

**ACT 46**

A Bill for an Act to Amend Chapter 82, Revised Laws of Hawaii 1955, as Amended, Relative to Mental Retardation.

*Be it Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 82, Revised Laws of Hawaii 1955, as amended, is hereby amended, in its entirety, to read as follows:

**"Section 82-1. Program; coordination and supervision.** The department of health shall coordinate and supervise a mental retardation program in the State which shall consist of community clinical services, Waimano training school and hospital, and protective services. The director of health, hereinafter referred to as 'director', shall be responsible for the administration of the program."

**"Section 82-2. Waimano training school and hospital.** There shall be in the State an institution known as 'Waimano training school and hospital' for persons who because of mental retardation are incapable of independent self-support and self-management in the community or incapable of attaining such self-support and self-management without proper treatment and training. Such persons, while in residence at the institution or on temporary leave of absence therefrom, shall be known as patients. When granted a conditional release, they shall be known as wards."

**"Section 82-3. Rules.** The director may prescribe, subject to the approval of the governor and the applicable provisions of the Hawaii Administrative Procedure Act, rules necessary for the implementation of the provisions of this chapter."

**"Section 82-4. Persons incapable of independent self-support and self-management.** Any person who is found to be incapable of independent self-support and self-management in the community or to be incapable of attaining such self-support and self-management without proper treatment and training, and who is found to require institutional care, supervision, control, treatment and training for his own welfare or for the welfare of his family or for the welfare of the community and who is found to be mentally retarded as set forth in section 82-5 shall be subject to commitment to the Waimano training school and hospital."

**"Section 82-5. Mentally retarded persons.** Mentally retarded persons, as referred to in section 82-4 are persons:

"(a) who are afflicted with:

"(1) a deficiency of general mental development associated with chronic brain syndrome, or

"(2) a deficiency of intelligence arising after birth, due to infection, trauma, or other disease process, or

"(b) who are afflicted with general intellectual subnormality not due to known organic factors."

**"Section 82-6. Commitment of mentally retarded persons; application, certificate.** Any circuit judge at chambers shall have jurisdiction to order commitments to Waimano training school and hospital

and no person sought to be committed shall be entitled to a jury trial of the issues raised by any application for commitment; provided, that, in the first circuit, a minor child may be committed only upon order of the judge of the juvenile court. Any adult relative or the guardian or the custodian of the individual sought to be committed; or any authorized agent of an organization approved under the provisions of sections 108-10 and 108-11 or of any governmental department or bureau, may file in the circuit court of the circuit in which such individual resides, or in the circuit court of the first circuit, an application for the commitment of such individual to Waimano training school and hospital. Such application shall be verified and there shall be attached thereto a certificate executed and verified by the members of a committee consisting of a physician, a clinical psychologist, and a social worker, all qualified by professional training and experience to make the findings and diagnoses authorized in the provisions of sections 82-4 and 82-5, certifying that the individual sought to be committed has been examined by the members of the committee and has been found to come within the provisions of sections 82-4 and 82-5, and that the individual should be committed to Waimano training school and hospital. Such examinations shall include the administration of psychological tests and psychological evaluations appropriate as an aid in the diagnosis of mental retardation and such certificate shall include the report of the result of such tests and evaluations as well as the statement of the facts which are alleged to bring the individual within the provisions of section 82-4. Appropriate forms for the application, certificate and statement hereinabove referred to shall be furnished by the department of health."

**"Section 82-7. Hearing of application; notice, duties of attorney general; appeal.** The judge shall, not less than ten days after the filing of such application, conduct a hearing thereon which shall be conducted in the presence of the person sought to be committed. A copy of such application together with notice of the time and place of the hearing thereon shall be personally served upon the person sought to be committed and upon any parent, guardian or custodian who has not joined in such application, not less than ten days prior to such hearing. In the event that personal service upon such parent, guardian or custodian cannot be effected within the State, service may be made as provided in section 230-31 or 230-32, whichever is applicable.

"At the request of the director or of any person authorized to file an application as hereinabove provided, the attorney general shall prepare, file and present applications under the provisions of this chapter, provided that, except in the first circuit, the respective county attorneys, at the request of the attorney general shall prepare, file and present such applications within their respective circuits.

"Every order of commitment entered under the provisions of this chapter prior to the procedures required of the director under section 82-10, and every final order of commitment entered under said section, shall contain a specific finding of the facts which bring the individual sought to be committed within the provisions of this chapter. Any

such order shall be subject to appeal, under the same terms and provisions as are set forth in section 208-3, by the individual sought to be committed, or by the guardian or custodian or any adult relative of such individual; provided, that unless specifically so ordered by the supreme court, no such appeal shall operate as a stay of the order of commitment, which shall be executed notwithstanding such appeal, subject to the release of the individual sought to be committed by order of the supreme court at any stage of the appeal."

**"Section 82-8. Liability for expense of support and treatment of persons committed; liability of persons committed.** A parent, guardian, or other person liable for the support of any person committed to the Waimano training school and hospital shall pay such sums as the court may order for the support and treatment of such person. Such order may be changed from time to time upon a showing of change of circumstances. The parent or guardian of a minor committed to the Waimano training school and hospital shall be liable for such support and treatment and such liability shall continue after the person committed has reached the age of majority. The adult children of any person committed to the Waimano training school and hospital shall be liable for the expenses of such person's support and treatment. Every nonindigent person committed to the Waimano training school and hospital and any property of his estate not exempt from execution, shall be liable for the expense of his support and treatment. The attorney general, whenever requested by the director, shall take such steps as may be appropriate, by suit if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in his behalf in any such enforcement proceeding."

**"Section 82-9. Commitment to Waimano training school and hospital of persons committed to other institutions.** Any person who has legally been ordered to be hospitalized at, or committed to, or imprisoned in any other institution under the control of any department of the State or any political subdivision thereof may, notwithstanding such prior hospitalization, commitment, or imprisonment, be committed to Waimano training school and hospital under the provisions of this chapter; provided, that no such person shall be committed to Waimano training school and hospital otherwise than upon application of the director of the department responsible for the administration of such other institution."

**"Section 82-10. Observation and re-examination; certification; finality of order.** No person committed to Waimano training school and hospital shall be detained therein for a period of more than sixty days unless, prior to the expiration of sixty days from the date of admission, or within such further period as may be allowed by the judge, the director has caused such person to be observed and examined by one or more qualified physicians and clinical psychologists other than the signers of the certificate referred to in section 82-6 and has filed in the circuit court in which the application for commitment was filed a certificate signed by such examiners and setting forth the results of such observation and examination, and certifying

that such person is in need of continued care, custody and treatment in Waimano training school and hospital. Upon the filing of such certificate, the judge may make a final order of commitment and such person shall thereafter remain at Waimano training school and hospital until discharged, conditionally released, granted leave, or transferred in accordance with the provisions of this chapter; provided, that if the judge is not satisfied that a final order of commitment should be entered on the basis of the certificate mentioned in this section, he may order a rehearing of the original application, upon the same terms and conditions as set forth in section 82-7 and may require such further examination and such further certificate as he may deem necessary in order to protect the rights of the alleged mentally retarded person, before entering such final order."

**"Section 82-11. Absolute discharge; conditional release; leave of absence; transfer.** The director shall file in the proceeding in which the order of commitment was entered a verified petition for the absolute discharge of any committed person whom the director finds to be no longer within the provisions of section 82-4. Such a finding may be made only upon the basis of a certificate executed and verified by the members of a committee constituted as provided in section 82-6, setting forth the opinion of the members of the committee, that such patient or ward no longer comes within the provisions of section 82-4 and the reasons for such opinion. The petition shall include such finding and the certificate upon which the same is based. The judge may require a hearing of such petition. Upon reading and filing such petition, or after a hearing thereof, the judge may enter an order finding that the allegations of the petition are true and setting aside the order of commitment. Every patient or ward discharged as herein provided shall be provided with a copy of such order. Upon the discharge of any patient coming within the provisions of section 82-9, at any time prior to the expiration of the period during which such patient could legally have been detained at the institution to which such patient was previously committed or sentenced, such patient shall be returned to the custody of such institution.

"The director may grant a conditional release to any patient committed as hereinabove provided whom the director finds to be potentially capable of self-support and self-management in the community, or whom the director finds, as result of the availability of other care, does not, at the time of such finding require institutional care, supervision, control, treatment and training at Waimano training school and hospital. Any such conditional release may involve, but shall not be limited to family or foster care or employment placements and shall be subject to such terms and conditions as may be imposed by the director. Any such conditional release may be terminated at any time upon the finding of the director that the continuation thereof will not serve the best interests of the ward or of his family or of the community. Every such conditional release shall be reviewed annually by the director.

"The director may grant to any patient a temporary leave of absence, upon such terms and conditions as he may deem advisable,

in any case in which the director shall find that such leave will promote the best interests of such patient. Such temporary leave of absence shall not extend beyond a period of one hundred and twenty consecutive days. No conditional release or temporary leave of absence shall be granted to any patient coming within the provisions of section 82-9 by reason of prior commitment to or imprisonment in a correctional institution prior to the expiration of the period during which such patient could legally have been detained at the institution to which such patient was previously committed or sentenced, unless the director shall find that the conduct of such patient within the Waimano training school and hospital is subversive to the maintenance of discipline and order therein, or is harmful to the program or to the other patients, in which event the director may grant such conditional release or temporary leave of absence and return such person to such correctional institution."

**"Section 82-12. Right of appeal.** Any patient or ward detained at the Waimano training school and hospital and any parent, relative or friend of such person shall be entitled to apply to an appeals committee consisting of two duly licensed physicians of the State, experienced in the diagnosis and treatment of the conditions described in section 82-5, and one attorney admitted to practice in all courts of the State for a hearing on the question whether such patient or ward comes within the provisions of section 82-4. The members of the committee shall be appointed by the director for a term of three years. Upon the receipt of such application, the appeals committee shall gather together all departmental records concerning such patient or ward and shall hold a hearing within sixty days from the date of the receipt of such application. The appeals committee shall consider all of the committee reports upon which the original commitment was based, all subsequent institutional reports, and all available clinical and psychological records relating to the patient or ward on whose behalf the appeal is prosecuted, and may consider any other pertinent or relevant evidence. If the appeals committee finds that the patient or ward does not come within the provisions of section 82-4, such findings shall be reported to the director who shall forthwith proceed in accordance with the provisions for absolute discharge established by section 82-11. A patient or ward or his personal representative shall not be allowed more than one appeal a year, under the provisions of this section."

**"Section 82-13. Enticing, harboring, secreting, etc.; penalty.** Any person who knowingly or intentionally:

"(a) Entices away from Waimano training school and hospital any patient committed or admitted thereto; or

"(b) Entices away from any home, facility or place of employment any patient or ward placed therein under the provisions of section 82-11 of this chapter; or

"(c) Harbors or secretes any patient or ward who has departed without permission or has been enticed away from the Waimano training school and hospital or from any such home, facility or place of employment shall be fined not more than one thousand dollars or

imprisoned not more than one year or both.”

**“Section 82-14. Guardianship of the person.** Notwithstanding any law to the contrary, the director shall be the guardian of the person of every person committed to and received at Waimano training school and hospital until such person is granted an absolute discharge. He shall have all the powers and duties of a natural guardian of a minor and in addition thereto all the powers and duties of a guardian of the person duly appointed by a court of competent jurisdiction; provided, that he shall not be liable in damages for any tortious act committed by such person. In case any person committed to Waimano training school and hospital has a guardian of the person already appointed by any court of competent jurisdiction, such guardian shall report such commitment to the court by which such guardian was appointed and such guardianship of the person shall be terminated or suspended during the period such person remains under the jurisdiction of the director as a patient or ward of Waimano training school and hospital.

“The provisions of this section shall not be deemed to terminate permanently the parental rights of the legal parent or parents of any minor committed as herein provided, and the director, as a guardian of such minor, shall exercise only such powers and duties of a natural guardian as are necessary for the protection and treatment and the promotion of the best interests of such patient or ward. The director shall from time to time delegate or transfer to the legal parent or parents of any such minor any of the director’s powers and duties as such guardian if he deems that such delegation or transfer will facilitate the treatment and promote the best interests of such minor.

“The powers and duties of the director as guardian of the person of any adult patient or ward shall supersede the powers and duties of any court-appointed guardian of the person of such patient or ward to such extent as is necessary for the protection and treatment and the promotion of the best interests of such patient or ward. The director shall from time to time delegate or transfer to such court-appointed guardian any of the director’s powers and duties as guardian under the provisions of this section if he deems that such delegation or transfer will facilitate the treatment and promote the best interests of such patient or ward.”

**“Section 82-15. Voluntary admission of minors.** Upon the written application of a parent or guardian or other person or agency having legal custody, the director may permit the admission to Waimano training school and hospital of any minor who comes within the provisions of sections 82-4 and 82-5 of this chapter, even though no application for commitment under the provisions of this chapter has been filed; provided, that no such minor shall be entitled as a matter of right to either be admitted or to remain at the Waimano training school and hospital. No minor admitted under the provisions of this section shall be detained at the Waimano training school and hospital for a period of more than thirty days after a parent or guardian or any adult relative of such admitted minor shall have submitted to the director a written demand for release or discharge, unless an application for commitment under the provisions of this

chapter has been filed in a circuit court having authority to order such commitment. Such period of thirty days may be extended for not more than an additional thirty days by a circuit judge having jurisdiction to order commitments upon such judge's finding that such extension is for the best interests of the minor. No such voluntary admission shall be permitted for any minor with respect to whom an application for commitment has previously been denied after presentation to a circuit judge having jurisdiction, without the specific written authorization of such judge, or a successor to or substitute for such judge, which authorization may be made subject to such conditions as may be deemed by the judge to promote the best interests of the minor.

"Any court-appointed guardian of the person of a minor, before entering into any agreement with the director concerning the voluntary admission of such minor, shall report such plan to the court that appointed such guardian and shall thereafter be guided by the directions of such court.

"No person admitted under the provisions of this section shall be detained at the Waimano training school and hospital after such person has reached his twentieth birthday unless, prior thereto, an application for commitment has been filed under the provisions of this chapter.

"Admission under the provisions of this section shall be subject to such reasonable conditions and regulations as may be established by the director and any person or persons legally liable for the support of the minor may be required to pay to the Waimano training school and hospital such reasonable sums as may be determined by the director as contributions toward the support, maintenance and treatment of the minor therein."

**"Section 82-16. Earnings and income of patients and wards.** The director shall prescribe, subject to the approval of the governor and the applicable provisions of the Hawaii administrative procedure act, rules necessary for the collection, conservation and disposition of earnings or income of any patient or ward, which are not subject to the control of a court-appointed guardian of the estate of such patient or ward, upon such terms and conditions as the director may deem advisable."

**"Section 82-17. Compensation for labor by patients of Waimano training school and hospital.** Any patient performing services for Waimano training school and hospital may be allowed such compensation for such services, as shall be determined by the director. No such patient shall, because of his services for Waimano training school and hospital, be deemed to be an employee of the State."

**SECTION 2.** This Act shall take effect upon its approval.  
(Approved May 8, 1965.) **H.B. 179.**