

## ACT 72

H.B. NO. 1088

A Bill for an Act Relating to Corrections.

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

SECTION 1. The purpose of this Act is to authorize the department of public safety to render necessary medical and mental health treatment to inmates and detainees in its custody in an efficient and quicker fashion when those inmates or detainees refuse treatment.

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§353-A Involuntary medical treatment criteria.** An inmate or detainee in the custody of the department may be ordered to receive involuntary medical treatment, including the taking or application of medication, if the court finds that:

- (1) The inmate or detainee poses a danger of physical harm to self or others;
- (2) Treatment with medication is medically appropriate; and
- (3) Considering less intrusive alternatives, treatment is essential to forestall the danger posed by the inmate or detainee.

**§353-B Initiation of proceeding for involuntary medical treatment.** (a) The director, or the director’s designee, may file a petition for involuntary medical treatment alleging that a person in the custody of the department meets the criteria for involuntary medical treatment under section 353-A. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public and shall be filed in the circuit court of the circuit wherein the person who is the subject of the petition is in custody. The attorney general, the attorney general’s deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by an affidavit of the licensed physician or psychologist who has examined the person within two days prior to submission of the petition, unless the person whose treatment is sought has refused to submit to a medical or psychological examination, in which case the fact of refusal shall be alleged in the petition. The affidavit shall set forth the signs and symptoms relied upon by the physician or psychologist to determine whether the person is in need of treatment, whether the person is capable of realizing and making a rational decision with respect to the person’s

need for treatment, and the recommended treatment. If the petitioner believes that further evaluation is necessary before treatment, the petitioner may request such further evaluation.

(b) If the person has been given an examination, evaluation, or treatment in a psychiatric facility or by the department within five days before the filing of the petition, and treatment is recommended by the staff of the facility or the department, the petition may be accompanied by an affidavit of the department's medical director or the mental health administrator in lieu of a physician's or psychologist's affidavit.

**§353-C Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary hospitalization.** (a) The court shall set a hearing on the petition, and notice of the hearing shall be served personally on the person who is the subject of the petition, or by certified or registered mail, return receipt requested, deliverable to the addressee only; on the person's spouse, civil union partner, or reciprocal beneficiary; legal parents; adult children; and legal guardian, if one has been appointed. If the person has no living spouse, civil union partner, or reciprocal beneficiary; legal parent; adult children; or legal guardian, or if none can be found, notice of the hearing shall be served on at least one of the person's closest adult relatives if any can be found. Notice of the hearing shall also be served on the public defender, person's attorney, or other court-appointed attorney, as the case may be. If the person is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if the person can be found within the State. Notice shall also be given to the other persons as the court may designate.

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

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the person who is the subject of the petition, and a statement of the legal standard upon which commitment is authorized;
- (2) A copy of the petition;
- (3) Written notice, in plain and simple language, that the person may waive the hearing by voluntarily agreeing to the care or treatment proposed;
- (4) A completed form indicating the waiver described in paragraph (3) if the person waived the hearing;
- (5) Written notice, in plain and simple language, that the person or the person's guardian or representative may apply at any time for a hearing on the issue of the person's need for care or treatment if the person has previously waived a hearing;
- (6) Notice that the person is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
- (7) Notice that if the person does not want to be represented by the public defender, the person may contact the person's own attorney; and
- (8) Notice, if applicable, that the petitioner intends to present evidence to show that the person is an incapacitated or protected person, or both, under article V of chapter 560, and whether the appointment of a guardian is sought at the hearing. If appointment of a guardian is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.

(c) If the person who is the subject of the petition executes and files a waiver of the hearing, then upon acceptance by the court following a court de-

termination that the person understands the person's rights and is competent to waive them, the court shall order the person to be given the care or treatment as the court deems to be proper under the circumstance.

**§353-D Hearing on petition.** (a) The court may adjourn or continue a hearing for failure to timely notify a spouse, civil union partner, reciprocal beneficiary, guardian, relative, or other person determined by the court to be entitled to notice, or for failure by the person who is the subject of the petition to contact an attorney as provided in section 353-C, if the court determines that an adjournment or continuance is in the interest of justice.

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

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

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

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

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

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

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

(i) If the court finds that the criteria for involuntary medical treatment under section 353-A have been met by clear and convincing evidence, the court may issue an order to authorize the department to involuntarily medically treat the person for a period of up to one year unless the person is sooner released or sooner determined to no longer be in need of treatment.

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

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

**“§802-1 Right to representation by public defender or other appointed counsel.** Any indigent person who is (1) arrested for, charged with, or convicted of an offense or offenses punishable by confinement in jail or prison or for which ~~[such]~~ the person may be or is subject to the provisions of chapter 571; or (2) threatened by confinement, against the indigent person’s will, in any psychiatric or other mental institution or facility; or (3) the subject of a petition for involuntary outpatient treatment under chapter 334; or (4) the subject of a petition for involuntary medical treatment under chapter 353 shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

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

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

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

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

### Note

1. Edited pursuant to HRS §23G-16.5.