



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 554, H.D. 1, S.D. 1, RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, April 4, 2017 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Andrea J. Armitage,
Deputy Attorney General, at 587-3050)

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to authorize treatment by administrative order over a patient's objection, for certain patients who have been committed to a psychiatric facility or who are in the custody of the Director of Health and reside in a psychiatric facility, and for pretrial detainees or committed persons in the custody of the Department of Public Safety. The bill establishes criteria for issuing a court order or an administrative order for treatment over a patient's, detainee's, or committed person's objection, and also establishes the due process procedures for an administrative authorization process.

Section 5 of the bill provides the criteria for a court or administrative order for treatment of a pretrial detainee or a committed person, over that person's objection. The bill repeals the contents of section 353-13.6, Hawaii Revised Statutes (HRS), and replaces it with new material that mirrors the changes proposed to chapter 334, HRS, for persons committed to a psychiatric facility in section 2. By repealing the current statutory wording, the definitions of "danger of physical harm to others" and "physical harm to self" would also be repealed. Those terms are used in a slightly different form in the amended version, page 10, line 13; nevertheless, we recommend that the original

definitions be included to clarify the new definition of "imminently dangerous to self or others" on page 11, lines 12 to 15.

If the Committee passes this measure, we respectfully ask the Committee to make the following amendments to the definitions in the current section 353-13.6(b) rather than repealing them (page 10, line 18, to page 11, line 12) referring to section 353-13.6(b):

(b) For the purposes of this section:

~~"[Danger of physical harm]~~ Dangerous to others" means likely to cause substantial physical or emotional injury to another, as evidenced by an act, attempt, or threat occurring recently or through a pattern of past behavior that has resulted in the person being placed in a more restricted setting for the safety of others in the facility.

~~"[Danger of physical harm]~~ Dangerous to self" means the person recently has threatened or attempted suicide or serious bodily self injury; or the person recently has behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, or self-protection, so that it is probable that death, substantial bodily injury, or serious physical or mental debilitation or disease will result unless adequate treatment is provided.

"Imminently dangerous to self or others" means that, without intervention, the person will likely become dangerous to self or dangerous to others within the next forty-five days.

We also suggest that the section titles of the new statutory sections in section 2, lines 19 and 20, on page 3, and in section 3, lines 4 and 5, on page 5 be amended because those sections describe the due process procedures for the administrative process, rather than criteria.

Page 3, section 2, lines 19 and 20, could be changed to:

**§334-B Due process procedures for administrative
authorization process for medical treatment over objection.**

Page 5, section 3, lines 4 and 5 could be changed to:

**"353- Due process procedures for administrative
authorization process for medical treatment over objection.**

If the Committee decides to pass this measure, we respectfully recommend that the foregoing amendments be adopted.



The Institute for Human Services

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Connie Mitchell
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LATE TESTIMONY

RE: IHS TESTIMONY IN SUPPORT OF HB554 HD1 SD1

Honorable Chair,

To better serve many individuals cycling through our Judiciary, Public Safety and Medical systems – IHS, The Institute for Human Services, Inc. is in strong support of this measure that designs quick access for persons needing psychiatric treatment by establishing a psychiatric review board to conform with the Harper v. Washington precedent which allows psychiatric review boards to determine need for involuntary treatment of mental illness. Currently, courts make this decision based on clinical testimony provided by a single psychiatrist. The psychiatric review board provides three independent clinical opinions on the need and benefit of treatment; a much better process to protect individual rights and also to speed an individual's way to needed treatment.

IHS is serving more and more unsheltered homeless each year, on the streets. Many of these individuals have been known for over a decade, and many have clear signs and symptoms of mental illness. Nonetheless, because they have the right to refuse treatment for mental illness, it is not until they commit a crime do they get picked up and taken into custody. With our current system, clients often serve their time and are discharged back onto the streets never being treated if DPS is unable to petition successfully for an order to treat. Hawaii State Hospital also experiences delays in delivering treatment because of the need to return to court for an order to treat, contributing to burgeoning census problems.

We are requesting that the legislature update Hawaii's mental health statutes to support speedier access to treatment while protecting rights that could well save millions of taxpayer dollars over time by reducing both the census at HSH and in the jails.

We believe this bill is likely to help break the cycle of chronic homelessness persons as well. Promoting access to treatment is a critical element of system prevention identified by the National Alliance to End Homelessness in its "Ten Essentials to End Homelessness".

We strongly support this bill.

Mahalo,

Connie Mitchell
Executive Director
IHS, The Institute for Human Services, Inc.

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: kimoc@ihs-hawaii.org
Subject: *Submitted testimony for HB554 on Apr 4, 2017 09:45AM*
Date: Monday, April 3, 2017 5:33:00 PM

LATE TESTIMONY

HB554

Submitted on: 4/3/2017

Testimony for JDL on Apr 4, 2017 09:45AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kimo K. Carvalho	IHS, The Institute for Human Services	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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