



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2385, RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT IN CORRECTIONAL FACILITIES.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, February 11, 2016 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Takayama and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill addresses needed modifications to the process of petitioning for involuntary medication orders for inmates and detainees in the custody of the Department of Public Safety. The bill 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 "danger of physical harm to others"; modifies the required notification process because the subject of the petition is already in custody; clarifies whether a treatment order remains in effect for an inmate or detainee who is released but returns to a facility; gives the court added flexibility in determining whether a guardian is necessary and/or whether a continuance of a hearing on the petition is necessary; adds the ability to obtain extensions to medication orders before they expire; corrects minor wording errors in the current law and allows the petitioners to file either declarations or affidavits, a process that follows modern court rules. 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 and detainees, and a safer environment for those in need of treatment and for correctional staff.

We respectfully request that this bill be passed.



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No. _____

TESTIMONY ON HOUSE BILL (HB) 2385
A BILL RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT IN
CORRECTIONAL FACILITIES

By
Nolan P. Espinda, Director

House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Kyle T. Yamashita, Vice Chair

Thursday, February 11, 2016; 10:00 a.m.
State Capitol, Conference Room 309

Chair Takayama, Vice Chair Yamashita, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** House Bill (HB) 2385, which seeks to amend an existing statute, Act 72, Session Laws of Hawaii 2011 (HB 1088), authorizing the Department of Public Safety to render necessary medical and mental health treatment to inmates and detainees in correctional facilities.

As with many newly enacted statutes, the agency often encounters unexpected operational issues in implementing the specific language of the statute which were not anticipated at the time it was drafted. There are two (2) specific operational deficiencies in the original statute that restrict the Department's ability to implement the law to its full extent, as well as seven (7) "housekeeping items", which SB 2914 seeks to address.

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.

The Department is 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. The Department is seeking this expanded definition, as inmates with mental

health disorders who have been relegated to long periods of isolation in segregated settings may not present the immediate behaviors of danger to self or others. However, if/when released from segregated settings, it is reasonably predictable based on past behaviors, that they may pose a serious danger to self or others. Presently, these individuals are relegated to indefinite seclusion, depriving them of the opportunity and rights of other prisoners or detainees. The Department considers it to be inhumane to retain these inmates in such settings without attempting interventions that could conceivably permit them the rights and privileges of other inmates.

The second significant area of change is in the hearings notification process. The Department has found it unnecessarily cumbersome to attempt to contact the litany 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 seven additional proposed technical amendments to the statute, which make it more operationally efficient, as follows:

- 1) permitting a declaration as an option to an affidavit from licensed physicians or psychologists who have personally examined the inmate;
- 2) changing the period of the examination requirement from two (2) to five (5) days;
- 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 considering appointing guardianships;
- 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; and
- 7) allowing the Department to petition the court for extension of the orders for a period of one year for inmates who continue to meet the criteria for the order.

The passage of this measure will enhance the present Court Ordered treatment process by improving the ability of the Department to provide timely treatment when needed.

Thank you for the opportunity to provide this testimony.