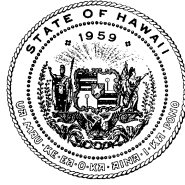


# SB146

Measure Title: RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.  
Report Title: Psychiatric Treatment; Administrative Order  
Description: Permits an administrative order to overcome a patient's objection to psychiatric treatment.  
Companion:  
Package: None  
Current Referral: CPH, JDL  
Introducer(s): BAKER



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB146  
RELATING TO ORDERS FOR TREATMENT OVER OBJECTION**

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION  
AND HEALTH

Hearing Date: FRIDAY, JANUARY 27, 2017

Room Number: 229

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

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

4 The purpose of this bill is to provide statutory support for an administrative  
5 mechanism to authorize treatment over objection.

6 The Hawaii State Hospital (HSH) is utilized primarily for forensic commitments  
7 (99% of total admissions). Bed space available for civil commitments in Hawaii is  
8 limited to psychiatric units in public and private community hospitals. Although the  
9 national average for forensic bed utilization is 47%, Missouri, Hawaii, Maryland,  
10 Wisconsin, and California all had over 74% forensic bed utilization.

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

1 Patients admitted to HSH are often experiencing acute psychiatric symptoms that  
2 generate a risk to the safety of patients or others. Expedient initiation of treatment to  
3 reduce that risk is an essential component of humane healthcare and maintaining a safe  
4 and secure therapeutic environment for all patients and staff. Recent research in  
5 neuroscience has reinforced what psychiatrists commonly find in their clinical practice:  
6 untreated psychosis causes damage to the brain and in the process, makes it more  
7 difficult to successfully reduce symptoms once treatment is 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 and the time between petition and judicial hearing is unpredictable with an average in  
11 2016 of 16.8 days with longest period of 50 days. Other states have responded to the  
12 need to provide expedient treatment by developing a non-judicial, administrative  
13 mechanism to review and authorize requests for OTT that are administered within the  
14 hospital setting. These mechanisms include provisions to ensure the due process rights  
15 of patients in such circumstances and are supported by United States Supreme Court  
16 case law. Current law in Hawaii does not allow for the potential development of such a  
17 mechanism.

18 A legislative approach to create this potential is a revision to HRS 334E- 2 (a) (9)  
19 that is outlined in SB146. This measure would enable the DOH to subsequently  
20 develop Hawaii Administrative Rules to support a more expedient method for the  
21 authorization of OTT.

22 The Department of Health strongly supports this measure.

23 Thank you for the opportunity to testify.

24 **Offered Amendments:** None.



Committee: Committee on Commerce, Consumer Protection, and Health  
Hearing Date/Time: Friday, January 27, 2017, 9:30 a.m.  
Place: Room 229  
Re: *Testimony of the ACLU of Hawaii in **Opposition** to S.B. 146, Relating to Orders for Treatment Over Objection*

Dear Chair Baker and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **opposition** to S.B. 146, which allows for the involuntary administration of psychotropic drugs by administrative order.

The ACLU 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 an imminent danger to themselves or others, where the treatment is in the patient’s best interest, and where no less restrictive means exist<sup>1</sup>—may the state intervene and force an individual to take psychotropic drugs or otherwise undergo medical psychiatric treatment over the patient’s objection.<sup>2</sup> 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 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. S.B. 146 is problematic in that it does not prescribe the process by which an administrative order may be requested, granted, or appealed. Instead, the bill would allow the procedure to be developed by the governing agency through the promulgation of rules. We remain unconvinced that an administrative process would automatically provide the due process required by law, and we are concerned that an ensuing administrative order for involuntary medication might violate an individual’s right to privacy guaranteed by the Hawaii State Constitution.<sup>3</sup> While the U.S. Supreme Court found in

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<sup>1</sup> The Hawaii Supreme Court has established a three-part test for considering a request to involuntarily medicate a criminal defendant: “(1) that the defendant actually poses a danger of physical harm to himself or herself or others; (2) that treatment with antipsychotic medication is medically appropriate, that is, in the defendant’s medical interest; and (3) that, considering less intrusive alternatives, the treatment is essential to forestall the danger posed by the defendant.” *State v. Kotis*, 91 Haw. 319, 334, 984 P.2d 78, 93 (1999).

<sup>2</sup> 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).

<sup>3</sup> H.I. Const. art. 1, § 6.

*Washington v. Harper*<sup>4</sup> that the administrative panel used in that case satisfied due process, this bill does not guarantee that the rights afforded to an objecting patient by the courts would be followed by our state agencies.

Further, any attempt by the state to expedite or expand the process of coercing a patient to take psychotropic drugs over their objection may deter individuals who suffer from mental illness from voluntarily seeking treatment. The fear of being forced to take psychotropic drugs is not unfounded, as these medications “alter the chemical balance in a patient’s brain”<sup>5</sup> and can cause devastating and potentially irreversible side effects.<sup>6</sup>

For these reasons, the ACLU urges the Committee to defer S.B. 146.

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.*

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<sup>4</sup> *Washington v. Harper*, 110 S.Ct. 1028 (1990).

<sup>5</sup> *Id.*, 110 S.Ct. at 1032.

<sup>6</sup> The Harper Court discussed the considerations of these side effects in the trial court’s consideration of the request for forced treatment. “While the therapeutic benefits of antipsychotic drugs are well documented, it is also true that the drugs can have serious, even fatal, side effects. One such side effect identified by the trial court is acute dystonia, a severe involuntary spasm of the upper body, tongue, throat, or eyes. The trial court found that it may be treated and reversed within a few minutes through use of the medication Cogentin. Other side effects include akathisia (motor restlessness, often characterized by an inability to sit still); neuroleptic malignant syndrome (a relatively rare condition which can lead to death from cardiac dysfunction); and tardive dyskinesia, perhaps the most discussed side effect of antipsychotic drugs.” *Harper*, 494 U.S at 229-30, (citations omitted).

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 25, 2017 3:12 PM  
**To:** CPH Testimony  
**Cc:** louis@hawaiidisabilityrights.org  
**Subject:** Submitted testimony for SB146 on Jan 27, 2017 09:30AM

**SB146**

Submitted on: 1/25/2017

Testimony for CPH on Jan 27, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louis Erteschik	Hawaii Disability Rights Center	Oppose	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.

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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## HAWAII MEDICAL ASSOCIATION

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FROM:  
HAWAII MEDICAL ASSOCIATION  
Dr. Chris Flanders, Executive Director  
Lauren Zirbel, Community and Government Relations

TO:  
COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH  
Senator Rosalyn H. Baker, Chair  
Senator Clarence K. Nishihara, Vice Chair

DATE: Friday, January 31, 2017  
TIME: 9:30 a.m.  
PLACE: Conference Room 229  
State Capitol

SB146  
Position: Support

On behalf of the physician and medical student members of the Hawaii Medical Association, we are writing in support of bill SB146.

The HMA supports the development of an expedient administrative pathway for admissions of patients experiencing acute psychiatric episodes who demonstrate potential danger to themselves or others into psychiatric treatment centers. As a nature of psychiatric illness, patients do not always rationally recognize the benefits of treatment. The judicial mechanism currently in place can be cumbersome and difficult to navigate, becoming an obstacle to the of placement of patients in a safe and secure environment, and the expedient initiation treatment.

Thank you for allowing us testimony on this important issue.

### HMA OFFICERS

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Immediate Past President – Scott McCaffrey, MD    Treasurer – Michael Champion, MD  
Executive Director – Christopher Flanders, DO



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 25, 2017 7:25 PM  
**To:** CPH Testimony  
**Cc:** jerrydeguzman@hawaii.rr.com  
**Subject:** Submitted testimony for SB146 on Jan 27, 2017 09:30AM

**SB146**

Submitted on: 1/25/2017

Testimony for CPH on Jan 27, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jerry DeGuzman	Individual	Oppose	No

Comments: I oppose this Bill. My wife was MISDIAGNOSED as being suicidal (simply because she took one of my powerful back pain killers to relieve her leg pains, and it knocked her out good and the ambulance was called). She was rushed to Queens West early in the morning, I went to work for the day, and when I went back to get her she was GONE. They put her in Queen's psyche ward without telling me, and when she woke up she didn't know what was going on. They didn't let me talk to her so for TWO DAYS she was scared out of her mind wondering why is she in the psyche ward and why can't she talk to me. These psyche doctors MAKE MISTAKES and to allow them to force treatment without patient or patient power of attorney approval, that would give them WAY TOO MUCH POWER to abuse and innocent people will end up having the stigma of being "psychotic" simply because these doctors forced their misdiagnoses on them. Thank you for considering my testimony. Please do not pass this bill.

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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