

S.B. NO. 2914

JAN 27 2016

A BILL FOR AN ACT

RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT 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 danger of physical harm to 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 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, or self-protection, so that it is
10 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 court of the circuit

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

20 (b) If the person has been given an examination,
21 evaluation, or treatment in a psychiatric facility or by the
22 department within five days before the filing of the petition,

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1 and treatment is recommended by the staff of the facility or the
2 department, the petition may be accompanied by an affidavit or
3 declaration of the department's medical director or the mental
4 health administrator in lieu of a physician's or psychologist's
5 affidavit[-] or declaration."

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

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

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1 the custody of the department, if such person can be located and
2 served. Notice of the hearing shall also be served on the
3 public defender, person's attorney, or other court-appointed
4 attorney, as the case may be. If the person who is the subject
5 of the petition is a minor, notice of the hearing shall also be
6 served upon the person who has had the principal care and
7 custody of the minor during the sixty days preceding the date of
8 the petition if [~~the~~] that person can be found within the State.
9 Notice shall also be given to the other persons as the court may
10 designate.

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

12 (1) The date, time, place of hearing, a clear statement of
13 the purpose of the proceedings and of possible
14 consequences to the person who is the subject of the
15 petition, and a statement of the legal standard upon
16 which [~~commitment~~] treatment is authorized;

17 (2) A copy of the petition;

18 (3) Written notice, in plain and simple language, that the
19 person may waive the hearing by voluntarily agreeing
20 to the care or treatment proposed;

21 (4) A completed form indicating the waiver described in
22 paragraph (3) if the person waived the hearing;

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1 (5) Written notice, in plain and simple language, that the
2 person or the person's guardian or representative may
3 apply at any time for a hearing on the issue of the
4 person's need for care or treatment if the person has
5 previously waived a hearing;

6 (6) Notice that the person is entitled to the assistance
7 of an attorney and that the public defender has been
8 notified of these proceedings;

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

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

20 (c) If the person who is the subject of the petition
21 executes and files a waiver of the hearing, then upon acceptance
22 by the court following a court determination that the person

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1 understands the person's rights and is competent to waive them,
2 the court shall order the person to be given the care or
3 treatment as the court deems to be proper under the
4 circumstance."

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

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

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

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1 guardian or guardian ad litem, or those persons entitled to
2 receive notice of the hearing under section 353-13.8.

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-~~] court. A waiver is valid only upon
8 acceptance by the court following a judicial determination that
9 the person understands the person's rights and is competent to
10 waive them, or is unable to participate. [~~If the person is~~
11 ~~unable to participate, the judge shall appoint a guardian ad~~
12 ~~litem or a temporary guardian as provided in article V of~~
13 ~~chapter 560, to represent the person throughout the~~
14 ~~proceedings.] At any point during the proceedings and after the
15 filing of the petition, the court may appoint a guardian ad
16 litem or a temporary guardian, as provided in article V of
17 chapter 560, to represent the person throughout the proceedings,
18 if the court finds that the person is unable to participate or
19 that other good cause exists.~~

20 (d) Hearings may be held at a convenient location within
21 the circuit where the person who is the subject of the petition
22 resides or any other circuit deemed appropriate by the court.

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1 The person or any interested person may request a hearing in
2 another circuit because of convenience to the parties,
3 witnesses, or the court, or because of the person's mental or
4 physical condition.

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

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

13 (g) No person who is the subject of the petition shall be
14 found to require care or treatment unless at least one physician
15 or psychologist who has personally examined or attempted to
16 examine the person testifies in person at the hearing. This
17 testimony may be waived by the person. If the subject has
18 refused to be examined by a licensed physician or psychologist,
19 the person may be examined by a court-appointed licensed
20 physician or psychologist. If the person refuses and there is
21 sufficient evidence to believe that the allegations of the
22 petition are true, the person's refusal shall be treated as a

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1 denial that the person is [~~mentally ill or suffering from~~
2 ~~substance abuse~~] in need of involuntary medical treatment.

3 Nothing in this section shall limit the person's privilege
4 against self-incrimination.

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

9 (i) If the court finds that the criteria for involuntary
10 medical treatment under section 353-13.6 have been met by clear
11 and convincing evidence, the court may issue an order to
12 authorize the department to involuntarily medically treat the
13 person for a period of up to one year unless the person is
14 sooner released or sooner determined to no longer be in need of
15 treatment. If so specified by the court, however, the order may
16 remain in effect if the person who is the subject of the
17 petition is released but returns to custody during the maximum
18 period of the order, if the underlying criminal case is still
19 active or the sentence has not been fully served, unless the
20 person is sooner determined to no longer be in need of
21 treatment.

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1 (j) The court may find that the person who is the subject
2 of the petition is an incapacitated or protected person, or
3 both, under article V of chapter 560, and may appoint a guardian
4 or conservator, or both, for the person under the terms and
5 conditions as the court shall determine.

6 (k) Prior to the expiration of an existing involuntary
7 treatment order, the department may move for an extension of the
8 order for a period of up to one year. An extension may be
9 ordered by the court upon a showing that the subject of the
10 order continues to meet the criteria set forth in section 353-
11 13.6. Any extension request shall follow the notice
12 requirements set forth in section 353-13.8."

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

16

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INTRODUCED BY: MM J. M.

18

BY REQUEST

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Report Title:

Correctional Facilities; Court Orders to Provide Medical Treatment

Description:

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; clarifies the effective expiration date of the order for persons who return to custody after release; and provides the ability for the department to seek an extension of an order to treat if necessary.

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

JUSTIFICATION SHEET

DEPARTMENT: Public Safety

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

PURPOSE: This bill changes the requirement of an 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: Existing statutes provide a statutory procedure for 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:

- 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.
- Adds definitions of danger of physical harm to others or self to clarify when the petitions are to 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.
- Clarifies the ability of the department to seek an extension of an order to treat prior to expiration if necessary.

Impact on the public: This measure will allow timelier treatment to the subject of the petition, reducing the danger of physical harm to his/her self or others in a quicker fashion.

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 amendments will improve the ability of the Departments of Public Safety and the Attorney General to coordinate and bring to the court's attention all necessary information relevant to the treatment sought for the subject of the petition.

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.