



GOV. MSG. NO. **1175**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 1, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 1, 2011, the following bill was signed into law:

HB1088 HD1 SD1 CD1

RELATING TO CORRECTIONS
Act 072 (11)

NEIL ABERCROMBIE
Governor, State of Hawaii

JUN 1 2011

ORIGINAL

ACT 072

on

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 1088
H.D. 1
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO CORRECTIONS.

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

1 SECTION 1. The purpose of this Act is to authorize the
2 department of public safety to render necessary medical and
3 mental health treatment to inmates and detainees in its custody
4 in an efficient and quicker fashion when those inmates or
5 detainees refuse treatment.

6 SECTION 2. Chapter 353, Hawaii Revised Statutes, is
7 amended by adding four new sections to be appropriately
8 designated and to read as follows:

9 "§353-A Involuntary medical treatment criteria. An inmate
10 or detainee in the custody of the department may be ordered to
11 receive involuntary medical treatment, including the taking or
12 application of medication, if the court finds that:

13 (1) The inmate or detainee poses a danger of physical harm
14 to self or others;

15 (2) Treatment with medication is medically appropriate;

16 and



1 (3) Considering less intrusive alternatives, treatment is
2 essential to forestall the danger posed by the inmate
3 or detainee.

4 **§353-B Initiation of proceeding for involuntary medical**

5 **treatment.** (a) The director, or the director's designee, may

6 file a petition for involuntary medical treatment alleging that

7 a person in the custody of the department meets the criteria for

8 involuntary medical treatment under section 353-A. The petition

9 shall be executed subject to the penalties of perjury but need

10 not be sworn to before a notary public and shall be filed in the

11 circuit court of the circuit wherein the person who is the

12 subject of the petition is in custody. The attorney general,

13 the attorney general's deputy, special deputy, or appointee

14 designated to present the case shall assist the petitioner to

15 state the substance of the petition in plain and simple

16 language. The petition may be accompanied by an affidavit of

17 the licensed physician or psychologist who has examined the

18 person within two days prior to submission of the petition,

19 unless the person whose treatment is sought has refused to

20 submit to a medical or psychological examination, in which case

21 the fact of refusal shall be alleged in the petition. The

22 affidavit shall set forth the signs and symptoms relied upon by



1 the physician or psychologist to determine whether the person is
2 in need of treatment, whether the person is capable of realizing
3 and making a rational decision with respect to the person's need
4 for treatment, and the recommended treatment. If the petitioner
5 believes that further evaluation is necessary before treatment,
6 the petitioner may request such further evaluation.

7 (b) If the person has been given an examination,
8 evaluation, or treatment in a psychiatric facility or by the
9 department within five days before the filing of the petition,
10 and treatment is recommended by the staff of the facility or the
11 department, the petition may be accompanied by an affidavit of
12 the department's medical director or the mental health
13 administrator in lieu of a physician's or psychologist's
14 affidavit.

15 **§353-C Notice; waiver of notice; hearing on petition;**
16 **waiver of hearing on petition for involuntary hospitalization.**

17 (a) The court shall set a hearing on the petition, and notice
18 of the hearing shall be served personally on the person who is
19 the subject of the petition, or by certified or registered mail,
20 return receipt requested, deliverable to the addressee only; on
21 the person's spouse, civil union partner, or reciprocal
22 beneficiary; legal parents; adult children; and legal guardian,



1 if one has been appointed. If the person has no living spouse,
2 civil union partner, or reciprocal beneficiary; legal parent;
3 adult children; or legal guardian, or if none can be found,
4 notice of the hearing shall be served on at least one of the
5 person's closest adult relatives if any can be found. Notice of
6 the hearing shall also be served on the public defender,
7 person's attorney, or other court-appointed attorney, as the
8 case may be. If the person is a minor, notice of the hearing
9 shall also be served upon the person who has had the principal
10 care and custody of the minor during the sixty days preceding
11 the date of the petition if the person can be found within the
12 State. Notice shall also be given to the other persons as the
13 court may designate.

14 (b) The notice required by subsection (a) shall include:

15 (1) The date, time, place of hearing, a clear statement of
16 the purpose of the proceedings and of possible
17 consequences to the person who is the subject of the
18 petition, and a statement of the legal standard upon
19 which commitment is authorized;

20 (2) A copy of the petition;



- 1 (3) Written notice, in plain and simple language, that the
2 person may waive the hearing by voluntarily agreeing
3 to the care or treatment proposed;
- 4 (4) A completed form indicating the waiver described in
5 paragraph (3) if the person waived the hearing;
- 6 (5) Written notice, in plain and simple language, that the
7 person or the person's guardian or representative may
8 apply at any time for a hearing on the issue of the
9 person's need for care or treatment if the person has
10 previously waived a hearing;
- 11 (6) Notice that the person is entitled to the assistance
12 of an attorney and that the public defender has been
13 notified of these proceedings;
- 14 (7) Notice that if the person does not want to be
15 represented by the public defender, the person may
16 contact the person's own attorney; and
- 17 (8) Notice, if applicable, that the petitioner intends to
18 present evidence to show that the person is an
19 incapacitated or protected person, or both, under
20 article V of chapter 560, and whether the appointment
21 of a guardian is sought at the hearing. If
22 appointment of a guardian is to be recommended, and a



1 nominee is known at the time the petition is filed,
2 the identity of the nominee shall be disclosed.

3 (c) If the person who is the subject of the petition
4 executes and files a waiver of the hearing, then upon acceptance
5 by the court following a court determination that the person
6 understands the person's rights and is competent to waive them,
7 the court shall order the person to be given the care or
8 treatment as the court deems to be proper under the
9 circumstance.

10 §353-D Hearing on petition. (a) The court may adjourn or
11 continue a hearing for failure to timely notify a spouse, civil
12 union partner, reciprocal beneficiary, guardian, relative, or
13 other person determined by the court to be entitled to notice,
14 or for failure by the person who is the subject of the petition
15 to contact an attorney as provided in section 353-C, if the
16 court determines that an adjournment or continuance is in the
17 interest of justice.

18 (b) Unless the hearing is waived, the judge shall hear the
19 petition as soon as possible and no later than ten days after
20 the date the petition is filed unless a reasonable delay is
21 sought for good cause shown by the person who is the subject of



1 the petition, the person's attorney, or those persons entitled
2 to receive notice of the hearing under section 353-C.

3 (c) The person who is the subject of the petition shall be
4 present at all hearings unless the person waives the right to be
5 present, is unable to attend, or creates conditions that make it
6 impossible to conduct the hearing in a reasonable manner as
7 determined by the judge. A waiver is valid only upon acceptance
8 by the court following a judicial determination that the person
9 understands the person's rights and is competent to waive them,
10 or is unable to participate. If the person is unable to
11 participate, the judge shall appoint a guardian ad litem or a
12 temporary guardian as provided in article V of chapter 560, to
13 represent the person throughout the proceedings.

14 (d) Hearings may be held at a convenient location within
15 the circuit where the person who is the subject of the petition
16 resides or any other circuit deemed appropriate by the court.
17 The person or any interested person may request a hearing in
18 another circuit because of convenience to the parties,
19 witnesses, or the court, or because of the person's mental or
20 physical condition.



1 (e) The attorney general, the attorney general's deputy,
2 special deputy, or appointee shall present the case for hearings
3 convened under this section.

4 (f) Counsel for the person who is the subject of the
5 petition shall be allowed adequate time for investigation of the
6 matters at issue and for preparation, and shall be permitted to
7 present evidence that the counsel believes necessary to a proper
8 disposition of the proceedings.

9 (g) No person who is the subject of the petition shall be
10 found to require care or treatment unless at least one physician
11 or psychologist who has personally examined the person testifies
12 in person at the hearing. This testimony may be waived by the
13 person. If the subject has refused to be examined by a licensed
14 physician or psychologist, the person may be examined by a
15 court-appointed licensed physician or psychologist. If the
16 person refuses and there is sufficient evidence to believe that
17 the allegations of the petition are true, the person's refusal
18 shall be treated as a denial that the person is mentally ill or
19 suffering from substance abuse. Nothing in this section shall
20 limit the person's privilege against self-incrimination.

21 (h) The person who is the subject of the petition in a
22 hearing under this section has the right to secure an



1 independent medical or psychological evaluation at the person's
2 own expense and present evidence thereon.

3 (i) If the court finds that the criteria for involuntary
4 medical treatment under section 353-A have been met by clear and
5 convincing evidence, the court may issue an order to authorize
6 the department to involuntarily medically treat the person for a
7 period of up to one year unless the person is sooner released or
8 sooner determined to no longer be in need of treatment.

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

14 SECTION 3. Section 802-1, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§802-1 Right to representation by public defender or**
17 **other appointed counsel.** Any indigent person who is (1)
18 arrested for, charged with, or convicted of an offense or
19 offenses punishable by confinement in jail or prison or for
20 which [~~such~~] the person may be or is subject to the provisions
21 of chapter 571; or (2) threatened by confinement, against the
22 indigent person's will, in any psychiatric or other mental



1 institution or facility; or (3) the subject of a petition for
2 involuntary outpatient treatment under chapter 334; or (4) the
3 subject of a petition for involuntary medical treatment under
4 chapter 353 shall be entitled to be represented by a public
5 defender. If, however, conflicting interests exist, or if the
6 public defender for any other reason is unable to act, or if the
7 interests of justice require, the court may appoint other
8 counsel.

9 The appearance of the public defender in all judicial
10 proceedings shall be subject to court approval.

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

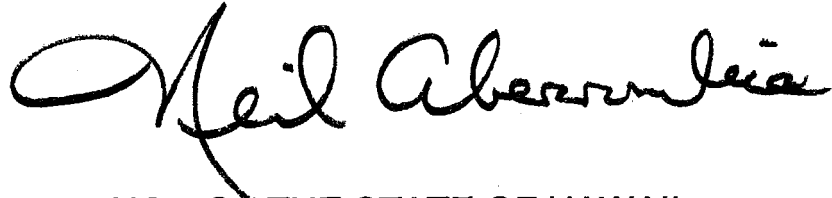
16 SECTION 4. In codifying the new sections added by section
17 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections of this Act.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 6. This Act shall take effect on July 1, 2011.



APPROVED this 1 day of JUN, 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII