

The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

Senate Committee on Human Services

Senator Joy A. San Buenaventura, Chair

Senator Les Ihara Jr., Vice Chair

Senate Committee on Health

Senator Jarrett Keohokalole, Chair

Senator Rosalyn H. Baker, Vice Chair

Monday, March 22, 2021 at 1:15 p.m.

State Capitol

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.

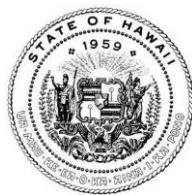
Purpose: Mandates appointment of a guardian ad litem to represent the best interests of a mentally ill individual in assisted community treatment proceedings. Effective 7/1/2060. (HD2)

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.

Thank you for the opportunity to testify on this measure.



EXECUTIVE CHAMBERS
HONOLULU

March 22, 2021

TO: The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Human Services

The Honorable Senator Jarrett Keohokalole, Chair
Senate Committee on Health

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

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

Hearing: Monday, March 22, 2021, 1:05 p.m.
VIA VIDEO CONFERENCE

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 Guardian Ad Litem (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 and purpose of the GAL and the Office of Public Defender are different. While the GAL advocates for the overall best interests of the individual, 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 new 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.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Human Services
and the Senate Committee on Health**

March 22, 2021

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

Chair San Buenaventura, Chair Keohokalole, Vice Chair Ihara, Vice Chair Baker,
and Members of the Committees:

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.

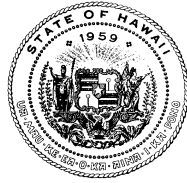
The ACT program involves social services treatment providers and implementation of those services. It does not involve liberty interests. The ACT process and the individual’s best interest are best served with the appointment of a GAL whose duty

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 (who is well versed in courtroom litigation).

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



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

Testimony in SUPPORT of H.B. 345 H.D. 2
RELATING TO ASSISTED COMMUNITY TREATMENT

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES

SENATOR JARRETT KEOHOKALOLE, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: 3/22/2021

Hearing Time: 1:15 p.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.

1 The role of a Guardian Ad Litem (GAL) to represent the best interests of individuals
2 when they are absent or unable to meaningfully participate in the proceedings is helpful. This
3 bill seeks to improve both access and implementation of ACT by providing the subject of an ACT
4 petition with a GAL and not requiring the subject to attend related hearings. Non-attendance
5 at hearing by individuals subject to an ACT petition has resulted in continuances, delaying the
6 process of implementation.

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

16 **Offered Amendments:** None.

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

18 **Fiscal Implications:** Undetermined.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

LATE

**THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES**

**THE HONORABLE JARRETT KEOHOKALO, CHAIR
SENATE COMMITTEE ON HEALTH**

**Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i**

March 22, 2021

RE: H.B. 345, H.D. 2; RELATING TO ASSISTED COMMUNITY TREATMENT.

Chair San Buenaventura, Chair Keohokalole, Vice Chair Ihara, Vice Chair Baker, members of the Senate Committee on Human Services and members of the Senate Committee on Health, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of H.B. 345, H.D. 2.

The purpose of H.B. 345, H.D. 2, is to require that a guardian ad litem be appointed for every case in which an application is filed for assisted community treatment. The guardian ad litem would be added to the list of individuals who currently receive notice of the hearings on the petition, and the subject of the petition would not need to be present at hearings if he or she was served with the petition and their guardian ad litem is present.

While the Department's primary function is to fairly and effectively prosecute criminal offenses, our overarching concern is public safety and welfare. In light of this, the Department actively supports many programs and initiatives that address some of the root causes for criminal behavior, such as mental health issues and substance abuse. To the extent people with serious, untreated mental health or substance abuse issues can receive needed treatment **before** any dangerous or potentially criminal acts are committed—while safeguarding their constitutional rights—the Department strongly supports these efforts.

For people who suffer from serious mental illness or substance abuse, who also pose an imminent danger to self or others, the Department strongly believes that providing swift and appropriate mental health treatment is both the most humane and safest approach for that person

and for everyone around them. By statute, one of the criteria for someone ordered to assisted community treatment is that he or she is:

unlikely to live safely in the community without available supervision, is now in need of treatment in order to prevent a relapse or deterioration that would predictably result in the person becoming imminently dangerous to self or others, and the person's current mental status or the nature of the person's disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment.

See HRS §334-121(2). So long as such a person remains in the community, something must be done to effectively address that person's issues, in order to protect public safety and welfare, as well as the safety of that individual. Requiring a guardian ad litem as part of this process will provide an advocate—and when needed, a representative—for the person's best interests, and hopefully help to guide him or her comfortably through the proceedings.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 345, H.D. 2. Thank you for the opportunity to testify on this matter.

HB-345-HD-2

Submitted on: 3/18/2021 5:08:08 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	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. Reviewing the testimony, it appears most people do not agree with this view (including the Public Defender) and so if the Legislature sees fit to make those changes, that is obviously a policy call within its discretion.



HB345 HD2 Guardian for Mentally Ill in ACT

COMMITTEE ON HUMAN SERVICES:

- Sen. Joy San Buenaventura, Chair; Sen. Les Ihara, Vice Chair

COMMITTEE ON HEALTH:

- Sen. Jarrett Keohokalole, Chair; Sen. Rosalyn Baker, Vice Chair
- Monday, Mar. 22 2021: 1:05: Videoconference

HSAC Supports HB345 HD2:

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,
- More efficient use of resources in the emergency room because this process reduces the number of times people return to ER repeatedly and improves services because most ER patients that would need this service are not getting the long term, sustaining psychiatric treatment they need despite the short term stabilization services provided during ER.
- This service can really help, 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: Senate Committee on Human Services, Senate Committee on Health

FROM: Partners In Care (PIC)

Hearing: Tuesday, 3/22/21; 1:05pm; via videoconference

Position: **Support**

Chair San Buenaventura, Chair Keohokalole, Vice Chair Ihara, Vice Chair Baker and Members of the Senate Committee on Human Services and the Senate Committee on Health:

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



949 Kamokila Boulevard, 3rd Floor, Suite 350, Kapolei, HI 96707
808.675.7300 | www.ohanahealthplan.com

March 22, 2021
1:15 p.m.
Via Videoconference

To: The Honorable Chair Joy A. San Buenaventura
The Honorable Vice Chair Les Ihara, Jr.
Senate Committee on Human Services

The Honorable Chair Jarrett Keohokalole
The Honorable Vice Chair Rosalyn H. Baker
Senate Committee on Health

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.



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

DATE: March 20, 2021

**TO: Senate Committee on Health
Chair Jarrett Keohokalole
Vice Chair Rosalyn Baker**

**Senate Committee on Human Services
Chair Joy San Buenaventura
Vice Chair Les Ihara**

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

Hearing: Tuesday, 3/2/2021 1:15 pm

RE: Testimony in Support of HB345, HD2, Relating to Assisted Community Treatment (ACT)

IHS, The Institute for Human Services, Inc. is **in strong support of HB345 HD2** which makes amendments to the Assisted Community Treatment (“ACT”) statute. However, we also **urge the Health and Human Services Committees to consider removing the Public Defender from the statute as was included in companion SB199.**

The most significant benefits of HB345 is that it will facilitate access to treatment for many more persons who have no understanding of their mental illness and how it impacts their quality of life, without compromising due process. 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 in a more timely manner for those who direly need it.

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.

HB345 and companion SB199 were 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. The Senate previously agreed to the appointment of a Guardian Ad Litem (“GAL”) upon a petition being filed in court for ACT and agreed to the removal of the Public Defender in these proceedings in SB199. These changes could speed up the process of ACT by potentially having the GAL’s opinion be made available at the first hearing and diminish the level of legal challenge that ensures. Thus, we respectfully request you once again allow removal of the Public Defender from ACT in HB345 HD2.

The Office of the Public Defender’s testimony has expressed the perspective that the best interests of the subject of petitions are well served by the appointment of the Guardian Ad





and obligation is to *"litigate legal issues on behalf of its
; which often contradicts what may be in the clients' best*

interests", In the case of ACT when illness and addiction has seriously impacted their ability to make sound decisions. They have also indicated in their testimony that the PD's involvement in these cases "not only makes it difficult for 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."

When IHS petitions for ACT on behalf of a disabled homeless subject, we do so because we have already tried numerous times to engaged the mentally disabled individual. Typically, no one else has taken sufficient interest or has resources to advance efforts to make treatment possible. For our team, petitions for ACT are also done as a last resort after other means to engage in treatment have failed. We apply assertive outreach and engagement and consider petitioning for guardianships when family members are available and willing, before petitioning for ACT. When capacity is restored through successful treatment as a result of any of these means, we invite the patient to also sign a Psychiatric Advanced Directive that might help if an individual late relapses and refuses treatment.

Sadly, many of the individuals who need ACT are high users of the emergency medical system and the destination hospital 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.

We hope your Committees will see fit to pass HB345 HD2 with the strong recommendation to remove the Public Defender from the process. That change could also contribute to further State savings by reducing the need to increase public defender personnel should the number of ACT petitions increase significantly. Mahalo!



HB-345-HD-2

Submitted on: 3/17/2021 10:19:46 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

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: 3/18/2021 2:30:13 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Buenaventura, Vice Chair Ihara, Committee on Human Services, Chair Keohokalole, Vice Chair Baker and Committee on Health,

Please support HB345 HD2.

It is unrealistic to expect a public defender to successfully represent a mentally ill person who is incapable of understanding reality. The public defenders do not have the time, training or resources to invest in a client who can't understand that they need medical treatment or continues to refuse treatment despite their dire need for immediate medical attention. People struggling from severe mental illness may be incapable of even brief, coherent conversations with anyone, let alone an attorney or judge in a court of law.

It was a long, expensive, arduous and painful process to have the Caregiver Foundation assigned to my 80+ year old uncle as a legal guardian. My uncle was a Vietnam veteran who struggled with Post Traumatic Stress Disorder. After he had a mental breakdown, he was uncooperative and very adamant about refusing any medical care to address his paranoia, hallucinations, and voices in his head. My uncle stopped talking to any family members and soon began to forget the names of his friends and neighbors that he had known for almost three decades. I continued to visit him at his apartment building, but he refused the groceries that I brought. I pleaded with him numerous times to get medical help, but he would always say "Caroline, you're not a doctor. Go away."

MH-1 is an Involuntary Application for Mental Health Evaluation. The police respond to a call about a person who is a danger to themselves or others. This means a person who is contemplating or attempted suicide or a person who committed a violent crime against another person because of their mental state. The police then arrive on scene to assess the person and if appropriate, transports the individual to the hospital for psychiatric evaluation/treatment. The hospital may hold the individual for up to 48 hours for evaluation.

My uncle would not have qualified for the MH-1 because he didn't attempt suicide or commit a violent crime against another person(s). My uncle would not have requested for the MH-2 to voluntarily commit himself and have the police transport him to a facility.

Even if my uncle had qualified for the MH-1, the doctors would not have been able to get my uncle to open up and discuss his state of mind. I know this because everytime he went to the emergency room, he refused to speak to the physicians because he didn't want to be evaluated and committed to a psychiatric ward where he feared that the Communist from Vietnam would torture or kill him.

Soon my uncle stopped paying his rent and bills. He could have easily been evicted to aimlessly roam the streets even though he had a full pension from the Air Force, Social Security and owned a parcel of land on the Big Island. My mother (my uncle's sister) took over his rent and bills so that he would have a place to live. This went on for a few years until the landlord died. At that point, he needed a psychiatric evaluation to determine his competency level. It was determined that he was no longer competent. Then the Caregiver Foundation became his legal guardian. Eventually the courts ordered to have him injected with a monthly sedative so that his out of pocket 24 hour caregivers could manage him in his new apartment.

Legal processes need to change to realistically work and benefit those who suffer from severe mental illness.

If my uncle had met with a public defender, he would have told the public defender to go to hell. Then the public defender would be required to legally and ethically pursue my uncle's interest which would be to refuse all medical care.

I believe that the intent of HB345 HD2 is to meet the basic mental health needs of people who suffer from severe mental illness. HB345 HD2 is a first step in a long journey to further improve humane and compassionate ways to assist those who cannot help themselves. It is important that the law be written and interpreted in such a way that the mentally incompetent who refuse necessary medical attention are not allowed to misuse their legal rights to further jeopardize their safety and well being. Human beings who are misusing their legal rights in this way need immediate medical attention, not a lengthy legal process in court.

Imagine if you lost your mind and all connection to reality. What if you had no family or friends to care for you for the long term? What if you refused all medical care when you were obviously very sick? If that were you, would you rather meet with an assigned guardian ad litem or a public defender knowing how long the legal process could take?

Thank you for taking the time to review this difficult and complex legal matter.

I appreciate the opportunity to provide testimony in support of HB345 HD2.

Mahalo,

Caroline Kunitake

**Testimony of Ellen Godbey Carson in Support of HB345 HD2
State Senate Committees on Health & Human Services
Hearing on Thursday, 3/22/2021 at 1:15 p.m.**

I write in strong support of HB345's appointment of a Guardian Ad Litem ("GAL") for persons subject to the Assisted Community Treatment ("ACT") statute. However, HB345 should be amended to delete notice to and appointment of a public defender, as described in further detail below.

While I write as an individual, I have served as President and director of Institute for Human Services, President of the Hawaii State Bar Association, and member of the Church of the Crossroads Peace and Justice Mission Team, spending many years helping Hawaii find better systemic ways to address its dual crises of homelessness and lack of affordable housing.

Over 100 of our homeless residents are dying on our streets each year, at an average age of only 54. [Deaths of homeless people continue to climb on Oahu | Honolulu Star-Advertiser](#) In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street. This bill addresses those most at risk of dying on our streets, people who have severe mental illness or substance abuse and no longer have decisional capacity for life-saving medical intervention and self-preservation. Abandoning these individuals to their "freedom" to live on the streets while severely disabled is a death sentence for many of them. And yet, they are someone's son or daughter, parent or loved one, and they deserve the same caring and curative treatment as would be offered to those with other life-threatening medical conditions.

A GAL is the best person to represent the interests of persons subject to the ACT petition, as these persons have lost their decisional capacity due to their serious mental illness or psychosis. The best interests of the person is served by providing effective treatment to help them regain their decisional capacity and become more functional. The Public Defender process has resulted in unnecessary costs and delays in the ACT process, as it focuses on delusional objections from a severely mentally ill person who has lost their capacity to consent, rather than focusing on the person's best interests in receiving life-saving treatment that can help them regain their decisional capacities.

Accordingly, HB345, HD2 should be amended to delete from its terms all requirements for notice to the public defender, entitlement to legal counsel, and appointment of a public defender, including on Page 3, line 12 (service on the public defender) and Page 4, lines 13-18 (notice and representation by the public defender and entitlement to legal counsel). HB345 should also be amended to delete all references within the ACT statute regarding notice to the public defender, entitlement to legal counsel, and appointment of a public defender (including in HRS 334-125(a)(3), 334-125 (b)(3) and 334-125(b)(4).

This bill strikes an appropriate balance of legal rights, by allowing a short duration of involuntary treatment for these incapacitated persons, to help stabilize them and allow them to regain their decisional capacity. In so doing, we can help avoid the very real dangers of irreversible disability and death that these severely ill persons face if they are left on their own on the streets. This bill can finally curtail the high costs associated with repeated medical and judicial interventions with our most seriously ill homeless residents, who most need more effective treatment options for their conditions.

TO: Chair Senator San Buenaventura, and members, Committee on Human Services, and Chair Senator Keohokalole, Chair, and members, Committee on Health

FR: Marya Grambs, volunteer in the homelessness community and member of Partners in Care Board of Directors; submitting testimony as an individual

Re: HB345/HD2

I am in strong support of HB345 which amends the Assisted Community Treatment (“ACT”) statute. An amendment to HB345 has eliminated the portion which removes the Public Defender from the process. I would request that you consider reinstating that clause.

As the Office of the Public Defender (OPD) itself has testified, the OPD’s duty is only to represent indigent persons who are threatened by imprisonment or confinement. ACT does not involve the same liberty interests contemplated by or necessitated by the HRS or the Hawai’i Constitution. As the OPD observed, individuals subject to the ACT petitions are not threatened by confinement or imprisonment. The ACT program involves social services. It does not involve liberty interests. In fact, rather than confine, the point of assisted community treatment (ACT) is to allow an individual to be treated in a lesser restrictive environment than 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. to be civilly committed for long periods of time or incarcerated for acts committed while not of sound mind.

This bill in the original form sought to remove the Office of the Public Defender (OPD) from the ACT proceedings. The OPD itself has requested that HB345/HD2 reinstate language removing the Public Defender from the process as is the case in the Senate companion SB199.

As it is now, the court process can take months to complete, leaving these individuals to continue to suffer in often horrific circumstances, vulnerable to being preyed upon and very often suffering from life-threatening co-occurring medical conditions which worsen over time. Some of the subjects of ACT petitions have even died during the unduly lengthy court process. Automatic appointment of a Guardian Ad Litem (“GAL”) when a petition is filed in court would speed up the legal process by potentially having the GAL’s opinion be made available at the first hearing.

The OPD has also noted that the purpose of a GAL is to protect the person under disability and to ensure that the person’s interest is not compromised. The OPD has testified that this role is in contrast to the role of the OPD, which is to litigate legal issues on behalf of its client according to the client’s requests; but the requests of the clients in these cases emanate from a psychotic state of mind in which they are unaware of being ill and thereby do not understand that they need treatment. Their psychosis prevents them from making a decision which is in their best interest; a GAL’s purpose would be to determine that.

This bill in the original form sought to remove the Office of the Public Defender (OPD) from the ACT proceedings. I join the OPD in requesting that HB345/HD2 reinstate language removing the Public Defender from the process as is the case in the Senate companion SB199.

HB-345-HD-2

Submitted on: 3/21/2021 9:17:47 AM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Athan Adachi	Individual	Support	No

Comments:

I support this bill as I feel it will help with the homeless situation and save money in the long run.

HB-345-HD-2

Submitted on: 3/21/2021 12:27:46 PM

Testimony for HMS on 3/22/2021 1:15:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Noreen Mulliken	Individual	Support	No

Comments:

Dear Legislators,

My husband and I, both Honolulu citizens and tax payers, strongly support House Bill 345 to streamline the legal process to get treatment for the many mentally ill individuals in our state. We also support HB 310, the mandate for mentally ill individuals to be evaluated and treated plus assigned a guardian to assist in their treatment and follow up treatments. It is apparent that most of these individuals are severely mentally ill. We would not let stray dogs run wild, eat out of trash bins, and defecate in the streets, why do we allow these incapacitated humans to do so. It is a disgrace to our state and nation. It is imperative that a guardian ad litem (GA) be assigned to represent individuals unable to make sane decisions for themselves. The streets are cluttered with homeless persons who are obviously unable to make decisions in their own best interest. To resolve the homeless plague on our streets and neighborhoods, it is time that something that will actually change the revolving door for these incapacitated individuals be done. It will save millions of dollars, lives, and improve our community. Do not let this humane treatment be delayed by legal red-tape.

Thank you for your support of HB345 - HD2.

Noreen and David Mulliken

Diamond Head, Honolulu, HI

HB-345-HD-2

Submitted on: 3/21/2021 1:00:46 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Faunce	Individual	Support	No

Comments:

Dear Legislators, please support HB345, HD2. As a responsible society, we must do everything we can to get help to those that are unable to control or take care of themselves. I am the father of a disabled daughter, born with brain damage resulting from hydrocephalus. She was a sweet, loving person, but totally incapable of understanding or controlling her actions. She was among the fortunate to have a mother that gave up her own career to be come a full time caregiver, allowing her to live a safe happy life until she died of complications from her birth defect at the age of 38.

Others we see on the streets and in our neighborhood, walking around partially clothed yelling out obscenities to noone in particular, are nowhere near as fortunate. They have noone to care for them and refuse to accept the fact that they need the help. HB345 HD2 is an overdue step in the right direction for getting some help to people that are unable and/or unwilling to seek the help they so badly need. Thank you for allowing me to comment.

HB-345-HD-2

Submitted on: 3/21/2021 1:36:29 PM

Testimony for HMS on 3/22/2021 1:15:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Gerald Busch	Individual	Support	No

Comments:

Our Bill of Rights and the 14th Amendment guarantee that life, liberty, or property cannot be taken by the state without due process. This bill may be viewed as an infringement of due process, that a psychiatric patient's liberty is reduced with the interventions recommended in this bill, with the assignment of a guardian ad litem or with the other measures proposed.

The issue at hand is that the affected population of homeless mentally ill patients has experienced a reduced life expectancy as a result of their extreme circumstances. In my work in the Queens Medical Center Emergency Department, both with the patient population and the other doctors that care for them, I have noted the frequent Emergency Department visits of a number of affected individuals, brought in repeatedly on an "MH-1," in very poor condition and living in squalor. We have noted their poor conditions and their early demise. My argument is that the sequence of protections, "life, liberty, property," begins with life, and this population is experiencing a frank deprivation of life, while their liberty interests are being considered primarily. One cannot experience liberty without life, and this population is being deprived of both quality and length of life by their conditions.

My recommendation therefore is that this bill be passed, so that the care of this population of patients may be improved and the lives of those individuals may be maintained and improved.

Mahalo for your consideration.

HB-345-HD-2

Submitted on: 3/21/2021 2:26:25 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sanford Yee	Individual	Support	No

Comments:

I support HB 345 and hope you pass it.

LATE

HB-345-HD-2

Submitted on: 3/21/2021 2:31:38 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Sheryl Lynch	Individual	Support	No

Comments:

I am the mother of an adult man who has been living on the streets of Honolulu for years now. He is suffering from mental health issue (schizophrenia) and in an effort to alleviate his symptoms has become an addict. He has been jailed for crimes committent while in the throws of his illness or as a result of a need for food and shelter. But he is allowed to make his own decisions. He has no place to go, and no one to help him. He is suffering, the community is suffering as a result of his homelessness and heavy use of resources. This bill seems like a step in the right direction. Please do something to help my son and the many ill citizens of Hawaii.

HB-345-HD-2

Submitted on: 3/21/2021 7:59:21 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Joanne Lim	Individual	Support	No

Comments:

This bill is a step in the right direction to address chronic homelessless.

HB-345-HD-2

Submitted on: 3/21/2021 10:21:56 PM

Testimony for HMS on 3/22/2021 1:15:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Marianne Whiting	Individual	Support	No

Comments:

I support HB345 and believe this measure would offer help to the mentally ill population currently living on the streets. Our current system has failed to meet their special needs created by their mental illness which they often fail to recognize themselves. By streamlining the legal process via court order to obtain treatment for these individuals there's a chance of getting the psychological help they need to turn their lives around. A guardian ad litem (GAL) representing their interest would be their best advocate with the ability to secure the help they need. Passing this bill is the humane thing to do not only for these individuals but for our community struggling with our growing homeless issue as well. Please endorse this bill. Thank you for your careful consideration and support.

HB-345-HD-2

Submitted on: 3/22/2021 12:35:20 AM

Testimony for HMS on 3/22/2021 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannette P Hereniko	Individual	Support	No

Comments:

To HMS/HDS committee members:

I write in favor of HB345 HD2 to help the mentally ill homeless by streamlining the legal process to get treatment for those individuals by court order. I am in favor of modifying the existing Assisted Community Treatment statute by automatically appointing a guardian ad litem (GAL) to each case to represent the individual's best interests. This step typically requires months to complete, dragging out the suffering for those awaiting needed help.

An additional improvement in the bill would be to remove the Public Defender from these cases, with the understanding that the GAL is the Client's best advocate, and additional players serve only to further delay the process.

Our community is only as strong as our weakest link. Surely we've ignored the mentally ill homeless way too long. I urge you to take action so they can receive medical care that they are unable to obtain or make decisions for obtaining, on their own.

Thank you so much for your consideration and positive support for this important Bill.

LATE

HB-345-HD-2

Submitted on: 3/22/2021 8:06:26 AM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert M Armstrong	Individual	Support	No

Comments:

I support the premise of HB 345 in order to help those who cannot help themselves and at the same time, protect those from us who pose an immediate danger to the community.

As a society we have to realize that those who suffer mental illness HAVE NO FREEDOM so we aren't violating their civil rights by protecting them and us. To do nothing (or to vote no) is to shirk our responsibilities to a good quality of life we all deserve here in the Islands and to be "our brothers' keeper" as the Bible commands us.

I believe this proposed law could help and deserves a chance. Mahalo.

LATE

HB-345-HD-2

Submitted on: 3/22/2021 8:38:19 AM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dorothy M Sunio	Individual	Support	No

Comments:

I urge your support of this bill. I am a mother of a 32 yr old homeless, drug-addicted son. I have not heard from him since September 14, 2018 and I have contacted many agencies, including the police, to help me find him. I have walked the streets showing other homeless my son's picture. I know he is in the Waikiki/Kapahulu area. Apparently, only the police know him as they have given him multiple citations for the "sit-lie ban", being in the park after closing, riding his bike on the sidewalk, etc. I can view all the citations on ecourt kokua website. My son, Aaron, is a loving, kind, and gentle soul. He is also a drug addict who has been thru 3 treatment programs. He needs help but does not go on his own. If you pass this bill you can help me find my son before he dies on the street. My husband and I love him dearly and are here to help him. Please help me get the help he needs to save his life by passing this bill

Mahalo,

Dottie Sunio

LATE

HB-345-HD-2

Submitted on: 3/22/2021 10:06:47 AM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Theresa Pinney	Individual	Support	No

Comments:

First and most importantly, as you know the plight of the mentally ill who suffer on our streets affects every single person in Honolulu. From Hawaii's visitors driving down King Street to children walking to schools—everybody is emotionally affected. I believe that just doing nothing and just standing by to see the pitiful degradation of the mentally ill in our public areas is outrageously inhumane.

I know. I have personal experience of dealing with the crisis involving a family member who is homeless and mentally ill. My poor mother was diagnosed with paranoid-schizophrenia when she was 63 years old. I spent more than 20 years, up to her death, helping her wrangle with the disease. I gave her love and financial support. I took her into my home, which resulted in extreme stress and agony for my family.

My mother's illness made her want to flee all the time. She imagined evil persons coming after her. She saw horrible creatures that made her shriek at in the middle of night. I would find knife stab marks on her bedroom walls after she had a battle with "them." Whenever I came home from work (teacher), I would cringe hoping that another ghastly sight would not be waiting for me on the other side of my front door.

The episodes got worse and she would have wild fits of hysteria, but the very worst thing she would do was leave and disappear. My mother ran out of my car or would take off in the middle of the night...never to be seen again for days and sometimes months.

Where would she be? On the streets. In a park. Huddled up with other homeless camps. I could never find her. I spent weekends searching and following leads of people who had spotted her at the airport or camping at the Pearl City Post Office.

After months of hunting her down, I finally found her late one night. She was sitting in the dark on the sidewalk in Chinatown. She was filthy with dirt-stained hands and feet. She reeked of urine. Her face had mud smears. Her hair was matted.

My mother had been a beautiful Filipino-Portuguese woman, plantation-born in Kukuihaele, Big Island. Growing up, my friends used to comment on what a beautiful mother I had. So, the vision before me that night brought me to my knees in tears. Why, I asked, why was she doing this? She nonchalantly replied, "It's because

they are after me, Dear. They are jealous of me and I must hide from them.” Her nonsensical responses enraged me. She was steps away from the Chinatown Police Department. But even they could not do anything to help her from her demons.

I sought help in courts and eventually with the Institute for Human Services. Because I was living Florida at that time, I had to obtain a qualified expert to be in control of my mother. So, I agreed to have her become a ward of the state. This meant she would be taking her medication, because she would do it for them but never for me.

Eventually my mother was housed and received the medical help she needed. She died of a heart attack 2014, but in the end, she was fed, cleaned, sheltered, and happy.

Nobody in Hawaii should have to suffer this way. The mentally ill person has the right to receive treatment---treatment they often believe they do not need. To rationalize that these people have the right to suffer on our streets is madness. You would not have a four-year old fend for himself on the streets; he does not have the mental capability to do that. Well, the same applies to the mentally ill.

Dear Legislators, I ask that you please pass the HB 345 and HD2. Please find it in your heart to protect the public, our children, our visitors, and, most of all, our mentally ill who are suffering on our streets.

Thank you,

Theresa Pinney
4300 Waiialae Avenue

LATE

HB-345-HD-2

Submitted on: 3/22/2021 12:24:00 PM

Testimony for HMS on 3/22/2021 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chad Taniguchi	Individual	Support	No

Comments:

I SUPPORT HB345HD2 and ask that you move it forward.

When respected people like Connie Mitchell, Ellen Godbey Carson, and others (who have dedicated their lives to help those unable to help themselves), it is time to listen to their counsel.

Even the Public Defender, who is legally required to strenuously gum up the works that might lead to better treatment, sees appointment of a Guardian Ad Litem as a better means of protection for the person.

I am old enough to recall when One Flew Over the Cuckoo's Nest encouraged releasing severely mentally impaired people from treatment facilities. Perhaps this is an important correction, 30+ years later, to better protect certain individuals who cannot perceive their own conditions.

The people concerned and our society will be safer with this change to the law.