

DAVID Y. IGE
GOVERNOR



EXECUTIVE CHAMBERS
HONOLULU

February 11, 2021

TO: The Honorable Representative Ryan I. Yamane, Chair
House Committee on Health, Human Services, and Homelessness

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

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

Hearing: Thursday, February 11, 2021, 9:30 a.m.
VIA VIDEO CONFERENCE
Conference Room 329, State Capitol

POSITION: The Governor's Coordinator appreciates the intent of this bill and offers comments.

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, and to eliminate the need for the Office of the Public Defender to participate in the proceedings.

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

The appointment of a GAL to represent the needs of individuals with severe mental illness in ACT proceedings is a positive step to ensure that the best interest of the individuals, including the need for the individual to receive medical treatment, is appropriately

represented. Currently, a GAL may be appointed to represent the needs of individuals in ACT petitions, but it is not required.

It is important to recognize that the role of the GAL and the Office of Public Defender serve different purposes. While the GAL advocates for the overall best interests of the individuals, the Office of the Public Defender is obligated to represent the individual's legal due process rights related to involuntary confinement or treatment. The Coordinator defers to the Department of the Attorney General regarding the impacts of removing the Office of the Public Defender from ACT proceedings, and specifically on whether this removal adversely impacts constitutional due process rights.

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

If this measure proceeds, further dialogue with the Department of the Attorney General and Judiciary may be necessary to ensure this measure is not subject to legal challenges related to due process issues. In addition, 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.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 0345, RELATING TO ASSISTED COMMUNITY TREATMENT.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

DATE: Thursday, February 11, 2021 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Ian T. Tsuda,
Deputy Attorney General, at (808) 693-7081)

Chair Yamane and Members of the Committee:

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 ad litem (GAL) for subjects of ACT proceedings, (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 GAL is present, and (3) amending sections 334-125 and 334-126, HRS, to remove the requirement that the public defender or other counsel be appointed and given notice of ACT proceedings. While there are no concerns with items (1) and (2) identified above, and while a subject of an ACT petition may retain the subject's own attorney, item (3)'s removal of appointment of counsel for subjects who cannot afford legal assistance would leave the ACT susceptible to legal challenges for several reasons.

The appointment of counsel is one of the significant provisions of the ACT 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 the provisions regarding the removal of the right to counsel be deleted from the bill.

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 House Committee on
Health, Human Services & Homelessness**

February 11, 2021

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

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Office of the Public Defender does *not* oppose H.B. No. 345.

This measure seeks to remove the Office of the Public Defender (OPD) and mandates the appointment of a guardian ad litem to represent the best interest of the mentally ill individual in Assisted Community Treatment (ACT) proceedings.

Pursuant to article I, section 14 of the Hawai‘i Constitution, “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.

Because the individuals subject to ACT petitions are not threatened by confinement or imprisonment, the Office of the Public Defender has *no objection* to its removal as long as a guardian ad litem is appointed to represent the interest of the individual.

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 the mentally ill individual. *See In re Doe*, 108 Hawai‘i 144, 154, 118 P.3d 54, 64 (2005) (the purpose of a guardian ad litem is to protect the person under disability and to ensure that the person’s interest are not compromised). This is in stark contrast to the role of the OPD, which is to litigate legal issues on behalf of its clients according to the clients’ requests, which often contradicts what may be in the clients’ best interests. Without consent by the individual, the OPD will continue to litigate against the social service providers and family members who seek only to implement social services and treatment to the mentally ill individuals.

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



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First State Legislature, 2021 Regular

Session House Committee on Human Services & Homelessness

Representative Ryan I. Yamane, Chair
Representative Adrian K. Tom, Vice Chair

Thursday, February 11, 2021 at 9:30 a.m.
State Capitol, Conference Room 329
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, Relating to Assisted Community Treatment.

Purpose: Mandates appointment of a guardian ad litem to represent the best interest of a mentally ill individual in assistant community treatment proceedings. Eliminates the need for the office of the public defender to participate in the proceedings.

Judiciary's Position:

The Judiciary offers the following comments on this measure and continued efforts to help and treat individuals suffering from mental illness and/or substance abuse:

1. Mandatory appointment of Guardian Ad Litem (“GAL”): There will be a financial impact on the Judiciary due to the fact that a GAL will be appointed in each case. GALs are private attorneys who charge an hourly rate for their services. Currently, court-appointed GALs charge \$60.00/hour for out of court tasks and \$90.00/hour for in-court tasks pursuant to HRS Section 571-87.
2. In light of possible objections and legal challenges to the proposed amendments, e.g., mandatory appointment of a GAL, removing the Office of the Public Defender



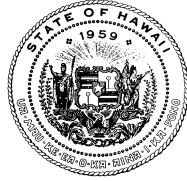
House Bill No. 345, Relating to Assisted Community Treatment
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Thursday, February 11, 2021 at 9:30 a.m.
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as defense counsel for the subject, allowing the hearing to proceed without attempts to secure the participation of the subject, etc., the Judiciary is unable to comment further with respect to the proposed changes.

3. It may be prudent to request an analysis of this bill by the Legislative Reference Bureau to determine whether such amendments should be adopted and implemented.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
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**Testimony COMMENTING on H.B. 345
RELATING TO ASSISTED COMMUNITY TREATMENT**

REPRESENTATIVE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

Hearing Date: 2/11/2021

Hearing Time: 9:30 a.m.

1 **Department Position:** The Department of Health (“Department”) respectfully offers comments
2 on this measure and a proposed H.D. 1.

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

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

15 This bill seeks to improve both access and implementation of ACT by providing the
16 subject of an ACT petition with a Guardian Ad Litem (GAL), not requiring the subject to attend
17 related hearings, and removing the role of the public defender or court appointed attorney in

1 related proceedings. Non-attendance by individuals subject to an ACT petition at hearings has
2 resulted in continuances, delaying the process of implementation.

3 The role of a GAL to represent the best interests of the individuals when they are absent
4 or unable to meaningfully participate in the proceedings is helpful. This measure's impact on
5 access to legal counsel for ACT proceedings may raise constitutional concerns. The Department
6 respectfully defers to the Department of the Attorney General for comments regarding access
7 to legal counsel and representation.

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

17 As written, we do not believe that this measure strikes that balance. However, we
18 remain committed to working with stakeholders to refine the current statute. Further, we
19 humbly ask the legislature to consider the programmatic and policy efforts that have been
20 undertaken in the last year that provide a foundation for continued active response for our
21 most vulnerable individuals. Specifically, we support the addition of the GAL and not requiring
22 the subject to attend the hearing as long as the GAL attends.

23 **Offered Amendments:** Please see proposed H.D. 1.

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

25 **Fiscal Implications:** Undetermined.

A BILL FOR AN ACT

RELATING TO ASSISTED COMMUNITY TREATMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the assisted
2 community treatment program (ACT) established in 2013 provides
3 individuals with severe mental illness who are unlikely to live
4 safely in the community without available supervision with the
5 necessary medical treatment and medication when it is in the
6 individual's best interest. The legislature further finds that
7 although ACT presents these individuals with an opportunity to
8 receive on-going treatment in the least restrictive setting and
9 serves as a vital alternative to repeat emergency interventions
10 as their primary course of treatment, many mentally ill
11 individuals fail to participate in the program to partake of
12 such benefits.

13 The legislature finds that existing law does not require a
14 guardian ad litem to be appointed to represent the individual
15 with severe mental illness during ACT proceedings and promote
16 their needs and interests. The legislature further finds that
17 the mandatory appointment of a guardian ad litem will improve

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1 the ACT process and eliminate the need to involve the office of
2 the public defender.

3 The purpose of this Act is to require the court to appoint,
4 at the time an ACT petition is filed, a guardian ad litem to
5 represent the best interests of the individual who is subject to
6 the petition throughout the pendency of the judicial
7 proceedings.

8 SECTION 2. Chapter 334, Hawaii Revised Statutes, is
9 amended by adding a new section to Part VIII to be appropriately
10 designated and to read as follows:

11 "§334- Appointment of guardian ad litem. (a) The
12 family court, upon receipt of a petition filed under this part,
13 shall appoint a guardian ad litem to represent the best
14 interests of the subject throughout the pendency of the
15 proceedings."

16 SECTION 3. Section 334-125, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§334-125 Notice.** (a) Notice of the hearing shall be:

19 (1) Served personally on the subject of the petition
20 pursuant to family court rules;

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- 1 (2) Served personally or by certified or registered mail,
2 return receipt requested, deliverable to the addressee
3 only, to as many as are known to the petitioner of the
4 subject's spouse or reciprocal beneficiary, legal
5 parents, adult children, and legal guardian, if one
6 has been appointed. If the subject of the petition
7 has no living spouse or reciprocal beneficiary, legal
8 parent, adult children, or legal guardian, or if none
9 can be found, notice of the hearing shall be served on
 at least one of the subject's closest adult relatives,
11 if any can be found;
- 12 (3) Served on the [public defender,] guardian ad litem
13 appointed for the subject of the petition;
- 14 (4) Served on the attorney for the subject of the
15 petition, [or other court appointed attorney as] if
16 applicable; and
- 17 [(4)] (5) Given to other persons as the court may
18 designate.
- 19 (b) The notice shall include the following:
- 20 (1) The date, time, place of hearing, a clear statement of
21 the purpose of the proceedings and possible

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1 consequences to the subject, and a statement of the
2 legal standard upon which assisted community treatment
3 is being considered;

4 (2) A copy of the petition;

5 (3) Notice that the subject of the petition has been
6 assigned a guardian ad litem to represent the best
7 interests of the subject throughout the proceeding;

8 (4) The name and contact information of the guardian ad
9 litem appointed for the subject of the petition; and

10 ~~(3)~~ (5) Notice that the subject of the petition is
11 entitled to the assistance of an attorney, and that
12 [the public defender has been notified of these
13 proceedings; and

14 ~~(4)~~ Notice that if the subject does not want to be
15 represented by the public defender, the subject may
16 contact ~~[the subject's]~~ their own attorney.

17 (c) Notice of all subsequent hearings shall be served in
18 accordance with subsections (a) and (b), and in accordance with
19 all applicable family court rules relating to service of notice,
20 including that service need not be made on parties in default
21 for failure to appear."

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1 SECTION 4. Section 334-126, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§334-126 Hearing on petition.** (a) The court shall
4 adjourn or continue a hearing for failure to timely notify a
5 person entitled to be notified unless the court determines that
6 the interests of justice require that the hearing continue
7 without adjournment or continuance.

8 (b) The time and form of the procedure incident to hearing
9 the issues in the petition shall be provided by family court
10 rule and consistent with this part.

11 (c) Hearings may be held at any convenient place within
12 the circuit. The subject of the petition, any interested party,
13 or the family court upon its own motion may request a hearing in
14 another court because of inconvenience to the parties,
15 witnesses, or the family court or because of the subject's
16 physical or mental condition.

17 (d) The hearing shall be closed to the public, unless the
18 subject of the petition requests otherwise. Individuals
19 entitled to notice are entitled to be present in the courtroom
20 for the hearing and to receive a copy of the hearing transcript

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1 or recording, unless the court determines that the interests of
2 justice require otherwise.

3 (e) The subject of the petition [~~shall~~] is not required to
4 be present at the hearing[~~. However, if~~]; provided that the
5 subject has been served with the petition and [does not appear
6 at the hearing, the court may appoint a] the appointed guardian
7 ad litem is present to represent the best interests of the
8 subject through the proceedings.

9 ~~[(f) Notwithstanding chapter 802 to the contrary, the~~
10 ~~public defender or other court appointed counsel shall represent~~
11 ~~the subject upon filing of the petition. A copy of the petition~~
12 ~~shall be served upon the public defender by the petitioner. The~~
13 ~~public defender or the court appointed counsel shall withdraw upon~~
14 ~~a showing that the subject is not indigent. If the subject does~~
15 ~~not desire representation, the court shall discharge the attorney~~
16 ~~after finding that the subject understands the proceedings and~~
17 ~~the relief prayed for in the petition. Nothing in this~~
18 ~~subsection shall be construed to:~~

19 (1) ~~Require the subject of the petition to accept legal~~
20 ~~representation by the public defender or other court~~
21 ~~appointed counsel; or~~

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1 ~~(2) Prevent the subject of the petition from obtaining~~
2 ~~their own legal counsel to represent them in any~~
3 ~~proceeding.~~

4 ~~(g)] (f)~~ If the subject of the petition is represented by
5 ~~[an]~~ their own attorney, the attorney shall be allowed adequate
6 time for investigation of the matters at issue and for
7 preparation, and shall be permitted to present the evidence that
8 the attorney believes necessary for a proper disposition of the
9 proceeding.

10 ~~(h)] (g)~~ No subject of the petition shall be ordered to
11 receive assisted community treatment unless at least one
12 psychiatrist or advanced practice registered nurse with
13 prescriptive authority and who holds an accredited national
14 certification in an advanced practice registered nurse
15 psychiatric specialization testifies in person at the hearing
16 who has personally assessed the subject, within a reasonable
17 time before the filing of the petition up to the time when the
18 psychiatrist or advanced practice registered nurse with
19 prescriptive authority and who holds an accredited national
20 certification in an advanced practice registered nurse
21 psychiatric specialization provides oral testimony at court.

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1 The testimony of the psychiatrist or advanced practice
2 registered nurse with prescriptive authority and who holds an
3 accredited national certification in an advanced practice
4 registered nurse psychiatric specialization shall state the
5 facts which support the allegation that the subject meets all
6 the criteria for assisted community treatment, provide a written
7 treatment plan, which shall include non-mental health treatment
8 if appropriate, provide the rationale for the recommended
9 treatment, and identify the designated mental health program
10 responsible for the coordination of care.

11 If the recommended assisted community treatment includes
12 medication, the testimony of the psychiatrist or advanced
13 practice registered nurse with prescriptive authority and who
14 holds an accredited national certification in an advanced
15 practice registered nurse psychiatric specialization shall
16 describe the types or classes of medication which should be
17 authorized, and describe the physical and mental beneficial and
18 detrimental effects of such medication.

19 [(4)] (h) The subject of the petition may secure a
20 psychiatric examination and present the findings as evidence at
21 the hearing. The subject shall be entitled to a psychiatric

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1 examination at a community mental health center if the subject
2 so desires, and if an examination has not already been conducted
3 at a community mental health center which will lead to
4 psychiatric testimony at the hearing."

5 SECTION 5. Section 334-127, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) If after hearing all relevant evidence, including the
8 results of any diagnostic examination ordered by the family
9 court, the family court finds that the criteria for assisted
10 community treatment under section 334-121(1) have been met
11 beyond a reasonable doubt and that the criteria under section
12 334-121(2) to 334-121(4) have been met by clear and convincing
13 evidence, the family court shall order the subject to obtain
14 assisted community treatment for a period of no more than one
15 year. The written treatment plan submitted pursuant to section
16 ~~[334-126(h)]~~ 334-126(g) shall be attached to the order and made
17 a part of the order.

18 If the family court finds by clear and convincing evidence
19 that the beneficial mental and physical effects of recommended
20 medication outweigh the detrimental mental and physical effects,
21 if any, the order may authorize types or classes of medication

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1 to be included in treatment at the discretion of the treating
2 psychiatrist or advanced practice registered nurse with
3 prescriptive authority and who holds an accredited national
4 certification in an advanced practice registered nurse
5 psychiatric specialization.

6 The court order shall also state who should receive notice
7 of intent to discharge early in the event that the treating
8 psychiatrist or advanced practice registered nurse with
9 prescriptive authority and who holds an accredited national
10 certification in an advanced practice registered nurse
11 psychiatric specialization determines, prior to the end of the
12 court ordered period of treatment, that the subject should be
13 discharged early from assisted community treatment.

14 Notice of the order shall be provided to those persons
15 entitled to notice pursuant to section 334-125."

16 SECTION 6. Section 334-129, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) A treating psychiatrist or advanced practice
19 registered nurse with prescriptive authority and who holds an
20 accredited national certification in an advanced practice
21 registered nurse psychiatric specialization may prescribe or

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1 administer to the subject of the order reasonable and
2 appropriate medication or medications, if specifically
3 authorized by the court order, and treatment that is consistent
4 with accepted medical standards and the family court order,
5 including the written treatment plan submitted pursuant to
6 section ~~334-126(h).~~ 334-126(g)."

7 SECTION 7. Section 334-133, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§334-133 Petition for additional period [-f]of[t]**
10 **treatment; hearing.** (a) Prior to the expiration of the period
11 of assisted community treatment ordered by the family court, any
12 interested party may file a petition with the family court for
13 an order of continued assisted community treatment. The
14 petition shall be filed, a guardian ad litem be appointed, and
15 notice be provided in the same manner as under sections 334-123
16 and 334-125.

17 (b) The family court shall appoint a guardian ad litem,
18 hold a hearing on the petition and make its decision in the
19 same manner as provided under sections 334-123 to 334-127. The
20 family court may order the continued assisted community
21 treatment for not more than one year after the date of the

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1 hearing pursuant to this section if the court finds that the
2 criteria for assisted community treatment continue to exist and
3 are likely to continue beyond one hundred eighty days.

4 (c) Nothing in this section shall preclude the subject's
5 stipulation to the continuance [+]of[+] an existing court order.
6 This section shall be in addition to the provisions on the
7 objection to discharge."

8 SECTION 8. Section 334-134, Hawaii Revised Statutes, is
9 amended to read as follows:

"§334-134 **Hearing for discharge.** Any person may petition
11 the family court for the discharge of an order of assisted
12 community treatment during the period of assisted community
13 treatment after sixty days from the most recent hearing
14 involving the subject of the order. The petition shall be
15 filed, guardian ad litem appointed, notice given, hearing held,
16 and order made in the same manner as provided for the original
17 petition alleging that the subject of the order met the criteria
18 for assisted community treatment."

19 SECTION 9. Section 802-1, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

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1 " (b) ~~[Except as provided in section 334 126(f), the]~~ The
2 appearance of the public defender in all judicial proceedings
3 shall be subject to court approval."

4 SECTION 10. Section 802-5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "~~(a) [Except as provided in section 334 126(f), when]~~ When
7 it shall appear to a judge that a person requesting the
8 appointment of counsel satisfies the requirements of this
9 chapter, the judge shall appoint counsel to represent the person
10 at all stages of the proceedings, including appeal, if any. If
11 conflicting interests exist, or if the interests of justice
12 require, the court may appoint private counsel, who shall
13 receive reasonable compensation for necessary expenses,
14 including travel, the amount of which shall be determined by the
15 court, and reasonable fees pursuant to subsection (b). All
16 expenses and fees shall be ordered by the court. Duly ordered
17 payment shall be made upon vouchers approved by the director of
18 finance and warrants drawn by the comptroller."

19 SECTION 11. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.

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1 SECTION 12. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____

H.B. NO. J

Report Title:

Mental Health; Assisted Community Treatment; Petition; Guardian Ad Litem; Appointment; Notice; Hearing

Description:

Mandates appointment of a guardian ad litem to represent the best interest of a mentally ill individual in assistant community treatment proceedings. Eliminates the need for the office of the public offender to participate in the proceedings.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





HB345 Guardian for Mentally Ill in ACT

COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS:

Rep Ryan Yamane, Chair; Rep. Adrian Tam, Vice Chair

Thursday, Feb.11· 2021: 9:30 am: Videoconference

HSAC Supports HB345:

GOOD MORNING CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS.

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

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

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

HB-345

Submitted on: 2/9/2021 12:23:40 PM

Testimony for HHH on 2/11/2021 9:30:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------------------|---------------------------|---------------------------|
| Louis Erteschik | 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. That said, we have a lot of concerns about eliminating the legal representation provided by the Office of the Public Defender. 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 have sat in Task Force meetings for the past few years at which many stakeholders have criticized the Office of the Public Defender for their vigorous representation of these individuals at the proceedings. While we understand where those concerns are coming from, we are not convinced that the solution to that problem is to eliminate that representation. As said, this is a legal proceeding and there are specific legal requirements that have to be shown and proven before the treatment can be ordered. We have been involved with this issue since the law was first passed. Over time, the criteria have been loosened and expanded to accommodate some of the valid issues raised by proponents of the treatment. We have actually supported most of those. However, they still have to "prove their case in Court" and if the respondent meets the criteria then presumably the Court will order the treatment. Simply because the Public Defender is making it inconvenient by representing their client is not a good reason to eliminate them from the process. They are doing their job and representing their clients. A basic tenet of the judicial system is the right to legal representation. While the bill does not say that they cannot have an attorney, the reality is that most, if not all of these individuals will not otherwise be in a position to retain private counsel. For that reason, we find this provision in the bill concerning and counter to the appropriate functioning of the judicial system.



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February 11, 2021
9:30 a.m.
Conference Room 329

To: The Honorable Chair Ryan I. Yamane
The Honorable Vice Chair Adrian K. Tam
House Committee on Health, Human Services, & Homelessness

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

Re: HB 345, 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, which mandates appointment of a guardian ad litem to represent the best interest of a mentally ill individual in assisted community treatment (ACT) proceedings; eliminates the need for the office of the public defender to participate in the 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.



Inspiring Hope, Changing Lives

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Connect via email: info@hopeserviceshawaii.org

HOPE Help Line: 808-935-3050

TESTIMONY IN SUPPORT OF HB 345: ASSISTED COMMUNITY TREATMENT

TO: Committee Chair, Vice-Chair and Committee Members
FROM: Brandee Menino, CEO, Hope Services Hawaii, Inc.
Hearing: Tuesday, 2/11/21; 9:30

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

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

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

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

Mahalo nui for your consideration.

Sincerely,

Brandee Menino,
Chief Executive Officer

JOIN OUR COMMUNITY



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Brandee Menino

HB-345

Submitted on: 2/8/2021 5:53:16 PM

Testimony for HHH on 2/11/2021 9:30:00 AM

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

Comments:

As a former ACT case manager, I strongly support this bill.

HB-345

Submitted on: 2/10/2021 4:43:35 PM

Testimony for HHH on 2/11/2021 9:30:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------------------|---------------------|---------------------------|---------------------------|
| Heather Roller Rodriguez | Individual | Support | No |

Comments:

This letter is to extend my support in favor of HB345 in its efforts to establish an appointed guardian to represent the severely mentally ill in assistant community treatment proceedings. I am a Honolulu county resident and a graduate student at the University of Hawai'i at Manoa in the school of Social Work. My concentration is in Behavioral Mental Health. In my time working in this field, I have seen the powerful benefits that mental health services can provide to individuals, especially those with more profound conditions. It has been my experience that the best services within this field are rooted in a person-centered and/or a community-based approach. These interventions seem to provide the most benefits to all persons, especially our most vulnerable. As such, I believe it is in the best interest to have an appointed guardian to represent mentally ill individuals in ACT proceedings. Having a personally connected representative will help ensure more equitable treatment and advocacy efforts for the client. Furthermore, it will eliminate the need for state resources, which may be allocated elsewhere. This bill is an important and continued step towards better services for the severely mentally ill. As Mahatma Gandhi said, "The true measure of any society can be found in how it treats its most vulnerable members." Thank you for your time and consideration.