

LATE TESTIMONY



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Wednesday, February 22, 2017, 9:15 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 146, S.D. 1, Relating to Orders for Treatment Over Objection

Dear Chair Keith-Agaran and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes **in opposition** to S.B. 146, S.D. 1, which allows for the involuntary administration of psychotropic drugs by administrative order. Should the Committee be inclined to move this bill, the ACLU of Hawaii offers an amendment.

The ACLU of Hawaii supports the right of all people, including those living with disabilities, to make informed choices about what happens to their own bodies. Only in the most exigent of circumstances—where the patient is in imminent danger to themselves or others, where the treatment is in the patient’s best interest, and where no less restrictive means exist¹—may the state intervene and force an individual to take psychotropic drugs or otherwise undergo medical psychiatric treatment over the patient’s objection.² Anything but the most stringent and careful process in making this determination would fly in the face of an individual’s fundamental right to bodily autonomy and would constitute an egregious deprivation of liberty.

The ACLU of Hawaii is concerned that this measure is an attempt to “sweep” the streets by rubber-stamping homeless individuals and families into psychiatric facilities and then forcing upon them psychotropic medications. While we appreciate the due process amendments made by the Committee on Commerce, Consumer Protection, and Health, the ACLU of Hawaii remains concerned that an administrative panel may routinely find that the long-term negative health consequences of an untreated illness alone satisfy the requirement that the individual “actually [pose] a danger of physical harm to himself or herself or others.”³ In other words, that an individual poses a “danger” to herself simply by allowing an illness to go untreated. This

¹ The Hawaii Supreme Court has established a three-part test for considering a request to involuntarily

² This should be a distinct consideration from an order authorizing an individual’s involuntary commitment. “An order authorizing a person’s involuntary commitment does not authorize the state to treat the committed person with psychotropic drugs. Nor does it amount to a finding that the patient is incapable of giving or withholding informed consent to submit to such treatment.” *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 242 (Alaska 2006).

³ *Kotis*, at 334.

reasoning could be used to justify forced medication in practically any case that would come before the administrative panel.

If the Committee is inclined to pass out this measure, the ACLU of Hawaii respectfully requests that S.B. 146, S.D. 1 be amended to reflect the following:

§334-B Criteria for administrative authorization process. (a) The administrative authorization process to determine whether an administrative order for treatment over objection should be issued shall include the following due process safeguards:

- (1) The facility shall give notice to the patient of the authorization process and the reasons for initiating the process;
- (2) The administrative panel shall consist of three members with relevant clinical training and experience, and who are not involved with the current treatment of the patient;
- (3) The patient shall have the right to attend the hearing, receive assistance from an advisor, and contest the proposed order with testimony, exhibits, witnesses, and cross examination; ~~and~~
- (4) The patient shall have the right to appeal the decision of the administrative panel; and
- (5) A finding that, untreated, the patient's illness would likely result in long-term negative effects on the health of the patient cannot alone satisfy the requirement in Section 334-A that the patient be dangerous to self or others.

For the reasons articulated above, the ACLU of Hawaii urges the Committee to defer S.B. 146, S.D. 1. However, should the Committee feel inclined to support this measure, the ACLU of Hawaii respectfully requests the Committee to adopt the above amendment.

Thank you for this opportunity to testify.



Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.