

JAN 28 2015

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# A BILL FOR AN ACT

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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:**

SECTION 1. Section 353-13.6, Hawaii Revised Statutes, is  
amended to read as follows:

"~~[+]~~ §353-13.6~~[+]~~ 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 danger of physical harm to 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.

For the purposes of this section:

"Danger of physical harm to others" means likely to cause  
substantial physical or emotional injury to another, as  
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  
23 wherein the person who is the subject of the petition is in

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

19 (b) If the person has been given an examination,  
20 evaluation, or treatment in a psychiatric facility or by the  
21 department within five days before the filing of the petition,  
22 and treatment is recommended by the staff of the facility or the  
23 department, the petition may be accompanied by an affidavit or

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1 declaration of the department's medical director or the mental  
2 health administrator in lieu of a physician's or psychologist's  
3 affidavit~~[-]~~ or declaration."

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

6 " ~~[+] §353-13.8~~ ~~[+]~~ Notice; waiver of notice; hearing on  
7 petition; waiver of hearing on petition for involuntary  
8 ~~[hospitalization.]~~ medical treatment. (a) The court shall set  
9 a hearing on the petition, and notice of the hearing shall be  
10 served personally on the person who is the subject of the  
11 petition, and personally or by certified or registered mail,  
12 return receipt requested, deliverable to the addressee only~~[-]~~,  
13 on ~~[the person's spouse, civil union partner, or reciprocal~~  
14 ~~beneficiary, legal parents, adult children, and legal guardian,~~  
15 ~~if one has been appointed. If the person has no living spouse,~~  
16 ~~civil union partner, or reciprocal beneficiary, legal parent,~~  
17 ~~adult children, or legal guardian, or if none can be found,~~  
18 ~~notice of the hearing shall be served on at least one of the~~  
19 ~~person's closest adult relatives if any can be found.]~~ either  
20 the person's legal guardian or emergency contact listed while in  
21 the custody of the department, if such person can be located and  
22 served. Notice of the hearing shall also be served on the  
23 public defender, person's attorney, or other court-appointed

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1 attorney, as the case may be. If the person is a minor, notice  
2 of the hearing shall also be served upon the person who has had  
3 the principal care and custody of the minor during the sixty  
4 days preceding the date of the petition if the person can be  
5 found within the State. Notice shall also be given to the other  
6 persons as the court may designate.

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

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

13 (2) A copy of the petition;

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

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

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

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(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 determination 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."

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

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1        "[+] §353-13.9 [+]    **Hearing on petition.**    (a)    The court may  
2    adjourn or continue a hearing for failure to timely notify [a  
3    ~~spouse, civil union partner, reciprocal beneficiary, guardian,~~  
4    ~~relative,~~] either the person's legal guardian or emergency  
5    contact listed while in the custody of the department, or other  
6    person determined by the court to be entitled to notice, or for  
7    failure by the person who is the subject of the petition to  
8    contact an attorney as provided in section 353-13.8, if the  
9    court determines that an adjournment or continuance is in the  
10   interest of justice.

11        (b)    Unless the hearing is waived, the [judge] court shall  
12    hear the petition as soon as possible and no later than ten days  
13    after the date the petition is filed unless a reasonable delay  
14    is sought for good cause shown by the person who is the subject  
15    of the petition, the person's attorney, the petitioner, the  
16    guardian or guardian ad litem, or those persons entitled to  
17    receive notice of the hearing under section 353-13.8.

18        (c)    The person who is the subject of the petition shall be  
19    present at all hearings unless the person waives the right to be  
20    present, is unable to attend, or creates conditions that make it  
21    impossible to conduct the hearing in a reasonable manner as  
22    determined by the [judge-] court.    A waiver is valid only upon  
23    acceptance by the court following a judicial determination that

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1 the person understands the person's rights and is competent to  
2 waive them, or is unable to participate. [~~If the person is~~  
3 ~~unable to participate, the judge shall appoint a guardian ad~~  
4 ~~litem or a temporary guardian as provided in article V of~~  
5 ~~chapter 560, to represent the person throughout the~~  
6 ~~proceedings.] At any point during the proceedings and after the  
7 filing of the petition, the court may appoint a guardian ad  
8 litem or a temporary guardian, as provided in article V of  
9 chapter 560, to represent the person throughout the proceedings,  
10 if the court finds that the person is unable to participate or  
11 that other good cause exists.~~

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.

22 (f) Counsel for the person who is the subject of the  
23 petition shall be allowed adequate time for investigation of the



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1 matters at issue and for preparation, and shall be permitted to  
2 present evidence that the counsel believes necessary to a proper  
3 disposition of the proceedings.

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

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

20 (i) If the court finds that the criteria for involuntary  
21 medical treatment under section 353-13.6 have been met by clear  
22 and convincing evidence, the court may issue an order to  
23 authorize the department to involuntarily medically treat the

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1 person for a period of up to one year unless the person is  
2 sooner released or sooner determined to no longer be in need of  
3 treatment. If so specified by the court, however, the order may  
4 remain in effect if the person who is the subject of the  
5 petition is released but returns to custody during the maximum  
6 period of the order, if the underlying criminal case is still  
7 active or the sentence has not been fully served, unless the  
8 person is sooner determined to no longer be in need of  
9 treatment.

10 (j) Prior to the expiration of an existing involuntary  
11 treatment order, the department may move for an extension of the  
12 order for a period of up to one year. An extension may be  
13 ordered by the court upon a showing that the subject of the  
14 order continues to meet the criteria set forth in section 353-  
15 13.6. Any extension request shall follow the notice  
16 requirements set forth in section 353-13.8.

17 ~~[(j)]~~ (k) The court may find that the person who is the  
18 subject of the petition is an incapacitated or protected person,  
19 or both, under article V of chapter 560, and may appoint a  
20 guardian or conservator, or both, for the person under the terms  
21 and conditions as the court shall determine."


22 SECTION 5. Statutory material to be repealed is bracketed  
23 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

4

BY REQUEST

5

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**Report Title:**

Correctional Facilities; Court Orders to Provide Medical Treatment for Inmates and Detainees

**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 FOR INMATES AND DETAINEES 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: The existing statutes enacted during the 2011 legislative session sought to provide a statutory procedure to provide 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. The two days as written was originally provided for persons being placed into the custody of the Hawaii State Hospital to ensure that their freedom rights were protected. Persons in the custody of the Department of Public Safety are either convicted or being held pursuant to court order and therefore there is no change in their custody status.
- Adds definitions of danger of physical harm to others or self to clarify when the petitions may properly 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 have a positive impact on the public as it seeks to clarify various sections that will improve the timeliness of providing treatment to the person subject of the petition to eliminate the danger of physical harm to his/her self or others.

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 operational process improvements will improve the timeliness of providing treatment to the person subject of the petition to eliminate the danger of physical harm to his/her self or others.

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.