Office of the Public Defender
State of Hawaii

Timothy Ho, Chief Deputy Public Defender

Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committees on Judiciary and Labor and Ways and Means

February 27, 2015, 10:10 a.m.

RE: S.B. 961, SD1: Relating To Mental Health Treatment

Chairs Keith-Agaran, Tokuda, and Members of the Committees:

The Office of the Public Defender disagrees with the proposed amendments on pages 4 and 5 of this measure, and therefore stands in opposition to S.B. 961, SD1.

This measure proposes the insertion of a new subsection in the notice requirement (page 4). According to this subsection, notice to the public defender of subsequent hearings will be considered to be effective notice to the subject of the petition. Service upon the Office of the Public Defender cannot be considered effective notice on the subject of the petition. Such a requirement would prove to be overly burdensome for our office to locate and notify our clients of a continued court date, many of whom are homeless and without any means of receiving telephonic, electronic or written communication. The Office of the Public Defender has a total of (4) investigators serving approximately sixty (60) attorneys, who handle over twenty thousand cases annually. Furthermore, the proposed language is flawed. Some of the subjects will not be represented by the Office of the Public Defender. They will have privately retained or court-appointed attorneys, or represent themselves. There is no provision for providing notice to a subject who is appearing pro se or with private counsel. According to this provision, service upon our office would be considered effective notice to subjects not represented by our office.

The Senate Committee on Health amended S.B. 961 by inserting language on page 5 of this measure that mandates the Office of the Public Defender to represent all individuals that are the subject of these petitions at the time of the filing of the petition. This requirement runs contrary to Chapter 802, Hawaii Revised Statutes, which is the statute that governs our office, and procedures for which an indigent receives legal representation. The Office of the Public Defender represents indigents charged with criminal offenses or who are facing involuntary confinement or out-patient psychiatric, mental or medical treatment.

The procedure is set forth in Chapter 802-3, HRS, which states as follows:

Any person entitled to representation by a public defender or other

appointed counsel may at any reasonable time request any judge to appoint counsel to represent the person.

HRS §802-5(a) states:

> (a) When it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings, including appeal, if any.

Chapter 802, HRS, requires a person to be notified of their right to counsel, a request for counsel, a determination of indigence and approval by the court. The language proposed in S.B. 961, SD1 bypasses the procedural requirements in Chapter 802, HRS, and mandates the Office of the Public Defender to represent all subjects to involuntary outpatient petitions without a referral from the court and court approval. While the proposed language makes it "easier" for the courts and personnel involved in these proceedings, it should not override the individual's choice to be represented, or not represented by counsel. Furthermore, we believe this may set a dangerous precedent of requiring the Office of the Public Defender to represent all individuals who are charged with crime or who face a loss of liberty from inception of the charges, as opposed to being appointed by the courts. This kind of a procedural change will require additional attorneys and support staff in addition to a significant increase in our budget.

Thank you for the opportunity to comment on this bill.

Hawaii Disability Legal Services, LLLC

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February 27, 2015

Committee on Judiciary and Labor
Committee on Ways and Means
Testimony on S.B. 961, SD1
Relating to Mental Health Treatment

February 27, 2015, 10:10 a.m.
Conference Room 211

Dear Chair Keith-Agaran, Chair Tokuda, and Members of the Committees:

My name is Diane C. Haar. I am a licensed attorney practicing in the State of Hawai`i. My practice is devoted to representing individuals with disabilities and their interests throughout the state. I brought the first case for Assisted Community Treatment (ACT), and regularly work with our mentally ill, homeless population. I regret missing this hearing on the ACT amendments. However, my work with people with disabilities takes me to all of our populated islands except Ni'ihau. Today I am on Kauai.

In previous written testimony made to the Committees on Health and on Human Services, I stated my strong support for the initial ACT Amendments and my reasons for it. I believe your Committees have access to that testimony, so I do not wish to burden you by reiterating it here.

I do, however want to address the revision made regarding the provision of a Guardian ad Litem. Unfortunately, it appears a hatchet fell on the original proposed amendment, where a scalpel would be the desirable tool of choice. I support the judiciary's testimony that the language of the original proposed amendment *requiring* the appointment of a Guardian ad Litem is too strong. However, removing the amendment entirely does not reflect the spirit of the original proposed amendment or the discussions and agreements following the first hearing on it.

Specifically, providing the Court discretion to choose to appoint a Guardian ad Litem if it deems it beneficial to the Court proceedings, instead of burdening it with an absolute requirement to do so is truly the best option. Out of this desire to give our judges the ability to select what configuration will best promote justice in their courtroom comes the following proposed language to the original amendment to ACT:

> The subject of the petition shall be present at the hearing. However, if the subject has been served with the petition and does not appear at the hearing, the court [~~shall~~] <u>may</u> appoint a guardian ad litem to represent the best interests of the subject through the proceedings.

Of course this language also satisfies the initial concerns spurring the drafting of the original amendment, which is ensuring that we afford our Court the clear ability to adequately protect our most vulnerable citizens suffering from mental illness. Specifically, this includes those individuals whose mental illness has rendered them incapable of protecting their own interests, but who are equally without family or close friends willing to do so.

I understand there is also concern as to the affordability of a Guardian ad Litem. For that reason, I spoke to Daisy Hartsfield, the attorney who served as the Guardian ad Litem on the ACT case I was involved in previously. In accordance with her estimates of time and payment on a typical case, this would create a cost of $210 to $270 per case. While not zero, this cost is minimal where the potential rewards to every participant in the Court proceeding are great, and particularly the subject of the petition, for whom the adjudication could very well be what restores them to productive and meaningful life rather than mere survival.

Your consideration of these amendments is greatly appreciated. Thank you for the opportunity to testify on this important matter.

HAWAII DISABILITY RIGHTS CENTER

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THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2015

Committee on Judiciary and Labor
Committee on Ways and Means
Testimony on S.B. 961, SD1
Relating to Mental Health Treatment

February 27, 2015, 10:10 A.M.
Conference Room 211

Chair Keith-Agaran, Chair Tokuda and Members of the Committees:

The Hawaii Disability Rights Center offers the following comments. We are pleased to see that the SD1 version addresses the concerns we expressed at the prior hearing regarding the appointment of the Public Defender and the lack of a necessity or the appropriateness of appointing a guardian ad litem.

That said, there are still some provisions in here that are confusing and do raise legitimate questions. For example, the provisions regarding psychiatric examinations and testimony are unclear. The bill says that the petition must be accompanied by a certificate from a psychiatrist who has examined the Respondent within twenty days. Yet the bill then allows a psychiatrist to testify in Court who need not be the same one who filed the petition and there is no timeline within which that psychiatric exam must have occurred. The bill deletes the current requirement of a ten day window. In theory this would allow a psychiatrist to testify when the assessment was conducted years ago. It is hard to imagine that this is really the intent of the bill and so we would like to see this clarified.

We understand that the Court has had problems with scheduling the hearings within the current requirement of the law that it be within ten days. Some adjustment may be

appropriate. The language in the bill which says that the hearing shall be set “as soon as possible” may be a bit too open ended and so we would suggest that perhaps a more definitive timeline should be considered.

We hope that by clarifying the points we have raised, the stakeholders involved with this issue will have a better understanding of how this outpatient treatment procedure will work.

Thank you for the opportunity to testify on this measure.

PHOCUSED

PROTECTING HAWAII'S OHANA, CHILDREN, UNDER SERVED, ELDERLY AND DISABLED

TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members, Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice Chair
Members, Senate Committee on Ways and Means

FROM: Scott Morishige, MSW
Executive Director, PHOCUSED

HEARING: **Friday, February 27, 2015 at 10:10 a.m. in Conf. Rm. 211**

Testimony in Support of SB961 SD1, Relating to Mental Health Treatment.

Thank you for the opportunity to provide testimony in **support** of SB961 SD1, which makes amendments to strengthen Hawaii's Assisted Community Treatment (ACT) law. PHOCUSED is a nonprofit membership and advocacy organization that works together with community stakeholders to impact program and policy change for the most vulnerable in our community, including individuals with serious mental illness.

The changes proposed in this bill were drafted after many discussions with the Family Court and other members of the Mental Health Task Force. These changes stem from the experience with the first ACT case that was presented to the Family Court. This first case highlighted a number of technical difficulties with the existing law, which are addressed by the proposed changes in this bill.

Hawaii's mental health system is currently fragmented, confusing, and nearly impossible to navigate. The result of this is that individuals with serious mental illness are often arrested for petty crimes, utilize emergency department services at a higher rate, undergo expensive and unnecessary multiple hospitalizations, and/or become homeless as a result of their mental illness. This is a very expensive revolving door that is hurtful to these individuals and the community. Hawaii's ACT law, which was originally passed in 2013, is part of the solution to fix this broken system and close the revolving door.

ACT provides a process whereby the Family Court can order a person with serious mental illness, who is not complying with treatment, to accept treatment in the community – thereby preventing them from bouncing in and out of the hospital, jail, and streets. In other states, this approach has resulted in a reduction in hospitalization and incarceration rates, and patients with violent histories have become significantly less likely to commit crime. SB961 will strengthen our current ACT law, and ease its implementation in our community.

Once again, PHOCUSED strongly urges your support of this bill. If you have any questions, please do not hesitate to contact PHOCUSED at 521-7462 or by e-mail at admin@phocused-hawaii.org.

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From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB961 on Feb 27, 2015 10:10AM*
Date: Wednesday, February 25, 2015 11:33:23 AM

SB961
Submitted on: 2/25/2015
Testimony for JDL/WAM on Feb 27, 2015 10:10AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Chair Keith-Agaran and Chair Tokuda and Members of the Committees:

I am Mary Pat Waterhouse from the Advisory Board of the Waipahu Aloha Clubhouse and I thank you for hearing this bill and for the opportunity to submit testimony on SB 961 SD1.

I strongly support SB 961 SD1, with one modification.

The original Assisted Community Treatment (ACT) law was passed over 10 years ago but it wasn't used because of the law's major problems and flaws. To correct these problems and flaws, major changes were made to the law 2 years ago. The purpose of the law that passed 2 years ago and the one that we are trying to pass today have the same objectives, that is to stabilize psychotic, seriously mentally ill and/or substance abuse individuals who cycle between the streets, hospitals and/or correctional facilities and to permit the Family Court mandate these individuals to receive treatment in the community. This process to support our at risk community members has been validated by the findings in 9 studies that have shown significant decreases of between a 50% to 75% in the number of days these individuals are hospitalized, incarcerated, and are homeless.

The one modification I would recommend is if the court thinks it is necessary, the judge should be able appoint a guardian ad litem (GAL). Individuals may need a guardian ad litem to represent them if the individual cannot be present at the hearing. Only then can the individual's best interests be presented to the judge. Therefore, I respectfully request that the GAL paragraph which was in the original bill in Section 334-126 be placed back into the bill and change "the court shall" appoint a GAL to "the court may".

Thank you,

Mary Pat Waterhouse