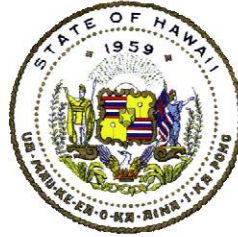


NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director of
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL (SB) 1179, SENATE DRAFT (SD) 1
A BILL FOR AN ACT RELATING TO
COURT ORDERS TO PROVIDE MEDICAL TREATMENT FOR INMATES
AND DETAINEES IN CORRECTIONAL FACILITIES

by
Ted Sakai, Director
Department of Public Safety

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, March 20, 2014, 2:00 p.m.
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** SB 1179, SD 1.

This bill would amend a statute, enacted in 2011, which allows us to petition the court to obtain orders, under certain circumstances, to provide treatment involuntarily to inmates and detainees in our care and custody. As may be expected with many newly created statutes, operating conditions not previously envisioned in the original proposal may be encountered when implementing the specific language of the statute. This bill addresses two specific operational deficiencies in the current law that restrict the Department's ability to fully implement the original intent of the statute, as well as six "housekeeping items."

The two most significant specific areas requiring modification are: (1) the definitions of danger of harm to self or others, and (2) the hearing notification process.

We are proposing that the definitions for harm to self or others be expanded to include individuals who, although they do not pose an immediate danger due to present physical constraints, do represent an imminent danger if these physical constraints are not present. We are seeking this expanded definition since we have encountered inmates with mental health disorders who have been relegated to long periods of isolation in segregated settings. They may not immediately demonstrate the behaviors of danger to self or others. However, if released from segregated settings, it is reasonably predictable based on past behaviors, that they would, in time, pose a serious danger to self or others. Presently, these individuals are relegated to indefinite seclusion, depriving them of opportunities and rights of other prisoners or detainees. The Department considers it to be inhumane to retain these inmates in such settings without attempting interventions which could conceivably permit them the rights and privileges of other prisoners.

The second significant area of change is the hearing notification process. The Department has found it unnecessarily cumbersome to attempt to contact the list of individuals outlined in the present statute, and is seeking to expedite the notification process by restricting notification to those parties designated by the inmates as their emergency contact or their legal guardian while in the custody of the Department, while still permitting the court to decide if other significant parties are relevant to the hearing.

There are additional minor proposed changes in the statute, that are reflected as follows: (1) permitting filings for orders in district court as well as circuit court; (2) permitting a declaration as an alternative to an affidavit from licensed physicians or psychologists who have personally examined the inmate; (3) deleting the erroneous reference to "commitment" and replacing it with a reference to "treatment"; (4) substituting the references to "judge" with references to "court" throughout the bill; (5) removing the inmates' inability to participate in the hearing as a condition for the court to consider the appointment of guardianships; and (6) permitting the court order to continue to the maximum

SB 1179, SD 1
March 20, 2014
Page 3

period of the order should an individual be released and returned to custody, unless it has been determined the person is no longer in need of treatment.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 1179, S.D. 1, RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT FOR INMATES AND DETAINEES IN CORRECTIONAL FACILITIES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 20, 2014

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

In 2011, Act 72 became law, amending chapter 353, Hawaii Revised Statutes (HRS) to codify procedures enabling the Department of Public Safety to petition the courts for authority to provide involuntary medication to inmates and detainees who are in severe need of treatment. This bill seeks to modify the current procedures based on issues that have arisen in court cases since Act 72 became effective. This bill clarifies that petitions may be filed in district court for district court cases in addition to circuit court; expands the time period for petitions to be filed from two days to five days; adds definitions of danger of physical harm to self and to others; gives the courts more flexibility in managing the timing of the hearings and assignments of guardians; modifies the required notification process where the subject of the petition is already in custody; and allows the treating physicians and psychologists to file either declarations or affidavits, a process that follows modern court rules and practice. These amendments are proposed to allow for a more efficient and responsive court process, enabling medical staff in various correctional facilities to provide critical and necessary medical treatment in a more timely fashion, resulting in the improved mental and physical status of inmates.

Consistent with changes made by this Committee to companion bill H.B. No. 948, H.D. 2, we recommend that the definition of “danger of physical harm to others” be amended by deleting the wording “of the person or” on page 2, line 3, of this bill.

We respectfully request that this bill be passed.