



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair

Representative Sharon E. Har, Vice Chair

Friday, January 17, 2014, 2:00 p.m.

State Capitol, Conference Room 325

By

Moira T. Chin

Director, Office of the Public Guardian

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**Bill No. and Title:** House Bill No.195, Relating to the Office of the Public Guardian.

**Purpose:** Repeals the Office of the Public Guardian's authority to petition for its own appointment as Guardian of the Person for an incapacitated person. Authorizes the court to allow OPG to manage a ward's financial assets where no conservatorship has been appointed to protect the ward's estate.

### **Judiciary's Position:**

The Office of the Public Guardian (OPG) supports this legislation. Chapter 551A, HRS, establishes the Office of the Public Guardian (OPG) within the Judiciary to serve as court-appointed Guardian of the Person for incapacitated persons for whom no willing and suitable individual is available to serve in this capacity. Currently, the law authorizes OPG to petition for its own appointment as guardian.

For at least the past eight years, OPG declined to petition the Court for its own appointment based on recommendations provided by a national study on public guardianship. The 2005 study, entitled "Wards of the State: A National Study of Public Guardianship," concluded, among other things, that "petitioning is a problematic role for many public guardianship programs," due to the potential for conflicts of interest. For instance, a program might be inclined to petition more frequently, regardless of individual needs, if its budget is dependent on the number of individuals served, or a program may "cherry pick," petitioning only for those individuals who are relatively "easy" or less costly and time-consuming to serve. The study



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recommended that public guardianship programs not petition for their own appointment. That prohibition has been adopted legislatively in Vermont and Washington. This measure proposes a similar prohibition with respect to Hawaii's public guardianship program. Current private and public entities, such as medical facilities and the Department of Human Services/Adult Protective Services would continue to have the authority to petition for OPG's appointment as guardian under HRS §560:5-304.

The bill also allows the court to empower OPG to manage and oversee the financial assets of a ward, where no conservatorship is in place. While some of OPG's wards have assets that should be protected in a conservatorship, there may be no conservator in place for various reasons, including the cost of conservatorship proceedings or the lack of a suitable person or entity willing to serve. In such cases, when OPG has attempted to access a ward's financial resources to pay for the ward's care, some financial institutions have denied access because the public guardian lacks conservatorship orders. This measure would authorize the court to expand the powers of the public guardian to access and manage its wards' financial assets in the absence of a conservatorship.

Thank you for the opportunity to testify on House Bill No. 195.