



The Judiciary, State of Hawai'i

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, April 6, 2021, 9:55a.m.
State Capitol, Conference Room 211
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by:

Roland Lee
Public Guardian
Office of the Public Guardian

Bill No. and Title: House Bill No. 345, H.D. 2, S.D. 1; Relating to Assisted Community Treatment.

Purpose: To require the Family Court, at the time an Assisted Community Treatment (ACT) petition is filed, to determine whether the subject individual has a guardian, and if not, to appoint the Office of the Public Guardian (OPG) to represent the best interests of the individual in the ACT proceedings.

Judiciary's Position:

The Judiciary respectfully opposes the current version of this measure, House Bill 345, H.D. 2, S.D. 1, with concerns that include the current version's inconsistency with other existing statutes and case law, operational and resource concerns, and professional concerns under the National Association of Social Workers Code of Ethics.

First, the summary guardian appointment process mandated in section 2 therein is inconsistent with current guardianship law, which provides legally required due process to



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individuals who are the subject of a guardianship petition. Chapter 560, article V, part 3 of the Hawaii Revised Statutes (HRS) establishes procedures for the judicial appointment of a guardian for an incapacitated person. These procedures include notice requirements, a hearing to determine if guardianship is warranted, appointment of a kokua kanawai to assist the court in assessing the individual's situation, appointment of counsel to represent the individual if requested or deemed necessary, and a professional evaluation.

In addition, the subject individual must attend and participate in the hearing, and may present evidence, subpoena witnesses and documents, and examine witnesses. The court may appoint a guardian only upon finding, by clear and convincing evidence, that the individual is an incapacitated person, whose needs cannot be met by less restrictive means. The law also establishes a priority schedule for persons who may be considered as a potential guardian, and OPG is generally a guardian of last resort. By contrast, this bill requires the Family Court to appoint OPG as guardian for an individual who is the subject of an ACT petition, simply upon a finding that the individual has no guardian.

To the extent that the bill finds that "the mandatory appointment of a guardian will improve procedures regarding the assisted community treatment program," this measure raises other issues, both legal and operational.

Section 2 of the bill provides that the purpose of OPG's appointment is for the guardian "to represent the best interests of the subject of the petition" in the chapter 334 proceeding. In executing its duties, however, OPG is bound by the requirements of section 560:5-314, HRS, which states in part,

A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian.

The above provision is consistent with the National Association of Social Workers Code of Ethics (NASW Code); as social workers, OPG's guardians are bound by the NASW Code. Thus, even wards suffering from severe mental illness are entitled to have their concerns and desires heard and considered by their guardians when decisions are made on their behalf.

Even if a guardian overrides a ward's expressed desires or objections, and determines that treatment is in the ward's best interest, there is no assurance that the ward will cooperate or submit to treatment. If a ward refuses to participate in assisted community treatment, OPG's



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guardians are neither authorized, trained, nor equipped to employ force to obtain compliance with the treatment order.

Over the years, OPG has had several clients committed to the Hawai'i State Hospital for prolonged periods of time. Some of these clients refuse to take their medication or otherwise cooperate with treatment and, therefore, cannot be rehabilitated and released back into the community. Even with the resources and support of the professional staff at the hospital, OPG's guardians cannot force these wards to submit to treatment. Thus, it does not necessarily follow that by appointing OPG as guardian for persons who are subsequently ordered to obtain treatment, these individuals will submit to treatment. Further, to the extent that treatment involves the *involuntary* administration of antipsychotic drugs, certain findings must be established before a guardian may consent to such procedures pursuant to the Hawaii Supreme Court's decision in, State v. Kotis, 91 Hawai'i 319, 334, 984 P.2d 78, 93 (1999).

The bill also raises operational concerns for OPG. Section 2 of the bill provides that the public guardian shall be appointed "to represent the best interests of the subject of the petition **throughout the pendency of the proceedings.**" (Emphasis added.) While the above language appears to limit the guardianship appointment to the period spanning the ACT proceedings, guardianship of an incapacitated person under chapter 560, HRS, terminates only upon the death of the ward or upon court order.

Requiring OPG to serve as guardians for severely mentally ill individuals who are the subjects of ACT petitions would further tax the office's resources, increasing demands upon social workers who are already carrying caseloads beyond maximal levels. OPG currently serves as permanent guardian for over 700 adults statewide. The eight guardians, one supervisor, and program director each carry a caseload of 70 to 80 wards, which is approximately twice as large as the maximum caseload recommended by the National Guardianship Association. Thus, expanding OPG's duties in the manner set out in this legislation: (1) will likely not result in the outcome it is designed to achieve; and (2) may have the unintended consequence of severely and adversely impacting OPG's ability to serve the best interests of its existing wards.

Based on the above testimony, should your committees decide to remove references to OPG and "guardian" from the bill and, instead, require the appointment of a guardian ad litem to represent the best interests of the subject of an ACT petition, the Judiciary stands on its testimony of March 22, 2021 before the Senate Committees on Human Services and Health on the H.D. 2 version of this measure, which commented as follows:

1. The Judiciary's current budget did not anticipate mandatory appointment of a Guardian Ad Litem ("GAL") in every Assisted Community Treatment ("ACT")



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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.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 345, H.D. 2, S.D. 1, RELATING TO ASSISTED COMMUNITY TREATMENT.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Tuesday, April 6, 2021 **TIME:** 9:55 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Ian T. Tsuda, Deputy Attorney General

Chairs Rhoads and Dela Cruz and Members of the Committees:

The Department of the Attorney General (Department) provides the following comments and concerns.

The purpose of this bill is to amend part VIII of chapter 334, Hawaii Revised Statutes (HRS), regarding Assisted Community Treatment (ACT), by (1) adding a new section to require the appointment of a guardian instead of a guardian ad litem to represent the best interests of the subject in an ACT proceeding, (2) amending section 334-126, HRS, to eliminate the requirement that the subject of a petition be present at the hearing, provided that the subject has been served with the petition and the subject's appointed guardian is present, and (3) amending section 334-125, HRS, to remove the requirement that the public defender or other court-appointed counsel be given notice of ACT proceedings. Moving from the appointment of a guardian ad litem (GAL), which was required in prior versions of this bill, to the appointment of a guardian solely for purposes of an ACT proceeding is problematic as it confuses the role of a guardian and avoids the procedural and substantive requirements necessary for the appointment of a guardian for an individual.

The appointment of a guardian is governed by the Uniform Probate Code under article V of chapter 560, HRS. When a guardian is appointed for an individual, that guardian is granted authority to make decisions and engage in transactions for and on behalf of the individual on a wide range of matters, such as those relating to medical,

financial, and legal decisions. The duration of this authority ceases only upon the death of the individual or by court order, with guardianships of minors also ending upon reaching the age of majority or order of some other suitable legal substitute. The process to appoint a guardian requires its own separate legal proceeding that provides due process protections for the individual. As a threshold matter, for adults there must exist sufficient evidence for a court to find that the individual is incapacitated and there are not lesser restrictive means to meet the individual's needs. For minors, the appointment must be in their best interests and the parents must consent to the appointment or be unwilling or unable to exercise their parental rights.

Conversely, the role of a GAL is to provide an independent opinion on the best interests of the subject when there exists an issue as to competency. *In re Doe*, 108 Hawai'i 144, 154, 118 P.3d 54, 64 (2005). The appointment of a GAL can occur in the same proceeding in which one is deemed necessary and typically lasts only for the duration of said proceeding. As such, not only is the appointment of a GAL appropriate for the purposes of this bill, the provisions for the appointment of a guardian stand in direct contrast to the procedures and requirements of the Uniform Probate Code.

Another concern is that the removal of the appointment of counsel for subjects who cannot afford legal assistance would leave the ACT process susceptible to legal challenge. The appointment of counsel is one of the significant provisions of the ACT process to afford subjects due process under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Constitution of the State of Hawai'i. This bill's proposed removal of the right to counsel would remove a significant protection afforded by the procedures of the ACT statutes.

For these reasons, the Department recommends all references to a "guardian" in this bill revert back to a "guardian ad litem" and that the provisions regarding the right to counsel in section 334-125, HRS, not be repealed.

Thank you for the opportunity to testify.

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 Judiciary
and Senate Committee on Ways and Means

April 6, 2021

HB 345 HD2 SD1: RELATING TO ASSISTED COMMUNITY TREATMENT

Chairs Rhoads and Dela Cruz, Vice Chairs Keohokalole and Keith-Agaran, and Members of the Committees:

The Office of the Public Defender offers the following comments on HB 345 HD2 SD1:

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.

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.

Currently, because the OPD must zealously represent their clients, ACT petitions take several months and require multiple hearing/trial dates before they are resolved/litigated, as illustrated by the following cases:

In re J.Y.

09.18.2019	ACT petition filed
11.16.2019	Pre-trial hearing (motion to dismiss)
01.08.2020	Trial commenced
06.08.2020	Day 2 Trial; verdict: petition granted (note: delay due to shutdown of courts / COVID-19)

In re J.E.

11.27.2019	ACT petition filed
01.29.2020	Pre-trial hearing (motion to dismiss)
07.21.2020	Petition withdrawn

In re D.R.

06.19.2020	ACT petition filed
09.29.2020	Pre-trial motion (motion to dismiss)
10.05.2020	Trial commenced
10.06.2020	Day 2 Trial
10.19.2020	Day 3 Trial; verdict: petition denied

In re R.S.

06.19.2020	ACT petition filed
11.20.2020	Pre-trial hearing (motion to dismiss)
02.03.2020	Pre-trial hearing (motion)
03.04.2021	Petition withdrawn (note: Petitioner had intended to call 15 witnesses)

In re M.A.

01.21.2021	ACT petition filed
04.21.2021	Pre-trial hearing scheduled (motion to dismiss)
05.04.2021	3-day (half days) trial scheduled

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 HB 345 HD2 SD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY**

**THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS**

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

April 6, 2021

RE: H.B. 345, H.D. 2, S.D. 1; RELATING TO ASSISTED COMMUNITY TREATMENT.

Chair Rhoads, Chair Dela Cruz, Vice Chair Keohokalole, Vice Chair Keith-Agaran, members of the Senate Committee on Judiciary, and members of the Senate Committee on Ways and Means, 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, S.D. 1.

The purpose of H.B. 345, H.D. 2, S.D. 1, is to require that a guardian be appointed for every case in which an application is filed for assisted community treatment. The guardian 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 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 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, S.D. 1. Thank you for the opportunity to testify on this matter.



THE INSTITUTE FOR HUMAN SERVICES, INC.
Ending the Cycle of Homelessness

DATE: April 3, 2021

TO: Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Jarrett Keohokalole, Vice Chair

Senate Committee on Ways and Means
Chair Donovan M. Dela Cruz,
Gilbert S.C. Keith-Agaran, Vice Chair

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

Joint Hearing: Tuesday, 4/6/2021 9:55am

RE: TESTIMONY IN SUPPORT of HB345, HD2, SD1, Relating to Assisted Community Treatment (ACT)

IHS, The Institute for Human Services, Inc. is **in strong support of HB345 HD2, SD1**, which makes amendments to the Assisted Community Treatment (“ACT”) statute. **However, we also respectfully request the Committees to amend this bill to (1) remove all references to the Public Defender in ACT statute; and (2) use a guardian ad litem (GAL) rather than the Office of Public Guardian (OPG) for ACT cases, as further explained below.**

This bill will facilitate access to treatment for many persons who have no understanding of their mental illness and how it impacts their quality of life, without compromising due process. Additionally, 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.

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 ACT proceedings in SB199. IHS strongly supports both of these changes.

IHS, The Institute for Human Services, Inc. is Hawaii’s oldest, largest and most comprehensive homeless services agency focused exclusively on ending and preventing homelessness in Hawaii. IHS is a 501(c)(3) charitable non-profit organization. IHS EIN: 99-0199107





THE INSTITUTE FOR HUMAN SERVICES, INC.
Ending the Cycle of Homelessness

These two 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 ensues.

HB345 HD2, SD1 has already removed most (but inadvertently not all) references to the Public Defender in ACT cases. The Standing Committee Report No. 1264 makes clear that the intent of the Senate Health and Human Services Committees was to “eliminat[e] the requirement that the Public Defender be appointed to assisted community treatment petitioners or requiring the family court to provide notice to the Public Defender”. **Thus, we respectfully request you remove any remaining references to the Public Defender for ACT cases in HB345 SD1, and including deletion of HRS 334-126(f) and HRS 802-1(a)(3) to establish consistency in our existing statutes.**

We also request amendment of this bill so that the guardian appointed for ACT cases will continue to be a Guardian Ad Litem (GAL), not a guardian from the Office of Public Guardian (OPG). This amendment is consistent with the current ACT law, which authorizes the court to appoint a GAL, not OPG. See HRS 334-126(e). This amendment is also consistent with the Senate’s approval of GALs for ACT cases in the Senate’s passage of companion bill SB199 earlier this year. GAL appointments made in ACT cases that IHS has initiated have been effective in protecting the best interests of the subject of the ACT petition. This allows potential appearance of the GAL at first hearing and reliance on Judiciary’s existing pool of GALs. GALs are faster, more appropriate and less costly than OPG because the GAL is only in place for the time of the treatment, until the patient regains decisional capacity, and is least intrusive, as the GAL does not try to control other aspects of the person’s life. The use of a GAL has been supported as a positive approach in the earlier testimony on this bill, by the Governor’s Office, the Public Defenders’ Office, and the Department of Health.

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.

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

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THE INSTITUTE FOR HUMAN SERVICES, INC.
Ending the Cycle of Homelessness

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, SD1 with the requested amendments to remove the Public Defender and OPG from the process, and retain the use of guardians ad litem that is already in the current law. Mahalo!

IHS, The Institute for Human Services, Inc. is Hawaii's oldest, largest and most comprehensive homeless services agency focused exclusively on ending and preventing homelessness in Hawaii. IHS is a 501 (c) (3) charitable non-profit organization. IHS EIN: 99-0199107





HB345 HD2 Guardian for Mentally Ill in ACT

COMMITTEE ON JUDICIARY:

- Sen. Karl Rhoads, Chair; Sen. Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS:

- Sen. Donovan Dela Cruz, Chair; Sen. Gilbert Keith-Agaran, Vice Chair
- Tuesday, Apr. 6 2021: 9:55: 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.



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April 6, 2021
9:55 a.m.

Conference Room 211 & Videoconference

To: The Honorable Chair Karl Rhoads
The Honorable Vice Chair Jarrett Keohokalole
Senate Committee on Judiciary

The Honorable Chair Donovan M. Dela Cruz
The Honorable Vice Chair Gilbert S.C. Keith-Agaran
Senate Committee on Ways and Means

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

Re: HB 345 HD2 SD1, 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 to represent the best interests 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-SD-1

Submitted on: 4/1/2021 7:02:45 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

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. We are not certain that the Office of the Public Guardian is the best entity, as opposed to GALs who regularly appear before the Court. We would defer to OPG on that. We continue to believe that is better 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.

HB-345-SD-1

Submitted on: 4/1/2021 5:00:43 PM

Testimony for JDC on 4/6/2021 9:55:00 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 SD1.

HB-345-SD-1

Submitted on: 4/2/2021 9:26:39 AM

Testimony for JDC on 4/6/2021 9:55:00 AM

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

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, Committee on Judiciary, Chair Dela Cruz, Vice Chair Keith-Agaran and Committee on Ways and Means,

Please support HB345 HD2, SD1.

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 your family members gave up on you since you were so uncooperative? 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 SD1.

Mahalo,
Caroline Kunitake

**Testimony of Ellen Godbey Carson in Support of HB345, HD2, SD1,
To the State Senate Committees on Judiciary, and Ways and Means**

Hearing Date: 4/6/21, 9:55am

I write in support of HB345, HD2, SD1, and respectfully request two amendments, as explained 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.

This bill serves vital functions of assisting those with severe mental illness to access effective treatment, and saving thousands, if not millions of dollars in health care costs, repeated police intervention, and repeated detention in jail by having the court mandate more effective treatment in a more timely manner for those who direly need it.

HB345 and companion SB199 were requested to streamline the legal process for providing treatment for those with 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 ACT proceedings in SB199. These two changes are very helpful, to speed up the ACT process.

Respectfully, HB345 HD2, SD1 warrants two amendments:

- (1) Administrative housekeeping to remove all remaining references to the Public Defender in ACT cases, including but not limited to deletion of HRS 334-126(f) and HRS 802-1(a)(3). Standing Committee Report No. 1264 makes clear that the intent of the Senate Health and Human Services Committees was to “eliminat[e] the requirement that the Public Defender be appointed to assisted community treatment petitioners or requiring the family court to provide notice to the Public Defender”.
- (2) Amend so the guardian appointed for ACT cases will continue to be a Guardian Ad Litem (GAL), not a guardian from the Office of Public Guardian (OPG). This amendment is consistent with the current ACT law, which authorizes the court to appoint a GAL, not OPG. See HRS 334-126(e). This amendment is also consistent with the Senate’s approval of GALs for ACT cases in the Senate’s passage of companion bill SB199 earlier this year. GALs are faster, more appropriate and less costly than OPG because the GAL is only in place for the time of the treatment, until the patient regains decisional capacity, and is least intrusive, as the GAL does not try to control other aspects of the person’s life.

The use of a GAL has been supported as a positive approach in the earlier testimony on this bill, by the Governor's Office, the Public Defenders' Office, and the Department of Health.

Thank you for consideration of this testimony.

TO THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

DATE: Tuesday, April 6, 2021
TIME: 9:55 a.m.
PLACE: Conference Room 211 & Videoconference
TIMESLOT: WAM

POSITION: **STRONG SUPPORT HB 345HD2 SD1**

Passage of HB 345 HD2 in this committee will reassert the legislature's commitment to addressing the mental health needs of Hawaii, by streamlining the legal process for getting seriously mentally ill persons for treatment by giving Automatic appointment of a Guardian ad litem (GAL) thus speeding up the legal process since the GAL's opinion could be available at the first hearing.

Furthermore, HB 345 ensures that an objective party meets with the person for whom the petition for mental health services was brought before the court. This will reduce the burden on the Public Defender's office since it permits guardian ad litem to act as the person's advocate. This could mean homelessness caused by mental illness has the potential for being reduced

Regarding outcome, HB345 has the potential over time to Reduces the overuse of emergency rooms by psychotic patients, which now costs over \$100,000,000.00 (100 million dollars) a year. Will also help reduce the spread of COVID caused by overcrowding in emergency rooms.

True advocacy takes into consideration the needs of the most at-risk and vulnerable population in Hawaii. This is not about how we feel, data supports the use of such measures. This legislation is not to rerail civic rights but to work in the best interests of a mentally ill individual even when they are unable to decide for themselves.

Furthermore, HB 345 will also ensure that beneficiaries get psychiatric & medical care while using the "least restrictive means" on interventions that infringe on of civil liberties; This bill will not prevent beneficiaries from asserting their rights in court to refuse treatment.

In closing, this bill should pass out of this committee in its current form, and is a step in the right direction toward a clinical approach in dealing with treatment-resistant populations along with providing for increased health and safety of the population. All amendments to this bill should be with the intent of reducing possible ambiguous language or enhancing the intent of the enabling language. Thank you for taking the time in reading my testimony.

Mahalo,

Kendrick Farm

HB-345-SD-1

Submitted on: 4/4/2021 3:55:35 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

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

Comments:

COMMITTEE ON THE JUDICIARY

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan Delacruz, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

TESTIMONY ON HB345, HD2, SD1 RELATING TO ASSISTED COMMUNITY TREATMENT

I am writing in SUPPORT of HB345, HD2, SD1 that would make important changes to Hawai'i's Assisted Community Treatment (ACT) law -- allowing the appointment of a guardian to represent the interests of severe mentally ill individuals (whose decisional capacity is often further impaired by substance abuse). However, **please consider AMENDING this draft to reference use of a Guardian Ad Litem instead of the "the public guardian" for ACT cases and to delete any remaining language referring to notice to and appointment of a public defender in the ACT law.**

Using a Guardian Ad Litem would be consistent with what is authorized under the current law and it is my understanding that this would also be less expensive.

This bill, with these changes, would greatly facilitate the process for determining whether treatment can be administered, while ensuring needs of the individual are assessed and their rights and 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."

Given these acknowledged constraints, the current ACT process is extremely protracted, delaying potentially life-saving decisions and needlessly increasing emergency health care and other public costs.

With this in mind and because a guardian ad litem would already be representing individual's best interests, it makes sense to remove the Office of the Public Defender from the ACT process. Based on the committee reports and other changes in this draft, I believe this was already the intent of this draft, however, **please also remove the references to a public defender in HRS 334-126(f) and 802-1(a)(3).**

Please support this bill with these amendments 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 and 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-SD-1

Submitted on: 4/4/2021 7:21:15 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Ware	Individual	Support	No

Comments:

Dear Chair and Committee members,

please support this bill to protect and care for individuals in institutional care settings who are not able to make their own decisions.

Sincerely,

Diane Ware, Volcano Hi



Marshall W. Hung – Former Developer for Honolulu
215 N. King Street, Suite 1000, Honolulu, HI 96817
W: 808.526.2027 ext. 6 F: 808.526-2066

April 5, 2021

Re: Testimony for Bill HB 345, HD2, SD1: HB345 SD1

To Whom It May Concern,

I support HB345, which amends our Assisted Community Treatment (“ACT”) statute, to facilitate access to treatment for many of our homeless residents who are seriously mentally ill and have no decisional capacity to help them access effective treatment. 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 and effective manner for those who direly need it.

I request this bill be amended to (1) remove all statutory references to the Public Defender participating in ACT cases; and (2) use a guardian ad litem (GAL) rather than the Office of Public Guardian (OPG) for ACT cases. GALs are already being used under current law to protect the best interests of persons involved in ACT proceedings, and are more effective and less expensive than appointing guardians from the OPG.

HB345 will reduce homelessness caused by mental illness and addiction because:

- It streamlines the legal process for getting seriously mentally ill and addicted persons into treatment.
- It advocates for the needs of what is one of the most at risk/vulnerable population in Hawaii.
- It reduces the overuse of emergency rooms by psychotic patients, which now costs government over \$100 million a year.
- It can promote long term stability for mentally ill and addicted persons receiving services under the Assisted Community Treatment Act
- Automatic appointment of a Guardian ad litem will speed up the legal process since the GAL's opinion could be available at the first hearing and ensures that an objective party meets with the person for whom the petition for mental health services was brought before the court.

Respectfully yours,

Marshall Hung

ph. 808-5262027

HB-345-SD-1

Submitted on: 4/5/2021 9:43:02 AM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marya Grambs	Individual	Support	No

Comments:

I support HB345 and request this bill be amended to remove the Public Defender from participating in ACT cases; and to use a guardian ad litem (GAL) rather than the Office of Public Guardian (OPG) for ACT cases. These changes will streamline the legal process for getting seriously mentally ill and addicted persons into treatment.

As the OFFICE OF THE PUBLIC GUARDIAN 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.

Automatic appointment of a Guardian ad litem will speed up the legal process since the GAL's opinion could be available at the first hearing and this will ensure that an objective party meets with the person for whom the petition for mental health services was brought before the court.