



The Judiciary, State of Hawai'i

**Testimony to the Thirty-First Legislature
2022 Regular Session**

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Friday, February 18, 2022 at 10:00 a.m.
Conference Room 211 & Videoconference

by

Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2740, Relating to Guardians Ad Litem.

Purpose: Allows the judiciary to compensate guardians ad litem for involuntary hospitalization and assisted community treatment petitions at a rate higher than existing statutory guidelines. Makes an appropriation.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 2740. An appropriation of at least \$100,000 will greatly assist members of our community who are suffering from mental illness. It is important to highlight that "[I]t is not the legislature's intent that the requested funds supplant the judiciary's existing funding or budget requests."

We are in full agreement that "guardians ad litem (GALs) have an important role in supporting persons who are being considered for involuntary hospitalization or assisted community treatment." The additional funding proposed is particularly crucial given the recently enacted statutory changes **requiring** the court to appoint GALs in **all** assisted



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community treatment cases. HRS section 334-123.5. Following these statutory changes, the number of assisted community treatment cases filed in the First Circuit Family Court has increased noticeably, which is a testament to the Legislature's wisdom in enacting those recent changes.

The Judiciary therefore strongly supports this bill and the Legislature's recognition that GALs in involuntary hospitalization cases and assisted community treatment cases will help to bring needed services to those suffering from mental illness and further the safety of the community.

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

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2740

February 18, 2022
10:00 a.m.
Room 211 and Videoconference

RELATING TO GUARDIANS AD LITEM

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2740 proposes to increase the number of people willing to serve as guardians ad litem by raising their compensation to a higher rate than what is currently included in Section 571-87, HRS, Appointment of Counsel and Guardian Ad Litem; Compensation. Guardians ad litem are court appointees who are appointed by judges to represent people who are subject to mental health petitions and not able to make decisions in their own best interests during judicial proceedings. The bill appropriates \$100,000 in general funds for the Judiciary to compensate guardians ad litem and other program costs for these purposes.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

TO: Honorable Senator Donovan M. Dela Cruz,
Chair, Senate Committee on Ways and Means

Honorable Senator Gilbert S.C. Keith-Agaran,
Vice Chair, Senate Committee on Ways and Means

FROM: Connie Mitchell MS, APRN, BC, Executive Director
IHS, The Institute for Human Services

SUBJECT: S.B. 2740 – RELATING TO GUARDIANS AD LITEM.

HEARING: February 18, 2022, 10:00 am Via Videoconference, State Capitol

POSITION: IHS strongly supports the passing of S.B. 2740.

IHS, The Institute for Human Services has been a critical safety net of our community for over 42 years. We provide a full spectrum of services to help those in our community experiencing homelessness to achieve housing and those who are on the precipice of homelessness to remain stably housed. **IHS stands in strong support of S.B. 2740.** This bill will assure sufficient Guardians Ad Litem (“GAL”) are available to provide critical court hearings for severely mentally ill individuals for treatment under our Assisted Community Treatment (“ACT”) law.

The ACT law, HRS Chapter 334-121, provides a court-supervised process to assist in obtaining life-saving treatment for individuals suffering from mental illness or substance abuse, who have lost decisional capacity. Among the persons IHS serves, these are the most vulnerable.

In 2021, Act 58 was passed to require appointment of a GAL to improve the ACT process and assist with necessary medical treatment in these cases. Our experience at IHS is that the mandatory appointment of GALs has indeed significantly improved the ACT process and made it much more effective when hearings occur. However, the fee structure for GALs is so low that it does not create a sufficient supply of GALs for these cases. Individuals in dire need of help, are facing delays in getting promptly set for hearing.

Currently, statutory fees for court-appointed GALs are \$60/hour for out-of-court work and \$90 an hour for in-court work. By contrast, court appointed attorneys in Hawaii are paid \$90/hour under state law and over \$100/hour for federal courts. Private sector attorneys’ fees are also substantially higher than GAL fees. The result is that when ACT petitions are filed for persons who are in imminent risk of danger to self or others, GALs are in short supply, and cases are being delayed in getting a hearing date.

This bill would allow a court to provide higher payment to secure sufficient GALs for ACT cases, supported by an appropriation of \$100,000. This relatively modest change will help assure the ACT process occurs as it was designed.

The benefits of this bill are two-fold:





The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

- (1) Prompt hearings with a GAL avoid tragic consequences caused by delays. One of our subjects of petition assaulted a police officer before the petition was brought to trial, further criminalizing him in order for him to access treatment. A female subject died as a result of being hit by a car while crossing a highway and yet another young man who already had his foot amputated due to self-neglect died in the hospital of septicemia that resulted from the infection of his wounds.
- (2) Prompt hearings with a GAL can help prevent the revolving door of emergency interventions by police, social workers, hospitals and court, and thus save the massive unnecessary costs being incurred when these individuals do not promptly get the appropriate attention they need.

Thank you for considering my testimony, offered on behalf of IHS and the many homeless mentally ill people we continue to serve and protect across our island. We hope your Committee will see fit to pass S.B. 2740.

Mahalo.



SB-2740

Submitted on: 2/13/2022 1:05:29 PM

Testimony for WAM on 2/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ellen Godbey Carson	Individual	Support	No

Comments:

I support SB2740. It will help assure sufficient GALs are available for Assisted Community Treatment (ACT) cases, by allowing courts to increase GAL fees where appropriate to obtain GALs for these cases. Currently, GAL fees are too low to attract enough GALs for these cases.

While I write as an individual, I have served as President and director of Institute for Human Services, President of the Hawaii State Bar Association, and President of Hawaii Women Lawyers.

The sad reality is that our statutory fees for court-appointed GALs are out-dated and insufficient to attract the numbers of people needed to do this work. As a result, human lives hang in the balance due to lack of GALs for ACT cases. The current GAL rate is \$60/hour for out-of-court work (which are most of hours spent) and \$90 an hour for in-court work. By contrast, court appointed defense attorneys in Hawaii are paid \$90/hour (for all work) under state law and \$158/hour for federal courts. Private sector attorneys' fees are also substantially higher than GAL fees, generally in the hundreds of dollars. The result is that the very low fee schedule that courts are constrained to use for GALs, limits those who are willing to serve as GALs. When there is not a GAL promptly available, these cases cannot be set for hearing nor proceed to assist the individual who is in imminent risk of danger to self or others.

As a volunteer for IHS, I've been so impressed by its vision for an ACT process that can truly save lives, and for GAL appointments that can finally provide the case-by-case attention we need to assist the courts in facilitating life-saving treatment for these vulnerable individuals.

Our ACT law is a model statute in our nation in many ways, helping point to a kinder and more effective system for responding to the needs of our mentally ill residents who have no decisional capacity for treatment or self-preservation. But the system can't operate the way it is designed when it's so difficult to find GALs to serve, that cases are delayed in being able to be heard.

The proposed amendment by 2740 is minor (pertains only to GALs for ACT cases) and caps the funding at \$100,000 so as to limit budgetary impact. The severely mentally ill individuals served by this bill are our high-utilizers, incurring millions of dollars to our police, courts, hospitals, and social services in a revolving door system that isn't giving them effective treatment. These

needless costs could be saved by having a prompt an efficient process for getting the treatment needed for these individuals, in a least restrictive environment. This bill strikes the right balance for those goals.

Please approve this bill SB2740.

Testimony of Anthea Wang, MD, MPH

Regarding SB 2740 relating to:

Guardian Ad Litem Program; Judiciary; Appropriation

February 14, 2022

Dear Chair, Vice Chair, and committee members,

Thank you for the opportunity to provide testimony for SB2750, which makes an appropriation to allow the judiciary to compensate Guardians Ad Litem (GALs) for Involuntary Hospitalization and Assisted Community Treatment petitions at a rate higher than existing statutory guidelines.

I support SB2740 and urge you to approve it.

As you know, GALs are crucial to support persons being considered for Involuntary Hospitalization or Assisted Community Treatment, who are at their most vulnerable state. However, the current GAL compensation is inadequate to attract enough GALs for these cases. Court appointed attorneys are compensated more under state law and even more for federal courts; and private sector attorney fees are substantially even higher. As a result, when petitions for Involuntary Hospitalization or Assisted Community Treatment are filed for persons who are in imminent risk of danger to self or others, there is an inadequate supply of GALs and the hearing dates for these cases are delayed.

As a practicing physician, I am involved in the care of vulnerable patients. I am also involved in the work of the Institute for Human Services for our homeless populations. I see all too often the revolving door faced by many severely ill persons who are homeless and get shuffled among the police, the courts, and the emergency rooms without a guardian representing their best interest and helping secure the effective treatment they need to address their condition. Ultimately, this measure not only provides needed care in a timely manner for vulnerable patients that can save their lives, but it also reduces needless costs and burdens to our medical, legal, and community systems.

Thank you,

Anthea Wang, MD, MPH

SB-2740

Submitted on: 2/16/2022 4:57:24 PM

Testimony for WAM on 2/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sarah Guay	Individual	Support	No

Comments:

To Whom it May Concern:

I support SB2740 to help assure sufficient GALs are available for Assisted Community Treatment (ACT) cases, by allowing courts to increase GAL fees where appropriate for these cases. Currently, GAL fees are too low to attract enough GALs for these cases.

GALs play a pivotal support role for many individuals in our community who lack the support to navigate the legal system. These individuals provide invaluable legal support currently at rates far below those of court-appointed attorneys yet are often called upon for similar (sometimes more challenging) roles.

Assuring sufficient GALs for this process can help stop the revolving door faced by too many severely ill persons who are homeless, and who get shuttled between police, courts and emergency rooms without a guardian to help secure effective treatment to address their condition. These GALs can help provide interventions that can save lives and save needless costs and burdens to our medical systems.

Your consideration of this important bill is crucial, mahalo for approving bill SB2740.