

S.B. NO. 1308

JAN 26 2011

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

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

9 "§353- Involuntary medical treatment criteria. An  
10 inmate or detainee in the custody of the department may be  
11 ordered to receive involuntary treatment, including but not  
12 limited to the taking or application of medication, if the court  
13 finds:

- 14 (1) That the subject actually poses a danger of physical  
15 harm to self or others; and

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- 1        (2) That treatment with medication is medically  
2                appropriate; and  
3        (3) Considering less intrusive alternatives, the treatment  
4                is essential to forestall the danger posed by the  
5                subject."

6        SECTION 3. Chapter 353, Hawaii Revised statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9        "§353- Initiation of proceeding for involuntary medical  
10 treatment. (a) The director, or his designee, may file a  
11 petition alleging that a person in the custody of the department  
12 meets the criteria for involuntary medical treatment. The  
13 petition shall be executed subject to the penalties of perjury  
14 but need not be sworn to before a notary public and shall be  
15 filed in the circuit court of the circuit wherein the subject is  
16 in custody. The attorney general, the attorney general's  
17 deputy, special deputy, or appointee designated to present the  
18 case shall assist the petitioner to state the substance of the  
19 petition in plain and simple language. The petition may be  
20 accompanied by a certificate of the licensed physician or  
21 psychologist who has examined the person within two days before

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1 submission of the petition, unless the person whose treatment is  
2 sought has refused to submit to medical or psychological  
3 examination, in which case the fact of refusal shall be alleged  
4 in the petition. The certificate shall set forth the signs and  
5 symptoms relied upon by the physician or psychologist to  
6 determine the person is in need of treatment, whether or not the  
7 person is capable of realizing and making a rational decision  
8 with respect to the person's need for treatment, and the  
9 recommended treatment. If the petitioner believes that further  
10 evaluation is necessary before treatment, the petitioner may  
11 request such further evaluation.

12 (b) In the event the subject of the petition has been  
13 given an examination, evaluation, or treatment in a psychiatric  
14 facility or by the department within five days before submission  
15 of the petition, and treatment is recommended by the staff of  
16 the facility or the department, the petition may be accompanied  
17 by a certificate of the department's medical director or the  
18 mental health administrator in lieu of a physician's or  
19 psychologist's certificate."

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1 SECTION 4. Chapter 353, Hawaii Revised statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§353- Notice; waiver of notice; hearing on petition;  
5 waiver of hearing on petition for involuntary hospitalization.

6 (a) The court shall set a hearing on the petition and notice of  
7 the hearing shall be served personally on the subject of the  
8 petition and served personally or by certified or registered  
9 mail, return receipt requested, deliverable to the addressee  
10 only, on the subject's spouse or reciprocal beneficiary, legal  
11 parents, adult children, and legal guardian, if one has been  
12 appointed. If the subject of the petition has no living spouse  
13 or reciprocal beneficiary, legal parent and adult children, or  
14 if none can be found, notice of the hearing shall be served on  
15 at least one of the subject's closest adult relatives if any can  
16 be found. Notice of the hearing shall also be served on the  
17 public defender, attorney for the subject of the petition, or  
18 other court-appointed attorney as the case may be. If the  
19 subject of the petition is a minor, notice of the hearing shall  
20 also be served upon the person who has had the principal care  
21 and custody of the minor during the sixty days preceding the

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1 date of the petition if such person can be found within the  
2 state. Notice shall also be given to such other persons as the  
3 court may designate.

4 (b) The notice shall include the following:

5 (1) The date, time, place of hearing, a clear statement of  
6 the purpose of the proceedings and of possible  
7 consequences to the subject; and a statement of the  
8 legal standard upon which commitment is authorized;

9 (2) A copy of the petition;

10 (3) A written notice, in plain and simple language, that  
11 the subject may waive such a hearing by voluntarily  
12 agreeing to the care or treatment proposed;

13 (4) A filled-out form indicating such waiver;

14 (5) A written notice, in plain and simple language, that  
15 the subject or the subject's guardian or  
16 representative may apply at any time for a hearing on  
17 the issue of the subject's need for care or treatment,  
18 if the subject has previously waived such a hearing;

19 (6) Notice that the subject is entitled to the assistance  
20 of an attorney and that the public defender has been  
21 notified of these proceedings;

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1        (7) Notice that if the subject does not want to be  
2                    represented by the public defender the subject may  
3                    contact the subject's own attorney;

4        (8) Notice, if such be the case, that the petitioner  
5                    intends to adduce evidence to show that the subject of  
6                    the petition is an incapacitated or protected person,  
7                    or both, under article V of chapter 560, and whether  
8                    or not appointment of a guardian is sought at the  
9                    hearing. If appointment of a guardian is to be  
10                   recommended, and a nominee is known at the time the  
11                   petition is filed, the identity of the nominee shall  
12                   be disclosed.

13        (c) If the subject executes and files a waiver of the  
14                   hearing, upon acceptance by the court following a court  
15                   determination that the person understands the person's rights  
16                   and is competent to waive them, the court shall order the  
17                   subject to be given the care or treatment as it deems to be  
18                   proper under the circumstance."

19        SECTION 5. Chapter 353, Hawaii Revised statutes, is  
20                   amended by adding a new section to be appropriately designated  
21                   and to read as follows:

1       "§353- Hearing on petition. (a) The court may adjourn or  
2 continue a hearing for failure to timely notify a spouse or  
3 reciprocal beneficiary, guardian, relative, or other person  
4 determined by the court to be entitled to notice, or for failure  
5 by the subject to contact an attorney as provided in section  
6 353- , if the court determines the interests of justice so  
7 require.

8       (b) Unless the hearing is waived, the judge shall hear the  
9 petition as soon as possible and no later than ten days after  
10 the date the petition is filed unless a reasonable delay is  
11 sought for good cause shown by the subject of the petition, the  
12 subject's attorney, or those persons entitled to receive notice  
13 of the hearing under section 353- .

14       (c) The subject of the petition shall be present at all  
15 hearings unless the subject waives the right to be present, is  
16 unable to attend, or creates conditions which make it impossible  
17 to conduct the hearing in a reasonable manner as determined by  
18 the judge. A waiver is valid only upon acceptance by the court  
19 following a judicial determination that the subject understands  
20 the subject's rights and is competent to waive them, or is  
21 unable to participate. If the subject is unable to participate,

1 the judge shall appoint a guardian ad litem or a temporary  
2 guardian as provided in article V of chapter 560, to represent  
3 the subject throughout the proceedings.

4 (d) Hearings may be held at a convenient location within  
5 the circuit. The subject, any interested person, or the court  
6 on its own motion may request a hearing in another circuit  
7 because of convenience to the parties, witnesses, or the court  
8 or because of the individual's mental or physical condition.

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

12 (f) Counsel for the subject of the petition shall be  
13 allowed adequate time for investigation of the matters at issue  
14 and for preparation, and shall be permitted to present the  
15 evidence that the counsel believes necessary to a proper  
16 disposition of the proceedings.

17 (g) No individual may be found to require care or  
18 treatment unless at least one physician or psychologist who has  
19 personally examined the individual testifies in person at the  
20 hearing. This testimony may be waived by the subject of the  
21 petition. If the subject of the petition has refused to be



1 examined by a licensed physician or psychologist, the subject  
2 may be examined by a court-appointed licensed physician or  
3 psychologist. If the subject refuses and there is sufficient  
4 evidence to believe that the allegations of the petition are  
5 true, the subject's refusal shall be treated as a denial that  
6 the subject is mentally ill or suffering from substance abuse.  
7 Nothing in this section, however, shall limit the individual's  
8 privilege against self-incrimination.

9 (h) The subject of the petition in a hearing under this  
10 section has the right to secure an independent medical or  
11 psychological evaluation at the subject's own expense and  
12 present evidence thereon.

13 (i) If the court finds that the criteria for involuntary  
14 treatment under section 353- have been met by clear and  
15 convincing evidence, the court may issue an order to authorize  
16 the Department to involuntarily treat the subject for a period  
17 of up to one year unless sooner determined to no longer be in  
18 need of treatment or released.

19 (j) The court may find that the subject of the petition is  
20 an incapacitated or protected person, or both, under article V  
21 of chapter 560, and may appoint a guardian or conservator, or

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1 both, for the subject under the terms and conditions as the  
2 court shall determine."

3 SECTION 6. Section 802-1, Hawaii Revised statutes, is  
4 amended to read as follows:

5 "§802-1 Right to representation by public defender or  
6 other appointed counsel. Any indigent person who is (1)  
7 arrested for, charged with or convicted of an offense or  
8 offenses punishable by confinement in jail or prison or for  
9 which such person may be or is subject to the provisions of  
10 chapter 571; or (2) threatened by confinement, against the  
11 indigent person's will, in any psychiatric or other mental  
12 institution or facility; or (3) the subject of a petition for  
13 involuntary outpatient treatment under chapter 334; or (4) the  
14 subject of a petition for involuntary medical treatment under  
15 chapter 353 shall be entitled to be represented by a public  
16 defender. If, however, conflicting interests exist, or if the  
17 public defender for any other reason is unable to act, or if the  
18 interests of justice require, the court may appoint other  
19 counsel.

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

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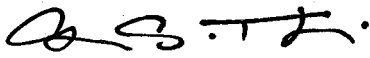
1           The appearance of a public defender in all hearings before  
2 the Hawaii paroling authority or other administrative body or  
3 agency shall be subject to the approval of the chairperson of  
4 the Hawaii paroling authority or the administrative head of the  
5 body or agency involved."

6           SECTION 7. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8           SECTION 8. This Act shall take effect upon its approval.

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10

INTRODUCED BY: 

11

BY REQUEST

**Report Title:**

Corrections.

**Description:**

Adds a section to chapter 353, Hawaii Revised Statutes, relating to the mental health treatment of inmates and detainees in the custody of the Department of Public Safety.

JUSTIFICATION SHEET

SB. NO. 1308

DEPARTMENT: PUBLIC SAFETY

TITLE: A BILL FOR AN ACT RELATING TO CORRECTIONS

PURPOSE: Amend chapter 353, Hawaii Revised Statutes, to codify a process the Department of Public Safety to provide necessary health care and treatment to inmates and detainees in its custody in an efficient and more expedient manner when those inmates or detainees refuse such care and treatment.

MEANS: Add four new sections to chapter 353 and amend section 802-1, Hawaii Revised Statutes.

JUSTIFICATION: Proposed amendments to chapter 353 will accomplish the following:

- (1) Provide the department with codified authority to petition the court for involuntary treatment for mentally ill individuals in the custody of the department who pose a danger to self or others by reason of their mental illness(es).
- (2) Provides process for notice, waiver of notice, hearings on petitions, and waivers of hearings on petitions for proposed involuntary treatment.
- (3) Permits the department to provide involuntary mental health care pursuant to court order.
- (4) Permits the department to respond in a more efficient manner to individuals

with mental health disorders on an emergent and continuous basis.

Impact on the public: This bill is intended to improve the care of individuals suffering from mental illness within the State of Hawaii Correctional system. It also is intended to more efficiently provide needed care to detainees and inmates who refuse recommended treatment when their mental health impacts their decision.

Impact on the department and other agencies; These proposed amendments and additions would assist and the Department's Mental Health Branch in preventing unnecessary transfers from Public Safety Facilities to Hawaii State Hospital (Department of Health Facilities). The Office of Public Defender would represent the interests of mentally ill inmates for whom the department would be seeking involuntary treatment.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: PSD 421

OTHER AFFECTED  
AGENCIES: Department of Health, Adult Mental Health Division, Hawaii State Hospital; Office of Public Defender; the Judiciary.

EFFECTIVE  
DATE: Upon approval.