

ACT 144

S.B. NO. 122

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to ensure that when an individual with a mental health emergency is subject to certain procedures and actions, sufficient notice is given to designated family members and other interested persons of the proceedings and actions and the individual's whereabouts.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§334- Notice of admissions, examinations, and hospitalizations. Notice of an individual’s emergency admission, examination, and hospitalization under this chapter may be given to at least one of the following persons in the following order of priority: the individual’s spouse or reciprocal beneficiary, legal parents, adult children, legal guardian, if one has been appointed, or if none can be found, the closest adult relative, as long as the individual:

- (1) Has capacity to make health care decisions and agrees;
- (2) Is given the opportunity to object and does not object, or the health care provider can reasonably infer from the circumstances based on the exercise of professional judgment that the individual does not object; or
- (3) Is incapacitated or an emergency circumstance exists and the health care provider determines based on the exercise of professional judgment that doing so is in the best interest of the individual.”

SECTION 3. Section 334-60.3, Hawaii Revised Statutes, is amended to read as follows:

“§334-60.3 Initiation of proceeding for involuntary hospitalization. (a) Any person may file a petition alleging that a person located in the county meets the criteria for commitment to a psychiatric facility. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public. The attorney general, the attorney general’s deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by a certificate of the licensed physician, advanced practice registered nurse, or psychologist who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to medical or psychological examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the signs and symptoms relied upon by the physician, advanced practice registered nurse, or psychologist to determine the person is in need of care or treatment, or both, and whether ~~or not~~ the person is capable of realizing and making a rational decision with respect to the person’s need for treatment. If the petitioner believes that further evaluation is necessary before commitment, the petitioner may request such further evaluation.

(b) In the event the subject of the petition has been given an examination, evaluation, or treatment in a psychiatric facility within five days before submission of the petition, and hospitalization is recommended by the staff of the facility, the petition may be accompanied by the administrator’s certificate in lieu of a physician’s or psychologist’s certificate.

(c) The petition shall include the name, address, and telephone number of at least one of the following persons in the following order of priority: the subject of the petition’s spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent, adult children, or legal guardian, or if none can be found, notice shall be served on at least one of the subject’s closest adult relatives, if any can be found.”

SECTION 4. Section 334-60.4, Hawaii Revised Statutes, is amended to read as follows:

“§334-60.4 Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary hospitalization. (a) The court shall set a hearing on the petition and notice of the time and place of ~~[such]~~ the hearing shall be served in accordance with, and to those persons specified in, a current order of com-

mitment. If there is no current order of commitment, notice of the hearing shall be served personally on the subject of the petition and served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, on the subject's spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent ~~and~~, adult children, or legal guardian, or if none can be found, notice of the hearing shall be served on at least one of the subject's closest adult relatives, if any can be found. Notice of the hearing shall also be served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as the case may be. If the subject of the petition is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if ~~such~~ that person can be found within the State. Notice shall also be given to ~~such~~ other persons as the court may designate.

(b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the subject; and a statement of the legal standard upon which commitment is authorized;
- (2) A copy of the petition;
- (3) A written notice, in plain and simple language, that the subject may waive ~~such a~~ the hearing by voluntarily agreeing to hospitalization, or with the approval of the court, to some other form of treatment;
- (4) A filled-out form indicating such waiver;
- (5) A written notice, in plain and simple language, that the subject or the subject's guardian or representative may apply at any time for a hearing on the issue of the subject's need for hospitalization, if the subject has previously waived such a hearing;
- (6) Notice that the subject is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
- (7) Notice that if the subject does not want to be represented by the public defender, the subject may contact the subject's own attorney; and
- (8) ~~[Notice, if such be the case,]~~ If applicable, notice that the petitioner intends to adduce evidence to show that the subject of the petition is an incapacitated or protected person, or both, under article V of chapter 560, and whether ~~or not~~ appointment of a guardian is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.

(c) If the subject executes and files a waiver of the hearing, upon acceptance by the court following a court determination that the person understands the person's rights and is competent to waive them, the court shall order the subject to be committed to a facility that has agreed to admit the subject as an involuntary patient or, if the subject is at such a facility, that the subject be retained there.

(d) Notice of adjournments, continuances, other delays, dates of rescheduled hearings, and waivers of the hearing under subsection (c) shall also be served on the persons specified in subsection (a)."

SECTION 5. Section 334-60.5, Hawaii Revised Statutes, is amended to read as follows:

“§334-60.5 Hearing on petition. (a) The court ~~[may]~~ shall adjourn or continue a hearing for failure to timely notify ~~[a]~~ the subject of the petition’s spouse or reciprocal beneficiary, legal parents, adult children, guardian, or relative, or other person determined by the court to be entitled to notice, or for failure by the subject to contact an attorney as provided in section 334-60.4(b)(7) ~~[if]~~ unless the court determines that the interests of justice ~~[so]~~ require ~~[-]~~ that the hearing continue without adjournment or continuance.

(b) The time and form of the procedure incident to hearing the issues in the petition shall be provided by court rule. Unless the hearing is waived, the judge shall hear the petition as soon as possible and no later than ten days after the date the petition is filed unless a reasonable delay is sought for good cause shown by the subject of the petition, the subject’s attorney, or those persons entitled to receive notice of the hearing under section 334-60.4.

(c) The subject of the petition shall be present at all hearings unless the subject waives the right to be present, is unable to attend, or creates conditions ~~[which]~~ that make it impossible to conduct the hearing in a reasonable manner as determined by the judge. A waiver is valid only upon acceptance by the court following a judicial determination that the subject understands the subject’s rights and is competent to waive them, or is unable to participate. If the subject is unable to participate, the judge shall appoint a guardian ad litem or a temporary guardian as provided in article V of chapter 560, to represent the subject throughout the proceedings.

(d) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested party, or the court on its own motion may request a hearing in another circuit because of convenience to the parties, witnesses, or the court or because of the individual’s mental or physical condition.

(e) The attorney general, the attorney general’s deputy, special deputy, or appointee shall present the case for hearings convened under this chapter, except that the attorney general, the attorney general’s deputy, special deputy, or appointee need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the court the case for involuntary hospitalization.

(f) Counsel for the subject of the petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that the counsel believes necessary to a proper disposition of the proceedings, including evidence as to alternatives to inpatient hospitalization.

(g) No individual may be found to require treatment in a psychiatric facility unless at least one physician, advanced practice registered nurse, or psychologist who has personally examined the individual testifies in person at the hearing. This testimony may be waived by the subject of the petition. If the subject of the petition has refused to be examined by a licensed physician, advanced practice registered nurse, or psychologist, the subject may be examined by a court-appointed licensed physician, advanced practice registered nurse, or psychologist. If the subject refuses and there is sufficient evidence to believe that the allegations of the petition are true, the court may make a temporary order committing the subject to a psychiatric facility for a period of ~~[not]~~ no more than five days for the purpose of a diagnostic examination and evaluation. The subject’s refusal shall be treated as a denial that the subject is mentally ill or suffering from substance abuse. Nothing in this section ~~[-, however,]~~ shall limit the individual’s privilege against self-incrimination.

(h) The subject of the petition in a hearing under this section has the right to secure an independent medical or psychological evaluation and present evidence thereon.

(i) If after hearing all relevant evidence, including the result of any diagnostic examination ordered by the court, the court finds that an individual is not a person requiring medical, psychiatric, psychological, or other rehabilitative treatment or supervision, the court shall order that the individual be discharged if the individual has been hospitalized prior to the hearing.

(j) If the court finds that the criteria for involuntary hospitalization under section 334-60.2(1) has been met beyond a reasonable doubt and that the criteria under sections 334-60.2(2) and 334-60.2(3) have been met by clear and convincing evidence, the court may issue an order to any law enforcement officer to deliver the subject to a facility that has agreed to admit the subject as an involuntary patient, or if the subject is already a patient in a psychiatric facility, authorize the facility to retain the patient for treatment for a period of ninety days unless sooner discharged. The court may also authorize the involuntary administration of medication, where the subject has an existing order for assisted community treatment, issued pursuant to part VIII of this chapter, relating to assisted community treatment, and in accordance with the treatment prescribed by that prior order. Notice of the subject's commitment and the facility name and location where the subject will be committed shall be provided to those persons entitled to notice pursuant to section 334-60.4. An order of commitment shall specify which of those persons served with notice pursuant to section 334-60.4, together with such other persons as the court may designate, shall be entitled to receive any subsequent notice of intent to discharge, transfer, or recommit. The court shall forward to the Hawaii criminal justice data center all orders of involuntary civil commitment or information from all orders of involuntary civil commitment, as requested by the Hawaii criminal justice data center, which in turn shall forward the information to the Federal Bureau of Investigation, or its successor agency, for inclusion in the National Instant Criminal Background Check System database. The orders or information shall also be maintained by the Hawaii criminal justice data center for disclosure to and use by law enforcement officials for the purpose of firearms permitting or registration pursuant to chapter 134. This subsection shall apply to all involuntary civil commitments without regard to the date of the involuntary civil commitment.

(k) The court may find that the subject of the petition is an incapacitated or protected person, or both, under article V of chapter 560, and may appoint a guardian or conservator, or both, for the subject under the terms and conditions as the court shall determine.

(l) Persons entitled to notice are also entitled to be present in the courtroom for the hearing and to receive a copy of the hearing transcript or recording, unless the court determines that the interests of justice require otherwise."

SECTION 6. Section 334-60.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [~~For civil commitments that result directly from legal proceedings under chapters 704 and 706, when~~] When the administrator or attending physician of a psychiatric facility contemplates discharge of an involuntary patient because of expiration of the court order for commitment or because the patient is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization in section 334-60.2, the administrator or attending physician shall provide notice of intent to discharge, or if the patient voluntarily agrees to further hospitalization, the administrator shall provide notice of the patient's admission to voluntary inpatient treatment. The following requirements and procedures shall apply:

(1) The notice and a certificate of service shall be filed with the family court and served on those persons whom the order of commit-

ment specifies as entitled to receive notice, by mail at the person's last known address. Notice shall also be sent to the prosecuting attorney of the county from which the person was originally committed, by facsimile or electronically, for the sole purpose of victim notification;

- (2) Any person specified as entitled to receive notice may waive this right in writing with the psychiatric facility;
- (3) If no objection is filed within five calendar days of mailing the notice, the administrator or attending physician of the psychiatric facility shall discharge the patient or accept the patient for voluntary inpatient treatment;
- (4) If any person specified as entitled to receive notice files a written objection, with a certificate of service, to the discharge or to the patient's admission to voluntary inpatient treatment on the grounds that the patient is a proper subject for commitment, the family court shall conduct a hearing as soon as possible, prior to the termination of the current commitment order, to determine if the patient still meets the criteria for involuntary hospitalization in section 334-60.2. The person filing the objection shall also notify the psychiatric facility by telephone on the date the objection is filed;
- (5) If the family court finds that the patient does not meet the criteria for involuntary hospitalization in section 334-60.2, the court shall issue an order of discharge from the commitment; and
- (6) If the family court finds that the patient does meet the criteria for involuntary hospitalization in section 334-60.2, the court shall issue an order denying discharge from the commitment."

SECTION 7. Section 334-82, Hawaii Revised Statutes, is amended to read as follows:

"§334-82 Order to show cause; guardian ad litem. Immediately upon receipt of a request, the court shall issue an order to show cause directed to the administrator of the facility and commanding the administrator to show cause at a date and time certain ~~[not]~~ no later than five days thereafter why the patient should not be discharged ~~[forthwith.]~~ immediately. A copy of the request shall be attached to the order to show cause. The form of the order to show cause shall be prescribed and supplied free of charge by the court. The order to show cause shall issue without cost and may be served as any other civil process or by any responsible person appointed by the court for that purpose. At any stage of the proceedings, the court may appoint a guardian ad litem for the patient. The guardian ad litem may be a member of the bar of the court or any other responsible person. Service on the administrator may be effected by leaving certified copies of the order to show cause and request at the facility with any person exercising authority. Notice of the order to show cause and the hearing date, and any adjournments, continuances, other delays, and dates of rescheduled hearings shall be provided to those persons entitled to notice pursuant to section 334-60.4."

SECTION 8. Section 334-84, Hawaii Revised Statutes, is amended to read as follows:

"§334-84 Order. If it is determined that the admission of the patient is regular and that the patient needs continued hospitalization, the court shall issue an order authorizing the detention of the patient at the facility. If it is de-

terminated that the admission of the patient is not regular or that the patient does not need continued hospitalization, the court shall issue an order requiring the immediate discharge of the patient from the facility. Notice of the detention or discharge shall be provided to those persons entitled to notice pursuant to section 334-60.4.”

SECTION 9. Section 334-123, Hawaii Revised Statutes, is amended to read as follows:

“§334-123 Initiation of proceeding for assisted community treatment. (a)

Any interested party may file a petition with the family court alleging that another person meets the criteria for assisted community treatment. The petition shall state:

- (1) Each of the criteria [~~numbered (1)~~] under section 334-121(1) through (7) for assisted community treatment [~~as set out in section 334-121~~];
- (2) Petitioner’s good faith belief that the subject of the petition meets each of the criteria [~~numbered (1)~~] under section 334-121(1) through (7) [~~set forth in section 334-121~~];
- (3) Facts [~~which~~] that support the petitioner’s good faith belief that the subject of the petition meets each of the criteria [~~numbered (1)~~] under section 334-121(1) through (7) [~~set forth in section 334-121~~]; and
- (4) That the subject of the petition is present within the county where the petition is filed.

The hearing on the petition need not be limited to the facts stated in the petition. The petition shall be executed subject to the penalties of perjury.

(b) The petition may be accompanied by a certificate of a licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization who has examined the subject of the petition within twenty calendar days prior to the filing of the petition. For purposes of the petition, an examination shall be considered valid so long as the licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization has obtained enough information from the subject of the petition to reach a diagnosis of the subject of the petition, and to express a professional opinion concerning the same, even if the subject of the petition is not fully cooperative.

(c) The petition shall include the name, address, and telephone number of at least one of the following persons in the following order of priority: the subject of the petition’s spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent, adult children, or legal guardian, or if none can be found, the petition shall include the name, address, and telephone number of at least one of the subject’s closest adult relatives, if any can be found.”

SECTION 10. Section 334-125, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notice of the hearing shall be:

- (1) Served personally on the subject of the petition pursuant to family court rules;
- (2) Served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, to as many as are known to the petitioner of the subject’s spouse or reciprocal beneficiary,

legal parents, adult children, and legal guardian, if one has been appointed[;]. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent, adult children, or legal guardian, or if none can be found, notice of the hearing shall be served on at least one of the subject's closest adult relatives, if any can be found:

- (3) Served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as applicable; and
- (4) Given to ~~such~~ other persons as the court may designate.”

SECTION 11. Section 334-126, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The court ~~may~~ shall adjourn or continue a hearing for failure to timely notify a person entitled to be notified[-] unless the court determines that the interests of justice require that the hearing continue without adjournment or continuance.”

2. By amending subsection (d) to read:

“(d) The hearing shall be closed to the public, unless the subject of the petition requests otherwise. Individuals entitled to notice are entitled to be present in the courtroom for the hearing and to receive a copy of the hearing transcript or recording, unless the court determines that the interests of justice require otherwise.”

SECTION 12. Section 334-127, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the subject of the petition does not meet the criteria for assisted community treatment, the family court shall dismiss the petition. Notice of the dismissal shall be provided to those persons entitled to notice pursuant to section 334-125.

(b) If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the criteria for assisted community treatment under section 334-121(1) have been met beyond a reasonable doubt and that the criteria under section 334-121(2) to 334-121(7) have been met by clear and convincing evidence, the family court shall order the subject to obtain assisted community treatment for a period of ~~not~~ no more than one year. The written treatment plan submitted pursuant to section 334-126(h) shall be attached to the order and made a part of the order.

If the family court finds by clear and convincing evidence that the beneficial mental and physical effects of recommended medication outweigh the detrimental mental and physical effects, if any, the order may authorize types or classes of medication to be included in treatment at the discretion of the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization.

The court order shall also state who should receive notice of intent to discharge early in the event that the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization determines, prior to the end of the court ordered period of treatment, that the subject should be discharged early from assisted community treatment.

Notice of the order shall be provided to those persons entitled to notice pursuant to section 334-125.”

SECTION 13. Section 334-129, Hawaii Revised Statutes, is amended to read as follows:

“§334-129 Failure to comply with assisted community treatment. (a) A treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization may prescribe or administer to the subject of the order reasonable and appropriate medication or medications, if specifically authorized by the court order, and treatment [which] that is consistent with accepted medical standards and the family court order, including the written treatment plan submitted pursuant to section 334-126(h).

(b) No subject of the order shall be physically forced to take medication under a family court order for assisted community treatment unless the subject is within an emergency department or admitted to a hospital, subsequent to the date of the current assisted community treatment order.

(c) A subject may be transported to a designated mental health program, or a hospital emergency department, for failure to comply with an order for assisted community treatment via the following methods:

(1) By an interested party with the consent of the subject of the order;
or

(2) In accordance with section 334-59.

(d) The designated mental health program’s treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization or designee of the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization shall make all reasonable efforts to solicit the subject’s compliance with the prescribed treatment. If the subject fails or refuses to comply after the efforts to solicit compliance, the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization shall assess whether the subject of the order meets criteria for admission to a psychiatric facility under part IV of this chapter, and proceed with the admission pursuant to section 334-59(a)(2) or (3); provided that the refusal of treatment shall not, by itself, constitute a basis for involuntary hospitalization.

(e) Notice of any transport or admission under this section shall be provided pursuant to section 334- .”

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 2018.

(Approved July 6, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.