



## *THE JUDICIARY, STATE OF HAWAII*

### **Testimony to the Senate Committee on Ways and Means**

The Honorable Rosalyn H. Baker, Chair  
The Honorable Shan S. Tsutsui, Vice Chair  
Thursday, March 27, 2008, 9:45 a.m.  
State Capitol, Conference Room 211

by  
Thomas R. Keller  
Administrative Director of the Courts

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**Bill No. and Title:** House Bill No. 2700, H. D. 1, S. D. 1, Relating to the Judiciary.

**Purpose:** To provide supplemental operating and capital improvement appropriations for FY 2009.

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

The Judiciary strongly urges your support of House Bill No. 2700, H. D. 1, S. D. 1, which provides supplemental resources for Judiciary operations in FY 2009. At the same time, the Judiciary is also greatly concerned about the significant position and related payroll fund reductions that are included in H. D. 1, S. D. 1. We therefore urge action to restore the eight positions and the \$293,278 cut from our payroll budget base, as well as to provide operating funding at a level closer to our original budget request. During the budget briefing to the members of the Senate Committee on Ways and Means on January 3, 2008, the House Committee on Finance on January 10, 2008, and the Senate Committee on Judiciary and Labor on January 11, 2008, we provided detailed information on our budget and the urgent nature of the requests. Consequently, our testimony today will primarily address the concerns generated by H. D. 1, S. D. 1.

The Judiciary understands that the economy has somewhat slowed and is not nearly as robust as in the past few years and that this, along with the desire to provide adequate public service to Hawaii's citizens, creates difficult resource allocation decisions as you attempt to balance significant competing initiatives with available general fund resources. Therefore, the Judiciary has followed a very conservative approach in developing its budget, and has focused its requests for additional resources on those that best serve people needing court services, and those that



address infrastructure concerns and process efficiencies. The Judiciary's supplemental budget request of approximately \$7.7 million for FY 2009 is consistent with the Judiciary's mission and responds to demands to: (1) provide essential services to and ensure the safety of children, other at-risk family members, and clients; (2) provide necessary treatment and evaluation services to offenders requiring the courts' assistance; and (3) ensure that our facilities are safe and secure for the public and our employees. It results in a total supplemental general fund budget just under \$152 million, which is well less than 3% of overall proposed state government appropriations for FY 2009.

However, of great concern to the Judiciary are the adjustments in House Bill No. 2700, H. D. 1, S. D. 1, which reduce the Judiciary's budget base by almost \$300,000 and delete eight permanently authorized positions. It is our understanding that this reduction relates to the payroll costs associated with our vacant positions, and was prompted by their "long-term" vacancy and by the desire to use these funds for other Judiciary requirements. In fact, one of these positions has been filled (Position No. 4835) and three of these positions are pending selection (that is, applicant lists have been provided to court programs, interviews may have been scheduled or conducted, and/or an applicant may have been selected but not yet been notified or accepted the position)(Position Nos. 4789, 58820, and 57889).. The Judiciary would have no alternative but to begin a reduction in force (RIF) procedure if this filled position is deleted. The deletion of eight authorized positions, as proposed by House Bill No. 2700, H. D. 1, S. D. 1 will adversely affect some court programs and court operations statewide because the vast majority of our staffing is involved in direct court operations, as well as in providing probation supervision to violent offenders. With available staff resources reduced, the Judiciary would face a serious dilemma because we do not have control over the volume or type of matters presented to the courts for disposition nor can we adjust our workload. Our various Courts (Appellate, Circuit, Family, and District) are mandated by the Constitution and thus cannot be reduced to save or benefit other Judiciary programs. Further, because of our inability to adjust our workload, such position and payroll budget reductions could have detrimental effects on the court services that we are able to provide Hawaii's residents.

It should be noted that five of these eight positions have been vacant from prior to 2007. Positions sometimes are vacant for extended periods due to: (1) grievances/suits which do not allow us to take any fill action until the matter is settled; (2) internal reorganizations which take time to go through the various processes, notifications, and approvals involved; and (3) difficulties in finding qualified applicants for certain positions, such as social workers dealing with sex offenders. The inability to fill these positions or difficulty in finding qualified applicants, however, by no means diminishes the need for these positions. The Judiciary has made a concerted effort to fill its positions because they are essential to court operations.



Another important point is that the Judiciary's payroll appropriations have already been reduced to allow for "turnover savings," or "normal" personnel turnover actions; and thus, are already more than \$4 million less than required to fund our authorized permanent positions in FY 2009 (see \* at the end of this testimony for a more detailed explanation of turnover savings). This is in addition to the deletion of the eight positions and nearly \$300,000 discussed above. In the past, the Judiciary has kept positions vacant in order to generate the "turnover savings" necessary to operate within its budget. From a financial standpoint, reducing our existing payroll appropriation is a double reduction for the same purpose; that is, attempting to again capture the "same" savings already built-in to our budget for position vacancies.

Further, the permanent position authorizations and payroll budget reductions included in House Bill No. 2700, H. D. 1, S. D. 1 will be especially difficult for the Judiciary because we are a small organization with specific constitutionally directed duties and responsibilities. As such, all positions authorized are essential to Judiciary program operations. The Judiciary cannot absorb the loss of authorized positions and their corresponding budgeted resources without impacting court operations. The Judiciary appreciates the very difficult challenge the Legislature faces in addressing the operating requirements of programs serving Hawaii's citizens. However, we believe that reducing the Judiciary's budget base will likely result in the public being adversely affected. The Judiciary, therefore, strongly opposes House Bill No. 2700, H. D. 1, S. D. 1's reduction of eight permanent position authorizations and \$300,000 to our payroll budget base as it will prevent us from fulfilling our responsibility to Hawaii's citizens, and respectfully requests the restoration of these positions and related funding.

One other point with regard to the payroll reductions – the Chief Justice, similar to any other chief executive of a large organization, needs some discretion in the utilization of salary savings in order to efficiently and effectively carry out the mission of the Judiciary. Historically, the amount of reprogramming of vacancy savings by the Chief Justice has represented approximately just three percent of the Judiciary's budget, certainly not an unreasonable amount of fiscal discretion for the head of the Judicial branch of government. Such discretion is critical to the Judiciary when faced with unforeseen operational contingencies or unplanned requirements.

In addition to the budget base reductions, the Judiciary is concerned over the deletion of 16 positions and more than \$2.3 million from our supplemental budget request. While we recognize the four position and over \$900,000 funding reductions as related to the difference between contracting or paying an hourly fee for guardian ad litem (GAL) and legal counsel services, we do want to emphasize the need and respectfully request your support to retain the remaining funding for these services. Such action will ensure that the Judiciary can fully provide these required services and pay contract rates that consider the increased compensation intended by the legislature, and will encourage new and experienced attorneys alike to provide these necessary



GAL and legal counsel services. The other 12 requested positions and related payroll funding are needed to support the continuing increase and complexity in court and administration workload and in services provided to staff and court users. For example, not funding the three Human Resources Department position requests (\$130,000) could adversely affect personnel operations and personnel matters, as well as morale, as employees will not receive the necessary services and advice in a timely manner. The absence of any funding support for our supplemental requests to increase the Center for Alternative Dispute Resolution purchase of service (POS) funding base (\$61,000) and to provide additional POS sex offender treatment and evaluation funds in the Third Circuit (\$55,000) could lead to cutbacks in mediation and treatment services, respectively. Without the \$360,669 requested for the evaluation of drug courts by the National Center for State Courts, the Legislature and the Judiciary cannot determine the impact and effectiveness of the Judiciary's various drug courts and thereby make relevant decisions about such courts.

The Judiciary also has concerns over the deletion of \$250,400 of the \$450,400 requested to replace and re-stretch rugs in severely worn areas in two First Circuit buildings. While much of the rugs in these buildings are over 25 years old and in very poor condition, the Judiciary's request covers only those areas most severely worn and deteriorated. These areas are "a liability waiting to happen" and are safety hazards with signs already posted to warn users and staff of dangerous conditions. It is respectfully requested that the \$250,400 be restored so that we can ensure safe, professional courthouses.

House Bill 2700 H. D. 1, S. D. 1 reduces the Judiciary's Capital Improvements Project (CIP) lump sum request of \$2.6 million for Judiciary facilities statewide by \$1.1 million. The Judiciary is greatly concerned over this reduction as our facilities get older, and our maintenance and repair requirements and backlog continue to increase. The proposed \$1.5 million would allow the Judiciary to proceed with its first and second lump sum priorities (that is, interior improvements at Kapuwaiwa Hale and air conditioning equipment replacement for the central computer center at Kauikeaouli Hale, respectively), but severely restrict the Judiciary's ability to undertake its third and largest item at its "flagship facility", the larger-scale interior reconfiguration and upgrades at Ali`iolani Hale.

House Bill No. 2700, H. D. 1, S. D. 1 also contains additional funding of \$100,000 for domestic violence services. Although the Judiciary did not request this item in its budget request and therefore takes no position on its inclusion, there is no question that the funding will be helpful in addressing the problem of domestic violence in Hawaii. The Judiciary's only concern is that its addition does not come at the expense of items included in our original budget request. It should also be mentioned that a purchase of service requires a bidding process, and there can be no assurance that a particular organization will be the low bidder and awarded the contract for the requested service.



House Bill No. 2700, H. D. 1, S. D. 1, Relating to the Judiciary  
Senate Committee on Ways and Means  
Thursday, March 27, 2008  
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The proposed supplemental budget is the Judiciary's best estimate of the resources necessary to maintain the integrity of the courts and to fulfill our statutory, constitutional, and public service mandates. The Judiciary respectfully requests your support of House Bill No. 2700, H. D. 1, S. D. 1 which includes the Judiciary's biennium budget request, and that you strongly consider restoring the eight position authorizations and almost \$300,000 to our payroll budget base, and the positions and funding deleted by House Bill No. 2700, H. D. 1, S. D. 1 from our supplemental operating budget requests. The reductions to the Judiciary's budget request reflected in House Bill No. 2700, H. D. 1, S. D. 1 will have a negative impact on court programs and to services provided to the citizens of Hawaii.

I hope that the information provided today will assist your committee in its deliberations relating to this bill. Thank you for the opportunity to provide testimony on this measure.

*\*"Turnover savings" are reflected as a negative lump-sum adjustment to each program's payroll budget because it is impossible to identify with any reasonable certainty, those specific position(s) which will be vacated during the course of an operating fiscal year. Including this negative adjustment in each program budget, therefore, provides an operating allocation of less than 100% of a program's salary requirements, in anticipation that position(s) will be vacated due to retirement, resignation, or other forms of separation from employment. Generally, programs have utilized a basic 5% rate for this negative adjustment, meaning that programs actually have only 95% of what they really need to pay for all authorized positions for the full 365 days of the fiscal year. In the interest of consistency, the Judiciary has applied the 5% "turnover savings" rate to large programs, with lesser amounts for smaller programs that will experience a proportionately lower percentage of employee "turnover" actions. All of our programs are closely monitored to ensure that sufficient payroll resources are available to provide for our actual requirements. The required payout of vacation credits is another factor that needs to be considered because the Judiciary does not budget for required vacation payments upon employee retirement or separation. The potential for a large vacation payout to a long-time Judiciary employee who chooses to retire makes close monitoring of vacancy rates and program salary requirements all the more important. In fact, in FY 2007, the Judiciary incurred almost \$1 million in unbudgeted vacation payouts.*



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2700, H.D. 1, S.D. 1, RELATING TO THE JUDICIARY.**

**BEFORE THE:**

**SENATE COMMITTEE ON WAYS AND MEANS**

**DATE:** Thursday, March 27, 2008 **TIME:** 9:45 AM

**LOCATION:** State Capitol, Room 211  
*Deliver to: Committee Clerk, Room 210, 1 Copy*

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY.

(For more information, contact Russell Suzuki, Deputy Attorney General, at 586-0618.)

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**Chair Baker and Members of the Committee:**

The Department of Attorney General has concerns about this bill

While we believe that article VI, section 4 of the Hawaii Constitution, which provides that "[t]he legislature shall provide for the staff and operating expenses of the judicial selection commission in a separate budget," requires that the Commission's appropriation and staffing are to be in a separate bill, we realize that attempting to address this concern this session is not practicable. We ask that the Legislature address this issue next year in the biennium budget.



**Judicial Selection Commission — THE JUDICIARY • STATE OF HAWAII**

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*Rosemary Fazio, Chair  
Philip Hellreich, Vice Chair  
Shelton Jim On, Secretary*

*Melvin Chiba  
Thomas Fujikawa  
Susan Ichinose  
Ralph LaFontaine  
Frederick Okumura  
Sheri Sakamoto*

TESTIMONY OF THE JUDICIAL SELECTION COMMISSION

On the Following Measure:  
HB 2700, H.D.1, S.D.1, RELATING TO THE JUDICIARY.

Before the:  
Senate Committee on Ways and Means

Date: Thursday, March 27, 2008  
Time: 9:45 a.m.  
Place: State Capitol, Conference Room 211

Testifier: Rosemary Fazio, Chair, Judicial Selection Commission

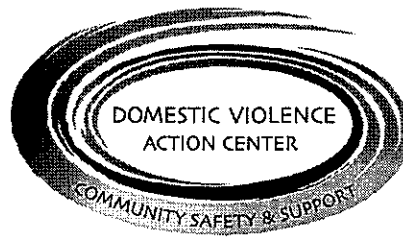
Chair Baker and Members of the Committee:

The Judicial Selection Commission has concerns about this bill as it relates to the appropriation for the Commission.

The Commission appreciates that the Committee on Judiciary and Labor, as stated in Standing Committee Report No. 3115, restored the budget of the Judicial Selection Commission in S.D.1. The Commission is requesting an appropriation of \$94,283 for fiscal year 2008-2009, which is intended to cover the staffing and operation costs of the Commission. However, the bill does not reflect where exactly in the Judiciary's budget that the Commission's funds were placed. We understand further that budget worksheets were not created by the Judiciary and Labor Committee and so there is no way to determine where the Judicial Selection Commission's funds are. Article VI, section 4 of the Hawaii Constitution provides that "[t]he legislature shall provide for the staff and operating expenses of the judicial selection commission in a separate budget." The Commission believes that embedding the Commission's budget within the Judiciary's budget does not satisfy this constitutional requirement.

In order for the Commission to be able to exercise its authority in a fair and independent manner it must remain independent of the Judiciary. Having the Commission's budget as a part of the Judiciary's appropriation, as it presently exists in this bill, could inhibit the Commission from operating independently from the Judiciary and could create an appearance of impropriety, from the public's perspective. In addition, inclusion of the Commission's budget within the Judiciary's appropriation does not appear to comply with the Constitutional requirement of a separate budget for the Commission.





TO: Rosalyn Baker, Chair  
Shan Tsutsui, Vice Chair  
Members of the Committee on Ways and Means

FR: Nanci Kreidman, M.A.  
Executive Director

RE: H.B. 2700, H.D. 1, S.D. 1

Aloha. Please accept this testimony reinforcing our request for monies to be included in the FY 09 Judiciary budget for crucial program services designed to meet the complex needs of victims of domestic violence.

We struggle each year to meet the rising costs of doing business, competing in the labor market for talented and compassionate professionals and reaching into the community with the important information we have about violence in the family. Requests made in prior years have yielded appropriations which increase our operating budget, but not to the level that is necessary.

In addition to State funding, we receive City and County funding, Federal funding, private grants, client fees, individual contributions and host events to raise money. We continue to seek ways to diversify our funding base and recognize that public money is essential for us to serve the community.

All of our program services delivered to clients and in the courts and community are documented for demographic, planning and evaluation purposes. All of the data is available upon request and reflects the earnest efforts we make to bring peace to our island families.

The community will continue to be best served with the appropriation of \$350,000 through our contract with the Hawaii State Judiciary. Thank you for permitting comment this morning.

**TESTIMONY IN SUPPORT OF HB 2700, HD 1, SD 1**  
**BY THE LEGAL AID SOCIETY OF HAWAII**

**Senate Committee on Ways and Means**  
**Hearing: March 27, 2008, 9:45 a.m., Room 211**

The Legal Aid Society of Hawai'i supports HB 2700, HD 1, SD 1. While the Legal Aid Society of Hawai'i has been included for funding at \$800,000 for FY 2008-09, it is respectfully requested that this amount be increased. Legal Aid is currently receiving \$810,000 in grant in aid funds through the Judiciary and has requested \$1,200,000 for FY 2008-09.

It should be noted that there is an error in the Senate Judiciary and Labor Committee's Standing Report on this bill, SSCR 3115. While the Committee voted to place the Legal Aid Society of Hawai'i, Na Loio, and Volunteer Legal Services Hawai'i in the budget, there was no decision to limit these funds for "guardians ad litem" purposes. The funds are intended for civil legal services and were not limited to guardians ad litem services. Further, the amounts listed for Na Loio and Volunteer Legal Services Hawai'i are in error. Na Loio is receiving \$423,000 in FY 2007-08 and Volunteer Legal Services Hawai'i is receiving \$600,000. The Committee's vote was to fund these three organizations at the same or similar levels in FY 2008-09 as in 2007-08.

It is vital that funding for the Legal Aid Society of Hawai'i be included in HB 2700, HD 1, SD1. Legal Aid has received funding from the state for over 20 years. Funding from the Legislature for general legal services to the Legal Aid Society of Hawai'i has substantially decreased over the past 15 years. In FY 1992, funding for this grant was at \$1.47 million. Between FY 1993 – FY 1997 the grant slowly decreased to \$1 million. In FY 2000 the award leveled off at \$810,000 for four years, and in FY 2004 dropped to \$647,000. In both FY 2006 and 2007, funding was \$649,000. Funding increased to \$810,000 in FY 2008. Overall, funding has decreased by 45% since 1992.

This request for funding at \$1,200,000 for FY 2008-09 for Legal Aid is an effort to restore our funding to a level closer to where Legal Aid was funded 15 years ago. The number of people living below 125% of the federal poverty guideline in Hawai'i has grown 28% to 156,321 since 1989.

Without support from the state, Legal Aid would be forced to lay off attorneys and other staff, thus decreasing legal services to low-income Hawai'i residents.

The Legal Aid Society of Hawai'i provides civil legal assistance to low-income residents statewide through nine offices located in Kaneohe, Waianae, Honolulu, Lihue, Kaunakakai, Lanai City, Wailuku, Kona and Hilo. In FY 2007, Legal Aid handled over 8,400 cases, serving over 15,000 children, adults and seniors.

Legal Aid provides legal assistance, community education and outreach services to families and individuals who have critical need to:

- **Maintain or secure affordable housing**
- **Eliminate the barriers to being homeless**
- **Secure appropriate placement and services for abused and neglected children (we are guardian ad litem for the children)**
- **Obtain public benefits such as disability benefits from the Social Security Administration or Medicaid**
- **Help their family become safe and stable with family law services, including protection from domestic violence, child custody and support**
- **Be protected from a consumer problem such as mortgage “rescue” scams or illegal debt collection practices**

Additional funding for civil legal services is urgently needed. The Access to Justice Hui, comprised of representatives of the Judiciary, the Hawai‘i State Bar Association, legal service providers, the Hawai‘i Justice Foundation and the William S. Richardson School of Law, as well as bar leaders and other interested parties, recently concluded an extensive statewide assessment of the civil legal needs of low and moderate-income residents of Hawai‘i. The resulting report, [Achieving Access to Justice for Hawai‘i’s People: The 2007 Assessment of Civil Legal Needs and Barriers of Low and Moderate-Income People in Hawai‘i](#), finds that only one out of five low and moderate income residents of Hawai‘i have their legal needs met. Further, only one out of every three persons contacting an existing legal services provider can obtain the legal help they need. The full 200 page Hui report is available at <http://www.legalaidhawaii.org/images/uploads/justice.pdf>.

One of the key recommendations of the Access to Justice Hui is that the State Legislature should increase funding for civil legal services. See [Community Wide Action Plan: Ten Steps in Increase Access to Justice in Hawai‘i by 2010](#), issued by the Hui on November 7, 2007.

Legal Aid is requesting \$1,200,000 from the legislature for FY 2008-09 to:

- open a new office in Wahiawa (two attorneys and two paralegals)
- hire an additional attorney in the Hilo office
- hire an additional attorney in the Waianae office
- hire an additional paralegal in the Maui office
- hire an additional paralegal in the Kona office

- continue to provide civil legal services statewide

Legal services will be provided statewide through Legal Aid's nine offices and over thirty satellite sites. With this support, Legal Aid will be able to continue its mission and provide critically-needed legal services to 10,000 families and individuals and positively affect the lives of over 20,000 people.

The requested funding increase will allow Legal Aid to help more families and individuals maintain or secure affordable housing, secure appropriate placement and services for abused and neglected children (we are guardian ad litem for the children), obtain public benefits such as disability benefits from the Social Security Administration or Medicaid, help families become safe and stable with family law services, including protection from domestic violence, child custody and support, and protect them from a consumer problem such as mortgage "rescue" scams or illegal debt collection practices.

The funding increase will also allow us to recruit and retain our staff by paying living wages. Our attorney salaries are well below those paid to public attorneys and some other non-profit organizations. As a result we have had difficulty retaining and recruiting staff, particularly local attorneys. We are committed to improving the retention and enhancing the recruitment of staff. We have recently created a "Legal Aid Fellowship" program with the William S. Richardson School of Law to hire one Richardson graduate per year who is interested in practicing public interest law. The fellowships are for two years.

Without this grant, Legal Aid may be forced to significantly reduce its services in rural areas that traditionally do not have specific funding sources available to provide civil legal services. Furthermore, loss of these funds may affect Legal Aid's ability to leverage federal funds into the state that has allowed the organization to expand its capacity to provide services specifically in the areas of housing discrimination, supportive legal services to the homeless, housing counseling, and tax disputes with the IRS.

We respectfully request your support for funding for the Legal Aid Society of Hawai'i for FY 2008-09. This funding is urgently needed to help support civil legal services for those families and individuals unable to afford legal assistance.

Thank you for this opportunity to testify.

Sincerely,



Chuck Greenfield  
Executive Director