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No. _____

TESTIMONY ON SENATE BILL 2914
A BILL RELATING TO COURT ORDERS TO PROVIDE MEDICAL TREATMENT IN
CORRECTIONAL FACILITIES

By

Nolan P. Espinda, Director

Senate Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, February 24, 2016; 10:00 a.m.
State Capitol, Conference Room 211

Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and
Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** Senate Bill (SB) 2914, 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 testify on this measure.