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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 554  
RELATING TO ORDERS TO TREAT OVER OBJECTIONS

by

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Judiciary  
Representative Scott Y. Nishimoto, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Friday, February 24, 2017; 2:00 p.m.  
State Capitol, Conference Room 325

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of House Bill (HB) 554, which proposes to amend Section 334E-2, Hawaii Revised Statutes, to enable the Hawaii State Hospital (HSH) to provide timely treatment that will serve to improve staff and patient safety at HSH. The current method of obtaining authorization to provide treatment over a patient's objection (Orders to Treat) through judicial hearing is a slow process, and at times, results in patient decompensation.

The Department agrees that providing an administrative mechanism to review and authorize requests for Orders to Treat would expedite the treatment process. If enacted, PSD's Health Care Division will closely monitor the experience of the Department of Health in employing this administrative process, as a similar administrative process for PSD's critically acute patients would benefit PSD's patients and staff, as well. The Department would appreciate your Committee's consideration in extending the same administrative process for PSD in the next legislative session.

Thank you for the opportunity to present this testimony.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony in SUPPORT of HB554  
RELATING TO ORDERS FOR TREATMENT OVER OBJECTION**

REPRESENTATIVE SCOTT Y. NISHIMOTO, CHAIR  
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: Friday, February 24, 2017

Room Number: 325

1 **Fiscal Implications:** Undetermined at this time.

2 **Department Testimony:** The Department of Health (DOH) strongly supports this  
3 measure and offers proposed amendments.

4 The purpose of this bill is to provide a basis in statute for an administrative  
5 mechanism to authorize treatment over objection.

6 The Hawaii State Hospital (HSH) is utilized primarily for involuntary forensic  
7 commitments (99% of total admissions). There are few other state hospitals with such a  
8 high proportion of forensic involuntary admissions.

9 We support this bill as it is consistent with a number of initiatives to enhance  
10 patient care and to improve safe, effective and efficient operations. We anticipate that  
11 these initiatives, once pursued, will have a positive impact on HSH census, length of  
12 stay, and the safety of both patients and staff. This measure will support the expedient  
13 initiation of treatment to reduce dangerousness and will enhance safety at the HSH.

14 Patients admitted to the HSH are often experiencing acute psychotic symptoms  
15 that increase the risk of harming themselves and others. The vast majority of  
16 involuntary patients do not realize that they are mentally ill and consequently resist  
17 treatment. Starting treatment quickly reduces the danger to other patients, staff and

1 the patients themselves, returns the patient to pre-morbid functioning sooner, and is  
2 associated with a more complete recovery. This is an essential component of humane  
3 healthcare and maintaining a safe and secure therapeutic environment for all patients  
4 and staff. Recent research in neuroscience has reinforced what psychiatrists commonly  
5 find in their clinical practice: untreated psychosis causes damage to the brain and in the  
6 process, makes it more difficult to successfully reduce symptoms once treatment is  
7 initiated after a delay.

8         The current method to obtain an authorization to provide treatment over a  
9 patient's objection (OTT) is via a judicial hearing. This method is not always expedient,  
10 with variable time periods between filing the petition and the judicial hearing, an average  
11 in 2016 of 16.8 days with the longest period being 50 days.

12         Other states have responded to the need by developing a non-judicial,  
13 administrative mechanism to review and authorize requests for OTT that are  
14 administered within the hospital setting. These mechanisms include provisions to  
15 ensure the due process rights of patients in such circumstances and are supported by  
16 United States Supreme Court case law. Current law in Hawaii does not allow for the  
17 potential development of such a mechanism.

18         One section where present statute can change to create this potential is a  
19 revision to HRS 334E- 2 (a) (9) that is outlined in SB146. This measure would enable  
20 the DOH to subsequently develop Hawaii Administrative Rules to support a more timely  
21 method for the authorization of OTT.

22         The Department of Health strongly supports this measure and offers proposed  
23 amendments. With the proposed amendments, the DOH estimates a shorter timeframe  
24 to obtain an OTT including an administrative process that is faster and projected to take  
25 one week.

1           We continue to outreach to stakeholders to incorporate their input into potential  
2 revisions and amendments. Thank you for the opportunity to testify. Our proposed  
3 amendments are summarized below and are included in the attached draft HB554 HD1.

4 **Offered Amendments:**

5           Please see attached for proposed HD1. Summary of proposed amendments to  
6 HB554 are as follows:

- 7           1. Insert language to create a new part in the Hawaii Revised Statutes to  
8           establish criteria for the issuance of an administrative order for treatment over  
9           a patient's objection and criteria for an administrative process to determine  
10           whether an administrative order for treatment over objection should be  
11           issued.
- 12           2. Remove "or special treatment facility" as chapter 334E only pertains to  
13           "psychiatric facilities."
- 14           3. Add reference to court in addition to administrative panel to establish criteria  
15           for courts to utilize in authorizing medical treatment over objection.
- 16           4. Clarify that the proposed treatment is medically appropriate.
- 17           5. Clarify that less intrusive alternatives have been considered.
- 18           6. Clarify that the administrative process described by this section is exempt  
19           from the contested case requirements of chapter 91, sections -8.5  
20           through -15.
- 21           7. Inserting an effective date of July 1, 2050.

REVISED:  
1ST DRAFT DATE:

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Proposed H.D. 1

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## A BILL FOR AN ACT

RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the initiation of  
2 treatment for patients admitted to the Hawaii state hospital  
3 needs to be expedient in order to address patients' psychiatric  
4 symptoms and protect the safety of the patient and others. The  
5 legislature further finds that the Hawaii state hospital is  
6 utilized primarily for forensic commitments, and that addressing  
7 patients' psychiatric symptoms quickly at the initiation of  
8 treatment will help maintain a safe and secure therapeutic  
9 environment for patients and staff as well as have a positive  
10 impact on patients' length of stay.

11           The legislature notes that the current method to obtain an  
12 authorization to provide treatment over a patient's objection is  
13 by a judicial hearing. Although unpredictable, on average the  
14 time between petition and judicial hearing is nearly seventeen  
15 days. Other states have responded to such unpredictability and  
16 delay by developing a non-judicial, administrative mechanism to

1 review and authorize requests for treatment over a patient's  
2 objection.

3 The purpose of this Act is to permit an administrative  
4 order to overcome a patient's objection to psychiatric  
5 treatment, establish criteria for issuance of the administrative  
6 order, and establish criteria for an administrative  
7 authorization process to determine whether the administrative  
8 order should be issued.

9 SECTION 2. ~~New statutory material is underlined.~~ Chapter  
10 334, Hawaii Revised Statutes, is amended by adding a new part to  
11 be appropriately designated and to read as follows:

12 "PART . ADMINISTRATION OF TREATMENT OVER OBJECTION

13 §334-A Criteria for medical treatment over objection. A  
14 patient who has been committed to a psychiatric facility for  
15 involuntary hospitalization or who is in the custody of the  
16 director and residing in a psychiatric facility may be ordered  
17 to receive treatment over the patient's objection, including the  
18 taking or application of medication, if the court, or  
19 administrative panel through the administrative authorization  
20 process established pursuant to section 334-B, finds that:

21 (1) The patient suffers from a physical or mental disease,  
22 disorder, or defect;

23 (2) The patient is dangerous to self or others;

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1        (3) The proposed treatment is medically appropriate; and

2        (4) Considering less intrusive alternatives, treatment is  
3        essential to forestall the danger posed by the  
4        patient.

5        **§334-B Criteria for administrative authorization process.**

6        (a) A patient who is in the custody of the director of health  
7        in a psychiatric facility may be ordered to receive medical  
8        treatment over objection through an administrative authorization  
9        process that includes the following due process safeguards:

10       (1) The facility shall give notice to the patient of the  
11       authorization process and the reasons for initiating  
12       the process;

13       (2) The administrative panel shall consist of three  
14       members with relevant clinical training and  
15       experience, and who are not involved with the current  
16       treatment of the patient;

17       (3) The patient shall have the right to attend the  
18       hearing, receive assistance from an advisor, cross  
19       examine witnesses, and present testimony, exhibits,  
20       and witnesses; and

21       (4) The patient shall have the right to appeal the  
22       decision of the administrative panel.

1        (b) The administrative process described by this section  
2        is exempt from the contested case requirements of chapter  
3        91, sections -8.5 through -15.

4        (c) The department may adopt rules, pursuant to chapter  
5        91, consistent with this part to effectuate this part."

6        SECTION 3. ~~This Act shall take effect upon its~~  
7        ~~approval.~~ Section 334E-2, Hawaii Revised Statutes, is amended by  
8        amending subsection (a) to read as follows:

9        "(a) Any patient in a psychiatric facility shall be  
10       afforded rights; and any psychiatric facility shall provide the  
11       rights to all patients; provided that when a patient is not able  
12       to exercise the patient's rights, the patient's legal guardian  
13       or legal representative shall have the authority to exercise the  
14       same on behalf of the patient. The rights shall include, but  
15       not be limited to, the following:

16       (1) Access to written rules and regulations with which the  
17       patient is expected to comply;

18       (2) Access to the facility's grievance procedure or to the  
19       department of health as provided in section 334-3;

20       (3) Freedom from reprisal;

21       (4) Privacy, respect, and personal dignity;

22       (5) A humane environment;



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- 1        (6) Freedom from discriminatory treatment based on race,  
2        color, creed, national origin, age, and sex;
- 3        (7) A written treatment plan based on the individual  
4        patient;
- 5        (8) Participation in the planning of the patient's  
6        treatment plan;
- 7        (9) Refusal of treatment except in emergency situations or  
8        where a court order or administrative order issued  
9        pursuant to section 334-A exists;
- 10       (10) Refusal to participate in experimentation;
- 11       (11) The choice of physician if the physician chosen  
12       agrees;
- 13       (12) A qualified, competent staff;
- 14       (13) A medical examination before initiation of non-  
15       emergency treatment;
- 16       (14) Confidentiality of the patient's records;
- 17       (15) Access to the patient's records;
- 18       (16) Knowledge of rights withheld or removed by a court or  
19       by law;
- 20       (17) Physical exercise and recreation;
- 21       (18) Adequate diet;
- 22       (19) Knowledge of the names and titles of staff members  
23       with whom the patient has frequent contact;

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- 1        (20) The right to work at the facility and fair  
2                compensation for work done; provided that work is  
3                available and is part of the patient's treatment plan;
- 4        (21) Visitation rights, unless the patient poses a danger  
5                to self or others; provided that where visitation is  
6                prohibited, the legal guardian or legal representative  
7                shall be allowed to visit the patient upon request;
- 8        (22) Uncensored communication;
- 9        (23) Notice of and reasons for an' impending transfer;
- 10       (24) Freedom from seclusion or restraint, except:
- 11               (A) When necessary to prevent injury to self or  
12                others; or
- 13               (B) When part of the treatment plan; or
- 14               (C) When necessary to preserve the rights of other  
15                patients or staff;
- 16       (25) Disclosure to a court, at an involuntary civil  
17                commitment hearing, of all treatment procedures which  
18                have been administered prior to the hearing;
- 19       (26) Receipt by the patient and the patient's guardian or  
20                legal guardian, if the patient has one, of this  
21                enunciation of rights at the time of admission."
- 22       SECTION 4. In codifying the new sections added by section  
23       2 of this Act, the revisor of statutes shall substitute

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1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 5. New statutory material is underscored.

4 SECTION 6. This Act shall take effect on July 1, 2050.

**Report Title:**

[Click here and type Report Title (1 line limit)]

**Description:**

[Click here and type Description (5 line limit)]

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2017 7:01 PM  
**To:** JUDtestimony  
**Cc:** louis@hawaiidisabilityrights.org  
**Subject:** Submitted testimony for HB554 on Feb 24, 2017 14:00PM

**HB554**

Submitted on: 2/22/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b>             | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------------------|---------------------------|---------------------------|
| Louis Erteschik     | Hawaii Disability Rights Center | Comments Only             | Yes                       |

Comments: This proposal represents a radical departure from Hawaii's jurisprudence and public policy. Orders for involuntary medication have always been entered by a Judge after a judicial process. While mental health professionals would render an opinion and offer testimony, the decision has always ultimately been up to the Court. It seems very dangerous to delegate this authority to an administrative panel and raises very serious due process and other constitutional protections. While the US Supreme Court case of Washington vs. Harper did permit this type of procedure in the prison context, we see a real legal distinction between the procedural protections that the law offers to individuals who are incarcerated because they have been found guilty of committing a crime and individuals with a mental illness who are supposed to be in a treating hospital. Moreover, we would note that even the prisons in Hawaii do not utilize this type of administrative panel. In the prisons, they utilize the traditional judicial process to seek orders to involuntarily medicate inmates. It would seem extremely contradictory for Hawaii to provide more legal protections for the rights of prison inmates than it does for individuals with disabilities in a hospital setting. We believe the better approach is to work with the Judiciary to find ways to expedite the judicial process.

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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**THE QUEEN'S  
HEALTH SYSTEMS**

**LATE**

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To: The Honorable Scott Y. Nishimoto, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
Members, Committee on Judiciary  
*Paula Yoshioka*

From: Paula Yoshioka, Senior Vice President, The Queen's Health Systems  
Date: February 23, 2017  
Hrg: House Committee on Judiciary Hearing; Friday, February 24, 2017 at 2:00PM in Room 325

Re: **Support for HB 554, Relating to Orders for Treatment Over Objection**

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My name is Paula Yoshioka and I am a Senior Vice President at The Queen's Health Systems (Queen's). I would like to provide **support** and **comments** for HB 554, Relating to Orders to Treat Over Objection. This bill permits an administrative order to overcome a patient's objection to psychiatric treatment.

At QHS we are committed to providing care for Hawaii's most underserved. The needs of the mental health population in Hawaii are growing and QHS has experienced an increased volume of civilly committed mental health patients who are unable, or unwilling, to consent to necessary treatment. The Civil Rights of Institutionalized People Act (CRIPA) guarantees a patient's right to receive treatment while committed, but facilities with committed patients are unable to provide that treatment without the patient's permission or a court order to treat. Without prompt treatment, the mental condition of these patients can deteriorate which is not quality patient care.

We concur with the suggested edits provided by the Department of Health describing the criteria for granting an order to treat and creating an administrative process while also preserving the existing court process.

Thank you for the opportunity to provide comments on this legislation.

*The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.*