



*The Judiciary, State of Hawai'i*  
Testimony to the Thirty-First Legislature, 2021 Regular Session

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

Tuesday, March 2, 2021, 9:35 a.m.  
VIA VIDEOCONFERENCE  
State Capitol

**WRITTEN TESTIMONY ONLY**

by

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

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**Bill No. and Title:** Senate Bill No. 199, S.D. 1, Relating to Assisted Community Treatment.

**Purpose:** Mandates appointment of a guardian ad litem to represent the best interest of a mentally ill individual in assisted community treatment proceedings and regarding an MH-1 application. Eliminates the need for the office of the public defender to participate in the proceedings. Effective 5/1/2029. (SD1)

**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:

With regard to Section 2, paragraph 2:

1. The Judiciary's current budget did not anticipate mandatory appointment of a Guardian Ad Litem ("GAL") in every Assisted Community Treatment ("ACT") case. The Judiciary's current budget does not include and account for this additional proposed expense.



2. Unfortunately, the Judiciary is unable to predict the additional costs at this time because any additional costs will depend upon the number of cases filed and the amount of work the GAL performs.
3. The Legislature should also consider amending HRS Section 571-87 to include ACT cases. Court-appointed GALs charge \$60.00/hour for out of court tasks and \$90.00/hour for in-court tasks pursuant to HRS Section 571-87.

With regard to Section 2, paragraph 1:

4. It would appear unnecessary to appoint a GAL in situations governed by HRS Section 334-59 (a) (1) ("MH-1"). In such situations, there is no court involvement and the appointment of a GAL would cause possible delay and additional expense in such situations.
5. Similarly, it would appear unnecessary to appoint a GAL in situations governed by HRS Section 334-59 (a) (2). In such cases, although there is court involvement, the court's decision is limited to whether the individual meets the criteria set forth in the statute and therefore should be transported for an emergency examination. Although the statute requires a filing with the court, no further action is taken on the application.
6. If the Legislature's intent is to mandate the appointment of a GAL in involuntary hospitalization cases under HRS Section 334-60.5, the amendment should be revised so that it would only affect these cases. However, as stated above, this will be an additional expense which is above the Judiciary's current budget.

With regard to Section 3:

7. The appointment of a GAL for the period of emergency hospitalization may be impractical due to the fact that the time period will be forty-eight (48) hours at most. During this time period, the individual is either released or a petition for involuntary hospitalization will be filed. As stated above, if the Legislature's intent is to ensure that the individual has a GAL during the involuntary hospitalization case, it is unnecessary to amend this section.
8. Finally, 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 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.



Senate Bill No. 199. S.D.1, Relating to Assisted Community Treatment  
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9. It may be prudent to request an analysis of this bill by the Legislative Reference Bureau to determine whether these amendments should be adopted and implemented.

Thank you for the opportunity to testify on this measure.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 199, S.D. 1, RELATING TO ASSISTED COMMUNITY TREATMENT.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 2, 2021 **TIME:** 9:35 a.m.

**LOCATION:** State Capitol, Via Videoconference

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

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Chair Rhoads and Members of the Committee:

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

The purposes of this bill are to (1) amend part IV of chapter 334, Hawaii Revised Statutes (HRS), regarding Admission to a Psychiatric Facility, to require various stakeholders to petition a court to appoint a guardian ad litem (GAL) for a subject throughout the pendency of any applications and related proceedings and for the court to appoint a GAL for a subject under emergency hospitalization pursuant to section 334-59(d), HRS, and (2) amend part VIII of chapter 334, regarding Assisted Community Treatment (ACT), by (a) adding a new section to require the appointment of a GAL for subjects of ACT proceedings, (b) 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 (c) 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. The Department has concerns with the amendments to part IV of chapter 334, as well as the removal of appointment of counsel for subjects who cannot afford legal assistance under ACT.

The Department is concerned that the amendments to part IV of chapter 334 violate the single-subject rule for bill titles. Section 14 of article III of the Constitution of

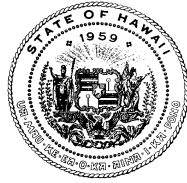
the State of Hawai'i provides in part that "Each law shall embrace but one subject, which shall be expressed in its title." "[A]n act which contains provisions neither suggested by the title, nor germane to the subject expressed therein, is, to that extent void." *Schwab v. Ariyoshi*, 58 Haw. 25, 34, 564 P.2d 135, 141 (1977). This measure is titled, "RELATING TO ASSISTED COMMUNITY TREATMENT", but section 2, paragraph 1, and section 3 of the bill make amendments to statutes relating to the emergency hospitalization of individuals to a psychiatric facility, which is not dependent on proceedings or orders for ACT. Rather, the decision to admit an individual into a psychiatric facility is based upon the judgment of a qualified medical professional after an emergency examination has been conducted.

In addition, these sections affect statutes that are invoked prior to initiation of any court proceeding. Individuals under emergency hospitalization may be held for up to 48 hours from the time of admission without a court order. If a qualified medical professional believes the individual continues to meet the criteria for hospitalization at the end of this time, a court proceeding for hospitalization is initiated under section 334-60.3, HRS. As such, there would be no court proceeding in which to appoint a GAL for an individual who is under only emergency hospitalization. For these reasons, the Department recommends that the addition of the "Appointment of guardian ad litem" provision to part IV of chapter 334 by section 2, paragraph 1, on page 2, lines 11 to 20, and the amendment to section 334-59(d) in section 3 be deleted.

Finally, the Department remains concerned with the removal of appointment of counsel provisions in ACT proceedings, even though a subject retains the right to obtain his or her own attorney. 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 these amendments in sections 4 and 5 regarding the public defender on page 5, line 14, page 6, lines 12-18, and on page 8, line 7, through page 9, line 3, and

the subsequent references to the redesignated subsections in sections 6, 7, 10, and 11, should be changed to retain the existing provisions.

Thank you for the opportunity to testify.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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WRITTEN  
TESTIMONY ONLY

**Testimony COMMENTING on S.B. 199 S.D. 1  
RELATING TO ASSISTED COMMUNITY TREATMENT**

SENATOR KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY

Hearing Date: 3/2/2021

Hearing Time: 9:35 a.m.

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

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 We are committed to supporting the availability and effectiveness of ACT including working  
14 with state agencies and community partners to improve access and implementation.

15 This measure 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 (ATG) for comments regarding  
7 access to legal counsel and representation.

8 This measure also seeks to improve the MH-1 process by appointing a GAL at the time  
9 that an MH-1 application is filed. For reference, the definition of an MH-1 is generally  
10 understood to mean a Mental Health Emergency Worker (MHEW) authorized emergency  
11 transport, pursuant to section 334-59(a)(1), of a person in crisis by either law enforcement  
12 and/or emergency medical services personnel to receive an emergency examination and  
13 possible emergency hospitalization. Appointing a GAL during the process of involuntary  
14 transport, emergency examination, and/or a brief emergency hospitalization would likely  
15 generate significant procedural challenges. The Department respectfully defers to the ATG for  
16 comments regarding legal procedural challenges.

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



1           As written, we do not believe that this measure strikes that balance. However, we  
2 remain committed to working with stakeholders to refine the current statute. Further, we  
3 humbly ask the legislature to consider the programmatic and policy efforts that have been  
4 undertaken in the last year that provide a foundation for continued active response for our  
5 most vulnerable individuals. Specifically, we support providing the subject of an ACT petition  
6 with a GAL and not requiring the subject to attend the hearing as long as the GAL attends.

7 **Offered Amendments:** Please see proposed S.D. 2.

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

9 **Fiscal Implications:** Undetermined.

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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. The legislature finds that the assisted  
2 community treatment program 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 the assisted community treatment program presents these  
8 individuals with an opportunity to receive ongoing treatment in  
9 the least restrictive setting and serves as a vital alternative  
10 to repeat emergency interventions as their primary course of  
11 treatment, many mentally ill individuals fail to participate in  
12 the program and partake of these benefits.

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

18

1 guardian ad litem will improve the assisted community treatment  
2 program process.

3 The purpose of this Act is to require the court to appoint,  
4 at the time an assisted community treatment program petition is  
5 filed, a guardian ad litem to represent the best interests of  
6 the individual who is subject to the petition throughout the  
7 pendency of the judicial 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. The family  
12 court, upon receipt of a petition filed under this part, shall  
13 appoint a guardian ad litem to represent the best interests of  
14 the subject of the petition throughout the pendency of the  
15 proceedings."

16 SECTION 3. Section 334-125, Hawaii Revised Statutes, is  
17 amended by amending subsections (a) and (b) to read as follows:

18 "(a) Notice of the hearing shall be:

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

- 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  
10                   at least one of the subject's closest adult relatives,  
11                   if any can be found;
- 12           (3)    Served on the public defender;
- 13           (4)    Served on the guardian ad litem appointed for the  
14                   subject of the petition;
- 15           (5)    Served on the attorney for the subject of the  
16                   petition, [~~or other court appointed attorney as~~] if  
17                   applicable; and
- 18           [~~(4)~~] (6)   Given to other persons as the court may  
19                   designate.

- 1 (b) The notice shall include the following:
- 2 (1) The date, time, place of hearing, a clear statement of
- 3 the purpose of the proceedings and possible
- 4 consequences to the subject, and a statement of the
- 5 legal standard upon which assisted community treatment
- 6 is being considered;
- 7 (2) A copy of the petition;
- 8 (3) Notice that the subject of the petition has been
- 9 assigned a guardian ad litem to represent the best
- 10 interests of the subject throughout the proceeding;
- 11 (4) The name and contact information of the guardian ad
- 12 litem appointed for the subject of the petition;
- 13 [~~3~~] (5) Notice that the subject of the petition is
- 14 entitled to the assistance of an attorney, and that
- 15 the public defender has been notified of these
- 16 proceedings; and
- 17 [~~4~~] (6) Notice that if the subject does not want to be
- 18 represented by the public defender, the subject may
- 19 contact the subject's own attorney."

20 SECTION 4. Section 334-126, Hawaii Revised Statutes, is

21 amended as follows:

1           1. By amending subsection (e) to read:

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

8           2. By amending subsection (g) to read:

9           “(g) If the subject of the petition is represented by [~~an~~]  
10 their own attorney, the attorney shall be allowed adequate time  
11 for investigation of the matters at issue and for preparation,  
12 and shall be permitted to present the evidence that the attorney  
13 believes necessary for a proper disposition of the proceeding.”

14           SECTION 5. Section 334-133, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           “§334-133 **Petition for additional period [†]of[†]**  
17 **treatment; hearing.** (a) [~~Prior to~~] Before the expiration of  
18 the period of assisted community treatment ordered by the family  
19 court, any interested party may file a petition with the family  
20 court for an order of continued assisted community treatment.  
21 The petition shall be filed, guardian ad litem appointed, and

1 Notice provided in the same manner as under section 334-123  
2 and 334-125.

3 (b) The family court shall appoint a guardian ad litem,  
4 hold a hearing on the petition, and make its decision in the  
5 same manner as provided under sections 334-123 to 334-127. The  
6 family court may order the continued assisted community  
7 treatment for [~~not~~] no more than one year after the date of the  
8 hearing pursuant to this section if the court finds that the  
9 criteria for assisted community treatment continue to exist and  
10 are likely to continue beyond one hundred eighty days.

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

15 SECTION 6. Section 334-134, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§334-134 Hearing for discharge.** Any person may petition  
18 the family court for the discharge of an order of assisted  
19 community treatment during the period of assisted community  
20 treatment after sixty days from the most recent hearing  
21 involving the subject of the order. The petition shall be

1 filed, guardian ad litem appointed, notice given, hearing held,  
2 and order made in the same manner as provided for the original  
3 petition alleging that the subject of the order met the criteria  
4 for assisted community treatment."

5 SECTION 7. Section 571-87, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) When it appears to a judge that a person requesting  
8 the appointment of counsel satisfies the requirement of  
9 chapter 802 for determination of indigency, or the court in its  
10 discretion appoints counsel under chapters [†]587A[†] and 346,  
11 part X, or that a person requires appointment of a guardian ad  
12 litem, or is appointed a guardian ad litem pursuant to  
13 section 334-\_\_\_, the judge shall appoint counsel or a guardian  
14 ad litem to represent the person at all stages of the  
15 proceedings, including appeal, if any. Appointed counsel and the  
16 guardian ad litem shall receive reasonable compensation for  
17 necessary expenses, including travel, the amount of which shall  
18 be determined by the court, and reasonable fees pursuant to  
19 subsections (b) and (c). All of these expenses and fees shall be  
20 certified by the court and paid upon vouchers approved by the  
21 judiciary and warrants drawn by the comptroller."



1           SECTION 8. This Act does not affect the rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 9. Statutory material to be repealed is bracketed and  
5 stricken. New statutory material is underscored.

6           SECTION 10. This Act shall take effect on July 1, 2060.

**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 interests of a mentally ill individual in assisted community treatment proceedings. Effective 7/1/2060.

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

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**

March 2, 2021

S.B. No. 199 SD1: RELATING TO ASSISTED COMMUNITY TREATMENT

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender offers comments on S.B. No. 199 SD1.

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, 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 mentally ill

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

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

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

Thank you for the opportunity to comment on S.B. No. 199 SD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-first State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

March 2, 2021

**RE: S.B. 199, S.D. 1, RELATING TO ASSISTED COMMUNITY TREATMENT.**

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in **support** of S.B. 199, S.D. 1.

The purpose of S.B. 199, S.D. 1, is to require that a guardian ad litem be appointed for every case in which:

- a law enforcement officer makes an application for emergency (mental) examination, observation, and diagnosis of a person in custody;
- an application is filed for assisted community treatment; or
- a person ordered to emergency hospitalization declines their right to notify a guardian or family member, and an attorney.

For matters involving assisted community treatment, the person’s guardian ad litem would be added to the list of individuals who currently receive notice of the hearing on the petition; the person need not be present at the hearing if the person was served with the petition and their guardian ad litem is present; and the Public Defender would no longer be the person’s default attorney for these types of matters.

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.

Because hearings on a petition for emergency hospitalization are not attached to any type of criminal proceedings, and the person subject to the petition is presumably not in custody for, nor accused of, committing any crime, the Department believes it is appropriate that neither county prosecutors nor the Office of the Public Defender is involved in these proceedings. That said, it is unclear from S.B. 199, S.D. 1, whether, how or when the person would be afforded court-appointed counsel, if they are unable to afford an attorney, but would like to be represented by one. With regards to protecting the person's constitutional rights, in this regard, we defer to the Department of the Attorney General's assessment.

For people who suffer from serious mental illness or substance abuse, who also pose an imminent danger to self or others, the Department strongly believes that providing swift and appropriate mental health treatment is both the most humane and safest approach for that person and for everyone around them. By statute, one of the criteria for someone ordered to assisted community treatment is that he or she is:

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

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

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 199, S.D. 1. Thank you for the opportunity to testify on this matter.

**SB-199-SD-1**

Submitted on: 2/26/2021 3:27:31 PM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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.

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.

# PARTNERS IN CARE

*Oahu's Continuum of Care*

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

## TESTIMONY IN SUPPORT OF SD199, SD1, Relating to Assisted Community Treatment

TO: House Committee on Finance  
FROM: Partners In Care (PIC)  
Hearing: Tuesday, 3/2/21; 9:35am; via videoconference  
Position: **Support**

Chair Rhoads, Vice Chair Keohokalole Members of the Senate Committee on the Judiciary:

Partners In Care, Oahu's Continuum of Care, stands in **Strong Support of SB199,SD1, Relating to Assisted Community Treatment**. Throughout Oahu, member agencies of Partners In Care work with individuals who suffer from severe mental illness and homelessness on a daily basis. Senate Bill 199 makes changes to the existing Assisted Community Treatment (ACT) process to include a Guardian Ad Litem to be in attendance on behalf of the individual who has been deemed to have lost decisional capacity. A Guardian Ad Litem's role in court proceedings is to represent the best interest of the individual and offer support and treatment as needed.

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

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

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

Aloha





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

**DATE: Feb. 28, 2021**

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

**From: Connie Mitchell, MS, APRN  
Executive Director  
IHS, The Institute for Human Services, Inc.**

**RE: Testimony in Support of SB199, SD1, Relating to Assisted Community Treatment  
Hearing Date: March 2, 2021, 9:35am, Via Videoconference**

IHS, The Institute for Human Services, Inc. is **in strong support of SB199, SD1 in regard to its amendments to the Assisted Community Treatment (“ACT”) statute.**

IHS notes, however, **does not support the SD1 amendments of the bill that would now require appointing a Guardian Ad Litem (“GAL”) for MH-1 mental health emergency examinations and hospitalizations.** The amendments are not consistent with the MH1 Statute which mandates an evaluation to determine whether or not an individual meets criteria for inpatient treatment. **IHS requests deletion of the statutory amendments pertaining to MH-1 by striking those amendments made in SD1, and reverting to the original language and intent of the SB199.**([https://www.capitol.hawaii.gov/session2021/bills/SB199\\_.HTM](https://www.capitol.hawaii.gov/session2021/bills/SB199_.HTM))

The MH-1 process, wherein a police officer takes into custody and transports an individual, who they believe demonstrates symptoms of mental illness or substance abuse and poses danger to self or others, to a psychiatric facility or hospital emergency room, already involves a Mental health Emergency Worker (MHEW) who evaluates whether an individual meets criteria for civil commitment. There is no need for a GAL in this emergency evaluation process as described in HRS 334-59. Appointment of GALs for MH-1’s would impose undue costs, and impose potential delays on these short term (48 hour) emergency examinations, and cause a person to be held in an emergency department for an indeterminate time while awaiting a GAL. This is not the intent of an emergency evaluation as stipulated in the current MH1 statute. Furthermore, there is no foreseeable benefit given the logistical challenges of this short time period. At a time when the state has such limited funds, requiring GALs for MH-1’s is unnecessary and may be counterproductive.

The ACT amendments in this Bill were originally requested by IHS, 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 substance use, particularly with methamphetamine. Automatic appointment of a Guardian Ad Litem (“GAL”) upon an ACT petition being filed would speed up the legal process by potentially having the GAL’s opinion possibly be made available at the first court hearing. Removing the Public Defender from participation in the court process still leaves the individual’s best interests to be represented by the appointment of a guardian ad litem.

While concerns were earlier raised regarding the bill’s removal of the Public Defender from the ACT process, the Public Defenders’ Office has stated in prior testimony (2/9/21) on SB199, that “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.” (emphasis in original). As further





noted by the Public Defender's testimony, "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 guardian ad litem is to protect the person under disability and to ensure that the person's interest are not compromised)." Thus, due process concerns are already addressed by the court's involvement and the appointment of a guardian ad litem.

Thousands, if not millions of dollars in health care costs, police intervention and detention of mentally ill persons in jail, could be saved by having the court mandate treatment for those who direly need it, in a more timely manner. This could avoid the costly revolving door of readmissions to hospitals, social services, and arrests.

Sadly, many of the individuals who need ACT are high users of the emergency medical system and the destination emergency departments. During the current COVID pandemic, easing the numbers of behavioral health crises coming to emergency departments also could improve the likelihood that persons in a medical crisis would be more likely to access treatment in an emergency department not overcrowded by behavioral health patients.

We encounter many of mentally ill or substance affected individuals 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 while awaiting an order for him to access treatment. A female subject died as a result of being hit by a car while crossing a Highway and yet another young man who already had his foot amputated due to self-neglect died in the hospital of septicemia that resulted from the infection of his wounds.

The most significant benefits of the ACT amendments proposed in SB199 is that it will facilitate access to treatment over objection for many more persons who have no understanding of their mental illness and how it impacts their quality of life, without compromising due process. Among homeless people whom we serve every day, these people are among our most vulnerable.

We hope your Committees will see fit to pass SB199, SD1, with the requested amendments to revert back to the original language of SB199 that did not include MH1.. Mahalo!



**SB-199-SD-1**

Submitted on: 2/26/2021 9:06:30 AM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
david gierlach	Testifying for st elizabeth's church	Support	No

Comments:

I am the Rector of St Elizabeth's Episcopal Church located in Palama. We serve hundreds of folks each week with food, sanitation, mail drop services, device charging and a toilet. We encounter on a near daily basis those in urgent need of mental health treatment and care, people who, without such care are frequently violent, angry, disruptive and are an overall menace to themselves and others. Making access to needed treatment for these folks easier matters. It matters for those afflicted and to those who encounter them. Modifying existing legislation to provide for appointment of a guardian ad litem who can then seek care for the person is sensible and necessary in many circumstances where the individual's mental illness itself becomes a bar to self-sought care. I understand the civil liberties concerns. Such rights need to be safeguarded. But balance between unfettered freedom on the one hand and treatment that can assist a person in regaining some mental and emotional equilibrium on the other hand militates strongly in favor of the approach taken by this bill. On my own behalf and on behalf of my congregation (which includes people struggling with mental health issues) we strongly support passage of this measure.

**SB-199-SD-1**

Submitted on: 2/25/2021 7:07:29 PM

Testimony for JDC on 3/2/2021 9:35:00 AM

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

Comments:

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

**TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF SB199, SD1**  
To the Senate Committee on Judiciary

For Hearing on March 2, 2021, 9:35am, Via VideoConference

**I strongly support SB199, SD1**, to assist our most vulnerable residents who are severely mentally ill or severely impaired due to substance abuse.

While I write as an individual, I have served as President of Institute for Human Services (IHS, where I am a current board member), the Hawaii State Bar Association and Hawaii Women Lawyers. I've spent thousands of volunteer hours helping Hawaii find better ways to address our homelessness crisis, civil rights and our legal system.

SB199 amends our Assisted Community Treatment law ("ACT") to finally provide critical tools needed for changing the lives of some of our most vulnerable residents who are chronically mentally ill and homeless. Some of these individuals are practically catatonic and "frozen," unable to respond intelligibly or to help themselves with life-saving treatment. Others have had so much methamphetamine use, that their cognitive abilities have been destroyed and they appear to have schizophrenia with active psychosis. Still others have severely infected wounds that are being ignored and are now threatening loss of limbs or life, because of their lack of capacity to act. Our Chief Medical Examiner reports that the death toll in our homeless community ranges from 70-100 individuals a year – someone's son, father, mother or daughter, who has died because we do not have an adequate safety net for their needs. The average age at death for these homeless persons is 53-54 years: that is, they lose over 20 years of lifespan due to the very real dangers of living on the street without proper treatment.

The current ACT court process is so slow that some people have died or been hospitalized while IHS has been pursuing an ACT petition. SB199 will require immediate appointment of a guardian ad litem ("GAL") upon submission of an ACT petition, to assist in determining need for treatment, and to satisfy the individual's right to representation in the ACT process.

SB199 will also remove the Public Defender in these cases that are conducted in Family Court. The Public Defenders' Office has stated in prior testimony (2/9/21) on SB199, that "the Office of the Public Dender has **no objection** to its removal as long as a guardian ad litem is appointed to represent the interst of the individual." (emphasis in original). As further noted by the Public Defender's testimony, "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)." Thus, due process concerns are already addressed by the court's involvement and the appointment of a guardian ad litem. The balance of rights in SB199 is an appropriate one, as it allows determination of the

person's best interests, based on their lack of decisional authority due to their severe illness.

SB199 will increase the likelihood that persons suffering from severe mental illness or substance abuse will receive timely and appropriate care and treatment. We have miracles of modern medicine that can treat even the most severe mental illnesses, but these treatments require either actual or implied consent processes so that treatment may be rendered. This bill is appropriately limited to those with mental illness or substance abuse who are imminently dangerous to self or others, and in need of care or treatment. This is often life-saving treatment, that enables the person to become more highly functioning and to restore communication and bridges with family and community.

We owe it to these individuals to provide them life-saving treatment and help restore their lucidity when they lack their own decision-making authority.

Respectfully submitted, Ellen Godbey Carson    Honolulu, Hawaii February 27, 2021

**SB-199-SD-1**

Submitted on: 2/27/2021 4:24:03 PM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Committee on Judiciary,

Please support SB199 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 SB199 SD1 is to meet the basic mental health needs of people who suffer from severe mental illness. SB199 SD1 is a first step in a long journey to further improve humane and compassionate ways to assist those who cannot help themselves. It is important that the law be written and interpreted in such a way that the mentally incompetent who refuse necessary medical attention are not allowed to misuse their legal rights to further jeopardize their safety and well being. Human beings who are misusing their legal rights in this way need immediate medical attention, not a lengthy legal process in court.

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

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

I appreciate the opportunity to provide testimony in support of SB199 SD1.

Mahalo,

Caroline Kunitake





**SB-199-SD-1**

Submitted on: 3/1/2021 9:28:28 AM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lynne Unemori	Individual	Support	No

Comments:

Committee on Judiciary

Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

**TESTIMONY ON SB199, SD1 RELATING TO ASSISTED COMMUNITY TREATMENT**

I am writing in SUPPORT of SB199, SD1, while noting one concern with this bill as now amended. This bill will make an important change to Hawai'i's Assisted Community Treatment (ACT) law to allow the appointment of a guardian ad litem to represent the interests of severely mentally ill individuals (whose decisional capacity is often further impaired by substance abuse). This would greatly help facilitate the process for determining whether treatment can be administered, while ensuring needs of the individual are assessed and their interests are protected. The current ACT process requires the involvement of the Office of the Public Defender which has testified "the role of the OPD, which is to litigate legal issues on behalf of its client according to the client's requests, which often contradicts what may be in the clients' best interests."

As OPD is required to carry out this role without considering what may be in the clients' best interests, the current ACT process is extremely protracted, delaying potentially life-saving decisions and needlessly increasing emergency health care and other public costs.

One change was made to this draft of the bill which extends the guardian ad litem provision to MH-1 emergency examination and hospitalization. It is my understanding that guardian ad litem appointments are unnecessary, unduly costly and logistically unrealistic during the MH-1 48-hour process, and a judicial process already exists for MH-1. Please amend this bill by reverting to the original version of SB199, which did not include this change.

Please support this bill, with the change noted, 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



**LATE**

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

March 2, 2021  
9:35 a.m.  
Via Videoconference

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

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

Re: SB 199 SD1, Relating to Assisted Community Treatment; **In Support**

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'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 SB 199 SD1, which mandates appointment of a guardian ad litem to represent the best interest of a mentally ill individual in assisted community treatment (ACT) proceedings and regarding MH-1 application; 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.