



The Judiciary, State of Hawai‘i

Testimony to the Senate

Committee on Human Services

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

and

Committee on Commerce, Consumer Protection, and Health

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

Friday, February 8, 2019, 2:45 PM

State Capitol, Conference Room 016

By

Darren Nako

Office of the Public Guardian

Intergovernmental and Community Relations Department

Bill No. and Title: Senate Bill No. 1051, Relating to Homeless Individuals with Severe Mental Illness.

Purpose: Requires the Department of Human Services, in conjunction with the Department of Health, to establish a three-year pilot project that provides shelter and mental health treatment for homeless individuals with severe mental illness or severe co-occurring mental illness and substance abuse disorders, who are subject to court-ordered assisted community treatment or court-ordered guardianship. Requires reports to the legislature and appropriates funds.

Judiciary's Position:

The Office of the Public Guardian (OPG) supports the intent of the proposed pilot project, but has the following concerns regarding its implementation.

Limitations of Guardianship

The pilot project seeks to address the problem of chronic homelessness among severely mentally ill individuals through the use of court-ordered community treatment or guardianship of incapacitated persons, and the delivery of mental health services in a shelter setting for a



Senate Bill No. 1051, Relating to Homeless Individuals with Severe Mental
Illness

Senate Committee on Human Services

Senate Committee on Commerce, Consumer Protection, and Health

Friday, February 8, 2019, 2:45 PM

Page 2

designated period of time, or until the individual is sufficiently rehabilitated to transition to a group home. A guardian's consent would provide the authority for an individual's shelter placement and treatment, where the individual will not participate voluntarily.

A person who qualifies for guardianship on the basis of incapacity is not deprived of all say in decisions affecting his or her welfare. HRS § 560:5-305 provides "A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian."

The above laws are consistent with the National Association of Social Workers Code of Ethics (NASW Code). OPG's guardians, as social workers, are bound by the NASW Code. One of the Code's ethical principles states, "Social workers respect the inherent dignity and worth of the person." The Code also provides that a social worker has the ethical responsibility to "respect and promote the right of clients to self-determination," (NASW Code section 1.02), and when providing consent on behalf of an incapacitated person, must ensure that guardians' actions are "consistent with their clients' wishes and interests." (NASW Code section 103(c)).

While provision of shelter and treatment services is generally in the best interest of OPG's wards, the provision of such services is not always consistent with a ward's wishes. When a ward resists proffered shelter and/or treatment and a guardian must override a ward's expressed desires or objections to make decisions that are in the ward's best interest, there is no assurance that the ward will cooperate or submit to treatment. For example, over the years OPG has had several clients committed to the Hawai'i State Hospital, with periods of commitment ranging from five to over twenty years. Some of these clients refuse to take their medication or otherwise cooperate with treatment and, thus, cannot be rehabilitated and released back into the community. Even with the resources and support of the professional staff at the hospital, OPG's guardians cannot force these wards to submit to treatment. And for those who can be sufficiently rehabilitated, transitioning back into the community is not always feasible as there are insufficient group homes into which to place these individuals.

The involuntary placement and treatment of homeless individuals also raises practical and legal concerns. If a ward refuses to go into or remain in the shelter or accept mental health treatment, OPG's guardians are neither authorized, trained, nor equipped to use physical action against the ward to achieve compliance. In addition, we note that aspects of the project --- referral, over the homeless individual's objection, into a shelter to receive treatment



Senate Bill No. 1051, Relating to Homeless Individuals with Severe Mental
Illness

Senate Committee on Human Services

Senate Committee on Commerce, Consumer Protection, and Health

Friday, February 8, 2019, 2:45 PM

Page 3

for a designated period of time or until sufficiently rehabilitated for release to a group home --- have parallels to civil commitment. Under HRS § 560:5-316(d), guardians are prohibited from "[initiating] the commitment of a ward to a mental health-care institution except in accordance with the State's procedure for involuntary commitment."

Staffing

While the bill does not describe the role of the OPG in the pilot project, it appropriates funds for one 0.5 full-time equivalent staff position in OPG, (position not described), presumably to serve as guardian for project participants. The moneys are appropriated to the Department of Human Services, rather than the Judiciary.

OPG currently serves as guardian for more than 700 adults statewide, with the office's nine social workers each carrying a caseload of between 70 to 80 wards, approximately twice as large as the maximum caseload recommended by the National Guardianship Association. Providing guardianship of up to eight severely mentally ill persons with intense psychosocial needs would require an additional social worker (half-time) and social service assistant (half-time).

Status of Homeless Individuals Upon Termination of Pilot Project

The bill does not address the status of the pilot project participants once the project ends on June 30, 2022. Under HRS § 560:5-318, a guardianship terminates only upon the death of the ward or upon court order. To terminate a guardianship, the ward, guardian, or another person interested in the ward's welfare must petition the court for termination on the grounds that the ward has died or no longer needs the guardian's assistance or protection.

If the homeless individuals participating in the pilot project are still incapacitated at the project's end, they would continue to be wards of OPG. The agency, however, would no longer have the resources provided under the project to support its guardianship duties, i.e., additional staff, shelter, and treatment services. Permanent OPG staff would have to absorb the wards into their already heavy caseload, and find housing and treatment services appropriate for severely mentally ill individuals. Caregivers may be unwilling to accept residents with severe mental illness or substance abuse disorders. If appropriate housing cannot be located for the wards, they may return to a life on the streets without treatment for their mental illness or substance abuse disorders.



Senate Bill No. 1051, Relating to Homeless Individuals with Severe Mental
Illness

Senate Committee on Human Services

Senate Committee on Commerce, Consumer Protection, and Health

Friday, February 8, 2019, 2:45 PM

Page 4

Finally, while the Judiciary has concerns regarding the proposed pilot project, we recognize the importance of and need for programs that will allow homeless individuals with severe mental illness to receive treatment for their illness while living in a safe and supportive environment. To that end, we welcome continued discussions on how best to achieve these goals. Thank you for the opportunity to provide comments on this bill.