

STAND. COM. REP. NO.

674

Honolulu, Hawaii

MAR 03 2017

RE: S.B. No. 146
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 146, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO ORDERS FOR TREATMENT OVER
OBJECTION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Permit an administrative order to overcome a patient's
objection to psychiatric treatment; and
- (2) Establish criteria for treatment over objection and the
administrative authorization process for
administratively ordering treatment over objection.

Your Committee received testimony in support of this measure
from the Department of Health, Department of Public Safety, and
The Queen's Health Systems. Your Committee received testimony in
opposition to this measure from the American Civil Liberties Union
of Hawai'i. Your Committee received comments on this measure from
the Judiciary and Hawaii Disability Rights Center.

Your Committee finds that it is important for the initiation
of treatment for patients admitted to the Hawaii State Hospital,
which is used primarily for forensic commitments, to be expedient
in order to address patients' psychiatric symptoms, which often



generate a risk of safety to the patient and others. Expedient initiation of treatment will help maintain a safe and secure therapeutic environment for patients and staff, and have a positive impact on patients' length of stay.

Your Committee further finds that the current method to obtain an authorization to provide treatment over a patient's objection is by a judicial hearing. The time between petition and judicial hearing is unpredictable and is on average nearly seventeen days. Your Committee notes that other states have responded to the unpredictability and delay of waiting for court hearings by developing a non-judicial, administrative mechanism to review and authorize requests for treatment over a patient's objection. This measure recognizes the importance of providing the details of an administrative process for authorizing treatment over a patient's objection and provides guidance for such a process.

Your Committee recognizes that while involuntary treatment necessarily gives rise to constitutional issues relating to minimum safeguards for due process, your Committee understands that professionals at state psychiatric facilities need to make serious day-to-day decisions with respect to medication for the safety of all patients and facility employees. Your Committee hopes that as this measure moves through the legislative process, the State and other stakeholders will continue to work together to find a balanced and refined approach so that this process may occur in a timely and fair manner.

Your Committee has amended this measure by:

- (1) Adopting language suggested by the Department of Health that:
 - (A) Clarifies treatment over objection is for medical, rather than psychiatric, conditions or symptoms;
 - (B) Deletes from the criteria for treatment over objection references to a patient residing in a special treatment facility;
 - (C) Broadens the scope of treatment from treatment with medication to a proposed treatment that is



medically appropriate under the criteria for treatment over objection;

- (D) Clarifies under the criteria for treatment over objection that the treatment is essential to forestall the danger posed by the patient's condition after considering less intrusive alternatives;
 - (E) Authorizes the Director of Health to order a patient who is in the Director's administrative custody and in a psychiatric facility to order the patient to receive medical treatment over objection through an administrative process;
 - (F) Clarifies the rights a patient is afforded when ordered to receive medical treatment over objection through an administrative process; and
 - (G) Exempts the administrative process for ordering medical treatment over objection from the contested case hearing requirements under chapter 91, Hawaii Revised Statutes;
- (2) Adopting language suggested by the American Civil Liberties Union of Hawai'i as a due process safeguard required under the administrative process, which requires a finding that the patient's illness satisfies certain criteria and that lack of treatment alone cannot satisfy the requirement that the patient is dangerous to self or others; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 146, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 146, S.D. 2.




Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,


GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SBI46 SDI	Committee Referral: CPH, JDL	Date: 2/22/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado	✓			
THIELEN, Laura H.				✓
TOTAL	3	0	0	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes