

ACT 176

An Act Amending Chapter 82, of the Revised Laws of Hawaii 1955, Relating to Waimano Home and Mental Retardation.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 82 of the Revised Laws of Hawaii 1955, as amended, is further amended to read as follows:

“CHAPTER 82 MENTAL RETARDATION

Section 82-1. The department of health shall coordinate and supervise a mental retardation program in the State which shall consist of the community clinical services and Waimano training school and hospital. The Director of Health shall be responsible for the administration and control of Waimano training school and hospital.

Section 82-2. Waimano training school and hospital. There shall be in the State of Hawaii an institution known as ‘Waimano Training School and Hospital’ for persons who because of mental defect are incapable of independent self-support and self-management in the community or incapable of attaining such self-support and self-management without proper treatment and training.

Section 82-3. Same. Rules and regulations. The director may prescribe rules and regulations necessary for the management of Waimano training school and hospital and appoint and remove, subject to the provisions of law, officers and employees thereof for whose compensation provision has been made by the Legislature, and perform such other acts as are necessary to the proper conduct and management of the institution.

Section 82-4. Persons incapable of independent self-support and self-management. Any person who by reason of mental defect is found to be incapable of independent self-support and self-management in the community or to be incapable of attaining such self-support and self-management without proper treatment and training, and who is found to require institutional care, supervision, control, treatment and training for his own welfare or for the welfare of his family or for the welfare of the community and who is found to be afflicted with any of the mental defects set forth in 82-5 shall be subject to commitment to the Waimano training school and hospital.

Section 82-5. Mentally defective persons. The mental defects referred to in section 82-4 are as follows: (a) a defect of general mental development associated with chronic brain syndrome; (b) a defect of intelligence existing since birth without demonstrated organic brain disease or known prenatal cause; (c) a defect of intelligence arising after birth, due to infection, trauma or other disease process, or (d) any other mental defect not covered by the foregoing categories.

Section 82-6. Commitment of mentally defective persons; application, certificate. Any circuit judge at chambers shall have jurisdiction to order commitments to Waimano training school and hospital and no person sought to be committed shall be entitled to a jury trial of the issues raised by any application for commitment; provided, that, in the first circuit, a minor child may be committed only upon order of the judge of the juvenile court. Any adult relative or the guardian or the custodian of the individual sought to be committed, or any authorized agent of an organization approved under the provisions of sections 108-10 and 108-11 or of any governmental department or bureau, may file in the circuit court of the circuit in which such individual resides, or in the circuit court of the first circuit, an application for the commitment of such individual to Waimano training school and hospital. Such application shall be verified and there shall be attached thereto, a certificate executed and verified by the members of a committee consisting of a physician, a clinical psychologist, and a social worker, all qualified by professional training and experience to make the findings and diagnoses authorized in the provisions of sections 82-4 and 82-5, certifying that the individual sought to be committed has been examined by the members of the committee and has been found to come within the provisions of sections 82-4 and 82-5, and that the individual should be committed to Waimano training school and hospital. Such examinations shall include the administration of psychological tests and psychological evaluations appropriate as an aid in the diagnosis of mental deficiency and such certificate shall include the report of the result of such tests and evaluations as well as the statement of the facts which are alleged to bring the individual within the provisions of section 82-4. Appropriate forms for the application certificate and statement hereinabove referred to shall be furnished by the department of health.

Section 82-7. Hearing of application; notice, duties of county officers; appeal. The judge shall, not less than ten days after the filing of such application, conduct a hearing thereon which shall be conducted in the presence of the person sought to be committed. A copy of such application, together with notice of the time and place of the hearing thereon shall be personally served upon the person sought to be committed and upon any parent, guardian or custodian who has not joined in such application, not less than ten days prior to such hearing. In the event that personal service upon such parent, guardian or custodian cannot be effected within the State, service may be made as provided in section 230-31 or 230-32, whichever is applicable. The city and county corporation counsel and the respective county attorneys shall, at the request of any person authorized to file an application has hereinabove provided, prepare, file and present applications under the provisions of this chapter within their respective jurisdictions. Every order of commitment entered under the provisions of this chapter shall contain a specific finding of the facts which bring the individual sought to be committed within the provisions of this chapter. Any such order shall be subject to appeal, under the same terms and provisions as are set forth in section 208-3 by the individual sought to be committed, or by the guardian, or custodian or any adult relative of such individual; provided, that unless specifically so ordered by the supreme court, no such appeal shall operate as a stay of the order of commitment, which shall be executed notwithstanding such appeal, subject to the release of the individual sought to be committed by order of the supreme court at any stage of the appeal.

Section 82-8. Liability for expense of support of persons committed; wards' liability. A parent, guardian, or a person liable for the support of any persons committed to the Waimano training school and hospital, as providing by section 82-6, who shall hereinafter be referred to as wards, shall pay such sums as the court may order. Such order may be changed from time to time upon a showing of change of circumstances. The parent or guardian of a minor committed to the Waimano training school and hospital shall not be liable for such support after the person committed has reached the age of majority. The adult children of any person committed to the Waimano training school and hospital shall be liable for the expenses of his support. Every non-indigent ward of Waimano training school and hospital and any property of his estate not exempt from execution, shall be liable for the expenses of his support; and the attorney general, whenever requested by the director, shall take such steps as may be appropriate, by suit if necessary, to compel the payment thereof and secure the payment by the attachment or other sequestration of any property of such ward not exempt from execution.

Section 82-9. Commitment to Waimano training school and hospital of persons committed to other institutions. Any person who has legally been ordered to be hospitalized at, or committed to, or imprisoned in any other institution under the control of any state department may, notwithstanding such prior commitment, be committed to Waimano training school and hospital under the provisions of this chapter; provided, that no such person shall be committed to Waimano training school and hospital otherwise than upon the application of the director of the department responsible for the administration of such other institution.

Section 82-10. Observation and re-examination; certification; finality of order. No person committed to Waimano training school and hospital shall be detained therein for a period of more than sixty days unless, prior to the expiration of sixty days from the date of admission, or within such further period as may be allowed by the judge, the director of health has caused such person to be observed and examined by one or more qualified physicians and clinical psychologists other than the signers of the certificate referred to in section 82-6 and has filed in the circuit court in which the application for commitment was filed a certificate signed by such examiners and setting forth the results of such observation and examination, and certifying that such person is in need of continued care, custody and treatment in Waimano training school and hospital. Upon the filing of such certificate, the judge may make a final order of commitment and such person shall thereafter remain in Waimano training school and hospital until discharged or paroled or granted leave or transferred in accordance with the provisions of this chapter; provided, that if the judge is not satisfied that a final order of commitment should be entered on the basis of the certificate mentioned in this section, he may order a rehearing of the original application, upon the same terms and conditions as set forth in section 82-7 and may require such further examination and such further certificate as he may deem necessary in order to protect the rights of the alleged mentally defective person, before entering such final order.

Section 82-11. Discharge; parole; leave of absence; transfer. The director of health shall discharge any ward as hereinabove provided, whom the director finds to be no longer within the provisions of section 82-4. Such a

finding shall be made only upon the basis of a certificate executed and verified by the members of a committee constituted as provided in section 82-6, setting forth the opinion of the members of the committee, that such ward no longer comes within the provisions of section 82-4 and the reasons for such opinion. Every such finding and certificate upon which the same is based shall be filed in the proceeding by which such ward was committed. Upon the discharge of any ward coming within the provision of section 82-9 at any time prior to the expiration of the period during which such ward could legally have been detained at the institution to which such ward was previously committed or sentenced, such ward shall be returned to the custody of such institution. The director of health may parole or grant a temporary leave of absence to any ward committed as hereinabove provided whom the director finds to be potentially capable of self-support and self-management in the community. Any such leave or parole shall be subject to such terms and conditions as may be imposed by the director and any such ward may be retaken and detained at any time upon the finding of the director that there has been a breach or failure of any such terms and conditions.

Section 82-12. Right of appeal. Any ward detained at the Waimano training school and hospital and any parent, relative or friend of such person shall be entitled to apply to an appeals committee consisting of two duly licensed physicians of the State, experienced in the diagnosis and treatment of nervous and mental disorders and one attorney admitted to practice in all courts of the State for a hearing on the question whether such ward comes within the provisions of section 82-4. The members of the committee shall be appointed by the director of health for a term of three years. Upon the receipt of such application, the appeals committee shall gather together all departmental records concerning such ward and shall hold a hearing within 60 days from the date of the receipt of such application. The appeals committee shall consider all of the committee reports upon which the original commitment was based, all subsequent institutional reports, and all available clinical and psychological records relating to the wards on whose behalf the appeal is prosecuted. If the appeals committee finds that the ward does not come within the provisions of section 82-4, such ward shall forthwith be discharged from Waimano training school and hospital. A ward or his personal representative shall be allowed one appeal a year.

Section 82-13. Enticing, secreting, etc., penalty. Any person who knowingly or intentionally entices away any ward committed or admitted to Waimano training school and hospital, or who knowingly harbors or secretes any such ward who has deserted or been enticed away from the authority of the institution or who has left or forsaken his parents, employer, or the person with whom the ward has been placed or stationed by the director without the permission of such parent, employer or person shall be fined not more than \$1,000 or imprisoned not more than one year or both.

Section 82-14. Guardianship of the person. Notwithstanding any law to the contrary, the director of health shall be the guardian of the person of every person committed to and received at Waimano training school and hospital for the period such ward remains under his jurisdiction. He shall have all the powers and duties of a natural guardian of such ward and in addition thereto all the powers and duties of a guardian of the person duly appointed by a court of competent jurisdiction; provided, that he shall not

be liable in damages for any tortious act committed by such ward. In case any person committed to Waimano training school and hospital has a guardian of the person already appointed by any court of competent jurisdiction, such guardianship of the person shall be terminated or suspended during the period such ward remains under the jurisdiction of the director of health as a ward of Waimano training school and hospital and such guardian before entering into any agreement with the director concerning such admission without commitment, or within ten days after such admission, shall report such fact to the court that appointed such guardian which shall enter an order in conformity with this section.

Section 82-15. Voluntary admission. Upon the written application of a parent or guardian and upon a finding of fact of a hardship or emergency case by the director of health, voluntary admission of minors for a period of evaluation and observation not to exceed three months prior to instituting commitment proceedings may be permitted by the director. The parent or guardian shall pay such sums as the director may order.

Section 82-16. Earnings of patients. Where an inmate (hereinafter referred to as a 'patient') of the Waimano training school and hospital is conditionally discharged, the director shall arrange to receive, and shall collect, at least one-half of the patient's net earnings which shall be deposited by the director in a bank in trust for the patient; provided, that if such patient shall, with the prior written approval of the director, voluntarily contribute a portion of his earnings to a purpose for his own best interest or his relatives' welfare then the director may arrange to receive and collect only one-half of the patient's net earnings less the amount of such contributions. The term 'net earnings' means the total amount received less necessary living expenses. The necessary living expenses shall be determined by the director in each case.

When the director decides that an emergency exists and that it is for the patient's best interests, or his relatives' welfare, he may, at the patient's request, withdraw sums from any amounts so deposited in trust and permit the patient to expend them subject to such directions as he may impose. Also, when any patient incurs any lawful obligation which the director deems unusual and which he may decide should immediately be paid, he may make withdrawals and discharge the obligation.

Section 82-17. Compensation for labor by wards of Waimano training school and hospital. Any wards at Waimano training school and hospital employed by the State at Waimano training school and hospital may be allowed such compensation for his work at Waimano training school and hospital as shall be determined by the director. No such ward shall, because of his work at Waimano training school and hospital, be a member of the employees' retirement system of the State of Hawaii or a member of the civil service of the State or subject to classification by the department of civil service of the State."

SECTION 2. This Act shall take effect upon its approval.

(Approved July 10, 1961.) S.B. 760.