



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Wednesday, February 22, 2017 at 9:15 a.m.

State Capitol, Conference Room 016

By

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Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 146, S.D.1, Relating to Orders for Treatment Over Objection.

Purpose: Permits an administrative order to overcome a patient's objection to psychiatric treatment.

Judiciary's Position:

The Judiciary takes no position on this bill and respectfully offers the following comments.

1. We need to be clear at the outset that the Judiciary, by these comments, takes no position on the constitutionality of this bill or any resulting act.
2. We are unaware of any existing administrative process for this kind of decision-making. Indeed, we are not aware of any existing administrative process that would apply to the general area of mental health care.



Senate Bill No.146, Relating to Orders for Treatment Over Objection
Senate Committee on Judiciary and Labor
Wednesday, February 22, 2017 at 9:15 a.m.
Page 2

3. Thus, we are unable to determine whether and how the Judiciary might be a participant. Any such administrative order will require access to the court on appeal. However, nothing in this bill gives any direction in this regard.

4. We are uncertain whether this bill is meant to apply only to the forensic population. All of the preamble language appears to single out the forensic population at the Hawaii State Hospital, but the proposed statutory language is written to apply to all patients at all psychiatric facilities.

5. If a new administrative process must be constructed, it might be well for the Legislature to set an effective date of, at a minimum, 9 to 12 months from the Governor's signing. This may give the Department of Health and the Department of the Attorney General time enough to set up the structure, hire the staff, and promulgate new rules, and give the Judiciary time to determine how to implement whatever appellate process is decided upon.

Thank you for the opportunity to provide testimony on this measure.