

ACT 87

H.B. NO. 2159

A Bill for an Act Relating to Mental Health.

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

PART I

SECTION 1. The purpose of this part is to require the department of the attorney general to assist with the preparation and filing of petitions for assisted community treatment and with the presentation of the case, unless declined by the petitioner.

SECTION 2. Section 334-121.5, Hawaii Revised Statutes, is amended to read as follows:

**“§334-121.5 Examination for assisted community treatment indication.** 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 associated with the licensed psychiatric facility where a person is located who was committed to involuntary hospitalization, delivered for emergency examination or emergency hospitalization, or voluntarily admitted to inpatient treatment at a psychiatric facility pursuant to part IV shall, before the person’s discharge, examine the person to determine whether an assisted community treatment plan is indicated pursuant to this part. If a plan is indicated, the psychiatrist or advanced practice registered nurse shall prepare the certificate specified by section 334-123 ~~[and may request assistance from the department of the attorney general with the preparation and filing of a petition brought pursuant to section 334-123]. The department of the attorney general shall assist with the preparation and filing of any petition brought pursuant to section 334-123 and with the presentation of the case at any related court proceedings; provided that, if the petitioner is a private provider or other private individual, the petitioner may decline the assistance.~~ The psychiatric facility may notify another mental health program for assistance with the coordination of care in the community for the person. Nothing in this section shall delay the appropriate discharge of a person from the psychiatric facility after the examination for assisted community treatment indication has been completed.”

SECTION 3. 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 under section 334-121 for assisted community treatment;

- (2) Petitioner's good faith belief that the subject of the petition meets each of the criteria under section 334-121;
- (3) Facts that support the petitioner's good faith belief that the subject of the petition meets each of the criteria under 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 but need not be sworn to before a notary public.

(b) The department of the attorney general shall assist with the preparation and filing of any petition brought pursuant to this section and with the presentation of the case at any related court proceedings; provided that, if the petitioner is a private provider or other private individual, the petitioner may decline the assistance.

~~[(b)]~~ (c) 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]~~ before 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. If the petitioner believes that further evaluation is necessary before treatment, the petitioner may request further evaluation.

~~[(e)]~~ (d) 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 4. Section 334-133, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Before the expiration of the period of assisted community treatment ordered by the family court, any interested party may file~~;~~ ~~or may request the department of the attorney general to file,~~ a petition with the family court for an order of continued assisted community treatment. The department of the attorney general shall assist with the preparation and filing of any petition brought pursuant to this section and with the presentation of the case at any related court proceedings; provided that, if the petitioner is a private provider or other private individual, the petitioner may decline the assistance. The petition shall be filed, and unless the court determines the existence of a guardian, a guardian ad litem appointed, and notice provided in the same manner as under sections 334-123 and 334-125."

SECTION 5. Act 221, Session Laws of Hawaii 2013, as amended by Act 114, Session Laws of Hawaii 2016, is amended by amending section 24 to read as follows:

“SECTION 24. This Act shall take effect on January 1, 2014; provided that:

- (1) Petitions filed pursuant to section 334-123, Hawaii Revised Statutes, for assisted community treatment involving a designated mental health program that is a state-operated provider shall not be filed until after July 1, 2015;
- (2) Any private provider wishing to file a petition pursuant to section 334-123, Hawaii Revised Statutes, for assisted community treatment may do so after January 1, 2014, ~~[using its own resources,]~~ if the petitioner is to be the designated mental health program; ~~[and]~~
- (3) Any interested party wishing to file a petition pursuant to section 334-123, Hawaii Revised Statutes, for assisted community treatment may do so after January 1, 2014, ~~[using the party's own resources,]~~ if the designated mental health program is a private provider~~[-]; and~~
- (4) After July 1, 2024, the department of the attorney general shall assist with the preparation and filing of any petition brought pursuant to sections 334-123 and 334-133, Hawaii Revised Statutes, and with the presentation of the case at any related court proceedings; provided further that if the petitioner is a private provider or other private individual, the petitioner may decline the assistance.”

## PART II

SECTION 6. The purpose of this part is to repeal language entitling the subject of a petition for assisted community treatment to legal representation by a public defender.

SECTION 7. Section 802-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any indigent person who is:

- (1) Arrested for, charged with, or convicted of an offense or offenses punishable by confinement in jail or prison or for which the person may be or is subject to the provisions of chapter 571;
- (2) Threatened by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility; ~~or~~
- ~~[(3) The subject of a petition for assisted community treatment under chapter 334; or~~
- (4) (3) The subject of a petition for involuntary medical treatment under chapter 353,

shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.”

## PART III

SECTION 8. The purpose of this part is to provide a mechanism for nonviolent petty misdemeanor defendants whose fitness to proceed in criminal proceedings remains an outstanding issue to be automatically screened for involuntary hospitalization or assisted community treatment.

SECTION 9. Section 704-421, Hawaii Revised Statutes, is amended to read as follows:

**“[§704-421] Proceedings for defendants charged with petty misdemeanors not involving violence or attempted violence; criminal justice diversion program.**

(1) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if, at the hearing held pursuant to section 704-404(2)(a) or at a further hearing held after the appointment of an examiner pursuant to section 704-404(2)(b), the court determines that the defendant is fit to proceed, then the proceedings against the defendant shall resume. In all other cases under this section where fitness remains an outstanding issue, the court shall continue the suspension of the proceedings and either commit the defendant to the custody of the director of health to be placed in a hospital or other suitable facility, including an outpatient facility, for further examination and assessment[-] or, in cases where the defendant was not subject to an order of commitment to the director of health for the purpose of the fitness examination under section 704-404(2), the court may order that the defendant remain released on conditions the court determines necessary for placement in a group home, residence, or other facility prescribed by the director of health for further assessment by a clinical team pursuant to subsection (3).

(2) ~~[Within seven days from the commitment of the defendant to the custody of the director of health, or as soon thereafter as is practicable, the director of health]~~ In cases under this section where the defendant's fitness to proceed remains an outstanding issue at the hearing held pursuant to section 704-404(2)(a) or a further hearing held after the appointment of an examiner pursuant to section 704-404(2)(b), as applicable, the director of health, within fourteen days of that hearing or as soon thereafter as is practicable, shall report to the court on the following:

- (a) The defendant's current capacity to understand the proceedings against the defendant and the defendant's current ability to assist in the defendant's own defense[-];
- (b) Whether, after assessment of the defendant pursuant to subsection (3)(a) or (b), the defendant's clinical team believes that the defendant meets the criteria for involuntary hospitalization under section 334-60.2 or assisted community treatment under section 334-121; and
- (c) The date that the director of health filed a petition for involuntary hospitalization or assisted community treatment on behalf of the defendant pursuant to subsection (3)(a) or (b), as applicable.

If, following the report, the court finds the defendant fit to proceed, the proceedings against the defendant shall resume. In all other cases, the court shall dismiss the charge with or without prejudice in the interest of justice. ~~[The director of health may at any time proceed under the provisions of section 334-60.2 or 334-121.]~~

(3) During the defendant's commitment to the custody of the director of health or release on conditions pursuant to subsection (1):

- (a) If the defendant's clinical team determines that the defendant meets the criteria for involuntary hospitalization set forth in section 334-60.2, the director of health, within seven days of the clinical team's determination, shall file with the family court a petition for involuntary hospitalization pursuant to section 334-60.3. If the petition is granted, the defendant shall remain hospitalized for a period of time as provided by section 334-60.6; or
- (b) If the defendant's clinical team determines that the defendant does not meet the criteria for involuntary hospitalization, or the court

denies the petition for involuntary hospitalization, the defendant's clinical team shall determine whether an assisted community treatment plan is appropriate pursuant to part VIII of chapter 334. If the clinical team determines that an assisted community treatment plan is appropriate, the psychiatrist or advanced practice registered nurse from the clinical team shall prepare the certificate for assisted community treatment specified by section 334-123, including a written treatment plan for the provision of mental health services to the defendant. The clinical team shall identify a community mental health outpatient program that agrees to provide mental health services to the defendant as the designated mental health program under the assisted community treatment order. The clinical team shall provide the defendant with a copy of the certificate. Within ten days of provision of the certificate to the defendant by the clinical team, the director of health shall file with the family court the assisted community treatment petition described in section 334-123. When a petition for assisted community treatment has been filed for a defendant, the defendant committed to the custody of the director of health shall remain in custody until the family court issues a decision on the petition; provided that the judge may order that the subject be released during the pendency of that action.

(4) This section shall not apply to any case under the jurisdiction of the family court unless the presiding judge orders otherwise."

#### PART IV

SECTION 10. The purpose of this part is to authorize courts to require a probation violator to undergo a mental health evaluation and treatment program as a condition of continued probation whenever there is reason to believe that the probation violation is associated with a mental disease, disorder, or defect of the defendant.

SECTION 11. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

**"§706-625 Revocation, modification of probation conditions.** (1) The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke probation except as provided in ~~[subsection]~~ subsections (6) and (7), reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

(2) The prosecuting attorney, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section, the court shall not be bound by the Hawaii rules of evidence, except for the rules pertaining to privileges.

(3) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension

of sentence or probation if the defendant has been convicted of another crime other than a felony.

(4) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(5) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted.

~~[(6) As used in this section, “conviction” means that a judgment has been pronounced upon the verdict.~~

~~(7)] (6)~~ The court may require a defendant to undergo and complete a substance abuse treatment program when the defendant has committed a violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5. If the defendant fails to complete the substance abuse treatment program or the court determines that the defendant cannot benefit from any other suitable substance abuse treatment program, the defendant shall be subject to revocation of probation and incarceration. The court may require the defendant to:

- (a) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (b) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (c) Contribute to the cost of the substance abuse treatment program; and
- (d) Comply with any other terms and conditions of probation.

~~[As used in this subsection, “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.~~

~~Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.]~~

(7) As a condition of continued probation, the court may require a defendant to undergo a mental health evaluation and treatment program when the defendant has committed a violation of the terms and conditions of probation and there is reason to believe that the violation is associated with a mental disease, disorder, or defect of the defendant. The court may require the defendant to:

- (a) Be assessed for a mental disease, disorder, or defect by a psychiatrist or psychologist, who shall prepare an appropriate treatment plan;
- (b) Present a proposal to receive treatment in accordance with the plan prepared pursuant to paragraph (a) through a mental health treatment program that includes an identified source of payment for the treatment program, as applicable;
- (c) Contribute to the cost of the treatment program, as applicable; and
- (d) Comply with any other terms and conditions of probation.

If the defendant fails to complete the treatment program or the court determines that the defendant cannot benefit from any other suitable treatment program, the defendant may be subject to revocation of probation and incarceration.

(8) Nothing in subsection (6) or (7) shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.

(9) For the purposes of this section:

“Conviction” means that a judgment has been pronounced upon the verdict.

“Mental health treatment program” means treatment services addressing a mental disease, disorder, or defect of the defendant, including residential or rehabilitation treatment or any other course or procedure, including diversion into specialized courts.

“Substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.”

## PART V

SECTION 12. Section 334-126, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The court may appoint an attorney for the subject if the court determines that the interests of justice require one be appointed. If the subject of the petition is represented by [their own] an attorney, whether retained by the subject or appointed by the court, the attorney 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 attorney believes necessary for a proper disposition of the proceeding.”

SECTION 13. Act 111, Session Laws of Hawaii 2017, is amended by amending section 8 to read as follows:

~~“SECTION 8. This Act shall take effect on July 1, 2017[, and shall be repealed on June 30, 2024; provided that subsection (a) of section 334E-2, Hawaii Revised Statutes, as amended by section 3 of this Act, shall be reenacted in the form in which it read on June 30, 2017].”~~

## PART VI

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval; provided that section 13 shall take effect on June 29, 2024.

(Approved June 27, 2024.)