



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in SUPPORT of SB 961
RELATING TO MENTAL HEALTH TREATMENT

SENATOR JOSH GREEN, CHAIR
SENATE COMMITTEE ON HEALTH (HTH)
AND

SENATOR SUZANNE CHUN OAKLAND, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING (HSH)
Hearing Date: February 10, 2015 Room Number: 016
1:30 p.m.

1 **Fiscal Implications:** Indeterminate.

2 **Department Testimony:** The Department of Health (DOH) supports this bill as the changes are
3 likely to improve implementation of Assisted Community Treatment (ACT).

4 The Assisted Community Treatment statute mandates that DOH gather information from
5 treating providers related to MH-1s and hospitalization of individuals who are under an order to
6 treat (OTT) and submit an annual report of its findings and recommendations to the Legislature.
7 Although DOH is mandated to gather information from treating providers, there is currently no
8 corresponding mandate for treating providers to provide this information to DOH.

9 DOH offers a proposed amendment to Act 221, Section 21 of the Sessions Laws of
10 Hawaii that will enhance the ability of the DOH to carry out its mandated responsibility to gather
11 information for the purpose of providing an annual report to the Legislature. The DOH seeks to
12 accomplish a simple language clean-up which enables the Adult Mental Health Division
13 (AMHD) to obtain information for the annual report. AMHD requests DOH authority in

1 gathering information from treating providers to be narrowly tailored to the ACT program
2 evaluation rather than the broader follow-up on treatment delivered to individuals with a court
3 order for ACT.

4 **Offered Amendments:** The DOH recommends the following amendment to Act 221, Section
5 21, Session Laws of Hawaii 2013. DOH would like the addition of a requirement directing
6 treating providers to submit the information specified in §334-123 section 21(a) (1) and (2) to the
7 DOH or its designee, by September 30th of each year, for the purposes of compiling the report.

8 L 2013, c 221, §21

9 SECTION 21. (a) Any treating provider wishing to file a petition pursuant to section 334-123,
10 Hawaii Revised Statutes, for assisted community treatment shall:

11 (1) Obtain historical information related to MH-1s and hospitalization of persons who are under
12 an order to treat; and

13 (2) Track further episodes of MH-1s and hospitalization while the persons are under the order.

14 (b) An entity designated by the department of health shall gather information from treating
15 providers related to MH-1s and hospitalization of persons who are under an order to treat.

16 Treating providers shall provide the information specified in section 21(a) (1) and (2) to the
17 Department of Health or its designee by September 30th of each year, for the purposes of

18 compiling the written report. The Department of Health [~~and~~] shall submit an annual report of its
19 findings and recommendations to the legislature no later than twenty days prior to the convening
20 of every regular session beginning with the regular session of 2015.

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



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Health

Senator Josh Green, Chair

Senator Glenn Wakai, Vice Chair

Testimony to the Senate Committee on Human Services

Senator Suzanne Chun Oakland, Chair

Senator Josh Green, Vice Chair

Tuesday, February 10, 2015, 1:30 p.m.

State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

By

R. Mark Browning

Deputy Chief Judge, Senior Family Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 961, Relating to Mental Health Treatment

Purpose: Removes the ten day time limit for setting a hearing date on a petition for assisted community treatment. Allows for notice of continuation hearings to the subject to be served via the public defender. Requires the court to appoint a guardian ad litem when the subject of a petition for assisted community treatment fails to appear at a hearing. Removes provisions governing the appointment of a public defender. Removes provisions allowing the court to order a subject to be examined by a licensed physician.

Judiciary's Position:

The Family Court takes no position on this bill but respectfully offers the following comments for the Committee's consideration.

1. Page 5, from line 9: We respectfully suggest that no changes be made to this section (e). Appointing a guardian ad litem with no further evidence than the subject's absence from a hearing requires an unwarranted assumption of the subject's incapacity. The law rarely allows such an assumption without any basis except in particular circumstances. For example, State law does not require (or allow) such an assumption even with persons who are subjects of involuntary commitment petitions.
2. Page 5, from line 13: We respectfully suggest the following language in lieu of the current section (f):

“The public defender or other court-appointed counsel shall represent the subject upon filing of the petition. A copy of the petition shall be served upon the public defender by the petitioner. The public defender or the court-appointed counsel may withdraw upon a showing that the subject is not indigent. If the subject does not desire representation, the court may discharge the attorney after finding that the subject understands the proceedings and the relief prayed for in the petition.”

The Office of the Public Defender is well equipped to assist persons who become subjects to these petitions. The “other court-appointed counsel” language is necessary in case the public defender must “conflict out” of the case due to a prior representation. While this statute is not as invasive of personal liberties as the involuntary commitment statute, this statute does implicate the loss of significant personal liberties. Hence, the need for an attorney as early as possible to ensure that such liberties are protected. Furthermore, this statute recognizes that need for early representation and, in fact, already refers to the public defender as an integral part of the process set forth by the statute.

Thank you for the opportunity to submit testimony on this matter.



HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2015

Committee on Health Committee on Human Services Testimony on S.B. 961 Relating to Mental Health Treatment

**February 10, 2015, 1:30 P.M.
Conference Room 016**

Chair Green, Chair Chun-Oakland and Members of the Committees:

The Hawaii Disability Rights Center offers the following comments which seek clarification as to the intent of this bill. We were active participants in the discussion at the Legislature when the current law was passed. We felt it struck a reasonable balance between the need to provide mental health treatment to individuals and the protection of their civil liberties and constitutional rights. We have participated in meetings of the Mental Health Task Force where the Judiciary spoke to us about how the law was being implemented. We understand that as the law unfolds modifications may be needed either to facilitate its operation or to clarify the underlying intent and purposes. To the extent that this bill seeks to do that it seems worthy of a discussion.

That said, there are some provisions in here that are confusing and do raise legitimate questions. The first is the seeming elimination of the appointment of the Public Defender to represent the individual who is the subject of the proceeding. We question the wisdom as well as the legality of that. Given the potential "liberty" interests that are at stake there is no rationale that has been articulated to support eliminating this requirement. Moreover the bill is confusing because it retains some provisions authorizing service of certain notices upon the Public Defender. For that reason it is difficult to discern if there are drafting issues with the bill that may be masking its intent.

Similarly 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 as well.

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.

Finally, while there may be a valid reason to appoint a guardian ad litem on a case by case basis, this bill mandates the appointment when the Respondent fails to appear. It states that the guardian will represent the individual's "best interests". While that sounds benevolent we do have some concern as to how the guardian will assess that and specifically we are concerned that as the measure also removes the requirement that an attorney be appointed, that these proceedings will turn into forums where the guardian will simply be one more person advocating for the administration of medication rather than representing and protecting the rights of the individual.

We believe that making improvements to the law is always a good idea. We would like however to receive clarification as to the points we have raised, so that all the stakeholders involved with this issue will have a better understanding of what this bill seeks to accomplish.

Thank you for the opportunity to testify on this measure.

Hawaii Disability Legal Services, LLC

1188 Bishop Street, Suite 2002 ♦ Honolulu, Hawaii, 96813 ♦ Tel: (808) 536-8074 ♦ Fax: (877) 335-2254

February 9, 2015

Committee on Health
Committee on Human Services
Testimony on S.B. 961
Relating to Mental Health Treatment

February 10, 2015, 1:30 p.m.
Conference Room 016

STRONG SUPPORT

Dear Chair Green, Chair Chun-Oakland, 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). I regularly work with our mentally ill, homeless population. Many of these individuals are frequently incarcerated and hospitalized for actions and behaviors related to untreated mental illness. They receive some treatment in our hospitals, jails, and prisons, but once released they return to the streets without the necessary support to continue their treatment and medication. The result is they cycle back into jail, prison, or hospitals. The less restrictive option to involuntary commitment, ACT also appears to be a solution to helping these individuals break out of the cycle by teaching them how to access the treatment they need and live independently in our communities, hopefully with significant improvement in their well-being.

I am strongly in favor of the proposed amendments to ACT. They are made to ensure these cases flow more smoothly through the Court for all participants, as well as to ensure the best interests of the individual with mental health concerns at issue.

First, the amendments ensure a Public Defender is appointed. The prior statute did not clearly appoint a Public Defender to represent the individual whose mental health is in question. The amendments take out the Court's option to appoint one, instead automatically granting the individual a Public Defender unless he or she desires and retains other counsel. In doing so, this ensures this individual has legal representation, rather than possibly having to proceed without any in a court proceeding he or she may not even understand.

Second, these amendments provide a Guardian ad Litem to represent this individual's best interests. Although the Public Defender can protect this person's legal interests, the Public Defender's job does not extend to protecting his or her personal interests. A Guardian ad Litem affords this extra layer of protection to this person. Typically provided where someone may not be capable of protecting his or her own interests, this amendment is made to fix the oversight of such a provision in this law, and particularly where this individual may not even be well enough to appear in Court on his or her own behalf.



Third, the original law required repeated personal service on the subject of the petition. This meant having a stranger approach this person on the street and thrust legal paperwork upon him or her. A potentially terrifying experience and particularly for someone with mental illness, these amendments require personal service of the paperwork at the initiation of the case. However, afterward service would be on the Public Defender (or his or her attorney) who can then inform their client of the proceedings and events in a non-threatening and more easily comprehensible manner.

Fourth, the amendments require examination by a licensed psychiatrist no longer than twenty days prior to the filing of the petition. This is in large part to clean up the language of the statute. Previous language made unclear in part whether the subject had to be examined at all or at least contemporaneously with the filing of the petition. In a separate section, the statute specified examination had to take place within ten days prior to the filing of the petition. These amendments are intended to rectify the omissions, but to also provide twenty instead of ten days prior to filing to allow time for additional investigation and professional coordination as needed before the filing occurs.

Fifth, the amendment lifting the ten day deadline for hearing on the filing of the petition is to ensure these cases flow smoothly and do not disrupt operations of the Court or others involved. It is expected that most of these cases will be done by the offices of the Attorney General and the Public Defender in the Family Court. The ten day deadline has the possibility of overburdening these bodies' already significant workload. This amendment is intended to allow scheduling to take place in a timelier, more manageable manner among these entities.

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



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February 9, 2015

Committee on Health
Committee on Human Services
Testimony on S.B. 961
Relating to Mental Health Treatment

February 10, 2015, 1:30 P.M.
Conference Room 016

STRONG SUPPORT

Chair Green, Chair Chun-Oakland and Members of the Committees:

Mental Health America of Hawaii is in strong support of SB961. We have spent many hours during the past two years working with I.H.S, the attorneys general from Adult Mental Health Division and Family Court, NAMI, Disability Rights Center, the pro bono attorney who represented the first case presented to Family court, and other advocates.

The changes recommended in this bill were drafted by the Family Court Attorney General after many discussions among these parties. These changes stem from the experience with the first case presented to Family Court which came up against some technical difficulties that this bill addresses.

For example, every time there was a court hearing, the person who was the subject of the case had to be served personally. This was deemed to be an undue and intimidating experience to subject her to.

The addition of a Guardian ad Litem is being recommended. Much as in the cases where a Guardian ad Litem is automatically assigned to children who have been removed from their families and are under the jurisdiction in the Family Court, the clients in ACT cases are unable to speak for themselves because one of the criteria that must be met for eligibility for an ACT order is that *"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."* Having a Guardian ad Litem appointed means there will be someone

specifically delegated to make a recommendation to the Court on the best interests of the subject of the Petition, since the attorneys' job is to work out the legal issues but not necessarily address the best personal interests of the individual.

While one section appears to eliminate the ordering of a Public Defender, what it actually does is remove confusion and duplication. There is an earlier section which automatically assigns a Public Defender: On page three, you will find: "*1334-125 Notice. (a) Notice of the hearing shall be: . . . 3) Served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as applicable.*" This indicates that a public defender is automatically appointed, thus making section (f) on page 5 unnecessary and requiring a pro-active "ordering" by the Court rather than an automatic assignment. Additionally, section (c) on page 4, lines 7-11, which are being added by this bill, also carries the assumption that a Public Defender has been appointed.

There are several other modifications to timing of filings which we deem important to enable the Assisted Community Treatment law to succeed.

Thank you for your consideration of this testimony.

Sincerely yours,



Marya Grambs
Executive Director

From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: wailua@aya.yale.edu
Subject: Submitted testimony for SB961 on Feb 10, 2015 13:30PM
Date: Monday, February 09, 2015 7:30:32 PM

SB961

Submitted on: 2/9/2015

Testimony for HTH/HSB on Feb 10, 2015 13:30PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Hawaii Assoc. of Professional Nurses	Support	No

Comments: Aloha Senator Josh Green, Chair, Senator Glenn Wakai, Vice Chair, and Honorable members of the Senate COMMITTEE ON HEALTH, Senator Suzanne Chun Oakland, Chair, Senator Josh Green, Vice Chair and Honorable members of the Senate COMMITTEE ON HUMAN SERVICES AND HOUSING. Mahalo for this opportunity to testify in support of SB 961, on behalf of the Hawaii Association of Professional Nurses (HAPN). As a primary psychiatric provider, both in the public and private sector, I am aware of the large percentage of homeless people who have a debilitating mental illness and how this condition contributes to their homelessness. This is not to say that there are people who are not homeless who also have debilitating mental illness. We know that with each relapse of psychosis, damage occurs in the brain tissue that precludes the person from maintaining their previous baseline of functioning. For this reason early medical intervention can and does protect against declining levels of functioning in these patients. The longer we wait to treat psychosis, the lower the baseline of function falls. By involuntarily committing a person in psychosis to medical treatment, we are actually doing that person a favor by preventing a further permanent decline in baseline of functioning. If passed, this bill will benefit a most vulnerable population. Many of these people are unaware that they have a psychosis; a current theory holds that they have physical changes in the frontal lobes of the brain that prevent the person from recognizing the illness, and so they don't believe they are sick and therefore do not need or wish to have treatment. This condition is named anosognosia. We would also like to point out that in current practice, many of these people may be patients of psychiatric mental health advance practice registered nurses (PMH APRNs) who are providing primary care to these folks. PMH APRNs are also now being hired as hospitalists at the locations housing inpatient psychiatric units, as well as filling psychiatrist positions at the community based case management companies. There is very little difference between the practices of a Psychiatrist and that of a PMH APRN. To avoid discrimination against patients of APRNs and also to make the system more fluid in its workings, we recommend inserting "and/or PMH APRN" in all instances in the bill where the word "Psychiatrist" exists. Hawaii is an APRN full practice authority state and has been a leader in this country's changes to improve access to health care in large part due to the progressive and innovative thinking of our legislature. We would hope that this is

a continuing quality present in this very session. Thank you for this opportunity to testify in strong support of SB 961 with the amendment adding PMH APRN. Wailua Brandman APRN PMH CNS/NP-BC FAANP Chair, HAPN Legislative Committee
wailua@aya.yale.edu 808-255-4442

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Re: SB961
To: Committee on Health and Human Services
From: Connie Mitchell, Executive Director
IHS, The Institute for Human Services, Inc.
Date: Feb. 8, 2015

IHS is in strong support of this bill which amends the statute that allowed for Assisted Community Treatment passed two sessions ago. The amendments proposed continue the intent of the statute to apply to a limited population impacted significantly by their mental illness and/or their substance abuse.

As the first party to petition on behalf of a chronically homeless woman), it is obvious that we desire changes to the statute to help streamline the process while continuing to protect an individual's right to due process . Our subject of the petition is chronically homeless, had a long history of mental illness and substance abuse with admissions to the Hawaii State Hospital. She also had numerous episodes of incarceration and had been brought to the emergency room for Mental Health Evaluation (MH1) prior to petition and now remains homeless on the street at this moment , despite offers of housing and help.

The amendments proposed in this bill will help improve the process of petitioning for someone incapacitated by mental illness or substance abuse by allowing the appointment of a guardian to advocate on their behalf if the subject chooses not to show up in court.

Contrary to testimony that has been submitted that refers to the removal of the role of the Public Defender in advocating for the subject of the petition, the Public Defender remains an integral part of the process. The language that was removed is redundant and that is the reason for removal.

Finally, the time frame of 20 days for the subject to have been evaluated by the psychiatrist prior to court hearing was articulated to allow for the court to be scheduled and at the same time not so long ago that the assessment might not be valid anymore.

We are in strong support of these amendments.



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

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TO: Senator Josh Green, Chair, Committee on Health
Senator Suzanne Chun Oakland, Chair, Committee on Human Services and Housing
Senator Glenn Wakai, Vice Chair, Committee on Health
Members, Committees on Health, and Human Services and Housing

FROM: Scott Morishige, Executive Director, PHOCUSED

HEARING: Senate Committees on Health, and Human Services and Housing
Tuesday, February 10, 2015 at 1:30 p.m. in Conf. Rm. 016

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

Thank you for the opportunity to provide testimony in **support** of SB961, 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 by the Attorney General's office 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.



National Association of Social Workers Hawai'i Chapter

Date: February 6, 2015

To: [Hearing SB 961](#)
Senate Committee on Health
Tuesday, February 10, 2015 1:30p
Hawaii State Legislature, Room 016

The National Association of Social Workers, Hawaii Chapter (NASW) strongly supports Senate Bill 961 , relating to Mental Health Treatment

Removing the 10 day time limit for setting a hearing date on a petition for community based treatment allows for more time for a psychiatrist to examine the client. There is a shortage of psychiatric care available in the state of Hawai'i, most notably on the neighbor islands. This elimination of the time frame would allow for more time to access psychiatric evaluation.

Requiring the court to appoint a Guardian Ad Litem gives support and protects the interests of the client, when they are unable to be mentally capable of looking out for their own interests. This will also allow for a hearing to continue if the client is not present, to be able to get community based behavioral health treatment for clients who are symptomatic and living with chronic, persistent mental illness.

These proposed changes to Section 334-123 of the Hawaii Revised Statutes will allow for people who are critically mentally ill to receive treatment without having to commit crime to get intensive care and receive treatment in the community setting instead of in an institutionalized setting. Community based mental health is more accessible to people with severe and persistent mental illness, this setting is also more effective in carein gfor their needs than are mental institutions (WHO, Mental Health and Substance Abuse, 2007)¹

Sincerely,

Sonja Bigalke-Bannan, MSW, LSW
Executive Director
National Association of Social Workers, Hawaii Chapter

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¹ WHO, 2007 Mental Health and Substance Abuse
<http://www.who.int/mediacentre/news/notes/2007/np25/en/>

