



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, February 5, 2019, 9:00 am
State Capitol, Conference Room 016

By

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Bill No. and Title: Senate Bill No. 1464, Relating to Judicial Proceedings.

Purpose: Establishes certain positions in the Department of the Attorney General, Judiciary, and Department of Health dedicated to the preparation, filing, defense, and adjudication of assisted community treatment petitions, related guardianship petitions, and other legal filings. Appropriates funds.

Judiciary's Position:

The Judiciary takes no position on this bill, but has strong concerns regarding sections 5 and 7 of the bill.

Section 5 deletes the numbered designation of judges set forth in HRS §603-3 (page 5, lines 10-15 of SB1464). The deletion does not seem to be necessary based on the language in the preamble of the bill. Such changes appear to alter the statutory structure governing the appointment and organization of the circuit, district, and district family courts. Doing so would be problematic because it could have unintended consequences. The Judiciary is unaware of any concerns with the current statutory structure. To the extent there is a perceived need to revise the statutes referred to in this measure, the Judiciary would be willing to undertake such study and report to the Legislature before the 2020 Legislative Session.

Section 7 establishes and funds a social worker position in the Office of the Public Guardian (OPG) that is “dedicated to handling petitions and actions brought on behalf of



homeless individuals with severe mental illness, including coordinating with private service providers and other interested parties.”

Under chapter 551A, Hawai‘i Revised Statutes (HRS), OPG serves as a guardian of incapacitated individuals who lack relatives or friends willing and able to act as their guardian. OPG, however, does not itself file petitions for guardianship. Agencies such as the Department of Human Services or Department of Health, or private parties, such as hospitals, petition the court to appoint OPG as a guardian for the incapacitated person. Further, under HRS §551A-2, OPG is specifically prohibited from petitioning for its own appointment as the incapacitated person’s guardian. This prohibition is consistent with the recommendations of a national study on public guardianship and with the practices of public guardianship programs in other jurisdictions. For the above reasons, we respectfully submit that OPG is not the appropriate agency to handle petitions and actions brought on behalf of homeless individuals with severe mental illness.

Other than the forgoing, the Judiciary takes no position on this bill but provides the following considerations.

1. The Judiciary requires more judges and appreciates the Legislature’s recognition of this need. We would request that the proposed creation of and appropriation for new judicial positions in the District Court and District Family Court in the First Circuit be in addition to the Judiciary’s current budget requests, as the work to be done by these proposed positions is in addition to the needs that the Judiciary is currently facing.
2. Although recognizing the needs of the community as set out in the bill, the Chief Justice must retain the discretion and the responsibility to assign judges according to the demands on the Court at a particular time. The proposed newly created positions cannot be solely dedicated to hearing assisted community treatment petitions and guardianship petitions. The Chief Justice and all of the Chief Judges and Deputy Chief Judges, including the Senior Family Court Judge, should have the discretion to decide the court dockets assigned to each judge. The needs of the community do not remain static. It is highly foreseeable that if a single judge is required to be dedicated to just one case type, that judge may either be so inundated with cases that delays in the proceedings may ensue or the judge may not have enough cases to fill a calendar.

Thank you for the opportunity to submit testimony on this measure.