

The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Tuesday, March 2, 2021, 11:00 a.m.
State Capitol, Conference Room 308
VIA VIDEOCONFERENCE

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 345, H.D.2, 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. Effective 7/1/2060. (HD2)

Judiciary's Position:

The Judiciary offers the following comments on this measure and revisions set forth in HD2:

1. The Judiciary's current budget did not anticipate mandatory appointment of a Guardian Ad Litem ("GAL") in every Assisted Community Treatment ("ACT") case. The Judiciary's current budget does not include and account for this additional proposed expense.
2. Unfortunately, the Judiciary is unable to predict the additional costs at this time because any additional costs will depend upon the number of cases filed and the amount of work the GAL performs.



House Bill No. 345, H.D.2, Relating to Assisted Community Treatment
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3. Further, the Legislature should also consider amending HRS Section 571-87 to include ACT cases. 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 HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Finance**

March 2, 2021

H.B. No. 345 HD2: RELATING TO ASSISTED COMMUNITY TREATMENT

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Office of the Public Defender offers the following comments on H.B. No. 345 HD2:

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.

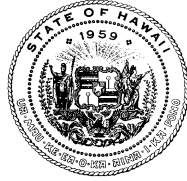
The ACT program involves social services treatment providers and implementation of those services. It does not involve liberty interests. The ACT process and the individual’s best interest are best served with the appointment of a GAL whose duty is to advise the court on whether ACT is in the best interest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

Finally, the appointment of the OPD to the subject-respondent not only makes it difficult for the Institute of Human Services (IHS) to obtain mental health treatment for the homeless, but it also makes it practically impossible for private parties to obtain assisted community mental health treatment for family members. While the vast majority of petitions are filed by IHS against the homeless individuals, ACT petitions may be filed (and have been filed) by private individuals against family members who are suffering from severe mental illness. The appointment of the OPD to the family member suffering from mental illness, however, has discouraged and will discourage private individuals from initiating ACT proceedings for family members. Because of the prohibitive cost of hiring an attorney, the petitioner must represent themselves, which places them in a great disadvantage against the subject family member, who is represented by the OPD. The pro se petitioners are unfamiliar with court procedures and, more importantly, with the Hawai'i Rules of Evidence. Meanwhile, the OPD attorney is a skilled litigator well-versed in the rules of evidence. Once the adversarial hearing on the petition commences, if it even reaches that stage, a pro se petitioner (assuming the petitioner is not an attorney) will not be able to lay the evidentiary foundation to introduce the required evidence and present the necessary witnesses to have the petition granted. Consequently, as long as the OPD is mandated to represent the subject-respondent, any relief sought from ACT petitions will only be available to those who are able to afford an attorney (well versed in courtroom litigation).

Thank you for the opportunity to comment on H.B. No. 345 HD2.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in SUPPORT of H.B. 345 H.D. 2
RELATING TO ASSISTED COMMUNITY TREATMENT

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: 3/2/2021

Hearing Time: 11:00 a.m.

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

DAVID Y. IGE
GOVERNOR



EXECUTIVE CHAMBERS
HONOLULU

LATE

March 2, 2021

TO: The Honorable Representative Sylvia Luke, Chair
House Committee on Finance

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: **HB 345 HD2 – RELATING TO ASSISTED COMMUNITY TREATMENT**

Hearing: Tuesday, March 2, 2021
VIA VIDEO CONFERENCE
Conference Room 308, State Capitol

POSITION: The Governor's Coordinator on Homelessness supports the intent of this measure, offers comments, and respectfully defers to the Judiciary regarding the fiscal impact of mandating the appointment of a Guardian Ad Litem (GAL).

PURPOSE: The purpose of this bill is to mandate appointment of a GAL to represent the best interest of a mentally ill individual in Assisted Community Treatment (ACT) proceedings.

The Coordinator recognizes the critical intersection between healthcare and homelessness, and appreciates the effort to increase access to ACT, including for individuals experiencing homelessness. Severe mental illness and substance use disorders, if untreated, impact the ability of homeless individuals to access and maintain stable housing. In certain cases, a homeless individual may be so severely mentally ill that they are unable to consent to treatment for behavioral health, open wounds, or other health conditions.

The appointment of a GAL to represent the needs of individuals with severe mental illness in ACT proceedings is a positive step to ensure that the best interest of the individuals, including the need for the individual to receive medical treatment, is appropriately represented. Currently, a GAL may be appointed to represent the needs of individuals in ACT petitions, but it is not required.

It is important to recognize that the role of the GAL and the Office of Public Defender serve different purposes. While the GAL advocates for the overall best interests of the individuals, the Office of the Public Defender is obligated to represent the individual's legal due process rights related to involuntary confinement or treatment.

It should also be noted that the DOH Behavioral Health Administration has implemented a number of new initiatives over the past year to streamline access to care for homeless individuals with severe mental illness or substance use disorders, including those who are potentially eligible for ACT orders for treatment. Specifically, DOH implemented the 24-hour Hawaii CARES line to streamline access to services, launched three new Palekana sites for stabilization services for those with co-occurring disorders, and expanded implementation of the Intensive Case Management program for homeless individuals with severe mental illness. The Coordinator and DHS have worked collaboratively with DOH to integrate these efforts within the homeless service system so that homeless service providers may appropriately triage and refer individuals to DOH behavioral health services if appropriate.

Further efforts to refine ACT treatment laws should be looked at in context with efforts undertaken by DOH to expand the network of care for individuals with behavioral health needs.

Thank you for the opportunity to testify on this bill.



HB345 Guardian for Mentally Ill in ACT

COMMITTEE ON FINANCE:

- Rep Sylvia Luke, Chair; Rep. Ty Cullen, Vice Chair
- Tuesday, Mar. 2 2021: 11:00: Videoconference

HSAC Supports HB345:

*GOOD MORNING 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.

PARTNERS IN CARE

Oahu's Continuum of Care

Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.

TESTIMONY IN SUPPORT OF HB345, HD2, Relating to Assisted Community Treatment

TO: House Committee on Finance
FROM: Partners In Care (PIC)
Hearing: Tuesday, 3/2/21; 11:00am; via videoconference
Position: **Support**

Chair Luke, Vice Chair Cullen and Members of the House Committee on Finance:

Partners In Care, Oahu's Continuum of Care, stands in **Strong Support of HB345, HD2, Relating to Assisted Community Treatment**. Throughout Oahu, member agencies of Partners In Care work with individuals who suffer from severe mental illness and homelessness on a daily basis. House Bill 345 makes changes to the existing Assisted Community Treatment (ACT) process to include a Guardian Ad Litem to be in attendance on behalf of the individual who has been deemed to have lost decisional capacity. A Guardian Ad Litem's role in court proceedings is to represent the best interest of the individual and offer support and treatment as needed.

Providing support and addressing the individual needs of people who suffer from a severe mental illness not only improves their ability to get treatment, it also addresses the revolving door of emergency departments, jail and the streets. Our health system has been taxed over the last several years by people going in and out of emergency departments and not getting the beneficial treatment that they need and deserve.

Adding a Guardian Ad Litem streamlines the legal process without compromising an individual's right to due process and makes sure that the individuals' best interests are taken into consideration during court proceedings. The time saved by appointing a Guardian Ad Litem at the first hearing is considerable and may help to avoid unnecessary suffering by individuals being considered for ACT care.

Thank you for your consideration of this measure. Please do not hesitate to contact us if you have any questions.

Aloha



The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

DATE: Feb. 28, 2021

**TO: House Finance Committee;
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair**

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

Hearing: Tuesday, 3/2/21 at 11:00 a.m, House Conference Room 308

RE: Testimony in Support of HB345, HD2, 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 (“ACT”) statute. However, we also **request the Finance Committee to consider removing the Public Defender from the process as is the case in the Senate companion SB199.** It appears the language may have been reinstated in committee.

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. Automatic appointment of a Guardian Ad Litem (“GAL”) upon a petition being filed in court would speed up the legal process by potentially 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. The Public Defender’s office offered no objection in their testimony.

Sadly, many of the individuals who need 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 for many more persons who have no understanding of their mental illness





The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

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, repeated police intervention, and repeated detention in jail 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 Committee will see fit to pass HB345 HD2 with the suggested amendment of removing the Public Defender from the process. That change could also contribute to further State savings by reducing need to increase public defender personnel should the number of ACT petitions increase significantly. Mahalo!





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808.675.7300 | www.ohanahealthplan.com

March 2, 2021
11:00 a.m.
Conference Room 308

To: The Honorable Chair Sylvia Luke
The Honorable Vice Chair Ty J.K. Cullen
House Committee on Finance

From: 'Ohana Health Plan
Rachel Wilkinson, Government Affairs Sr. Manager

Re: HB 345 HD2, Relating to Assisted Community Treatment; **In Support**

'Ohana Health Plan is a wholly owned subsidiary of Centene Corporation, a leading multi-national healthcare enterprise committed to helping people live healthier lives. Since 2008, 'Ohana Health Plan has provided government-sponsored managed care services to families—from keiki to kupuna—and individuals with complex medical needs primarily through QUEST Integration (Medicaid), Medicare Advantage and Medicare Prescription Drug Plans across the state.

'Ohana Health Plan offers our **support** of HB 345 HD2, which mandates appointment of a guardian ad litem to represent the best interest of a mentally ill individual in assisted community treatment (ACT) proceedings.

Since 2013, 'Ohana Health Plan has also served adults diagnosed with a qualifying serious mental illness (SMI) and/or a serious and persistent mental illness (SPMI) through the state's Community Care Services (CCS) program.

Our CCS members are some of Hawaii's most vulnerable—individuals who have been diagnosed with schizophrenia, Post Traumatic Stress Disorder, substance induced psychosis, bipolar disorder, and major depression. They have significant impairment in their social or functional behavior, unable to achieve optimal health outcomes without the support of persons to help navigate their care.

The process for employing the existing ACT law can be lengthy and cumbersome to manage, thereby resulting in the community and our members being underserved. We support this bill and believe it is an important step in improving the ACT process so that

individuals with SMI/SPMI: 1) receive treatment and 2) their best interests and needs are represented accordingly.

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

HB-345-HD-2

Submitted on: 2/26/2021 6:33:59 PM

Testimony for FIN on 3/2/2021 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Christy MacPherson	Individual	Support	No

Comments:

As a former ACT case manager, I support HB345, HD2.

HB-345-HD-2

Submitted on: 2/28/2021 5:41:59 PM

Testimony for FIN on 3/2/2021 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Individual	Comments	No

Comments:

The appointment of a guardian ad litem in these cases might be a good idea. The question of "what is in the best interests of the respondent" in a case like this is a good one and a guardian ad litem can shed some insight for the Court.

In contrast to the original version of the bill, this draft appears to retain the legal representation provided by the Office of the Public Defender. We believe that has a lot of merit, and think the provision should continue to be there. After all, despite the desire to "help" the individual, this is nonetheless a legal proceeding, the outcome of which does impact a person's legal rights. For that reason, we see no basis to eliminate a right which exists under the current law. We think that having the Guardian Ad Litem in addition to the Public Defender will give the Court a broader perspective and will also protect the individual's legal rights. We see those roles as complementary and believe they can work well together.

HB-345-HD-2

Submitted on: 3/1/2021 8:08:04 AM

Testimony for FIN on 3/2/2021 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Godbey Carson	Individual	Support	No

Comments:

I support this bill, which provides a great value by streamlining the legal process for Assisted Community Treatment, by providing a Guardian ad Litem instead of a public defender for these individuals. The Guardian and Court can then ensure appropriate treatment for serious mental illness or psychosis from drug abuse. This protects the individual's rights while helping speed up the legal process. 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.

While I am testifying as a individual, I have served as president of the Institute for Human Services (IHS) and the Hawaii State Bar Association, in both capacities seeking to make our justice system more humane and effective for those most in need in our community.

I believe this bill strikes an appropriate balance that can help save lives, as well as saving potentially million of dollars in health care costs, by stopping the revolving door for homeless individuals who need effective treatment that can be provided by ACT by using long - acting injectable medication. The current ACT process takes too long, causing needless public costs, tragic circumstances, and even death. This bill helps provide better treatment options that can help these homeless persons become more functional and self-sustaining.

HB-345-HD-2

Submitted on: 3/1/2021 8:44:35 AM

Testimony for FIN on 3/2/2021 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lynne Unemori	Individual	Support	No

Comments:

Committee on Finance

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

TESTIMONY ON HB345, HD2 RELATING TO ASSISTED COMMUNITY TREATMENT

I am writing in SUPPORT of HB345, HD2. This bill will make an important change to Hawai'i's Assisted Community Treatment (ACT) law to allow the appointment of a guardian ad litem to represent the interests of severe mentally ill individuals (whose decisional capacity is often further impaired by substance abuse). This would greatly help facilitate the process for determining whether treatment can be administered, while ensuring needs of the individual are assessed and their interests are protected. The current ACT process requires the involvement of the Office of the Public Defender which has testified "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."

As OPD is required to carry out this role, the current ACT process is extremely protracted, delaying potentially life-saving decisions and needlessly increasing emergency health care and other public costs.

Please support this bill so the ACT process can effectively work as intended – to make important assessments that could result in better treatment options for individuals, helping them break the cycle of continued homelessness, harm to themselves and potentially others and aiding them in getting on a path to recovery.

Lynne Unemori
Community citizen and Institute for Human Services board member

HB-345-HD-2

Submitted on: 3/2/2021 9:26:53 AM

Testimony for FIN on 3/2/2021 11:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Spurrier	Individual	Support	No

Comments:

Strongly support.