



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

House Committee on Finance
Representative Rep. Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair

Thursday, March 28, 2024 at 2:00 p.m.
State Capitol, Conference Room 308 & Videoconference

WRITTEN TESTIMONY ONLY

by:
Matthew J. Viola
Senior Judge, Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2557, SD1, HD1– Relating to Legal Representation

Purpose: Allows a court to appoint an attorney for the subject of a petition for assisted community treatment if the interests of justice require one be appointed. Repeals language that entitles the subject of a petition for assisted community treatment to legal representation by a public defender. Effective 7/1/3000. (HD1).

Judiciary's Position:

The Judiciary takes no position on SB2557 SD1 HD1. We need, however, to raise a concern before this Committee. The Judiciary may need to return to the Legislature for funding for the new mandate in the amended Hawai'i Revised Statutes (HRS) § 334-126(f):

(f) The court may appoint an attorney for the subject of the petition if the court determines that the interests of justice require one be appointed.

The original SB2557 was a housekeeping bill meant to correct an inconsistency between two sections of the HRS. SD1 and, now, HD1, added this new language in response to testimony



strenuously objecting to the elimination of respondents' right to counsel in assisted community treatment (ACT) cases.

While the Judiciary takes no position on the constitutional question raised, we point out these concerns:

1. Although the new language appears to make the appointment of counsel discretionary, the court may determine that the appointment of counsel is legally required in ACT cases. As noted in the testimony of the Hawaii Disability Rights Center, the ACLU, and an individual, eliminating the right to counsel appears to make Hawai'i an outlier among the states with similar laws. The testimony by the ACLU quotes from 2021 testimony by the Department of Attorney General (AG):

The appointment of counsel is one of the significant provisions of the ACT to afford subjects due process under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Constitution of the State of Hawai'i. This bill's [HB345] proposed removal of the right to counsel would remove a significant protection afforded by the procedures of the ACT statutes. For these reasons, the Department recommends the provisions regarding the removal of the right to counsel be deleted from the bill."

2. In the likely event that this Legislature passes HB2159 HD2 SD1, which requires the AG to assist petitioners in ACT cases, there may be a greater need to appoint counsel for respondents in the interests of justice.

3. We need to raise two practical problems regarding implementation, *i.e.*, funds and the pool of available attorneys. This "housekeeping" bill has become a bill with unfunded responsibilities. If the number of ACT cases continues to increase and the Judiciary is required to appoint and pay attorneys to represent respondents (in addition to the currently required appointment of guardians ad litem), the Judiciary will need additional funding. Moreover, the pool of attorneys for civil family court proceedings – including ACT cases -- is already quite small in all judicial circuits. The statutory compensation rates for court-appointed attorneys may need to be increased to attract competent attorneys to accept appointments in these cases.

The Judiciary will gather data after this law becomes effective in order to evaluate the need for and the level of increased funding.

Thank you for the opportunity to testify on this matter.

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March 11, 2024

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**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER STATE OF HAWAII
TO THE COMMITTEE ON FINANCE**

S.B. 2557, S.D.1, H.D.1: RELATING TO LEGAL REPRESENTATION
Hearing: March 28, 2024 at 2:00 p.m.

Chair Kyle T. Yamashita
Vice Chair Lisa Kitagawa
Honorable Committee Members

The Office of the Public Defender (OPD) **supports** this bill.

The 2021 amendments to the Assisted Community Treatment (ACT) law properly removed the OPD as counsel for subjects of an ACT petition.¹ While the provisions of the ACT statutes under Chapter 334 were amended to remove the appointment of the OPD as counsel for subjects of an ACT petition, HRS § 802-1 was not amended to remove the definition of an “indigent person,” the limitation of the OPD’s representation, to include “the subject of a petition for assisted community treatment under chapter 334.” See HRS § 802-1(a)(3). This bill resolves this outstanding issue and properly removes the subject of an ACT petition from HRS § 802-1.²

¹ The OPD generally represents only persons who are subject to incarceration. Pursuant to article I, section 14 of the Hawai‘i Constitution, “[t]he State shall provide counsel for an indigent defendant charged with an offense **punishable by imprisonment.**” (Emphasis added). Prior to the enactment of the ACT statutes, HRS § 802-1 limited the OPD’s duty to representing only indigent persons threatened by imprisonment or confinement. This limitation was inclusive to indigent persons charged with criminal offenses punishable by confinement or prison, juveniles subject to confinement under HRS Chapter 571, and persons threatened by confinement in psychiatric or other mental institutions, including accompanying requests for involuntary medical treatment.

² It is important to reiterate that the OPD has already been removed as counsel for the subject of an ACT petition under Chapter 334. This bill only seeks to further clarify the removal of the OPD as counsel for the ACT subject by removing the unnecessary provision under HRS § 802-1(a)(3).

In prior hearings, the American Civil Liberties Union (ACLU) and Hawai'i Disability Rights Center (HDRC) raised concerns that the failure to appoint either the OPD or a court-appointed attorney to represent the subject of the ACT violated the subject's due process rights. The amendment to HRS § 334-126(f) in this version of the bill allows the court to appoint an attorney for the subject of the ACT petition "if the court determines that the interests of justice require one by appointed." The OPD supports this amendment as it allows the appointment of counsel at the court's discretion in instances where counsel may be necessary or appropriate. To the extent that the ACLU and/or the HDRC suggested that either the OPD or court-appointed counsel be appointed by default upon the filing of the ACT petition, the OPD reiterates its position that appointment of the OPD to represent the subject of an ACT petition is inconsistent with the OPD's duty to represent only indigent persons threatened by imprisonment or confinement.³ Again, the OPD has no objection to the amendment which allows the court to appoint counsel, not the OPD, for the subject in the interests of justice and the OPD would have no objection to the appointment of counsel, not the OPD, to every subject of an ACT petition.⁴

The OPD **supports** this bill. Thank you for the opportunity to comment on S.B. 2557, S.D. 1, H.D. 1.

³ Even if the ACT petition is granted, the subject of the ACT petition would not be subject to confinement in a hospital or mental institution. See HRS §§ 334-127, 334-129. The subject may only be transported to a designated mental health program or hospital emergency department with their consent or in accordance with the emergency hospitalization procedure set forth in HRS § 334-59, which requires a belief that the subject is mentally ill or suffering from substance abuse, imminently dangerous to self or others, and is need of care or treatment or both. See HRS § 334-59. continued confinement of the subject is sought, the subject could then be subjected to the involuntary civil commitment procedure set forth in Chapter 334 and the OPD would be appointed to represent the subject due to the threat of confinement. The ACT statutes only allow involuntary medication of the subject of an ACT order if the subject is within a hospital emergency room or admitted to a hospital. See HRS § 334-129(b).

⁴ At a hearing before the House Committee on the Judiciary and Hawaiian Affairs, the OPD was asked whether the subject's due process rights are protected without the default appointment of counsel. The OPD believes that the ACT hearing procedure is defined to provide due process rights to the subject of the ACT petition. Ultimately the determination of whether the ACT procedure provides constitutionally-adequate due process to the subject is a matter that would be determined by the courts, not the OPD.

SB-2557-HD-1

Submitted on: 3/25/2024 6:49:28 PM

Testimony for FIN on 3/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Comments	In Person

Comments:

We realize this measure started off as merely a housekeeping bill. However, we believe it presents an opportunity to the Legislature to revisit what we respectfully believe was a decision made a few years ago that violated the rights of individuals who have a mental illness. When the ACT program was first implemented, the Respondents were afforded legal representation via the Public Defender. A few years ago the Legislature removed that right and substituted a Guardian Ad Litem to assist the individual in the proceeding. It is clearly not the equivalent and is not legal representation. A Guardian Ad Litem may advocate for the so called " best interests" of the Respondent while a Public Defender may be more likely to advocate for the articulated wishes of that individual. We believe it violates the due process rights of these people.

Our research to date, while not a full list of all the states in the US, has indicated that it appears that all the states we have surveyed currently provide for a right to counsel in these cases. That confirms our position that Hawaii has been an outlier on this subject. This bill attempts to strike a compromise by providing for counsel in cases where the Judge feels it is appropriate. While we continue to believe that counsel is required, the updated version is a step in the right direction, and an improvement over current law. It does, though, raise some further questions such as what criteria would the Court use to decide whether to appoint counsel. Would the Court be required to make a specific finding as to why counsel was appointed or not appointed? These questions may need further exploration.

Moreover, this Committee as well as the full House of Representatives advanced HB 2159 which would have the Attorney General represent the Petitioners. If that were to pass it would substantially tilt the scales even further against these individuals. In light of the possibility that that measure were to pass, it would create even more of an imbalance and raise even more serious constitutional issues. Certainly if the Legislature is going to consider having the Attorney General be a full party to the case, it is all the more reason to restore the right to free counsel for the individuals who are the subject of the proceedings. In fact we would argue that it must restore the right to counsel in that case. That would hardly be extraordinary. Essentially, it would provide that the ACT proceedings be conducted in the same traditional manner as virtually all other hearings which occur in the Judicial system.

It is important to understand that an ACT Order from the Court is enforceable. That means that under 334-129 HRS the subject can be forcibly transported to an emergency room and involuntarily medicated. So this is not simply a Judge telling someone to take medication. It can lead to an individual being transported in a police car to a hospital ER and forcibly medicated.

While one may debate whether that is beneficial or detrimental, nobody can deny that it is a serious infringement of a constitutionally protected liberty interest. For that to occur, they must at the very least be accorded their constitutional rights to due process, which includes legal representation.



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

TO: Honorable Rep. Kyle T. Yamashita,
Chair, House Committee on Finance

Honorable Rep. Lisa Kitagawa,
Vice-Chair, House Committee on Finance

FROM: Angie Knight, Community Relations Manager
IHS, The Institute for Human Services, Inc.

RE: SB2557 SD1 HD1 - RELATING TO LEGAL REPRESENTATION.

HEARING: Thursday, March 28, 2024 at 2:00 PM

POSITION: IHS **supports** the passing of SB2557 SD1 HD1

IHS, The Institute for Human Services, supports the passing of SB2557 SD1 HD1. We agree that current Hawaii Revised Statutes should be amended to remove language from Section 802-subsection (a) (3), which includes the subject of a petition for assisted community treatment as an individual that shall be “entitled to representation by a Public Defender.”

We support the Senate and House's proposed measures that remove the language requiring subjects for the Assisted Community Treatment (ACT) petition from being represented by the Public Defender. Both Senate and House members have acknowledged that the individuals subject to ACT are typically protected by the representation of a GAL who would represent the subject's best interest. The subjects of ACT petitions are likely to be unable to participate meaningfully in the court proceedings even if given the opportunity.

If passed, this bill has the potential to save the State money by facilitating more expedient petitioning for ACT. By having people receive treatment more quickly, there would be fewer emergency room visits, arrests, and engagements with the criminal justice system—both incarceration and appearances in the judicial system.

This bill promises to ensure that the expertise of a qualified mental health professional, who can determine whether someone could benefit from medical treatment and supportive services that help improve quality of life, is given due respect in protecting the right to treatment for those who don't realize they need it.

Mahalo for the opportunity to offer our perspective and testimony.

SB-2557-HD-1

Submitted on: 3/27/2024 1:59:36 PM

Testimony for FIN on 3/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
N/A	ACLU of Hawaii	Oppose	Remotely Via Zoom

Comments:

Aloha Chair Yamashita, Vice Chair Kitagawa and Committee Members:

The ACLU of Hawai'i strongly opposes SB 2557 SD1 HD1 stripping away legal representation for indigent persons with mental health disabilities and/or co-occurring disorders subject to Assisted Community Treatment petitions. The proposed measure, while an improvement to the original measure, makes the appointment of court appointed counsel discretionary.

Given the liberty interests of personal and body autonomy at stake under Assisted Community Treatment orders which allow for forced medication, the lack of legal counsel violates the due process rights afforded under our federal and Hawai'i Constitutions.

Please remedy this Constitutional violation by guaranteeing the right to legal counsel for indigent persons throughout ACT legal proceedings in Family Court.

Sincerely,
Carrie Ann Shirota, Esq.

ACLU of Hawai'i Policy Director



Committee: Finance
Hearing Date/Time: Thursday, March 28, 2024, at 2:00pm
Place: Conference Room 308 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in OPPOSITION to S.B. 2557 SD1 HD1 Relating to Legal Representation**

Dear Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The ACLU of Hawai'i **opposes S.B. 2557 SD1 HD1 which** proposes to repeal paragraph (3) of section 802-1(a), Hawaii Revised Statutes, which entitles the subject of a petition for assisted community treatment to legal representation by a public defender.

What's at Stake

The ACLU of Hawai'i strongly opposes stripping away legal representation – and ultimately the due process rights of indigent persons subject to Assisted Community Treatment (ACT) petitions and orders.

Under an ACT order, the Family Court has the discretion to order forced medication (also known as involuntary medical treatment). This is acknowledged by the Department of the Attorney General in a formal opinion dated April 20, 2023:

“An individual can be forcibly medicated under an ACT order if the individual is within an emergency department or admitted to a hospital, it is determined there that the individual is “imminently dangerous to self or others,” and the administration of medication pursuant to the ACT order is indicated by good medical practice.”¹

The proposed measure, while an improvement to the original measure, makes the appointment of court appointed counsel **discretionary, rather than mandatory**. Given the liberty interests at stake under ACT orders, the lack of legal counsel violates the due process rights afforded under our federal and Hawai'i Constitutions.

The Department of the Attorney General Has Previously Held that Legal Counsel Affords Individuals Subject to ACT Due Process under Federal and Hawai'i Law.

In 2021, the State Legislature introduced a measure to eliminate the right to counsel for persons subject to Assistant Community Treatment petitions. Written testimony from the **Department of Attorney General, dated February 11, 2021**, on HB 345 Relating to Assisted Community Treatment, to amend H.R.S. 334, reflected their constitutional concerns:

¹ <https://ag.hawaii.gov/wp-content/uploads/2023/04/AG-Opinion-23-01.pdf>

“The appointment of counsel is one of the significant provisions of the ACT to afford subjects due process under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Constitution of the State of Hawai’i. This bill’s proposed removal of the right to counsel would remove a significant protection afforded by the procedures of the ACT statutes. *For these reasons, the Department recommends the provisions regarding the removal of the right to counsel be deleted from the bill.*”

During discussion of HB 345, the **Department of Health** also expressed their reservations:

“We continue to strive for a balance with individuals suffering from acute mental illness where they can be treated during a time where they are, for all intents and purposes ‘unconscious,’ **but still assure that their right to self-determination and representation during proceedings will be honored,**” the department wrote in testimony. **“As written, we do not believe that this measure strikes that balance.”**

At that time, the Office of the Public Defender also weighed in on this matter, and offered the following comments on H.B. No. 345 HD1:

“Article I, section 14 of the Hawai’i Constitution provides, “The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment.” (Emphasis added). Accordingly, OPD did not object to the original bill “as long as guardian ad litem (GAL) was appointed to represent the interest of the individual because the individuals subject to the ACT petitions are not threatened by confinement or imprisonment.”

We respect the Public Defender’s legal interpretation of the Hawai’i Constitution as it relates to their mandate to represent indigent defendants “threatened by confinement or imprisonment.” However, **we agree with the prior Department of Attorney General’s written testimony that persons subject to an ACT petition must be afforded counsel under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Hawai’i Constitution.**²

Hawaii’s Supreme Court Has Set a High Legal Standard Before the State May Force Medication Over the Patient’s Objections.

The Hawai’i Supreme Court has affirmed *that the right of each person to determine his or her medical treatment is one of the most valued liberties in a democratic society. Only in the most exigent of circumstances—where the patient is an imminent danger to themselves or others, where the treatment is in the patient’s best interest, and where no less restrictive means exist—may the State intervene and force an individual to take psychotropic drugs or otherwise undergo medical psychiatric treatment over the patient’s objection.* See *State v. Kotis*, 984 P.2d 78, 91 Hawai’i 319 (1999). <https://law.justia.com/cases/hawaii/supreme-court/1999/18823-2.html>

² The Department of Attorney General issued an opinion last year relating to Assisted Community Treatment yet did not squarely address the issue whether indigent persons subject to ACT petitions are entitled to legal representation. However, the opinion acknowledges that ACT orders can include medical treatment. <https://ag.hawaii.gov/wp-content/uploads/2023/04/AG-Opinion-23-01.pdf>

Several proponents for removing Part II affording legal representation have argued that legal counsel is unnecessary because indigent individuals subject to ACT petitions are afforded Guardian Ad Litem (GALS) in the Family Court proceedings. However, GALs must abide by a different standard than attorneys. GALs are expected to make recommendations based on the “best interest of the individual” whereas attorneys have a legal duty to provide zealous representation and protect the Constitutional rights of their client, including those living with or perceived disabilities, where decision-making relates to personal or bodily autonomy – including the right to determine medical treatment.

Under the proposed measure, the State Legislature will be sanctioning an imbalanced legal proceeding where the State, via the Attorney General’s office, **is mandated to file** petitions to the Family Court for an order of continued Assisted Community Treatment (including coercive or forced treatment) against a pro se individual for up to two years unless the petitioner declines the assistance.³

The lack of due process procedural safeguards in place simply because a person has a mental health condition and/or co-occurring condition is discriminatory on its face, and constitutionally suspect.

Removing legal counsel, whether a Public Defender or court appointed counsel from the ACT process, a closed legal proceeding in Family Court, violates a person’s due process rights under our federal and state Constitutions.

Other States Afford Individuals Subject to Assisted Outpatient Treatment Petitions Legal Representation

Hawaii’s Assisted Community Treatment laws are modeled after Assisted Outpatient Treatment processes in other jurisdictions. Significantly, states such as New York⁴, California⁵, Washington, and Utah, to name a few, afford individuals the right to legal representation throughout the AOT legal proceedings.

- 1. New York’s Section 9.60 Assisted outpatient treatment Mental Hygiene (MHY) CHAPTER 27, TITLE B, ARTICLE 9 Law, also known as Kendra’s Law, affords the right to counsel.**

§ 9.60 Assisted outpatient treatment.

(g) Right to counsel. The subject of the petition shall have the right to be represented by the mental hygiene legal service, or privately financed counsel, at all stages of a proceeding commenced under this section.⁶

³ Hawai’i Judiciary form to initiate a Petition for Assisted Community Treatment
<https://www.courts.state.hi.us/wp-content/uploads/2023/07/3CP553.pdf>

⁴https://my.omh.ny.gov/analytics/saw.dll?dashboard&PortalPath=%2Fshared%2FAOTLP%2F_portal%2FAssisted%20Outpatient%20Treatment%20Reports&nquser=BI_Guest&nqpassword=Public123

⁵ <https://namisantaclara.org/wp-content/uploads/2014/11/Lauras-Law-AB1421.pdf>

⁶ <https://www.nysenate.gov/legislation/laws/MHY/9.60>

2. California’s AB-1976 Mental health services: assisted outpatient treatment.(2019-2020), Assembly Bill No. 1976, CHAPTER 140, also known as Laura’s Law, affords the right to counsel.⁷

(4) The petition shall state all of the following:

(A) Each of the criteria for assisted outpatient treatment as set forth in subdivision (a).

(B) Facts that support the petitioner’s belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition shall be limited to the stated facts in the verified petition, and the petition contains all the grounds on which the petition is based, in order to ensure adequate notice to the person who is the subject of the petition and that person’s counsel.

(C) That the person who is the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed.

(D) That the person who is the subject of the petition has the right to be represented by counsel in all stages of the proceeding under the petition, in accordance with subdivision (c).

Proposed Amendments

Please defer this measure or pass this bill with the proposed amendments to ensure that the due process rights of all individuals under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Hawai’i Constitution are protected:⁸

1. Add language that any indigent person subject to a petition for assistant community treatment shall be entitled to legal representation by court appointed counsel through all stages of the ACT legal proceedings.
2. Add language that any indigent person subject to a petition for assistant community treatment shall be entitled to legal representation by a public defender through all stages of the ACT legal proceedings.

Thank you for the opportunity to testify in opposition to **S.B. 2557 SD1 HD1**.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
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⁷ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1976

⁸ The Department of Attorney General issued an opinion last year relating to Assisted Community Treatment. However, this Opinion did not squarely address the issue whether indigent persons subject to ACT petitions are entitled to legal representation. However, the opinion acknowledges that ACT orders can include medical treatment. <https://ag.hawaii.gov/wp-content/uploads/2023/04/AG-Opinion-23-01.pdf>

SB-2557-HD-1

Submitted on: 3/25/2024 5:00:28 PM

Testimony for FIN on 3/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Isis Usborne	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I am opposed to this measure for the reasons outlined by the ACLU: this bill "strip[s] away legal representation for indigent persons subject to Assisted Community Treatment petitions." We cannot just lock people up and expect societal problems to be solved. This bill would harm the most marginalized among us. Please pass legislation that would help rather than harm people.

Mahalo,

- Isis Usborne, 96815

SB-2557-HD-1

Submitted on: 3/27/2024 2:17:31 PM

Testimony for FIN on 3/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kerestin Walker	Individual	Oppose	Written Testimony Only

Comments:

Honorable Members of the Senate,

I am writing to express my strong opposition to SB2557. As someone who has long dealt with mental health struggles and as a former ACT housing coordinator, I have witnessed firsthand the importance of respecting individuals' autonomy and their right to self-determination regardless of health status.

SB2557 undermines these fundamental rights and poses a threat to the well-being and empowerment of individuals with disabilities.

The 10 principles of disability justice highlight the core values that should guide policies and actions concerning individuals with disabilities.

These principles include:

Intersectionality: Recognizing that disability intersects with various social identities and experiences.

Leadership of those most impacted: Elevating the voices and leadership of individuals with disabilities in decision-making processes.

Recognizing multiple forms of oppression: Acknowledging and addressing the interconnectedness of ableism with other forms of oppression such as racism, sexism, and classism.

Community-based strategies: Prioritizing community-based solutions that empower individuals with disabilities and foster inclusion.

Accessibility: Ensuring physical, communication, and programmatic accessibility in all aspects of life.

Holistic approach to access: Going beyond physical access to address systemic barriers that limit full participation and equality.

Interdependence: Valuing interdependence and mutual support among all members of society.

Sustainability and eco-ability: Incorporating environmental sustainability and accessibility into disability justice efforts.

Recognizing the centrality of culture: Affirming the diverse cultural experiences and identities within the disability community.

Global perspective: Understanding disability justice within a global context and advocating for the rights of individuals with disabilities worldwide.

SB2557 contradicts these principles by stripping away people's rights and not providing them with sufficient rights that would allow them to make informed decisions relating to their own bodies. Instead of promoting the well-being and agency of individuals with disabilities, this bill perpetuates harmful paternalistic attitudes and further marginalizes an already vulnerable population.

I urge you to reject SB2557 and instead prioritize policies that uphold the principles of disability justice, promote autonomy, and protect the rights of individuals with disabilities. I stand in solidarity with the ACLU's statement as a mental health educator, community organizer, graduate student and highly concerned community member.

Let us work together to create a society where all individuals, regardless of ability, can thrive and exercise their right to self-determination.

Thank you for considering my testimony.

Sincerely,

Kerestin "Keke" Walker

SB-2557-HD-1

Submitted on: 3/27/2024 3:39:58 PM

Testimony for FIN on 3/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mary Pat Waterhouse	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Yamashita and Members of Finance Committee,

I have a family member who has mental illness and I'm on the board of several organizations that support the mentally ill, however I'm testifying as an individual. SB2557SD1HD1 protects the legal rights of the mentally ill if they go before a court for an ACT order. The bill gives the judge the authority to appoint an attorney if the judge deems it's necessary for justice to occur. It also removes the public defender as someone who would represent the individual. This was removed a few years ago in another section of the law. The public defender agrees with this as stated in their testimony that representing persons up for an ACT order is not in line with their mission.

Mahalo for considering my testimony.

Mary Pat Waterhouse

SB-2557-HD-1

Submitted on: 3/27/2024 10:07:34 PM

Testimony for FIN on 3/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	Written Testimony Only

Comments:

I am submitting testimony in opposition as an individual subject to involuntary commitment, whether inpatient or outpatient must have an attorney present during the commitment hearing. Commitment is Commitment, whether inpatient or outpatient, and basic liberties are at stake in both cases.

The State should never have stripped away the right to legal counsel during outpatient commitment hearings as there are now many individuals currently under Outpatient Commitment Orders issued without legal counsel present due to the actions of the Hawai'i State Legislature/ State Of Hawai'i.

The right to counsel is not discretionary and should not depend on whether the Court or the Guardian Ad Litem "decides" legal representation should be made available to an individual that is the target of an outpatient commitment hearing or Assisted Community Treatment hearing.

As the Attorney General of the State Of Hawai'i wrote/ warned in their 2/9/2021 testimony to the State Legislature on then bill SB199 (Relating To Assisted Community Treatment):

"The appointment of counsel is one of the significant provisions of the ACT to afford subjects due process under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Constitution of the State of Hawai'i."

The State must reverse course and provide free legal counsel to "all" individuals who are the target of Assisted Community Treatment (forced treatment) petitions.