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To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Judiciary

Date: Tuesday, January 21, 2014
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 958 Relating to Tax Fraud

The Department of Taxation (Department) supports H.B. 958, an administration measure which will aid the Department in its mission to enforce the state's tax laws by prohibiting the use of zappers, or automated sales suppression devices, to commit tax fraud.

H.B. 958 makes the willfull and knowing sale, purchase, installation, transfer, or possession of a zapper a Class B felony punishable by a fine of not more than $25,000 and/or imprisonment of up to 20 years. Zappers are computer software and/or hardware that are used to falsify electronic sales records in order to commit tax fraud.

The use of zappers or sales suppression devices has become a major problem, both across the United States and internationally. Tax fraud by the use of zappers is extremely difficult to detect, since it works by creating a second set of books on a removable memory device such as an external hard drive or memory stick. In order to hide the tax fraud, a set of books is conspicuously maintained on the computer's hard drive which is purported to be the "true and correct" state of the books.

Zappers can be programmed in different ways, but a common scheme is to program the zapper to record certain sales only to the removable memory device and not record them to the books which are purported to be "true and correct." This scheme is very difficult, if not impossible, to detect on the computer's hard drive because the diverted transactions are never recorded there in the first place. The zapper can also be programmed to divert proceeds from sales to an out-of-country bank account or to an innocuous bank account set to receive the funds.

The Department believes that it is best to be proactive in this matter and to provide for substantial penalties for anyone using such a device to deter its use.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
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No. _____

TESTIMONY ON HOUSE BILL (HB) 948, HOUSE DRAFT (HD) 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

Tuesday, January 21, 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** HB 948, HD 1. We would like to point out, however, that the companion bill, SB 1179, SD 1, has crossed over from the Senate, and has also been heard and passed out of the House Committee on Public Safety.

This bill would amend a statute, enacted in 2011, which allows us to petition the court to obtain orders to provide treatment involuntarily to inmates and detainees in our care and custody under certain circumstances. 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 restricts 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 who 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 whom the inmate has designated 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 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 Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary

January 21, 2014

H.B. No. 948 HD1: RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT FOR INMATES AND DETAINEES IN CORRECTIONAL FACILITIES

Chair Rhoads and Members of the Committee:

We have concerns about H.B No. 948 HD1. The definition of "Danger of physical harm to others" appears to be overly broad. The bill would permit the involuntary administration of medical treatment or medication to an inmate who is "likely to cause substantial physical or emotional harm to others." The term "emotional harm" can arguably be interpreted as simply frightening another person. Such a situation should not, in and of itself, permit the involuntary administration of medication.

Forcible administration of medication or medical treatment is a very intrusive procedure. The court should only order such a procedure under the most extreme circumstances. An inmate could have very legitimate reasons for refusing medication. Many medications which are used to treat psychological conditions carry serious side effects and persons do not forfeit their right to refuse medication simply by being incarcerated.

The bill, on page 9, also allows an involuntary treatment order to remain effective for up to a one year period even if the subject is released from custody and is subsequently returned to the facility. This is a concern because such a situation would assume the same conditions exist as at the issuance of the order by the court. Such an assumption is questionable when the subject has not been in the custody and under the supervision of the detention facility for a period of time.

Thank you for the opportunity to comment.