

JAN 23 2015

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# A BILL FOR AN ACT

RELATING TO MENTAL HEALTH TREATMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 334-123, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§334-123 Initiation of proceeding for assisted community  
4 treatment. (a) Any interested party may file a petition with  
5 the family court alleging that another person meets the criteria  
6 for assisted community treatment. The petition shall state:

7           (1) Each of the criteria numbered (1) through (7) for  
8 assisted community treatment, as set out in section  
9 334-121;

10          (2) Petitioner's good faith belief that the subject of the  
11 petition meets each of the criteria numbered (1)  
12 through (7) set forth in section 334-121;

13          (3) Facts which support petitioner's good faith belief  
14 that the subject of the petition meets each of the  
15 criteria numbered (1) through (7) set forth in section  
16 334-121; and



1 (4) ~~[+]That[+]~~ the subject of the petition is present  
2 within the county where the petition is filed.

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

6 (b) The petition may be accompanied by a certificate of a  
7 licensed psychiatrist who has examined the subject of the  
8 petition ~~[at any time]~~ no longer than twenty calendar days prior  
9 to the ~~[submission]~~ filing of the petition.

10 ~~[(c) If the subject of the petition has refused to submit  
11 to examination by a licensed psychiatrist, the fact of the  
12 refusal shall be alleged in the petition.]"~~

13 SECTION 2. Section 334-124, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§334-124 Hearing date.** The family court shall set a  
16 hearing date on a petition as soon as possible~~[, but within ten  
17 days after filing of the petition]."~~

18 SECTION 3. Section 334-125, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§334-125 Notice.** (a) Notice of the hearing shall be:



- 1 (1) Served personally on the subject of the petition  
2 pursuant to family court rules; and
- 3 (2) Served personally or by certified or registered mail,  
4 return receipt requested, deliverable to the addressee  
5 only, to as many as are known to the petitioner of the  
6 subject's spouse or reciprocal beneficiary, legal  
7 parents, adult children, and legal guardian, if one  
8 has been appointed;
- 9 (3) Served on the public defender, attorney for the  
10 subject of the petition, or other court-appointed  
11 attorney as applicable; and
- 12 (4) Given to such other persons as the court may  
13 designate.
- 14 (b) The notice shall include the following:
- 15 (1) The date, time, place of hearing, a clear statement of  
16 the purpose of the proceedings and possible  
17 consequences to the subject, and a statement of the  
18 legal standard upon which assisted community treatment  
19 is being considered;
- 20 (2) A copy of the petition;



1 (3) Notice that the subject of the petition is entitled to  
2 the assistance of an attorney, and that the public  
3 defender has been notified of these proceedings; and

4 (4) Notice that if the subject does not want to be  
5 represented by the public defender, the subject may  
6 contact the subject's own attorney.

7 (c) Notice of all subsequent hearings to include a  
8 continuance of the first hearing shall be served in accordance  
9 with subsections (a) and (b) except that service upon the public  
10 defender in accordance with subsection (a)(3) is accepted as  
11 service on the subject of the petition."

12 SECTION 4. Section 334-126, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§334-126 Hearing on petition. (a) The court may adjourn  
15 or continue a hearing for failure to timely notify a person  
16 entitled to be notified.

17 (b) The time and form of the procedure incident to hearing  
18 the issues in the petition shall be provided by family court  
19 rule and consistent with this part.

20 (c) Hearings may be held at any convenient place within  
21 the circuit. The subject of the petition, any interested party,



1 or the family court upon its own motion may request a hearing in  
2 another court because of inconvenience to the parties,  
3 witnesses, or the family court or because of the subject's  
4 physical or mental condition.

5 (d) The hearing shall be closed to the public, unless the  
6 subject of the petition requests otherwise.

7 (e) The subject of the petition shall be present at the  
8 hearing. However, if the subject has been served with the  
9 petition and does not appear at the hearing, the court [~~in its~~  
10 ~~discretion, may go forward with the hearing.~~] shall appoint a  
11 guardian ad litem to represent the best interests of the subject  
12 through the proceedings.

13 [~~f)~~ ~~The subject of the petition need not, but may, be~~  
14 ~~represented by an attorney. If the subject desires an attorney~~  
15 ~~and is indigent, or if the family court determines that the~~  
16 ~~legal or factual issues raised are of such complexity that the~~  
17 ~~assistance of an attorney is necessary for an adequate~~  
18 ~~presentation of the merits or that the subject of the petition~~  
19 ~~is unable to speak for the subject's self, the family court~~  
20 ~~shall order the appointment of a public defender or other~~



1 ~~attorney to represent the subject and continue the hearing for~~  
2 ~~not more than seven days.]~~

3 (g) If the subject of the petition is represented by an  
4 attorney, the attorney shall be allowed adequate time for  
5 investigation of the matters at issue and for preparation, and  
6 shall be permitted to present the evidence that the attorney  
7 believes necessary for a proper disposition of the proceeding.

8 (h) No subject of the petition shall be ordered to receive  
9 assisted community treatment unless at least one psychiatrist  
10 testifies in person at the hearing who has personally assessed  
11 the subject [~~within the time period commencing ten calendar days~~  
12 ~~before the filing of the petition and ending at the time of the~~  
13 ~~psychiatrist's testimony]. The psychiatrist's testimony shall  
14 state the facts which support the allegation that the subject  
15 meets all the criteria for assisted community treatment, provide  
16 a written treatment plan, which shall include non-mental health  
17 treatment if appropriate, provide the rationale for the  
18 recommended treatment, and identify the designated mental health  
19 program responsible for the coordination of care.~~

20 If the recommended assisted community treatment includes  
21 medication, the psychiatrist's testimony shall describe the



1 types or classes of medication which should be authorized, and  
2 describe the physical and mental beneficial and detrimental  
3 effects of such medication.

4  ~~[If the subject of the petition has refused to be examined~~  
5  ~~by a licensed psychiatrist, the family court may request the~~  
6  ~~subject to consent to examination by a psychiatrist appointed by~~  
7  ~~the court or employed at a community mental health center. If~~  
8  ~~the subject of the petition does not consent and the family~~  
9  ~~court finds sufficient evidence to believe that the allegations~~  
10  ~~in the petition are true, the family court may order the~~  
11  ~~commitment of the subject to a psychiatric facility for~~  
12  ~~examination. The commitment shall not be for more than forty-~~  
13  ~~eight hours. The examining psychiatrist shall submit the~~  
14  ~~findings and recommendations to the family court in the form of~~  
15  ~~a written treatment plan.~~

16  ~~The subject of the petition's refusal to submit voluntarily~~  
17  ~~to examination shall be treated as a denial that the subject is~~  
18  ~~mentally ill or suffering from substance abuse, and a denial~~  
19  ~~that the subject otherwise fits within the criteria for a court~~  
20  ~~order of assisted community treatment.~~



1        ~~Nothing herein shall be construed in a way that limits the~~  
2 ~~subject of the petition's privilege against self incrimination.]~~

3        (i) The subject of the petition may secure a psychiatric  
4 examination and present the findings as evidence at the hearing.  
5 The subject shall be entitled to a psychiatric examination at a  
6 community mental health center if the subject so desires, and if  
7 an examination has not already been conducted at a community  
8 mental health center which will lead to psychiatric testimony at  
9 the hearing."

10        SECTION 5. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12        SECTION 6. This Act shall take effect upon its approval;  
13 provided that the amendments made to sections 334-123, 334-125,  
14 and 334-126, Hawaii Revised Statutes, by this Act shall not be  
15 repealed when those sections are reenacted on July 1, 2020,  
16 pursuant to section 24, Act 221, Session Laws of Hawaii 2013.

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INTRODUCED BY:

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**Report Title:**

Mental Health; Assisted Community Treatment

**Description:**

Removes the ten day time limit for setting a hearing date on a petition for assisted community treatment. Allows for notice of continuation hearings to the subject to be served via the public defender. Requires the court to appoint a guardian ad litem when the subject of a petition for assisted community treatment fails to appear at a hearing. Removes provisions governing the appointment of a public defender. Removes provisions allowing the court to order a subject to be examined by a licensed physician.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

