

**HB-345-HD-1**

Submitted on: 2/16/2021 2:16:56 PM

Testimony for JHA on 2/17/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christy MacPherson	Individual	Support	No

Comments:

As a former ACT case manager, I support HB345, HD1.

**DATE: Feb. 16, 2021**

**TO: House Judiciary Committee  
Representative Mark Nakashima, Chair  
Representative Scot Matayoshi , Vice Chair**

**FROM: IHS, The Institute for Human Service, Inc.  
Connie Mitchell, Executive Director**

**RE: HB345 Relating to Assisted Community Treatment**

IHS, The Institute for Human Services, Inc. is in strong support of HB345 which makes amendments to the Assisted Community Treatment statute.

For the past 15 months, IHS has been implementing an Outreach Program that identifies homeless individuals suffering mental illness who have lost decisional capacity and continue to refuse treatment. The goal is to engage and motivate the individual to accept treatment.

This Bill was requested to streamline the legal process without compromising an individual's right to due process and ensure his/her right to treatment for serious mental illness or psychosis suffered as a result of chronic substance use, particularly with methamphetamine. Auto appointment of Guardian Ad Litem upon petition being filed would speed up the legal process by possibly having the GAL's opinion possibly be made available at the first hearing. Removing the Public Defender from participation in the court process still leaves the individual's best interests to be represented by the appointment of a guardian ad litem

Sadly, many of these potential subjects of ACT are high users of the emergency medical system and the destination emergency departments. We encounter many of them on outreach with significant medical conditions including severely infected wounds which might never have reached life-threatening status had the individual had the ability to understand their situation and the diseases that afflict both mind and body.

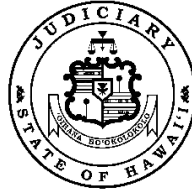
Even sadder, when the Assisted Community Treatment Process process requires months to complete, the subject or potential subject of our petition may suffer tragic consequences. One of our subjects of petition assaulted a police officer before the petition was brought to trial, further criminalizing him in order for him to access treatment. A female subject died as a result of being hit by a car while crossing a Highway and yet another young man who already had his foot amputated due to self-neglect died in the hospital of septicemia that resulted from the infection of his wounds.

The most significant benefits of the amendments proposed in HB345 is that it will facilitate access to treatment over objection for many more persons who have no understanding of their

mental illness and how it impacts their quality of life without compromising due process. Among homeless people whom we serve every day, these people are among our most vulnerable.

Indeed, thousands, if not millions of dollars in health care costs could be saved by having the court mandate treatment for those who direly need it, in a more timely manner. During the current COVID pandemic, easing the numbers of behavioral health crises coming to emergency departments could also improve the likelihood that persons in a medical crisis would be more likely to access treatment.

We hope your Committees will see fit to pass HB345. Mahalo!



*The Judiciary, State of Hawai'i*

**Testimony to the Thirty-First State Legislature, 2021 Regular Session  
House Committee on Judiciary & Hawaiian Affairs**

Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 17, 2012, at 2:00 p.m.  
State Capitol, Conference Room 325  
VIA VIDEOCONFERENCE

by  
Christine E. Kuriyama  
Deputy Chief Judge, Senior Judge  
Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 345, H.D.1, Relating to Assisted Community Treatment.

**Purpose:** Mandates appointment of a guardian ad litem to represent the best interests of a mentally ill individual in assisted community treatment proceedings. (HD1)

**Judiciary's Position:**

The Judiciary offers the following comments on this measure and revisions set forth in HD1:

1. Mandatory appointment of Guardian Ad Litem ("GAL"): In anticipation of appointing a GAL in every Assisted Community Treatment ("ACT") case, because the Judiciary's current budget does not include and account for the additional proposed expense, we would respectfully ask the Legislature to appropriate sufficient funding for this new Judiciary responsibility that would be created under this bill.
2. Further, the Legislature should also consider amending HRS Section 571-87 to include ACT cases in said statutory provision. As stated previously, court-appointed GALs charge \$60.00/hour for out of court tasks and \$90.00/hour for in-court tasks pursuant to HRS Section 571-87.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAII

OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender,  
State of Hawai'i to the House Committee on  
Judiciary & Hawaiian Affairs

February 17, 2021

H.B. No. 345 HD1: RELATING TO ASSISTED COMMUNITY TREATMENT

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender offers the following comments on H.B. No. 345 HD1:

Article I, section 14 of the Hawai'i Constitution provides, "The State shall provide counsel for an indigent defendant charged with an offense *punishable by imprisonment.*" (Emphasis added).

Prior to the enactment of ACT program, HRS § 802-1 limited the OPD's duty to representing only indigent persons threatened by imprisonment or confinement. This limitation was inclusive to indigent individuals charged with criminal offenses punishable by confinement in jail or prison, juveniles subject to confinement under HRS chapter 571, and persons threatened by confinement in psychiatric or other mental institutions, including accompanying requests for involuntary medical treatment. In each instance, the individual's liberty and their personal freedom to live and breathe outside of confinement is at stake. ACT, enacted under HRS chapter 334, however, extended the right to counsel to persons subject to ACT petitions even though ACT does not involve the same liberty interests contemplated by or necessitated by the HRS or the Hawai'i Constitution.

This bill in the original form sought to remove the Office of the Public Defender (OPD) from the ACT proceedings. The OPD did not object to the original bill as long as a guardian ad litem (GAL) is appointed to represent the interest of the individual because the individuals subject to the ACT petitions are not threatened by confinement or imprisonment.

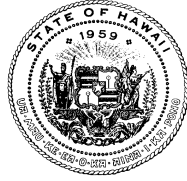
The ACT program involves social services treatment providers and implementation of those services. It does not involve liberty interests. The ACT process and the individual's best interest are best served with the appointment of a GAL whose duty is to advise the court on whether ACT is in the best interest of the mentally ill

individual. *See In re Doe*, 108 Hawai‘i 144, 154, 118 P.3d 54, 64 (2005) (the purpose of a GAL is to protect the person under disability and to ensure that the person’s interest is not compromised).

The GAL’s role is in stark contrast to the role of the OPD, which is to litigate legal issues on behalf of its client according to the client’s requests, which often contradicts what may be in the clients’ best interests. Thus, the OPD will advocate on behalf of the individual and his/her right to refuse to treatment. Indeed, the Hawai‘i Rules of Professional Conduct requires the OPD, as an advocate, to “zealously assert[] the client’s position under the Rules of the adversary system.” Consequently, the OPD, if mandated to represent the individual who is subject to an ACT petition, will continue to zealously litigate the petitions against the social service providers and family members to ensure that the criteria for ACT under HRS § 334-121(1) has been met.

Thank you for the opportunity to comment on H.B. No. 345 HD1.

DAVID Y. IGE  
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.  
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**Testimony in SUPPORT of H.B. 345 H.D. 1  
RELATING TO ASSISTED COMMUNITY TREATMENT**

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR  
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date: 2/17/2021

Hearing Time: 2:00 p.m.

1 **Department Position:** The Department of Health (“Department”) supports the intent of this  
2 measure and offers comments.

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the  
4 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a  
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,  
6 private and community resources. Through the BHA, the Department is committed to carrying  
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and  
8 person-centered.

9 The Department is committed to addressing the needs of individuals who live with  
10 behavioral health issues and are in need of necessary medical treatment when it is in their best  
11 interest. Assisted Community Treatment (ACT) is an important method to ensure the  
12 application of those services for those who would benefit from treatment over their objection.  
13 The Department is committed to supporting the availability and effectiveness of ACT including  
14 working with state agencies and community partners to improve access and implementation.

15 The role of a Guardian Ad Litem (GAL) to represent the best interests of individuals  
16 when they are absent or unable to meaningfully participate in the proceedings is helpful. This  
17 bill seeks to improve both access and implementation of ACT by providing the subject of an ACT

1 petition with a GAL and not requiring the subject to attend related hearings. Non-attendance  
2 at hearing by individuals subject to an ACT petition has resulted in continuances, delaying the  
3 process of implementation.

4           Regarding involuntary treatment, the Department feels strongly that we need to  
5 continue to dialogue the concept that an individual who is severely psychotic whether through  
6 mental illness, substance abuse or both, can be in a state of “unconsciousness” similar to that  
7 of an individual who is unconscious because of a physical cause. The need to be able to render  
8 immediate treatment and aid in those cases without explicit consent of the individual such as  
9 with CPR, for people with mental illness is important to us. We continue to strive for a balance  
10 with individuals suffering from acute mental illness where they can be treated during a time  
11 where they are, for all intents and purposes “unconscious”, but still assure that their right to  
12 self-determination and representation during proceedings will be honored.

13 **Offered Amendments:** None.

14           Thank you for the opportunity to testify on this measure.

15 **Fiscal Implications:** Undetermined.





## **HB345 HD1 Guardian for Mentally Ill in ACT**

COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS:

Rep Mark Nakashima, Chair; Rep. Scot Matayoshi, Vice Chair

Wednesday, Feb.17 2021: 2:00: Videoconference

### **HSAC Supports HB345 HD1:**

*ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of over 30 substance use disorder and co-occurring mental health disorder treatment and prevention agencies.*

- Streamlines a legal process for getting seriously mentally ill persons treated
- ACT advocates for the needs of the most at risk/vulnerable population in Hawaii
- Allocation of resources from the emergency room not be wasted by people coming repeatedly and not getting the psychiatric treatment they need, especially during COVID pandemic

We appreciate the opportunity to provide testimony and are available for questions.



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**TESTIMONY IN SUPPORT OF HB 345: ASSISTED COMMUNITY TREATMENT**

TO: Committee Chair, Vice-Chair and Committee Members  
FROM: Brandee Menino, CEO, Hope Services Hawaii, Inc.  
Hearing: Tuesday, 2/17/21; 2:00

Thank you for the opportunity to provide testimony **in support** of HB 345, to mandate the appointment of a guardian ad litem to represent the best interest of a mentally ill individual in Assisted Community Treatment (ACT) proceedings, and eliminate the need for the office of the public offender to participate in the proceedings.

As homeless service providers, our staff regularly interact with our neighbors who suffer from severe mental illness, and we are all too familiar with the revolving door of emergency room treatment for those who cannot access the mental health care they truly need. My colleague, Angela Kalani, shared the story of her encounter with "Josiah," a participant at our Hilo mens' shelter:

*Josiah was just about to move into permanent housing, when he had a psychotic episode and attempted suicide. "He went ballistic and broke the windows," says Angela. "This man was violently beating himself up because he believed if he punched his guts, they would explode and he would die." Josiah was taken to Hilo Medical Center, but Angela knew that, because he was a danger to other shelter residents, if he was discharged before his new home was ready he'd be back out on the streets. "I went to Hilo Medical Center and advocated for them to keep him until he got into housing. I tried to get him a psychiatric bed, but they were full. Luckily he had a hand injury so they could take him on a medical level—if he hadn't had that injury he would not have been able to stay in the hospital."*

Halting this revolving door of treatment at our hospitals has never been more urgent, with exhausted healthcare workers, and resources stretched thin. By appointing a Guardian ad litem for ACT proceedings, we can speed up the legal process, promote long-term stability for participants, and free up hospital resources and staff to fight COVID-19. Therefore, I strongly urge you to support **HB 345**.

Mahalo nui for your consideration.

Sincerely,

Brandee Menino,  
Chief Executive Officer

JOIN OUR COMMUNITY



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