
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 inmates and detainees in its custody
4 in an efficient and quicker fashion when those inmates or
5 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 the court finds:

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

15 (2) Treatment with medication is medically appropriate;
16 and



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

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



1 by the physician or psychologist to determine whether the person
2 is in need of treatment, whether the person is capable of
3 realizing and making a rational decision with respect to the
4 person's need for treatment, and the recommended treatment. If
5 the petitioner believes that further evaluation is necessary
6 before treatment, the petitioner may request such further
7 evaluation.

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

16 **§353-C Notice; waiver of notice; hearing on petition;**
17 **waiver of hearing on petition for involuntary hospitalization.**

18 (a) The court shall set a hearing on the petition, and notice
19 of the hearing shall be served personally on the person who is
20 the subject of the petition, or by certified or registered mail,
21 return receipt requested, deliverable to the addressee only, on
22 the person's spouse or reciprocal beneficiary, legal parents,



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

14 (b) The notice required by subsection (a) shall include:
15 (1) The date, time, place of hearing, a clear statement of
16 the purpose of the proceedings and of possible
17 consequences to the person who is the subject of the
18 petition, and a statement of the legal standard upon
19 which commitment is authorized;
20 (2) A copy of the petition;



- 1 (3) Written notice, in plain and simple language, that the
2 person may waive the hearing by voluntarily agreeing
3 to the care or treatment proposed;
- 4 (4) A completed form indicating the waiver if the person
5 waived the hearing;
- 6 (5) Written notice, in plain and simple language, that the
7 person or the person's guardian or representative may
8 apply at any time for a hearing on the issue of the
9 person's need for care or treatment if the person has
10 previously waived a hearing;
- 11 (6) Notice that the person is entitled to the assistance
12 of an attorney and that the public defender has been
13 notified of these proceedings;
- 14 (7) Notice that if the person does not want to be
15 represented by the public defender, the person may
16 contact the person's own attorney; and
- 17 (8) Notice, if applicable, that the petitioner intends to
18 present evidence to show that the person is an
19 incapacitated or protected person, or both, under
20 article V of chapter 560, and whether appointment of a
21 guardian is sought at the hearing. If appointment of
22 a guardian is to be recommended, and a nominee is



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

3 (c) If the person who is the subject of the petition
4 executes and files a waiver of the hearing, upon acceptance by
5 the court following a court determination that the person
6 understands the person's rights and is competent to waive them,
7 the court shall order the person to be given the care or
8 treatment as it deems to be 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 person who is the subject of the petition to contact an
14 attorney as provided in section 353-C, if the court determines
15 that an adjournment or continuance is in the interest of
16 justice.

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



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

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



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

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

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



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

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

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

14 "**§802-1 Right to representation by public defender or**
15 **other appointed counsel.** Any indigent person who is (1)
16 arrested for, charged with or convicted of an offense or
17 offenses punishable by confinement in jail or prison or for
18 which [~~such~~] the person may be or is subject to the provisions
19 of chapter 571; or (2) threatened by confinement, against the
20 indigent person's will, in any psychiatric or other mental
21 institution or facility; or (3) the subject of a petition for
22 involuntary outpatient treatment under chapter 334; or (4) the



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

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

9 The appearance of a public defender in all hearings before
10 the Hawaii paroling authority or other administrative body or
11 agency shall be subject to the approval of the chairperson of
12 the Hawaii paroling authority or the administrative head of the
13 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 of 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 on July 1, 2030.



Report Title:

Corrections.

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. Effective July 1, 2030. (HB1088 HD1)

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