

JAN 26 2009

A BILL FOR AN ACT

RELATING TO PUBLIC DEFENDER SERVICES.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- Public defender services. In addition to section
5 46-1.5, each county shall provide public defender services under
6 chapter 802."

7 SECTION 2. Chapter 802, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§802- Public defender services; counties. (a)
11 Beginning July 1, 2010, each county shall provide public
12 defender services for indigents, as provided in this chapter.

13 (b) Each county shall appoint and set the compensation of
14 the county public defender who shall be responsible for the
15 duties as provided in this chapter within the respective
16 county's jurisdiction. The qualifications of the county public
17 defender shall be set by the county; provided that the county



1 public defender shall be qualified to practice law before all
2 courts in this State.

3 (c) Each county shall provide by ordinance or rule for the
4 staffing and compensation of the county public defender office.

5 (d) This section shall not require a change or
6 substitution of counsel for a pending case, as of July 1, 2010,
7 in which the state public defender is the appointed counsel."

8 SECTION 3. Section 802-8, Hawaii Revised Statutes, is
9 repealed.

10 [~~"§802-8 Office of the state public defender. An office~~
11 ~~of state public defender is hereby created within the department~~
12 ~~of budget and finance for administrative purposes."]~~

13 SECTION 4. Section 802-9, Hawaii Revised Statutes, is
14 repealed.

15 [~~"§802-9 Defender council. The governor shall appoint a~~
16 ~~defender council consisting of five members, who shall serve at~~
17 ~~the governor's pleasure. There shall be at least one member~~
18 ~~from each of the counties of the State. The chairperson of the~~
19 ~~council shall be selected by its members. Each member shall~~
20 ~~serve without pay and shall be reimbursed for necessary expenses~~
21 ~~incurred while attending meetings and while in the discharge of~~



1 ~~the member's responsibilities. The council shall be the~~
2 ~~governing body of the office of the state public defender."]~~

3 SECTION 5. Section 802-11, Hawaii Revised Statutes, is
4 repealed.

5 [~~§802-11 Appointment of state public defender. The state~~
6 ~~public defender shall be appointed by the defender council~~
7 ~~without regard to chapters 76 and 89. The state public~~
8 ~~defender's appointment shall be for a term of four years except~~
9 ~~as otherwise provided herein, and until the state public~~
10 ~~defender's successor is appointed and qualified. The state~~
11 ~~public defender shall be qualified to practice law before the~~
12 ~~supreme court of this State. Effective July 1, 2005, the state~~
13 ~~public defender shall be paid a salary set at eighty seven per~~
14 ~~cent of the attorney general. The state public defender shall~~
15 ~~devote full time to the performance of the state public~~
16 ~~defender's duties and shall not engage in the general practice~~
17 ~~of law."]~~

18 SECTION 6. Section 802-12, Hawaii Revised Statutes, is
19 repealed.

20 [~~§802-12 Organization of office, assistance. Subject to~~
21 ~~the approval of the defender council, the state public defender~~
22 ~~may employ assistant state public defenders and other employees,~~



1 ~~including investigators, as may be necessary to discharge the~~
2 ~~function of the office. Assistant state² public defenders shall~~
3 ~~be qualified to practice before the supreme court of this State.~~
4 ~~Assistant state public defenders shall be appointed without~~
5 ~~regard to chapter 76 and shall serve at the pleasure of the~~
6 ~~state public defender. All other employees may be appointed in~~
7 ~~accordance with chapter 76. An assistant state public defender~~
8 ~~may be employed on a part time basis, and when so employed, the~~
9 ~~assistant public defender may engage in the general practice of~~
10 ~~law, other than in the practice of eriminal law."]~~

11 SECTION 7. All rights, powers, functions, and duties of
12 the office of the state public defender are transferred to the
13 the city and county of Honolulu, county of Kauai, county of
14 Maui, and county of Hawaii, respectively.

15 All officers and employees whose functions are transferred
16 by this Act shall be transferred with their functions and shall
17 continue to perform their regular duties upon their transfer,
18 subject to the state personnel laws and this Act.

19 No officer or employee of the State having tenure shall
20 suffer any loss of salary, seniority, prior service credit,
21 vacation, sick leave, or other employee benefit or privilege as
22 a consequence of this Act, and such officer or employee may be



1 transferred or appointed to a civil service position without the
2 necessity of examination; provided that the officer or employee
3 possesses the minimum qualifications for the position to which
4 transferred or appointed; and provided that subsequent changes
5 in status may be made pursuant to applicable civil service and
6 compensation laws.

7 An officer or employee of the State who does not have
8 tenure and who may be transferred or appointed to a civil
9 service position as a consequence of this Act shall become a
10 civil service employee without the loss of salary, seniority,
11 prior service credit, vacation, sick leave, or other employee
12 benefits or privileges and without the necessity of examination;
13 provided that such officer or employee possesses the minimum
14 qualifications for the position to which transferred or
15 appointed.

16 If an office or position held by an officer or employee
17 having tenure is abolished, the officer or employee shall not
18 thereby be separated from public employment, but shall remain in
19 the employment of the State or county with the same pay and
20 classification and shall be transferred to some other office or
21 position for which the officer or employee is eligible under the



1 personnel laws of the State as determined by the respective
2 mayor of the county.

3 SECTION 8. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the office of the state public defender
7 relating to the functions transferred to the city and county of
8 Honolulu, county of Kauai, county of Maui, and county of Hawaii,
9 respectively shall be transferred with the functions to which
10 they relate.

11 SECTION 9. It is the intent of this Act that the
12 transition of public defender services from the State to the
13 counties occur with minimal or no disruption of public defender
14 services. This Act addresses jurisdictional responsibilities
15 only for public defender services. This Act shall not be
16 interpreted as affecting professional legal services of public
17 defender services.

18 SECTION 10. Pursuant to article VIII, section 5, of the
19 Hawaii state constitution, there is appropriated out of the
20 general revenues of the State of Hawaii the sum of \$
21 or so much thereof as may be necessary for fiscal year 2009-2010



1 for transfer of public defender services from the State to each
2 county, as follows:

3	City and County of Honolulu:	\$
4	County of Kauai	\$
5	County of Maui	\$
6	County of Hawaii	\$

7 The sum appropriated shall be expended by the department of
8 budget and finance for the purposes of this Act.

9 SECTION 11. This Act shall take effect on July 1, 2009.

10

INTRODUCED BY: 



Report Title:

Public Defender; Appropriation

Description:

Transfers public defender functions to counties. Makes appropriation.

