



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**TESTIMONY IN SUPPORT OF SB2813
RELATING TO ORDERS FOR TREATMENT OVER OBJECTION**

SENATOR CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,
AND MILITARY AFFAIRS

Hearing Date and Time: Tuesday, January 30, 2018 at 1:15 p.m. Room Number: 229

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

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

3 The purpose of this bill is to permit an administrative order to overcome a
4 patient's objection to psychiatric and medical treatment and amend criteria for issuance
5 of such an order, whether through a court or administrative process.

6 The Department of Health supports this measure as it is consistent with initiatives
7 to enhance the care of detainees who have mental health challenges and to improve
8 safe, effective, and efficient operations within the Department of Public Safety (PSD).
9 This measure supports the expedient initiation of treatment to reduce dangerousness
10 and will enhance safety in PSD facilities.

11 During the 2017 legislative session, HB554 HD1 SD2 CD1 pertaining to
12 establishing an administrative mechanism to authorize treatment over objection for
13 patients at the Hawaii State Hospital (HSH) was passed and enacted (Act 111). The

1 DOH and the PSD continue to meet regularly and have discussed a process, proposed
2 by DOH based on best practices from other jurisdictions, to obtain administrative orders
3 that authorize treatment over objection for patients in HSH. This process outline may
4 provide the basis for an administrative mechanism applicable to individuals in PSD
5 custody.

6 We thank the committee for considering our testimony in support of this measure.



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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TESTIMONY ON SENATE BILL 2813
RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, January 30, 2018; 1:15 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** Senate Bill (SB) 2813, which proposes to amend Section 353, Hawaii Revised Statutes, to enable PSD to provide timely treatment to patients who are “imminently dangerous”, thus serving to improve staff and patient safety at PSD. 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 while exposing treatment staff to potential harm and injury.

We note that in proposing amendments to section 353-13.6(b), Hawaii Revised Statutes, correct Ramseyer format was not used. The terms “danger of physical harm to others” and “danger of physical harm to self” existing in the current text of the statute, were inadvertently omitted from page 4, line 13 and 19, respectively, and the newly proposed terminology was not underlined. If the Committee passes this measure, we respectfully ask that the following amendments be made to the subject terms, as follows:

“(b) For 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 restrictive 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.”

An administrative mechanism utilizing relevant clinical expertise to review and authorize requests for Orders for Treatment would expedite the treatment process and provide critical emergent treatment interventions, serving to increase the safety and well-being of PSD’s patients and staff. The Department would appreciate your Committee’s favorable consideration of this measure.

Thank you for the opportunity to present this testimony.



**Office of the Public Defender
State of Hawaii**



**Testimony of the Office of the Public Defender
to the Committee on Public Safety, Intergovernmental, and Military Affairs**

January 26, 2018

S.B. No. 2813: RELATING TO ORDERS FOR TREATMENT OVER
OBJECTION.

Chair Clarence K. Nishihara and Members of the Committee:

The Office of the Public Defender strongly opposes passage of S.B. No. 2813. Medical and medication decisions are a fundamental liberty right – the right of an individual to determine what, if anything, they consent to being ingested or injected into the body. This bill strips away a person’s right to make individual medical and medication decisions if they are in custody without adequate due process. The Office of the Public Defender recognizes that the Department of Public Safety has an interest in medicating persons in custody who are actively psychotic, in an uncontrolled manic episode, or who may be a danger to themselves or to others because of an untreated mental illness. The Legislature must balance the liberty interest of an individual with safety concerns.

The current procedures in HRS Section 353-13.6 provide an appropriate and effective means to manage a severely mentally ill person in custody who is in need of treatment and medication. We are concerned that the new proposed procedures side step the important due process right of an individual to make medical decisions. The Department of Public Safety has the ability to quickly seek involuntary medication orders from the Courts. They have not taken advantage of this option – they rarely request Court intervention despite having this option as a valuable resource. They also have the ability to request an expedited hearing if the need is urgent. The Courts regularly set hearings for emergency hospitalizations within 72-hours (see HRS Section 704-413) in other cases.

The Courts provide an essential protection to individuals who refuse to take specific medications because of severe, debilitating, and sometimes life-threatening side effects. The Courts provide an essential protection to individuals who may need an advocate to properly cross-examine doctors and staff as to why they believe an individual is in need of forced medication or services and assertions that they may be dangerous. There have been instances when mentally individuals are able to articulate why they do not want to take specific medications that a doctor is recommending that are rational and explainable. There have been instances when claims of dangerousness have been exaggerated.

Our office feels the proposed new procedures are ripe for abuse without the proper checks and balances. The Bill seeks to streamline forced treatment by eliminating the ability of an individual in custody to have legal advice and advocacy. The vast majority of the mentally ill who are in the custody of the Department of Public Safety are indigent and will need the services of the Office of the Public Defender. We are an essential part in the process to insure that the medication and treatment that administrators wish to “force” a person to take are appropriate and that all less intrusive alternatives and treatment have been explored. It is our position that the proposed “administrative authorization process” is inadequate to protect the liberty interests of individuals with mental health issues in custody. Our office is concerned that “administrative panels” that are not monitored by the Courts and that fail to provide legal representation by the Office of the Public Defender will circumvent the due process and liberty interest of individuals who are making what they believe to be appropriate medical decisions. This measure provides for “assistance from an advisor” to the mentally ill patient, however, our office submits that assigning an unspecified “advisor” is simply insufficient to protect the mentally ill and provide adequate due process.

For these reasons, we strongly oppose S.B. No. 2813.

Thank you for the opportunity to provide testimony in this matter.

SB-2813

Submitted on: 1/28/2018 10:51:33 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments: