



## *The Judiciary, State of Hawaii*

### **Testimony to the Senate Committee on Judiciary and Labor**

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, January 30, 2015, 8:30 am  
State Capitol, Conference Room 016

By  
Moirra T. Chin  
Director, Office of the Public Guardian

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**Bill No. and Title:** Senate Bill No. 223, Relating to the Public Guardian.

**Purpose:** Repeals the Office of the Public Guardian's (OPG) 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 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 ten 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 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



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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 conservator.

We support this measure and request a housekeeping amendment to conform the OPG law to the guardianship laws that authorize the appointment of an emergency guardian and a temporary substitute guardian. A copy of the proposed amendment is attached.

Thank you for the opportunity to testify on S.B. No. 223.

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# A BILL FOR AN ACT

RELATING TO THE OFFICE OF THE PUBLIC GUARDIAN.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 551A-2, Hawaii Revised Statutes, is  
2       amended by amending subsections (a) and (b) to read as follows:  
3       "(a) The public guardian shall serve as guardian, limited  
4       guardian, testamentary guardian, emergency guardian, or  
5       temporary substitute guardian of an incapacitated person when so  
6       appointed by the family court or by the circuit court under  
7       chapter 560. ~~[The]~~ Notwithstanding section 560:5-304, the  
8       public guardian may not file a petition for the public  
9       guardian's own appointment. Petitions for public guardianship  
10      may ~~[also]~~ be filed by any person, agency, or facility  
11      responsible for the support or care of individuals who:  
12      (1) Are not able to understand or adequately participate  
13          in decisions concerning their care; and  
14      (2) Have no relatives or friends willing and able to act  
15          as a guardian.  
16      (b) The public guardian shall have the same powers and  
17      duties as a private guardian. In addition, if there is no

1 conservatorship in effect for a ward, the court may authorize  
2 the public guardian to:

- 3       (1) Request and obtain copies of any and all of the ward's  
4       financial information, records, and documents,  
5       including but not limited to account statements,  
6       deposit and withdrawal records, and canceled or  
7       returned checks, from any and all savings accounts,  
8       checking accounts, safe deposit box accounts,  
9       retirement or pension accounts, investment accounts,  
10       insurance accounts, annuity accounts, credit card  
11       accounts, and all other accounts held in the name of  
12       the ward; and
- 13       (2) Transact business or take necessary action as to the  
14       accounts in paragraph (1)."

15       SECTION 2. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17       SECTION 3. This Act shall take effect upon its approval.

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**Cc:** [REDACTED]  
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**SB223**

Submitted on: 1/28/2015

Testimony for JDL on Jan 30, 2015 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Colette Kon	Individual	Comments Only	No

Comments: a

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SB223

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Measure  
Title: RELATING TO THE OFFICE OF THE PUBLIC GUARDIAN.

Report Title: Office of the Public Guardian; Powers

Description: Prohibits the office of the public guardian from petitioning for its own appointment as guardian of the person for an incapacitated person. Authorizes the court to allow the office to manage a ward's financial assets where no conservatorship is in effect.

Testimony:

The Office of Public Guardian should not be allowed to manage a ward's financial assets where no conservatorship is in effect.

Recently a elderly couple was awarded to state OPG by family. The family made this decision assuming OPG would assist in making the best decisions to care for this elderly couple. However, the process was hindered by the OPG's Social Workers own personal decisions. The family's request were ignored and arrangements were made by the OPG's Social Worker. The family voiced concerns, but was told it is ultimately the OPG's decision how their finances would be spent.

The facts of the case:

Elderly couple in their 90's living alone with advanced dementia. Adult Protective Service initiated and OPG assigned the legal guardianship. Financial Assests \$250,000 , with a home in Pauoa. OPG given legal guardianship on December 15<sup>th</sup>. NO assistance was provided to the aging couple. OPG Social Worker informed couple did not have Home Owners Insurance and it was not safe to keep them there. OPG ignored concern and left couple in their home. . OPG Social Worker insisted couple stay in home with 24 hour care and wait for openings at Hale Kuike. OPG Social Worker questioned by family member regarding facility. Concern was the cost of Hale Kuike, \$15,000 to \$20,000 per month, equal \$250,000 year. Couple would not be able to afford this facility on a long term plan. Family requesting Lunalilo Care Facility at \$11,000 per month, about \$125,000 per year. Much more affordable, could accommodate the couple to be placed in same room. OPG Social Worker uncooperative with request.

January 2, elderly wife fell in driveway. Admitted to hospital for Broken Hip and surgically repaired. In the interim, elderly husband alone in home. Family decision to stay with him until placement could be arranged. OPG Social Worker continued to seek admission to Hale Kuike. Hale Kuike owner and nurse made home visit for admission. However at that time NO MALE Bed was available. Lunalilo Home at

that time could accommodate elderly uncle. OPG Social Worker would not return family phone calls and denied request to have elderly uncle assessed for admission. Family member questioned decision, but was told OPG had the ultimate decision to place their elderly uncle. OPG social worker said a bed would be opened next week. However, family member unable to take care of advanced dementia elderly uncle and called the ambulance. He then gets admitted to local hospital. Elderly Uncle with advanced dementia placed in POSEY restraints at bedside. Hale Kuike now unable to admit elderly uncle. OPG social worker places elderly uncle in Foster Care Home under Expanded Care (additional cost of \$750/month). OPG social worker now informs family no visitors for a couple of weeks until he gets adjusted. In the meantime, OPG Social Worker calls Lunalilo Care Home to inform them of her decision to place elderly uncle into a Foster Home. Admission Nurse questions the expanded care decision and informs them they had a male bed open for the past couple of weeks. OPG social worker declines offer. OPG social worker does not inform family of options available in the community.

OPG did not have the best interest of this elderly couple. The decision by the OPG Social Worker to place them in the MOST EXPENSIVE facility on Oahu is questionable. The OPG Social Worker should not have the ability to manage their incapacitated clients financial assets. It would be of interesting to investigate how many elderly clients were placed in a facility they could not afford on long term plan of care. What happens when an elderly persons finances are depleted, they become Medicaid. Thus, costing the state to pay for their care.

Ethically, this elderly couple married for 70 years are now separated from each other because of the OPG's failure to provide a safe environment in a timely manner. Why the OPG Social Worker insisted on the most expensive care home is questionable!

The Office of Public Guardian should be PROHIBITED from managing their clients financial assets.