
A BILL FOR AN ACT

RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT 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.

(a) 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.

(b) For the purposes of this section:

"Danger of physical harm to others" means likely to cause



1 substantial physical or emotional injury to another, as
2 evidenced by an act, attempt, or threat occurring recently or
3 through a pattern of past behavior that has resulted in the
4 person being placed in a more restricted setting for the safety
5 of others in the facility.

6 "Danger of physical harm to self" means the person recently
7 has threatened or attempted suicide or serious bodily self
8 injury; or the person recently has behaved in such a manner as
9 to indicate that the person is unable, without supervision and
10 the assistance of others, to satisfy the need for nourishment,
11 essential medical care, or self-protection, so that it is
12 probable that death, substantial bodily injury, or serious
13 physical or mental debilitation or disease will result unless
14 adequate treatment is provided."

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

17 "[+]§353-13.7[+] Initiation of proceeding for involuntary
18 medical treatment. (a) The director, or the director's
19 designee, may file a petition for involuntary medical treatment
20 alleging that a person in the custody of the department meets
21 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 court of the circuit
4 wherein the person who is the subject of the petition is in
5 custody. The attorney general, the attorney general's deputy,
6 special deputy, or appointee designated to present the case
7 shall assist the petitioner to state the substance of the
8 petition in plain and simple language. The petition may be
9 accompanied by an affidavit or declaration of the licensed
10 physician or psychologist who has examined the person within
11 [~~two~~] five days prior to submission of the petition, unless the
12 person whose treatment is sought has refused to submit to a
13 medical or psychological examination, in which case the fact of
14 refusal shall be alleged in the petition. The affidavit or
15 declaration shall set forth the signs and symptoms relied upon
16 by the physician or psychologist to determine whether the person
17 is in need of treatment, whether the person is capable of
18 realizing and making a rational decision with respect to the
19 person's need for treatment, and the recommended treatment. If
20 the petitioner believes that further evaluation is necessary



1 before treatment, the petitioner may request such further
2 evaluation.

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

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

14 "[+]§353-13.8[+] Notice; waiver of notice; hearing on
15 petition; waiver of hearing on petition for involuntary
16 ~~[hospitalization-]~~ medical treatment. (a) The court shall set
17 a hearing on the petition, and notice of the hearing shall be
18 served personally on the person who is the subject of the
19 petition, and personally or by certified or registered mail,
20 return receipt requested, deliverable to the addressee only[+],
21 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.] either~~
~~the person's legal guardian or emergency contact listed while in~~
~~the custody of the department, if such person can be located and~~
~~served.~~ 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 who is the subject
of the petition 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]~~ that 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]~~ treatment 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



1 incapacitated or protected person, or both, under
2 article V of chapter 560, and whether the appointment
3 of a guardian is sought at the hearing. If
4 appointment of a guardian is to be recommended, and a
5 nominee is known at the time the petition is filed,
6 the identity of the nominee shall be disclosed."

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

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

19 (b) Unless the hearing is waived, the [judge] court shall
20 hear the petition as soon as possible and no later than ten days
21 after the date the petition is filed unless a reasonable delay



1 is sought for good cause shown by the person who is the subject
2 of the petition, the person's attorney, the petitioner, the
3 guardian or guardian ad litem, or those persons entitled to
4 receive notice of the hearing under section 353-13.8.

5 (c) The person who is the subject of the petition shall be
6 present at all hearings unless the person waives the right to be
7 present, is unable to attend, or creates conditions that make it
8 impossible to conduct the hearing in a reasonable manner as
9 determined by the ~~[judge-]~~ court. A waiver is valid only upon
10 acceptance by the court following a judicial determination that
11 the person understands the person's rights and is competent to
12 waive them, or is unable to participate. ~~[If the person is~~
13 ~~unable to participate, the judge shall]~~ At any point during the
14 proceedings and after the filing of the petition, the court may
15 appoint a guardian ad litem or a temporary guardian, as provided
16 in article V of chapter 560, to represent the person throughout
17 the proceedings~~[-]~~, if the court finds that the person is unable
18 to participate or that other good cause exists.

19 (d) Hearings may be held at a convenient location within
20 the circuit where the person who is the subject of the petition
21 resides or any other circuit deemed appropriate by the court.



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

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

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

13 (g) No person who is the subject of the petition shall be
14 found to require care or treatment unless at least one physician
15 or psychologist who has personally examined or attempted to
16 examine the person testifies in person at the hearing. This
17 testimony may be waived by the person. If the subject has
18 refused to be examined by a licensed physician or psychologist,
19 the person may be examined by a court-appointed licensed
20 physician or psychologist. If the person refuses and there is
21 sufficient evidence to believe that the allegations of the



1 petition are true, the person's refusal shall be treated as a
2 denial that the person is ~~[mentally ill or suffering from~~
3 ~~substance abuse.]~~ in need of involuntary medical treatment.

4 Nothing in this section shall limit the person's privilege
5 against self-incrimination.

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

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



1 person is sooner determined to no longer be in need of
2 treatment.

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

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

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on January 7, 2059.



Report Title:

Correctional Facilities; Court Orders to Provide Medical Treatment

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. Takes effect on 1/7/2059. (SD1)

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