
A BILL FOR AN ACT

RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the initiation of
2 treatment for pretrial detainees and committed persons in the
3 custody of the department of public safety needs to be expedient
4 to address each committed person's medical or psychiatric
5 symptoms and to protect the safety of the committed person and
6 others. The legislature further finds that promptly addressing
7 a committed person's medical or psychiatric symptoms helps to
8 maintain a safe and secure environment for the individual
9 involved and the persons who surround the committed person.

10 The legislature notes that a judicial hearing is required
11 to obtain an authorization to provide treatment over a person's
12 objection. However, this procedure may not be expedient enough
13 to address the detainee's immediate health needs. Other states
14 have addressed the variability and length of time before the
15 judicial hearing by developing a nonjudicial, administrative
16 process to review and authorize requests for treatment despite a
17 person's objections.



1 The purpose of this Act is to permit an administrative
2 order to overcome a person's objection to medical or psychiatric
3 treatment, establish criteria for issuance of the court or
4 administrative order, and establish criteria for an
5 administrative authorization process to determine whether the
6 administrative order should be issued.

7 SECTION 2. Chapter 353, Hawaii Revised Statutes, is
8 amended by adding a new section to part I to be appropriately
9 designated and to read as follows:

10 "§353- Criteria for administrative authorization process
11 for treatment over objection. (a) Upon petition by the medical
12 officer of a correctional facility or another person designated
13 by the director, a pretrial detainee or committed person who is
14 in the custody of the department may be ordered to receive
15 medical treatment over the pretrial detainee's or committed
16 person's objection through an administrative authorization
17 process. The petition:

18 (1) Shall allege that the pretrial detainee or committed
19 person meets the criteria for treatment over objection
20 under section 353-13.6;

21 (2) Shall be executed subject to the penalties of perjury;



1 (3) May be accompanied by an affidavit or declaration of
2 the licensed physician or psychologist who has
3 examined the person within five days prior to
4 submission of the petition; provided that:

5 (A) If the person has been given an examination,
6 evaluation, or treatment in a psychiatric
7 facility or by the department within five days
8 before the filing of the petition, and treatment
9 is recommended by the staff of the facility or
10 the department, the petition may be accompanied
11 by an affidavit or declaration of the
12 department's medical director or the mental
13 health administrator in lieu of a physician's or
14 psychologist's affidavit or declaration; and

15 (B) If the person for whom treatment is sought has
16 refused to submit to a medical or psychological
17 examination, the fact of refusal shall be alleged
18 in the petition;

19 (4) Shall set forth the signs and symptoms relied upon to
20 determine whether the person is in need of treatment,
21 whether the person is capable of realizing and making



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1 a rational decision with respect to the person's need
2 for treatment, and the recommended treatment; and
3 (5) May request further evaluation, if the petitioner
4 believes additional evaluation is necessary before
5 treatment.

6 (b) The administrative authorization process shall include
7 the following due process safeguards:

8 (1) The department shall serve notice to the same persons,
9 and in the same manner, as set forth in section
10 353-13.8(a), containing the information set forth in
11 section 353-13.8(b) (1) to (7);

12 (2) The administrative panel shall consist of three
13 members who have relevant clinical training and
14 experience and are not involved with the current
15 treatment of the pretrial detainee or committed
16 person;

17 (3) The pretrial detainee or committed person may attend
18 the hearing, be represented by an attorney, cross-
19 examine witnesses, and present testimony, exhibits,
20 and witnesses; and



1 (4) The pretrial detainee or committed person may appeal
2 the decision of the administrative panel pursuant to
3 an appeals process to be adopted by the department.

4 (c) The administrative process described by this section
5 is exempt from the contested case requirements of sections
6 91-8.5 to 91-15.

7 (d) The department may adopt rules, pursuant to chapter
8 91, to effectuate this section."

9 SECTION 3. Section 353-13.6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§353-13.6 [Involuntary medical treatment criteria.]~~
12 Criteria for issuance of court or administrative order for

13 treatment over objection. (a) ~~[An inmate or detainee in the~~
14 ~~custody of the department may be ordered to receive involuntary~~
15 ~~medical treatment, including the taking or application of~~
16 ~~medication, if the court finds that:~~

17 ~~(1) The inmate or detainee poses a danger of physical harm~~
18 ~~to self or danger of physical harm to others;~~

19 ~~(2) Treatment with medication is medically appropriate;~~
20 and



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

4 A pretrial detainee or a committed person in the custody of the
5 department may be ordered to receive treatment over the pretrial
6 detainee's or committed person's objection, including the taking
7 or application of medication, if the court or administrative
8 panel through the administrative authorization process
9 established pursuant to section 353- finds that:

10 (1) The pretrial detainee or committed person suffers from
11 a physical or mental disease, disorder, or defect;

12 (2) The pretrial detainee or committed person is
13 imminently dangerous to self or others;

14 (3) The proposed treatment is medically appropriate; and

15 (4) After considering less intrusive alternatives,
16 treatment is necessary to forestall the danger posed
17 by the pretrial detainee or committed person.

18 (b) For the purposes of this section[+:

19 ~~"Danger of physical harm to others" means likely to cause~~
20 ~~substantial physical or emotional injury to another, as~~
21 ~~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 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.], "imminently dangerous to self~~
13 ~~or others" means that, without intervention, the person will~~
14 ~~likely become dangerous to the person's self or dangerous to~~
15 ~~others within the next forty-five days."~~

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

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



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1 SECTION 6. This Act shall take effect on July 1, 2018.

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Report Title:

Psychiatric Treatment; Administrative Order; Administrative Authorization Process; Department of Public Safety

Description:

Authorizes medical treatment by administrative order of pretrial detainees or committed persons despite their objection. Establishes criteria for issuing court or administrative orders and the process to determine whether an administrative order should be issued for medical treatment over the pretrial detainee's or committed person's objection.

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