



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2914, S.D. 1, H.D. 1, RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT IN CORRECTIONAL FACILITIES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, April 5, 2016

TIME: 2:31 p.m.

LOCATION: State Capitol, Room 308

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

Chair Luke 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. This should result 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.

DAVID Y. IGE
GOVERNOR



NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

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Deputy Director
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LATE

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON SENATE BILL 2914, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT
IN CORRECTIONAL FACILITIES

By

Nolan P. Espinda, Director

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, April 5, 2016; 2:31 p.m.
State Capitol, Conference Room 308

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** Senate Bill (SB) 2914, Senate Draft (SD) 1, House Draft (HD) 1, 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 encountered unexpected operational issues in implementing the specific language of the statute that were not anticipated at the time of drafting. We identified 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, SD 1, HD 1 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. PSD 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 opportunities and rights of other offenders 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.

Additionally, we have proposed technical amendments to the statute to 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.

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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 testify on this measure.