
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



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 has
5 recently:

6 (1) Threatened or attempted suicide or serious bodily self
7 injury; or

8 (2) Behaved in such a manner as to indicate that the
9 person is unable, without supervision and the
10 assistance of others, to satisfy the need for
11 nourishment, essential medical care, or self-
12 protection, so that it is probable that death,
13 substantial bodily injury, or serious physical or
14 mental debilitation or disease will result unless
15 adequate treatment is provided."

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

18 "[+]§353-13.7[+] **Initiation of proceeding for involuntary**
19 **medical treatment.** (a) The director, or the director's
20 designee, may file a petition for involuntary medical treatment
21 alleging that a person in the custody of the department meets
22 the criteria for involuntary medical treatment under section



1 353-13.6. The petition shall be executed subject to the
2 penalties of perjury but need not be sworn to before a notary
3 public and shall be filed in the circuit or district court of
4 the circuit or district wherein the person who is the subject of
5 the petition is in custody. The attorney general, the attorney
6 general's deputy, special deputy, or appointee designated to
7 present the case shall assist the petitioner to state the
8 substance of the petition in plain and simple language. The
9 petition may be accompanied by an affidavit or declaration of
10 the licensed physician or psychologist who has examined the
11 person within [~~two~~] five days prior to submission of the
12 petition, unless the person whose treatment is sought has
13 refused to submit to a medical or psychological examination, in
14 which case the fact of refusal shall be alleged in the petition.
15 The affidavit or declaration shall set forth the signs and
16 symptoms relied upon by the physician or psychologist to
17 determine whether the person is in need of treatment, whether
18 the person is capable of realizing and making a rational
19 decision with respect to the person's need for treatment, and
20 the recommended treatment. If the petitioner believes that
21 further evaluation is necessary before treatment, the petitioner
22 may request such further evaluation.



1 (b) If the person has been given an examination,
2 evaluation, or treatment in a psychiatric facility or by the
3 department within five days before the filing of the petition,
4 and treatment is recommended by the staff of the facility or the
5 department, the petition may be accompanied by an affidavit or
6 declaration of the department's medical director or the mental
7 health administrator in lieu of a physician's or psychologist's
8 affidavit~~[-]~~ or declaration."

9 SECTION 3. Section 353-13.8, Hawaii Revised Statutes, is
10 amended by amending its title and subsections (a) and (b) to
11 read as follows:

12 "~~[+]~~**\$353-13.8[+]** Notice; waiver of notice; hearing on
13 petition; waiver of hearing on petition for involuntary
14 hospitalization. (a) The court shall set a hearing on the
15 petition, and notice of the hearing shall be served personally
16 on the person who is the subject of the petition, or by
17 certified or registered mail, return receipt requested,
18 deliverable to the addressee only~~[-]~~, on at least one of the
19 following individuals: the person's spouse~~[-, civil union~~
20 ~~partner,~~] or reciprocal beneficiary; legal parents; adult
21 children; ~~[and]~~ legal guardian, if one has been appointed; or
22 the person's emergency contact listed while the person is in the



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

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

16 (1) The date, time, place of hearing, a clear statement of
17 the purpose of the proceedings and of possible
18 consequences to the person who is the subject of the
19 petition, and a statement of the legal standard upon
20 which [~~commitment~~] care or treatment is authorized;

21 (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 described in
5 paragraph (3) if the person 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 the appointment
21 of a guardian is sought at the hearing. If
22 appointment of a guardian is to be recommended, and a



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

3 SECTION 4. Section 353-13.9, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending its title and subsections (a) to (d) to
6 read:

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

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



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 or district where the person who is the subject of
22 the petition resides or any other circuit or district deemed



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

5 2. By amending subsection (i) to read:

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

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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



Report Title:

Correctional Facilities; Involuntary Medical Treatment

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 to appoint a guardian ad litem or temporary guardian; changes the time within which a person must be examined from two days to five days prior to filing of the petition; amends the list of 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. (HB948 HD2)

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