
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 the inmates and detainees in its
4 custody in a more efficient and quicker fashion when those
5 inmates or 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 ordered by a court upon a finding
13 that:

- 14 (1) The subject poses an actual danger of physical harm to
15 self or others;
16 (2) Treatment with medication is medically appropriate;
17 and



1 (3) After considering less intrusive alternatives, the
2 treatment is determined to be essential to forestall
3 the physical danger posed by the subject.

4 §353-B Initiation of proceeding for involuntary medical
5 treatment. (a) The director, or the director's designee, may
6 file a petition alleging that a person in the custody of the
7 department meets the criteria for involuntary medical treatment
8 under section 353-A. The petition shall be executed subject to
9 the penalties of perjury but need not be sworn to before a
10 notary public and shall be filed in the circuit court of the
11 circuit in which the subject is in custody. The attorney
12 general, or the attorney general's deputy, special deputy, or
13 appointee designated to present the case, shall assist the
14 petitioner to state the substance of the petition in plain and
15 simple language. The petition may be accompanied by the
16 certificate of a licensed physician or psychologist who has
17 examined the person within two days before submission of the
18 petition, unless the person for whom treatment is sought has
19 refused to submit to medical or psychological examination, in
20 which case the fact of refusal shall be alleged in the petition.
21 The certificate shall set forth the signs and symptoms relied
22 upon by the physician or psychologist to determine that the



1 person is in need of treatment, whether or not the person is
2 capable of realizing and making a rational decision with respect
3 to the person's need for treatment, and the recommended
4 treatment. If the petitioner believes that further evaluation
5 is necessary before treatment, the petitioner may request such
6 further evaluation.

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

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 subject of the
19 petition or by certified or registered mail, return receipt
20 requested, deliverable to the addressee only, or on the
21 subject's spouse or reciprocal beneficiary, legal parents, adult
22 children, or legal guardian if one has been appointed. If the



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

14 (b) The notice shall include the following:

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

20 (2) A copy of the petition;

21 (3) A written notice, in plain and simple language, that
22 the subject may waive such a hearing by voluntarily



1 agreeing to the care or treatment proposed, and if a
2 waiver is executed, a filled-out form indicating the
3 waiver;

4 (4) A written notice, in plain and simple language, that
5 the subject or the subject's guardian or
6 representative may apply at any time for a hearing on
7 the issue of the subject's need for care or treatment,
8 if the subject has previously waived a hearing;

9 (5) Notice that the subject is entitled to the assistance
10 of an attorney and that the public defender has been
11 notified of these proceedings;

12 (6) Notice that if the subject does not want to be
13 represented by the public defender the subject may
14 contact the subject's own attorney; and

15 (7) Notice, if applicable, that the petitioner intends to
16 adduce evidence to show that the subject of the
17 petition is an incapacitated or protected person, or
18 both, under article V of chapter 560, and whether or
19 not appointment of a guardian is sought at the
20 hearing. If appointment of a guardian is to be
21 recommended, and a nominee is known at the time the



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

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

9 §353-D Hearing on petition. (a) The court may adjourn or
10 continue a hearing for failure to timely notify a spouse or
11 reciprocal beneficiary, guardian, relative, or other person
12 determined by the court to be entitled to notice, or for failure
13 by the subject to contact an attorney as provided in section
14 353-C , if the court determines the interests of justice so
15 require.

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



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

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

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

20 (f) Counsel for the subject of the petition shall be
21 allowed adequate time for investigation of the matters at issue
22 and for preparation, and shall be permitted to present the



1 evidence that the counsel believes necessary to a proper
2 disposition of the proceedings.

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

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

21 (i) If the court finds that the criteria for involuntary
22 treatment under section 353-A have been met by clear and



1 convincing evidence, the court may issue an order to authorize
2 the department to involuntarily treat the subject for a period
3 of up to one year unless sooner released or determined to no
4 longer be in need of treatment.

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

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

12 "**§802-1 Right to representation by public defender or**
13 **other appointed counsel. (a) Any indigent person who is:**

14 (1) [~~arrested~~] Arrested for, charged with, or convicted of
15 an offense or offenses punishable by confinement in
16 jail or prison or for which [~~such~~] the person may be
17 or is subject to the provisions of chapter 571; [~~or~~]

18 (2) [~~threatened~~] Threatened by confinement, against the
19 indigent person's will, in any psychiatric or other
20 mental institution or facility; [~~or~~]

21 (3) [~~the~~] The subject of a petition for involuntary
22 outpatient treatment under chapter 334; or



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

7 (b) The appearance of the public defender in all judicial
8 proceedings shall be subject to court approval.

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

14 SECTION 4. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect upon its approval.

21



Report Title:

Corrections; Involuntary Medical Treatment

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. (SD1)

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

