

# S.B. NO. 2813

JAN 24 2018

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## 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 patients admitted to the department of public  
3 safety at times requires expediency to address patients'  
4 psychiatric and medical symptoms to protect the patient and  
5 others.

6           The legislature notes that the current method to  
7 obtain authorization to provide treatment over a patient's  
8 objection is through a judicial hearing. Although dependent on  
9 circumstances, the average time between the petition and  
10 judicial hearing is nearly ten days. Other states have  
11 addressed the variability and length of time before the judicial  
12 hearing by developing a nonjudicial, administrative process to  
13 review and authorize requests for treatment despite a patient's  
14 objections.

15           The purpose of this Act is to permit an administrative  
16 order to overcome a patient's objection to psychiatric and  
17 medical treatment, amend criteria for issuance of such an order,  
18 whether through a court or administrative process.

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

4 "§353- Criteria for administrative authorization process  
5 for involuntary medical treatment. (a) A detainee or committed  
6 person who is in the custody of the department may be ordered to  
7 receive medical treatment over the detainee's or committed  
8 person's objection through an administrative authorization  
9 process that includes the following due process safeguards:

- 10 (1) The department shall serve notice to the same persons,  
11 and in the same manner, as set forth in section 353-  
12 13.8(a), containing the information set forth in  
13 section 353-13.8(b) (1) and (3) to (7);
- 14 (2) The administrative panel shall consist of three  
15 members who have relevant clinical training and  
16 experience and are not involved with the current  
17 treatment of the detainee or committed person;
- 18 (3) The detainee or committed person shall have the right  
19 to attend the hearing, receive assistance from an  
20 advisor, cross examine witnesses, and present  
21 testimony, exhibits, and witnesses; and
- 22 (4) The detainee or committed person shall have the right  
23 to appeal the decision of the administrative panel.

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1        (b) The administrative process described by this section  
2 is exempt from the contested case requirements of sections 91-  
3 8.5 to 91-15.

4        (c) The department may adopt rules, pursuant to chapter  
5 91, to effectuate this section."

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

8        "~~§353-13.6 [Involuntary medical treatment criteria.]~~

9 Criteria for issuance of court or administrative order for

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

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

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

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

21 A detainee or a committed person, in the custody of the  
22 department, may be ordered to receive treatment over the  
23 detainee's or committed person's objection, including the taking

1 or application of medication, if the court, or administrative  
2 panel through the administrative authorization process  
3 established pursuant to section 353- , finds that:

- 4       (1) The detainee or committed person suffers from a  
5           physical or mental disease, disorder, or defect;  
6       (2) The detainee or committed person is imminently  
7           dangerous to self or others;  
8       (3) The proposed treatment is medically appropriate; and  
9       (4) After considering less intrusive alternatives,  
10           treatment is necessary to forestall the danger posed  
11           by the detainee or committed person.

12       (b) For the purposes of this section:

13           "Dangerous to others" means likely to cause substantial  
14 physical or emotional injury to another, as evidenced by an act,  
15 attempt, or threat occurring recently or through a pattern of  
16 past behavior that has resulted in the person being placed in a  
17 more restricted setting for the safety of others in the  
18 facility.

19           "Dangerous to self" means the person recently has  
20 threatened or attempted suicide or serious bodily self injury;  
21 or the person recently has behaved in such a manner as to  
22 indicate that the person is unable, without supervision and the  
23 assistance of others, to satisfy the need for nourishment,

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1 essential medical care, or self-protection, so that it is  
2 probable that death, substantial bodily injury, or serious  
3 physical or mental debilitation or disease will result unless  
4 adequate treatment is provided.

5 "Imminently dangerous to self or others" means that,  
6 without intervention, the person will likely become dangerous to  
7 self or dangerous to others within the next forty-five days."

8 SECTION 4. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act, upon its approval, shall take effect  
11 on July 1, 2018.

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INTRODUCED BY:

*M.M.M.*

14

BY REQUEST

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**Report Title:**

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

**Description:**

Authorizes psychiatric and medical treatment by administrative order despite a patient's objection for pretrial detainees or committed persons in the custody of the Department of Public Safety. Establishes criteria for issuing court or administrative order and the process to determine whether administrative order should be issued for psychiatric or medical treatment over the patient's objection. Effective 7/1/2018.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

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## JUSTIFICATION SHEET

DEPARTMENT: Public Safety

TITLE: A BILL FOR AN ACT RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

PURPOSE: Provide statutory authorization and criteria for an administrative authorization process for involuntary medical treatment for detainees or committed persons in the custody of the Department of Public Safety (PSD).

MEANS: Add a new section to part I, chapter 353, and amend section 353-13.6, Hawaii Revised Statutes.

JUSTIFICATION: This measure will provide to the Department of Public Safety the same administrative mechanism in treating patients as provided to the Department of Health in Act 111, Session Laws of Hawaii 2017, utilizing relevant clinical expertise to review and authorize requests for orders for involuntary medical treatment. The current method of obtaining authorization to provide treatment over a patient's objection (Orders to Treat) through judicial hearing is a slow process, which, at times, results in patient decompensation and exposes the patient and treatment staff to potential harm and injury.

This administrative procedure would expedite the treatment process and provide critical, emergent treatment interventions, benefiting both PSD's patients and staff by enhancing patient and staff safety at correctional facilities statewide.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: PSD 421.

OTHER AFFECTED  
AGENCIES:

County Prosecutors, Office of the Public  
Defender, Judiciary.

EFFECTIVE DATE:

Upon approval.