

JAN 24 2013

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# A BILL FOR AN ACT

RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT FOR  
INMATES AND DETAINEES IN CORRECTIONAL FACILITIES.

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

1           SECTION 1. Section 353-13.6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~+~~§353-13.6~~+~~ **Involuntary medical treatment criteria.**

4 An inmate or detainee in the custody of the department may be  
5 ordered to receive involuntary medical treatment, including the  
6 taking or application of medication, if the court finds that:

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

9           (2) Treatment with medication is medically appropriate;  
10           and

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

14           For the purposes of this section:

15           "Danger of physical harm to others" means likely to cause  
16 substantial physical or emotional injury to another, as  
17 evidenced by an act, attempt, or threat occurring recently or

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1 through a pattern of past behavior that has resulted in the  
2 person being placed in a more restricted setting for the safety  
3 of the person or of others in the facility.

4 "Danger of physical harm to self" means the person recently  
5 has threatened or attempted suicide or serious bodily self  
6 injury; or the person recently has behaved in such a manner as  
7 to indicate that the person is unable, without supervision and  
8 the assistance of others, to satisfy the need for nourishment,  
9 essential medical care, shelter or self-protection, so that it  
10 is probable that death, substantial bodily injury, or serious  
11 physical or mental debilitation or disease will result unless  
12 adequate treatment is provided."

13 SECTION 2. Section 353-13.7, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§353-13.7[+] **Initiation of proceeding for involuntary**  
16 **medical treatment.** (a) The director, or the director's  
17 designee, may file a petition for involuntary medical treatment  
18 alleging that a person in the custody of the department meets  
19 the criteria for involuntary medical treatment under section  
20 353-13.6. The petition shall be executed subject to the  
21 penalties of perjury but need not be sworn to before a notary  
22 public and shall be filed in the circuit or district court of  
23 the circuit or district wherein the person who is the subject of

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1 the petition is in custody. The attorney general, the attorney  
2 general's deputy, special deputy, or appointee designated to  
3 present the case shall assist the petitioner to state the  
4 substance of the petition in plain and simple language. The  
5 petition may be accompanied by an affidavit or declaration of  
6 the licensed physician or psychologist who has examined the  
7 person within [~~two~~] five days prior to submission of the  
8 petition, unless the person whose treatment is sought has  
9 refused to submit to a medical or psychological examination, in  
10 which case the fact of refusal shall be alleged in the petition.  
11 The affidavit or declaration shall set forth the signs and  
12 symptoms relied upon by the physician or psychologist to  
13 determine whether the person is in need of treatment, whether  
14 the person is capable of realizing and making a rational  
15 decision with respect to the person's need for treatment, and  
16 the recommended treatment. If the petitioner believes that  
17 further evaluation is necessary before treatment, the petitioner  
18 may request such further evaluation.

19 (b) If the person has been given an examination,  
20 evaluation, or treatment in a psychiatric facility or by the  
21 department within five days before the filing of the petition,  
22 and treatment is recommended by the staff of the facility or the  
23 department, the petition may be accompanied by an affidavit or

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1 declaration of the department's medical director or the mental  
2 health administrator in lieu of a physician's or psychologist's  
3 affidavit[-] or declaration."

4 SECTION 3. Section 353-13.8, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~f~~]**§353-13.8**[~~]~~ **Notice; waiver of notice; hearing on**  
7 **petition; waiver of hearing on petition for involuntary**  
8 **hospitalization.** (a) The court shall set a hearing on the  
9 petition, and notice of the hearing shall be served personally  
10 on the person who is the subject of the petition, or by  
11 certified or registered mail, return receipt requested,  
12 deliverable to the addressee only[~~]~~, on [~~the person's spouse,~~  
13 ~~civil union partner, or reciprocal beneficiary; legal parents;~~  
14 ~~adult children; and legal guardian, if one has been appointed.~~  
15 ~~If the person has no living spouse, civil union partner, or~~  
16 ~~reciprocal beneficiary; legal parent; adult children; or legal~~  
17 ~~guardian, or if none can be found, notice of the hearing shall~~  
18 ~~be served on at least one of the person's closest adult~~  
19 ~~relatives if any can be found.] the person's legal guardian or  
20 emergency contact listed while in the custody of the department.  
21 Notice of the hearing shall also be served on the public  
22 defender, person's attorney, or other court-appointed attorney,  
23 as the case may be. If the person is a minor, notice of the~~

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1 hearing shall also be served upon the person who has had the  
2 principal care and custody of the minor during the sixty days  
3 preceding the date of the petition if the person can be found  
4 within the State. Notice shall also be given to the other  
5 persons as the court may designate.

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

- 7 (1) The date, time, place of hearing, a clear statement of  
8 the purpose of the proceedings and of possible  
9 consequences to the person who is the subject of the  
10 petition, and a statement of the legal standard upon  
11 which [~~commitment~~] treatment is authorized;
- 12 (2) A copy of the petition;
- 13 (3) Written notice, in plain and simple language, that the  
14 person may waive the hearing by voluntarily agreeing  
15 to the care or treatment proposed;
- 16 (4) A completed form indicating the waiver described in  
17 paragraph (3) if the person waived the hearing;
- 18 (5) Written notice, in plain and simple language, that the  
19 person or the person's guardian or representative may  
20 apply at any time for a hearing on the issue of the  
21 person's need for care or treatment if the person has  
22 previously waived a hearing;
- 23 (6) Notice that the person is entitled to the assistance

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1 of an attorney and that the public defender has been  
2 notified of these proceedings;

3 (7) Notice that if the person does not want to be  
4 represented by the public defender, the person may  
5 contact the person's own attorney; and

6 (8) Notice, if applicable, that the petitioner intends to  
7 present evidence to show that the person is an  
8 incapacitated or protected person, or both, under  
9 article V of chapter 560, and whether the appointment  
10 of a guardian is sought at the hearing. If  
11 appointment of a guardian is to be recommended, and a  
12 nominee is known at the time the petition is filed,  
13 the identity of the nominee shall be disclosed.

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

21 SECTION 4. Section 353-13.9, Hawaii Revised Statutes, is  
22 amended to read as follows:

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1           " ~~[f]~~ **§353-13.9** ~~[f]~~ **Hearing on petition.** (a) The court may  
2 adjourn or continue a hearing for failure to timely notify [a  
3 ~~spouse, civil union partner, reciprocal beneficiary, guardian,~~  
4 ~~relative,~~] the person's legal guardian or emergency contact  
5 listed while in the custody of the department, or other person  
6 determined by the court to be entitled to notice, or for failure  
7 by the person who is the subject of the petition to contact an  
8 attorney as provided in section 353-13.8, if the court  
9 determines that an adjournment or continuance is in the interest  
10 of justice.

11           (b) Unless the hearing is waived, the ~~[judge]~~ court shall  
12 hear the petition as soon as possible and no later than ten days  
13 after the date the petition is filed unless a reasonable delay  
14 is sought for good cause shown by the person who is the subject  
15 of the petition, the person's attorney, the petitioner, the  
16 guardian or guardian ad litem, or those persons entitled to  
17 receive notice of the hearing under section 353-13.8.

18           (c) The person who is the subject of the petition shall be  
19 present at all hearings unless the person waives the right to be  
20 present, is unable to attend, or creates conditions that make it  
21 impossible to conduct the hearing in a reasonable manner as  
22 determined by the ~~[judge-]~~ court. A waiver is valid only upon  
23 acceptance by the court following a judicial determination that

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1 the person understands the person's rights and is competent to  
2 waive them, or is unable to participate. [~~If the person is~~  
3 ~~unable to participate, the judge shall appoint a guardian ad~~  
4 ~~litem or a temporary guardian as provided in article V of~~  
5 ~~chapter 560, to represent the person throughout the~~  
6 ~~proceedings.] At any point during the proceedings and after the  
7 filing of the petition, the court may appoint a guardian ad  
8 litem or a temporary guardian, as provided in article V of  
9 chapter 560, to represent the person throughout the proceedings,  
10 if the court finds that the person is unable to participate or  
11 that other good cause exists.~~

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

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

22 (f) Counsel for the person who is the subject of the  
23 petition shall be allowed adequate time for investigation of the



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1 matters at issue and for preparation, and shall be permitted to  
2 present evidence that the counsel believes necessary to a proper  
3 disposition of the proceedings.

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

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

20 (i) If the court finds that the criteria for involuntary  
21 medical treatment under section 353-13.6 have been met by clear  
22 and convincing evidence, the court may issue an order to  
23 authorize the department to involuntarily medically treat the

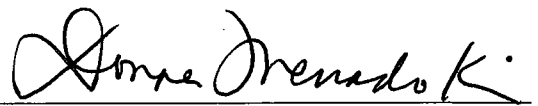
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1 person for a period of up to one year unless the person is  
2 sooner released or sooner determined to no longer be in need of  
3 treatment. If so specified by the court, however, the order may  
4 remain in effect if the person who is the subject of the  
5 petition is released but returns to custody during the maximum  
6 period of the order, if the underlying criminal case is still  
7 active or the sentence has not been fully served, unless the  
8 person is sooner determined to no longer be in need of  
9 treatment.

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

15 SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

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

18  
19 INTRODUCED BY: 

20 BY REQUEST

21

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**Report Title:**

Correctional Facilities; Court Orders to Provide Medical Treatment for Inmates and Detainees

**Description:**

Provides for the filing of a petition for involuntary medical treatment in either the district or circuit court; allows for a declaration to be filed with the petition as an alternative to an affidavit; expands the court's ability to continue the hearing on the petition for good cause; gives the court more flexibility in deciding when a guardian ad litem is necessary; changes the time requirement for filing for a court order for medical treatment from a period of within two days of an examination of the person to within five days; redefines the persons who must be notified of the petition; and clarifies the effective expiration date of the order for persons who return to custody after release.

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

# SB. NO. 1179

## JUSTIFICATION SHEET

DEPARTMENT: Public Safety

TITLE: A BILL FOR AN ACT RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT FOR INMATES AND DETAINEES IN CORRECTIONAL FACILITIES.

PURPOSE: This bill provides for the filing of an involuntary medical treatment petition in both district and circuit courts, changes the examination of the person from a period within two days to within five days, adds definitions for danger to self or others, allows for the use of declarations in addition to affidavits, and redefines the persons notified of the petition from the person's legal spouse, civil union partner, or reciprocal beneficiary; legal parents; adult children; or legal guardian, or if none can be found to persons identified by the subject of the petition as their emergency contact while in the custody of the Department of Public Safety.

MEANS: Amend sections 353-13.6, 353-13.7, 353-13.8, and 353-13.9, Hawaii Revised Statutes.

JUSTIFICATION: The existing statutes enacted during the 2011 legislative session sought to provide a statutory procedure to provide involuntary medical treatment for inmates in the custody of the Department of Public Safety when the inmate or detainee poses a danger of physical harm to self or others; treatment with medication is medically appropriate and considering less intrusive alternatives, treatment is essential to forestall the danger posed by the inmate or detainee. However, as written, the statutes require amendments to clarify issues that will improve the operational efficiency of the petition process. The proposed amendments accomplish the following:

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- Allows petitions to be filed in both district and circuit courts. The current statutes only allow for petitions to be submitted to circuit court.
- Allows declarations as an alternative to affidavits in the filing of the petition.
- Increases the number of days of the examination prior to the petition submission from two days to five days, allowing for better operational coordination. The two days as written was originally provided for persons being placed into the custody of the Hawaii State Hospital to ensure that their freedom rights were protected. Persons in the custody of the Department of Public Safety are either convicted or being held pursuant to court order and therefore there is no change in their custody status.
- Adds definitions of danger of physical harm to others or self to clarify when the petitions may properly be used.
- Limits the petition notification requirement to persons identified as emergency contacts or legal guardians of the subject of the petition, to support timelier proceedings.

Impact on the public: This measure will have a positive impact on the public as it seeks to clarify various sections that will improve the timeliness of providing treatment to the person subject of the petition to eliminate the danger of physical harm to his/her self or others.

Impact on the department and other agencies: This measure will have a positive impact for the Department of Public Safety, the

Department of the Attorney General, and the Judiciary. The operational process improvements will improve the timeliness of providing treatment to the person subject of the petition to eliminate the danger of physical harm to his/her self or others.

GENERAL FUND: N/A.

OTHER FUNDS: N/A.

PPBS PROGRAM  
DESIGNATION: PSD 421.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General, Office of the Public Defender, and the Judiciary.

EFFECTIVE DATE: Upon approval.