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# A BILL FOR AN ACT

RELATING TO ASSISTED COMMUNITY TREATMENT.

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

1           SECTION 1. The legislature finds that the assisted  
2 community treatment program established in 2013 provides  
3 individuals with severe mental illness who are unlikely to live  
4 safely in the community without available supervision with the  
5 necessary medical treatment and medication when it is in the  
6 individual's best interest. The legislature further finds that  
7 although the assisted community treatment program presents these  
8 individuals with an opportunity to receive ongoing treatment in  
9 the least restrictive setting and serves as a vital alternative  
10 to repeat emergency interventions as their primary course of  
11 treatment, many mentally ill individuals fail to participate in  
12 the program and partake of these benefits.

13           The legislature finds that existing law does not require a  
14 guardian ad litem to be appointed to represent an individual  
15 with severe mental illness during assisted community treatment  
16 program proceedings and promote their needs and interests. The  
17 legislature further finds that the mandatory appointment of a



1 guardian ad litem upon the filing of an assisted community  
2 treatment petition will improve procedures regarding the  
3 assisted community treatment program. Where the individual has  
4 an existing guardian, that person may act on the individual's  
5 behalf during the proceedings and does not necessitate the  
6 appointment of a guardian ad litem.

7 The purpose of this Act is to require the court to appoint,  
8 at the time an assisted community treatment program petition is  
9 filed, a guardian ad litem to represent the best interests of  
10 the individual who is subject to the petition throughout the  
11 pendency of the judicial proceedings if there is no existing  
12 guardian.

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

16 "§334- Appointment of a guardian ad litem. The family  
17 court, upon receipt of a petition filed under this part, shall  
18 determine the existence of a guardian and if none, shall appoint  
19 a guardian ad litem to represent the best interests of the  
20 subject of the petition throughout the pendency of the  
21 proceedings."



1 SECTION 3. Section 334-125, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:  
3 "(a) Notice of the hearing shall be:  
4 (1) Served personally on the subject of the petition  
5 pursuant to family court rules;  
6 (2) Served personally or by certified or registered mail,  
7 return receipt requested, deliverable to the addressee  
8 only, to as many as are known to the petitioner of the  
9 subject's spouse or reciprocal beneficiary, legal  
10 parents, adult children, and legal guardian, if one  
11 has been appointed. If the subject of the petition  
12 has no living spouse or reciprocal beneficiary, legal  
13 parent, adult children, or legal guardian, or if none  
14 can be found, notice of the hearing shall be served on  
15 at least one of the subject's closest adult relatives,  
16 if any can be found;  
17 (3) Served on the [~~public defender,~~] guardian ad litem  
18 appointed for the subject of the petition or the  
19 subject's existing guardian, if the court determines  
20 the existence of one;



1        (4) Served on the attorney for the subject of the  
2                    petition, ~~[or other court appointed attorney as]~~ if  
3                    applicable; and

4        ~~[(+4)]~~ (5) Given to other persons as the court may  
5                    designate.

6        (b) The notice shall include the following:

7        (1) The date, time, place of hearing, a clear statement of  
8                    the purpose of the proceedings and possible  
9                    consequences to the subject, and a statement of the  
10                   legal standard upon which assisted community treatment  
11                   is being considered;

12        (2) A copy of the petition;

13        (3) Notice that the subject of the petition has been  
14                    assigned a guardian ad litem to represent the best  
15                    interests of the subject throughout the proceeding,  
16                    unless the court determined the existence of a  
17                    guardian for the subject; and

18        ~~[(+3)]~~ (4) Notice that the subject of the petition is  
19                    entitled to the assistance of an attorney, and that  
20                    ~~[the public defender has been notified of these~~  
21                    ~~proceedings; and~~



1       ~~(4) Notice that if the subject does not want to be~~  
2           ~~represented by the public defender,~~] the subject may  
3           contact [~~the subject's~~] their own attorney."

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

6           "**§334-126 Hearing on petition.** (a) The court shall  
7 adjourn or continue a hearing for failure to timely notify a  
8 person entitled to be notified unless the court determines that  
9 the interests of justice require that the hearing continue  
10 without adjournment or continuance.

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

14          (c) Hearings may be held at any convenient place within  
15 the circuit. The subject of the petition, any interested party,  
16 or the family court upon its own motion may request a hearing in  
17 another court because of inconvenience to the parties,  
18 witnesses, or the family court or because of the subject's  
19 physical or mental condition.

20          (d) The hearing shall be closed to the public, unless the  
21 subject of the petition requests otherwise. Individuals



1 entitled to notice are entitled to be present in the courtroom  
2 for the hearing and to receive a copy of the hearing transcript  
3 or recording, unless the court determines that the interests of  
4 justice require otherwise.

5 (e) The subject of the petition shall not be required to  
6 be present at the hearing [~~However, if~~]; provided that the  
7 subject has been served with the petition and [~~does not appear~~  
8 ~~at the hearing, the court may appoint a~~] the appointed guardian  
9 ad litem, or existing guardian, is present to represent the best  
10 interests of the subject through the proceedings.

11 [~~(f) Notwithstanding chapter 802 to the contrary, the~~  
12 ~~public defender or other court appointed counsel shall represent~~  
13 ~~the subject upon filing of the petition. A copy of the petition~~  
14 ~~shall be served upon the public defender by the petitioner. The~~  
15 ~~public defender or the court appointed counsel may withdraw upon~~  
16 ~~a showing that the subject is not indigent. If the subject does~~  
17 ~~not desire representation, the court may discharge the attorney~~  
18 ~~after finding that the subject understands the proceedings and~~  
19 ~~the relief prayed for in the petition. Nothing in this~~  
20 ~~subsection shall be construed to:~~



1       ~~(1) Require the subject of the petition to accept legal~~  
2           ~~representation by the public defender or other court-~~  
3           ~~appointed counsel, or~~

4       ~~(2) Prevent the subject of the petition from obtaining~~  
5           ~~their own legal counsel to represent them in any~~  
6           ~~proceeding.~~

7       ~~(g)]~~ (f) If the subject of the petition is represented by  
8   ~~[an]~~ their own attorney, the attorney shall be allowed adequate  
9   time for investigation of the matters at issue and for  
10   preparation, and shall be permitted to present the evidence that  
11   the attorney believes necessary for a proper disposition of the  
12   proceeding.

13       ~~[(h)]~~ (g) No subject of the petition shall be ordered to  
14   receive assisted community treatment unless at least one  
15   psychiatrist or advanced practice registered nurse with  
16   prescriptive authority and who holds an accredited national  
17   certification in an advanced practice registered nurse  
18   psychiatric specialization testifies in person at the hearing  
19   who has personally assessed the subject, within a reasonable  
20   time before the filing of the petition up to the time when the  
21   psychiatrist or advanced practice registered nurse with



1 prescriptive authority and who holds an accredited national  
2 certification in an advanced practice registered nurse  
3 psychiatric specialization provides oral testimony at court.  
4 The testimony of the psychiatrist or advanced practice  
5 registered nurse with prescriptive authority and who holds an  
6 accredited national certification in an advanced practice  
7 registered nurse psychiatric specialization shall state the  
8 facts which support the allegation that the subject meets all  
9 the criteria for assisted community treatment, provide a written  
10 treatment plan, which shall include non-mental health treatment  
11 if appropriate, provide the rationale for the recommended  
12 treatment, and identify the designated mental health program  
13 responsible for the coordination of care.

14       If the recommended assisted community treatment includes  
15 medication, the testimony of the psychiatrist or advanced  
16 practice registered nurse with prescriptive authority and who  
17 holds an accredited national certification in an advanced  
18 practice registered nurse psychiatric specialization shall  
19 describe the types or classes of medication which should be  
20 authorized, and describe the physical and mental beneficial and  
21 detrimental effects of such medication.





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

8           SECTION 5. Section 334-127, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10           "(b) If after hearing all relevant evidence, including the  
11 results of any diagnostic examination ordered by the family  
12 court, the family court finds that the criteria for assisted  
13 community treatment under section 334-121(1) have been met  
14 beyond a reasonable doubt and that the criteria under section  
15 334-121(2) to 334-121(4) have been met by clear and convincing  
16 evidence, the family court shall order the subject to obtain  
17 assisted community treatment for a period of no more than one  
18 year. The written treatment plan submitted pursuant to section  
19 ~~[334-126(h)]~~ 334-126(g) shall be attached to the order and made  
20 a part of the order.



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

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

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

20           SECTION 6. Section 334-129, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) A treating psychiatrist or advanced practice  
2 registered nurse with prescriptive authority and who holds an  
3 accredited national certification in an advanced practice  
4 registered nurse psychiatric specialization may prescribe or  
5 administer to the subject of the order reasonable and  
6 appropriate medication or medications, if specifically  
7 authorized by the court order, and treatment that is consistent  
8 with accepted medical standards and the family court order,  
9 including the written treatment plan submitted pursuant to  
10 section [~~334-126(h).~~] 334-126(g)."

11           SECTION 7. Section 334-133, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**§334-133 Petition for additional period [{}of{}]**  
14 **treatment; hearing.** (a) [~~Prior to~~] Before the expiration of  
15 the period of assisted community treatment ordered by the family  
16 court, any interested party may file a petition with the family  
17 court for an order of continued assisted community treatment.  
18 The petition shall be filed, and unless the court determines the  
19 existence of a guardian, a guardian ad litem appointed, and  
20 notice provided in the same manner as under sections 334-123  
21 and 334-125.



1 (b) The family court shall appoint a guardian ad litem,  
2 unless there is an existing guardian, hold a hearing on the  
3 petition, and make its decision in the same manner as provided  
4 under sections 334-123 to 334-127. The family court may order  
5 the continued assisted community treatment for [~~not~~] no more  
6 than one year after the date of the hearing pursuant to this  
7 section if the court finds that the criteria for assisted  
8 community treatment continue to exist and are likely to continue  
9 beyond one hundred eighty days.

10 (c) Nothing in this section shall preclude the subject's  
11 stipulation to the continuance [{}of{}] an existing court order.  
12 This section shall be in addition to the provisions on the  
13 objection to discharge."

14 SECTION 8. Section 334-134, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§334-134 Hearing for discharge.** Any person may petition  
17 the family court for the discharge of an order of assisted  
18 community treatment during the period of assisted community  
19 treatment after sixty days from the most recent hearing  
20 involving the subject of the order. The petition shall be  
21 filed, and unless the court determines the existence of a



1 guardian, guardian ad litem appointed, notice given, hearing  
2 held, and order made in the same manner as provided for the  
3 original petition alleging that the subject of the order met the  
4 criteria for assisted community treatment."

5 SECTION 9. Section 802-1, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) [~~Except as provided in section 334-126(f), the~~] The  
8 appearance of the public defender in all judicial proceedings  
9 shall be subject to court approval.

10 (c) The appearance of a public defender in all hearings  
11 before the Hawaii paroling authority or other administrative  
12 body or agency shall be subject to the approval of the  
13 chairperson of the Hawaii paroling authority or the  
14 administrative head of the body or agency involved."

15 SECTION 10. Section 802-5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) [~~Except as provided in section 334-126(f), when~~] When  
18 it shall appear to a judge that a person requesting the  
19 appointment of counsel satisfies the requirements of this  
20 chapter, the judge shall appoint counsel to represent the person  
21 at all stages of the proceedings, including appeal, if any. If



1 conflicting interests exist, or if the interests of justice  
2 require, the court may appoint private counsel, who shall  
3 receive reasonable compensation for necessary expenses,  
4 including travel, the amount of which shall be determined by the  
5 court, and reasonable fees pursuant to subsection (b). All  
6 expenses and fees shall be ordered by the court. Duly ordered  
7 payment shall be made upon vouchers approved by the director of  
8 finance and warrants drawn by the comptroller."

9 SECTION 11. This Act does not affect rights and duties  
10 that matured, penalties that were incurred, and proceedings that  
11 were begun before its effective date.

12 SECTION 12. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 13. This Act shall take effect upon its approval.



**Report Title:**

Mental Health; Assisted Community Treatment; Petition; Guardian  
Ad Litem; Appointment; Notice; Hearing

**Description:**

Mandates appointment of a guardian ad litem to represent the  
best interests of a mentally ill individual in assisted  
community treatment proceedings. Eliminates the requirement for  
the office of the public defender to participate in the  
proceedings. (SD2)

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not legislation or evidence of legislative intent.*

