



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair

Representative Sharon E. Har, Vice Chair

Friday, January 17, 2014, 2:00 p.m.  
State Capitol, Conference Room 325

By

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Director, Office of the Public Guardian

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**Bill No. and Title:** House Bill No.195, Relating to the Office of the Public Guardian.

**Purpose:** Repeals the Office of the Public Guardian's authority to petition for its own appointment as Guardian of the Person for an incapacitated person. Authorizes the court to allow OPG to manage a ward's financial assets where no conservatorship has been appointed to protect the ward's estate.

### **Judiciary's Position:**

The Office of the Public Guardian (OPG) supports this legislation. Chapter 551A, HRS, establishes the Office of the Public Guardian (OPG) within the Judiciary to serve as court-appointed Guardian of the Person for incapacitated persons for whom no willing and suitable individual is available to serve in this capacity. Currently, the law authorizes OPG to petition for its own appointment as guardian.

For at least the past eight years, OPG declined to petition the Court for its own appointment based on recommendations provided by a national study on public guardianship. The 2005 study, entitled "Wards of the State: A National Study of Public Guardianship," concluded, among other things, that "petitioning is a problematic role for many public guardianship programs," due to the potential for conflicts of interest. For instance, a program might be inclined to petition more frequently, regardless of individual needs, if its budget is dependent on the number of individuals served, or a program may "cherry pick," petitioning only for those individuals who are relatively "easy" or less costly and time-consuming to serve. The study

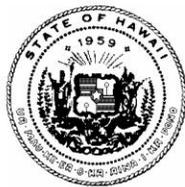


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recommended that public guardianship programs not petition for their own appointment. That prohibition has been adopted legislatively in Vermont and Washington. This measure proposes a similar prohibition with respect to Hawaii's public guardianship program. Current private and public entities, such as medical facilities and the Department of Human Services/Adult Protective Services would continue to have the authority to petition for OPG's appointment as guardian under HRS §560:5-304.

The bill also allows the court to empower OPG to manage and oversee the financial assets of a ward, where no conservatorship is in place. While some of OPG's wards have assets that should be protected in a conservatorship, there may be no conservator in place for various reasons, including the cost of conservatorship proceedings or the lack of a suitable person or entity willing to serve. In such cases, when OPG has attempted to access a ward's financial resources to pay for the ward's care, some financial institutions have denied access because the public guardian lacks conservatorship orders. This measure would authorize the court to expand the powers of the public guardian to access and manage its wards' financial assets in the absence of a conservatorship.

Thank you for the opportunity to testify on House Bill No. 195.



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
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January 17, 2014

**MEMORANDUM**

TO: The Honorable Karl Rhoads, Chair  
House Committee on Judiciary

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 195 - RELATING TO THE OFFICE OF THE PUBLIC  
GUARDIAN**

Hearing: Friday, January 17, 2012; 2:00 p.m.  
Conference Room 325, State Capitol

**PURPOSE:** The purposes of H.B. 195 are to prohibit the Office of the Public Guardian (OPG) from petitioning for its own appointment as guardian for an incapacitated person, and to authorize the court to allow the OPG to manage a ward's financial assets where no conservatorship is in effect.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the provisions of this bill that allow the Family Court to authorize the public guardian to request and obtain copies of financial information and documents and to transact business on behalf of the incapacitated person.

The Department of Human Services' (DHS) adult protective services (APS) has petitioned Family Court on numerous occasions to have an OPG appointed as the guardian of an incapacitated person who has also been abused, neglected, or financially exploited. Financial transactions to pay for services needed by the incapacitated person may be rejected by financial institutions because no one has yet

been appointed to legally act on the behalf of the incapacitated person in financial matters. Room and board arrangements in care facilities and personal care services go unpaid when there is no authorized person to act on behalf of the incapacitated person.

The provisions of subsection (b) of H.B.195 will allow the Family Court to authorize the public guardian to act in the best interest of the incapacitated person to access needed funds, to effect business transactions, and to complete an analysis of the scope of the person's financial interests to prevent further abuse or financial exploitation. This will also assist in the processing of applications and annual renewals for medical assistance if needed. Once the immediate financial needs are taken care of, the public guardian can then take the necessary steps to appoint a conservator for long-term financial management of the incapacitated person's assets and accounts.

The DHS defers to the Judiciary on the provisions of subsection (a) of this bill specifying that the public guardian may not file a petition for the public guardian's own appointment.

Thank you for the opportunity to provide comments on this bill.