



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

**TO:** Honorable Rep. Della Au Belatti,  
Chair, House Committee on Health & Homelessness  
  
Honorable Rep. Jenna Takenouchi,  
Vice-Chair, Senate Committee on Health & Homelessness

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

**RE:** [HB 2521](#) - RELATING TO LEGAL REPRESENTATION.

**HEARING:** Friday, February 2, 2024 at 9:45 AM

**POSITION:** IHS **supports** the passing of HB 2521

IHS, The Institute for Human Services, stands in full support of HB2521. We agree that current Hawaii Revised Statutes should be amended to remove language from Section 802-subsection (a) (3), which includes the subject of a petition for assisted community treatment as an individual that shall be “entitled to representation by a Public Defender.”

This section of the law pertains to persons who are at risk for detention or incarceration. The subject of a petition for Assisted Community Treatment (ACT) is not at risk for detention. Rather, he/she is the subject of advocacy for appropriate treatment to curb the dangerous behavior that could result in involuntary hospitalization or incarceration.

IHS has been petitioning for assisted community treatment for over four years. In 2021, based on experience with these cases, we advocated for the ACT process to be amended to remove the public defender from the petitioning process. The Public Defender’s office did not object. and legislators understood that the rights of the subject would be protected by the appointment of a guardian ad litem who acts in the subject’s best interest, evaluation of a board-certified psychiatrist or psychiatric APRN-Rx and the Judge who hears the case.

From a practical standpoint and our team’s experience, the petitioning and appointment of a public defender for the subject adds weeks, if not months, of delay to the assisted community treatment petitioning process, which, at times, can result in adverse outcomes such as injury to self or others, serious illness and/or even death.

We ask you to please pass this bill to remove language that poses a potential barrier to swiftly treating a seriously mentally ill individual. Thank you for the opportunity to offer our perspective and testimony.

**HB-2521**

Submitted on: 1/31/2024 4:16:08 PM

Testimony for HLT on 2/2/2024 9:45:00 AM

| <b>Submitted By</b> | <b>Organization</b>             | <b>Testifier Position</b> | <b>Testify</b>    |
|---------------------|---------------------------------|---------------------------|-------------------|
| Louis Erteschik     | Hawaii Disability Rights Center | Comments                  | Remotely Via Zoom |

Comments:

We suspect this is a housekeeping measure which conforms this section of the HRS to existing law. That said, we continue to have concerns about the legislative decision a few years ago which removed the right to counsel in these proceedings. In light of other measures this session which seek to expand the participation of the Office of the Attorney General, we believe this is tipping the scale even more against the Respondents in these cases, who really deserve to have their legal rights protected. We would urge the Legislature to revisit the entire issue of representation in Assisted Community Treatment Hearings.

DATE: February 2, 2024

TO: Honorable Legislators

FROM: Christopher D. Thomas, Attorney at Law

RE: Public Comment and Testimony Regarding HB 2521 and Amending HRS §802-1(a)(3)

My name is Christopher Thomas; I am an attorney in Honolulu, and I obtain Assisted Community Treatment (ACT) Orders for the Institute of Human Services (IHS). Via IHS, our team of Psychiatrists, Outreach Workers, and Attorneys represent the highest utilizers of our ACT Statute within Hawai'i. We have treated, and continue to treat, a large percentage of O'ahu's seriously mentally ill and substance addicted homeless population. Our ACT statute, housed in HRS Chapter 334 is one of the most useful laws we use to ensure the most vulnerable of our citizens receives the treatment they have the right to obtain.

I support HB 2521 as a practical and commonsense Amendment to our laws to match the intent of prior legislation which Amended ACT process and procedure.

As you are likely aware, in 2021, Chapter 334 was amended to relieve the State of Hawai'i Public Defender's (PD's) attorneys from the burden of being appointed as mandatory counsel to ACT Respondents/Patients. Chapter 334 was further amended to make the appointment of a Guardian Ad Litem (GAL) to ACT Respondents mandatory, versus discretionary. Prior to the PD's being removed from mandatory appointment, ACT Petitions were unreasonably delayed due to a myriad of logistical and procedural entanglements. Prior to 2021, my experience is that mandatory PD appointment actually served to thwart the purpose of ACT Orders: to get patients efficiently treated. Appointment of a GAL in lieu of PDs has streamlined ACT Orders and produced more efficient treatment.

Unfortunately, while Chapter 334 was Amended to remove PD representation, a corresponding edit to Chapter 802 Section 1(a)(3) was neglected. As a result, HRS 802-1(a)(3) remains in conflict with Chapter 334-121 through 136. An Amendment is necessary to remove PD appointment remaining in Chapter 802. HB 2521 represents that necessary Amendment.

From a practitioner's standpoint gleaned from the last five years of trying ACT cases, the mandatory appointment of GALs to ACT cases adequately balances the need for an ACT Respondent to have an advocate to guide them through the ACT process with the need of the community to immediately and swiftly treat illness/substance abuse. An ACT Respondent is provided adequate due process in a civil matter through protection via the statute, a trial judge, a psychiatrist, and a GAL. Public Defender mandatory representation is, therefore, not necessary. The neglected corresponding Amendment to HRS 802-1(a)(3) is overdue.

I respectfully request that HB 2521 be given your full support through the legislative process.

Respectfully submitted,

Christopher D. Thomas, (808) 261-7710, cthomas@hawaiianfamilylaw.com

