

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO ASSISTED COMMUNITY TREATMENT.

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

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

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



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1 the ACT process and eliminate the need to involve the office of  
2 the public defender.

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

16 SECTION 3. Section 334-125, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§334-125 Notice.** (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,~~] guardian ad litem  
13          appointed for the subject of the petition;

14          (4) Served on the attorney for the subject of the  
15          petition, [~~or other court appointed attorney as~~] if  
16          applicable; and

17          [~~(4)~~] (5) Given to other persons as the court may  
18          designate.

19          (b) The notice shall include the following:

20          (1) The date, time, place of hearing, a clear statement of  
21          the purpose of the proceedings and possible



1 consequences to the subject, and a statement of the  
2 legal standard upon which assisted community treatment  
3 is being considered;

4 (2) A copy of the petition;

5 (3) Notice that the subject of the petition has been  
6 assigned a guardian ad litem to represent the best  
7 interests of the subject throughout the proceeding;

8 (4) The name and contact information of the guardian ad  
9 litem appointed for the subject of the petition; and

10 ~~[(3)]~~ (5) Notice that the subject of the petition is  
11 entitled to the assistance of an attorney, and that  
12 ~~[the public defender has been notified of these~~  
13 ~~proceedings; and~~

14 ~~(4) Notice that if the subject does not want to be~~  
15 ~~represented by the public defender,]~~ the subject may  
16 contact ~~[the subject's]~~ their own attorney.

17 (c) Notice of all subsequent hearings shall be served in  
18 accordance with subsections (a) and (b), and in accordance with  
19 all applicable family court rules relating to service of notice,  
20 including that service need not be made on parties in default  
21 for failure to appear."



1 SECTION 4. Section 334-126, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§334-126 Hearing on petition.** (a) The court shall  
4 adjourn or continue a hearing for failure to timely notify a  
5 person entitled to be notified unless the court determines that  
6 the interests of justice require that the hearing continue  
7 without adjournment or continuance.

8 (b) The time and form of the procedure incident to hearing  
9 the issues in the petition shall be provided by family court  
10 rule and consistent with this part.

11 (c) Hearings may be held at any convenient place within  
12 the circuit. The subject of the petition, any interested party,  
13 or the family court upon its own motion may request a hearing in  
14 another court because of inconvenience to the parties,  
15 witnesses, or the family court or because of the subject's  
16 physical or mental condition.

17 (d) The hearing shall be closed to the public, unless the  
18 subject of the petition requests otherwise. Individuals  
19 entitled to notice are entitled to be present in the courtroom  
20 for the hearing and to receive a copy of the hearing transcript



1 or recording, unless the court determines that the interests of  
2 justice require otherwise.

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

9 [~~(f) Notwithstanding chapter 802 to the contrary, the~~  
10 ~~public defender or other court appointed counsel shall represent~~  
11 ~~the subject upon filing of the petition. A copy of the petition~~  
12 ~~shall be served upon the public defender by the petitioner. The~~  
13 ~~public defender or the court appointed counsel may withdraw upon~~  
14 ~~a showing that the subject is not indigent. If the subject does~~  
15 ~~not desire representation, the court may discharge the attorney~~  
16 ~~after finding that the subject understands the proceedings and~~  
17 ~~the relief prayed for in the petition. Nothing in this~~  
18 ~~subsection shall be construed to:~~

19 (1) ~~Require the subject of the petition to accept legal~~  
20 ~~representation by the public defender or other court-~~  
21 ~~appointed counsel, or~~



1       ~~(2)~~ ~~Prevent the subject of the petition from obtaining~~  
2           ~~their own legal counsel to represent them in any~~  
3           ~~proceeding.~~

4       ~~(g)]~~ (f) If the subject of the petition is represented by  
5       ~~[an]~~ their own attorney, the attorney shall be allowed adequate  
6       time for investigation of the matters at issue and for  
7       preparation, and shall be permitted to present the evidence that  
8       the attorney believes necessary for a proper disposition of the  
9       proceeding.

10       ~~[(h)]~~ (g) No subject of the petition shall be ordered to  
11       receive assisted community treatment unless at least one  
12       psychiatrist or advanced practice registered nurse with  
13       prescriptive authority and who holds an accredited national  
14       certification in an advanced practice registered nurse  
15       psychiatric specialization testifies in person at the hearing  
16       who has personally assessed the subject, within a reasonable  
17       time before the filing of the petition up to the time when the  
18       psychiatrist or advanced practice registered nurse with  
19       prescriptive authority and who holds an accredited national  
20       certification in an advanced practice registered nurse  
21       psychiatric specialization provides oral testimony at court.



1 The testimony of the psychiatrist or advanced practice  
2 registered nurse with prescriptive authority and who holds an  
3 accredited national certification in an advanced practice  
4 registered nurse psychiatric specialization shall state the  
5 facts which support the allegation that the subject meets all  
6 the criteria for assisted community treatment, provide a written  
7 treatment plan, which shall include non-mental health treatment  
8 if appropriate, provide the rationale for the recommended  
9 treatment, and identify the designated mental health program  
10 responsible for the coordination of care.

11 If the recommended assisted community treatment includes  
12 medication, the testimony of the psychiatrist or advanced  
13 practice registered nurse with prescriptive authority and who  
14 holds an accredited national certification in an advanced  
15 practice registered nurse psychiatric specialization shall  
16 describe the types or classes of medication which should be  
17 authorized, and describe the physical and mental beneficial and  
18 detrimental effects of such medication.

19 ~~(+i)~~ (h) The subject of the petition may secure a  
20 psychiatric examination and present the findings as evidence at  
21 the hearing. The subject shall be entitled to a psychiatric



1 examination at a community mental health center if the subject  
2 so desires, and if an examination has not already been conducted  
3 at a community mental health center which will lead to  
4 psychiatric testimony at the hearing."

5 SECTION 5. Section 334-127, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) If after hearing all relevant evidence, including the  
8 results of any diagnostic examination ordered by the family  
9 court, the family court finds that the criteria for assisted  
10 community treatment under section 334-121(1) have been met  
11 beyond a reasonable doubt and that the criteria under section  
12 334-121(2) to 334-121(4) have been met by clear and convincing  
13 evidence, the family court shall order the subject to obtain  
14 assisted community treatment for a period of no more than one  
15 year. The written treatment plan submitted pursuant to section  
16 [~~334-126(h)~~] 334-126(g) shall be attached to the order and made  
17 a part of the order.

18 If the family court finds by clear and convincing evidence  
19 that the beneficial mental and physical effects of recommended  
20 medication outweigh the detrimental mental and physical effects,  
21 if any, the order may authorize types or classes of medication



1 to be included in treatment at the discretion of the treating  
2 psychiatrist or advanced practice registered nurse with  
3 prescriptive authority and who holds an accredited national  
4 certification in an advanced practice registered nurse  
5 psychiatric specialization.

6 The court order shall also state who should receive notice  
7 of intent to discharge early in the event that the treating  
8 psychiatrist or advanced practice registered nurse with  
9 prescriptive authority and who holds an accredited national  
10 certification in an advanced practice registered nurse  
11 psychiatric specialization determines, prior to the end of the  
12 court ordered period of treatment, that the subject should be  
13 discharged early from assisted community treatment.

14 Notice of the order shall be provided to those persons  
15 entitled to notice pursuant to section 334-125."

16 SECTION 6. Section 334-129, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) A treating psychiatrist or advanced practice  
19 registered nurse with prescriptive authority and who holds an  
20 accredited national certification in an advanced practice  
21 registered nurse psychiatric specialization may prescribe or



1 administer to the subject of the order reasonable and  
2 appropriate medication or medications, if specifically  
3 authorized by the court order, and treatment that is consistent  
4 with accepted medical standards and the family court order,  
5 including the written treatment plan submitted pursuant to  
6 section [~~334-126(h)~~] 334-126(g)."

7 SECTION 7. Section 334-133, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§334-133 Petition for additional period [+]of[+] treatment; hearing.** (a) Prior to the expiration of the period  
10 of assisted community treatment ordered by the family court, any  
11 interested party may file a petition with the family court for  
12 an order of continued assisted community treatment. The  
13 petition shall be filed, a guardian ad litem be appointed, and  
14 notice be provided in the same manner as under sections 334-123  
15 and 334-125.

17 (b) The family court shall appoint a guardian ad litem,  
18 hold a hearing on the petition, and make its decision in the  
19 same manner as provided under sections 334-123 to 334-127. The  
20 family court may order the continued assisted community  
21 treatment for not more than one year after the date of the



1 hearing pursuant to this section if the court finds that the  
2 criteria for assisted community treatment continue to exist and  
3 are likely to continue beyond one hundred eighty days.

4 (c) Nothing in this section shall preclude the subject's  
5 stipulation to the continuance [†]of[†] an existing court order.  
6 This section shall be in addition to the provisions on the  
7 objection to discharge."

8 SECTION 8. Section 334-134, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§334-134 Hearing for discharge.** Any person may petition  
11 the family court for the discharge of an order of assisted  
12 community treatment during the period of assisted community  
13 treatment after sixty days from the most recent hearing  
14 involving the subject of the order. The petition shall be  
15 filed, guardian ad litem appointed, notice given, hearing held,  
16 and order made in the same manner as provided for the original  
17 petition alleging that the subject of the order met the criteria  
18 for assisted community treatment."

19 SECTION 9. Section 802-1, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



1           "(b) [~~Except as provided in section 334-126(f), the~~] The  
2 appearance of the public defender in all judicial proceedings  
3 shall be subject to court approval."

4           SECTION 10. Section 802-5, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6           "(a) [~~Except as provided in section 334-126(f), when~~] When  
7 it shall appear to a judge that a person requesting the  
8 appointment of counsel satisfies the requirements of this  
9 chapter, the judge shall appoint counsel to represent the person  
10 at all stages of the proceedings, including appeal, if any. If  
11 conflicting interests exist, or if the interests of justice  
12 require, the court may appoint private counsel, who shall  
13 receive reasonable compensation for necessary expenses,  
14 including travel, the amount of which shall be determined by the  
15 court, and reasonable fees pursuant to subsection (b). All  
16 expenses and fees shall be ordered by the court. Duly ordered  
17 payment shall be made upon vouchers approved by the director of  
18 finance and warrants drawn by the comptroller."

19           SECTION 11. This Act does not affect rights and duties  
20 that matured, penalties that were incurred, and proceedings that  
21 were begun before its effective date.





# S.B. NO. 199

**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 interest of a mentally ill individual in assistant community treatment proceedings. Eliminates the need for the office of the public offender to participate in the proceedings.

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

