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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.

12           The legislature finds that existing law does not require a  
13 guardian ad litem to be appointed to represent the individual  
14 with severe mental illness participating in ACT. The  
15 legislature further finds that the mandatory appointment of a  
16 guardian ad litem will improve the ACT process by providing an  
17 advocate for the concerned individual's needs and interest.



1 The purpose of this Act is to require the court to appoint,  
2 at the time an ACT petition is filed, a guardian ad litem to  
3 represent the best interests of the individual who is subject to  
4 the petition throughout the pendency of the judicial  
5 proceedings.

6 SECTION 2. Chapter 334, Hawaii Revised Statutes, is  
7 amended by adding a new section to part VIII to be appropriately  
8 designated and to read:

9 "§334- Appointment of guardian ad litem. (a) The  
10 family court, upon receipt of a petition filed under this part,  
11 shall appoint a guardian ad litem to represent the best  
12 interests of the subject of the petition throughout the pendency  
13 of the proceedings."

14 SECTION 3. Section 334-125, Hawaii Revised Statutes, is  
15 amended by amending subsections (a) and (b) to read as follows:

- 16 "(a) Notice of the hearing shall be:
- 17 (1) Served personally on the subject of the petition
  - 18 pursuant to family court rules;
  - 19 (2) Served personally or by certified or registered mail,
  - 20 return receipt requested, deliverable to the addressee
  - 21 only, to as many as are known to the petitioner of the



1 subject's spouse or reciprocal beneficiary, legal  
 2 parents, adult children, and legal guardian, if one  
 3 has been appointed. If the subject of the petition  
 4 has no living spouse or reciprocal beneficiary, legal  
 5 parent, adult children, or legal guardian, or if none  
 6 can be found, notice of the hearing shall be served on  
 7 at least one of the subject's closest adult relatives,  
 8 if any can be found;

9 (3) Served on the [~~public defender,~~] guardian ad litem  
 10 appointed for the subject of the petition;

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

14 [~~4~~] (5) Given to other persons as the court may  
 15 designate.

16 (b) The notice shall include the following:

17 (1) The date, time, place of hearing, a clear statement of  
 18 the purpose of the proceedings and possible  
 19 consequences to the subject, and a statement of the  
 20 legal standard upon which assisted community treatment  
 21 is being considered;



- 1 (2) A copy of the petition;
- 2 (3) Notice that the subject of the petition has been
- 3 assigned a guardian ad litem to represent the best
- 4 interests of the subject throughout the proceeding;
- 5 (4) The name and contact information of the guardian ad
- 6 litem appointed for the subject of the petition; and
- 7 ~~[-3-]~~ (5) Notice that the subject of the petition is
- 8 entitled to the assistance of an attorney, and that
- 9 ~~[the public defender has been notified of these~~
- 10 ~~proceedings; and~~
- 11 ~~-(4)-~~ ~~Notice that if the subject does not want to be~~
- 12 ~~represented by the public defender,]~~ the subject may
- 13 contact ~~[the subject's]~~ their own attorney."

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

16 **"§334-126 Hearing on petition.** (a) The court shall  
17 adjourn or continue a hearing for failure to timely notify a  
18 person entitled to be notified unless the court determines that  
19 the interests of justice require that the hearing continue  
20 without adjournment or continuance.



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

4 (c) Hearings may be held at any convenient place within  
5 the circuit. The subject of the petition, any interested party,  
6 or the family court upon its own motion may request a hearing in  
7 another court because of inconvenience to the parties,  
8 witnesses, or the family court or because of the subject's  
9 physical or mental condition.

10 (d) The hearing shall be closed to the public, unless the  
11 subject of the petition requests otherwise. Individuals  
12 entitled to notice are entitled to be present in the courtroom  
13 for the hearing and to receive a copy of the hearing transcript  
14 or recording, unless the court determines that the interests of  
15 justice require otherwise.

16 (e) The subject of the petition [~~shall~~] is not required to  
17 be present at the hearing [~~. However, if~~]; provided that the  
18 subject has been served with the petition and [~~does not appear~~  
19 ~~at the hearing, the court may appoint a~~] the appointed guardian  
20 ad litem is present to represent the best interests of the  
21 subject through the proceedings.



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

11           ~~(1) Require the subject of the petition to accept legal~~  
12           ~~representation by the public defender or other court~~  
13           ~~appointed counsel; or~~

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

17           ~~(g)]~~ (f) If the subject of the petition is represented by  
18 [an] their own attorney, the attorney shall be allowed adequate  
19 time for investigation of the matters at issue and for  
20 preparation, and shall be permitted to present the evidence that



1 the attorney believes necessary for a proper disposition of the  
2 proceeding.

3       ~~(h)~~ (g) No subject of the petition shall be ordered to  
4 receive assisted community treatment unless at least one  
5 psychiatrist or advanced practice registered nurse with  
6 prescriptive authority and who holds an accredited national  
7 certification in an advanced practice registered nurse  
8 psychiatric specialization testifies in person at the hearing  
9 who has personally assessed the subject, within a reasonable  
10 time before the filing of the petition up to the time when the  
11 psychiatrist or advanced practice registered nurse with  
12 prescriptive authority and who holds an accredited national  
13 certification in an advanced practice registered nurse  
14 psychiatric specialization provides oral testimony at court.  
15 The testimony of the psychiatrist or advanced practice  
16 registered nurse with prescriptive authority and who holds an  
17 accredited national certification in an advanced practice  
18 registered nurse psychiatric specialization shall state the  
19 facts which support the allegation that the subject meets all  
20 the criteria for assisted community treatment, provide a written  
21 treatment plan, which shall include non-mental health treatment



1 if appropriate, provide the rationale for the recommended  
2 treatment, and identify the designated mental health program  
3 responsible for the coordination of care.

4 If the recommended assisted community treatment includes  
5 medication, the testimony of the psychiatrist or advanced  
6 practice registered nurse with prescriptive authority and who  
7 holds an accredited national certification in an advanced  
8 practice registered nurse psychiatric specialization shall  
9 describe the types or classes of medication [~~which~~] that should  
10 be authorized, and describe the physical and mental beneficial  
11 and detrimental effects of such medication.

12 [~~(i)~~] (h) The subject of the petition may secure a  
13 psychiatric examination and present the findings as evidence at  
14 the hearing. The subject shall be entitled to a psychiatric  
15 examination at a community mental health center if the subject  
16 so desires, and if an examination has not already been conducted  
17 at a community mental health center [~~which~~] that will lead to  
18 psychiatric testimony at the hearing."

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



1           "(b) If after hearing all relevant evidence, including the  
2 results of any diagnostic examination ordered by the family  
3 court, the family court finds that the criteria for assisted  
4 community treatment under section 334-121(1) have been met  
5 beyond a reasonable doubt and that the criteria under section  
6 334-121(2) to 334-121(4) have been met by clear and convincing  
7 evidence, the family court shall order the subject to obtain  
8 assisted community treatment for a period of no more than one  
9 year. The written treatment plan submitted pursuant to section  
10 [~~334-126(h)~~] 334-126(g) shall be attached to the order and made  
11 a part of the order.

12           If the family court finds by clear and convincing evidence  
13 that the beneficial mental and physical effects of recommended  
14 medication outweigh the detrimental mental and physical effects,  
15 if any, the order may authorize types or classes of medication  
16 to be included in treatment at the discretion of the treating  
17 psychiatrist or advanced practice registered nurse with  
18 prescriptive authority and who holds an accredited national  
19 certification in an advanced practice registered nurse  
20 psychiatric specialization.



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

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

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

13           "(a) A treating psychiatrist or advanced practice  
14 registered nurse with prescriptive authority and who holds an  
15 accredited national certification in an advanced practice  
16 registered nurse psychiatric specialization may prescribe or  
17 administer to the subject of the order reasonable and  
18 appropriate medication or medications, if specifically  
19 authorized by the court order, and treatment that is consistent  
20 with accepted medical standards and the family court order,



1 including the written treatment plan submitted pursuant to  
2 section [~~334-126(h)~~.] 334-126(g)."

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

5 "§334-133 Petition for additional period [{}of{}]   
6 treatment; hearing. (a) Prior to the expiration of the period  
7 of assisted community treatment ordered by the family court, any  
8 interested party may file a petition with the family court for  
9 an order of continued assisted community treatment. The  
10 petition shall be filed, a guardian ad litem be appointed, and  
11 notice be provided in the same manner as under sections 334-123  
12 and 334-125.

13 (b) The family court shall appoint a guardian ad litem,  
14 hold a hearing on the petition, and make its decision in the  
15 same manner as provided under sections 334-123 to 334-127. The  
16 family court may order the continued assisted community  
17 treatment for not more than one year after the date of the  
18 hearing pursuant to this section if the court finds that the  
19 criteria for assisted community treatment continue to exist and  
20 are likely to continue beyond one hundred eighty days.



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

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

7 "**§334-134 Hearing for discharge.** Any person may petition  
8 the family court for the discharge of an order of assisted  
9 community treatment during the period of assisted community  
10 treatment after sixty days from the most recent hearing  
11 involving the subject of the order. The petition shall be  
12 filed, guardian ad litem appointed, notice given, hearing held,  
13 and order made in the same manner as provided for the original  
14 petition alleging that the subject of the order met the criteria  
15 for assisted community treatment."

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

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



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

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

16 SECTION 11. This Act does not affect rights and duties  
17 that matured, penalties that were incurred, and proceedings that  
18 were begun before its effective date.

19 SECTION 12. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 13. This Act shall take effect on May 1, 2029.



S.B. NO. 199  
S.D. 2

**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 defender to participate in the proceedings. Effective 5/1/2029. (SD2)

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

