

**Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on  
Judiciary**

February 14, 2018

S.B. No. 2172 SD1: RELATING TO EXPERT WITNESS FEES

Chair Dela Cruz and Members of the Committee:

This measure would clarify that expert witness fees for witnesses in criminal cases are paid out of a fund established under the State of Hawaii Department of Budget and Finance. S.B. No. 2172 mandates that expert witnesses subpoenaed on behalf of either the state or defendant at the expense of the state in criminal cases are entitled to applicable fees associated with their testimony, consultation, and preparation associated with the expert's testimony. The bill also entitles out-of-state expert witnesses to round-trip airfare as well as \$200 per day per diem.

This statutory section, H.R.S. § 621-7, which relates to witness fees is currently tied into a fund for such fees established under and administered by the Department of Budget and Finance. S.B. No. 2172 SD1 clarifies that fees for expert witnesses who are subpoenaed to testify in criminal cases fall are eligible for payment under this statute. We support this clarification.

Thank you for the opportunity to provide testimony in this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai'i**

February 14, 2018

**RE: S.B. 2172; RELATING TO EXPERT WITNESS FEES**

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 2172, S.D. 1. This bill is part of the Department's 2018 legislative package.

The purpose of S.B. 2172, S.D. 1 is to clarify the applicable reimbursements allowable for expert witnesses, as outlined in §621.7, §621.9, and §836-3 of the Hawaii Revised Statutes. This is in direct response to a March 2, 2017 policy change within the Department of Budget and Finance (“B & F”), in which B & F discontinued reimbursement of certain expert witness fees.

Generally, when a party subpoenas an expert witness for the purposes of trial, grand jury or any other criminal proceeding, the subpoenaing party incurs a number of costs associated with that particular expert. These costs may include but are not limited to: expert testimony, review of documents, consultation and preparation, travel, and time in attendance at court. As each county prosecuting attorney’s office handles cases on behalf of the State, it was well established, up until March 2, 2017, that the State—specifically B & F—reimbursed these associated costs, whether it be for the prosecution, an indigent defendant represented by the public defender’s office, or private conflict counsel. Although the current statutes associated with reimbursements for witnesses remain silent in regards to expert witnesses, the legislature made it quite clear in the 1976 House Journal Conference Committee Report that expert witness fees was not only contemplated, but anticipated to be included in any reimbursements:

“At present, the courts have an account titled “Legal Expenses” which is looked to by both the prosecutor and indigent defendants to pay for witness

expenses, transcript costs in the case of indigent defendants and investigatory, expert and other services.”

After discussions with the Office of the Attorney General, the Governor signed and issued Governor’s Administrative Directive No. 18-01, on January 2, 2018 (See Attachment 1). The directive essentially re-established the guidelines and procedures regarding expert witness reimbursements, to what they were prior to March 2, 2017. In addition, the directive proposes that legislative action be taken, to expressly clarify allowable expenses, to ensure efficient administration of criminal cases.

Using the right expert witness in any particular case can make or break a case, thus it was always the Legislature’s intent to ensure that the quality of a case presented by the prosecution or defense not be dictated by truncated trial expenses. Considering the importance of ensuring the participation of qualified expert witnesses, to successfully convict defendants who have caused harm to people and property here in Hawai’i, or to properly defend against various criminal allegations, the Department strongly believes that this is a very logical fiscal responsibility, which has been and would continue to be manageable for the State.

For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of S.B. 2172, S.D. 1. Thank you for this opportunity to testify.



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

January 2, 2018

**ADMINISTRATIVE DIRECTIVE NO. 18-01**

TO: Department of Budget and Finance, Department of Accounting and General Services and Department of Attorney General

FROM: David Y. Ige  
Governor

SUBJECT: Reimbursement of Expert Witness Fees and Other Expenses to Counties

Discussion

Hawaii Revised Statutes sections 621-7, 621-8, 621-9, 836-2 and 836-3 provide budgetary procedures for the covering of expenses when subpoenaing witnesses to testify for the State in criminal cases. The statutes do not clearly delineate what constitutes allowable expenses and should be clarified by appropriate legislative action. Pending such clarification and in order to promote the efficient administration of criminal prosecutions by the State, I direct appropriate executive branch agencies as follows:

Policy

This Administrative Directive shall be effective for an interim period from the date of this directive and shall expire on June 30, 2018.

1. County Prosecutors may submit to the Department of Budget and Finance the following:

Allowable Expenses:

Costs for law enforcement officers, including overtime, to transport a defendant.

Expert witness fees, including preparation, travel, waiting, and testimony.

Per diem at a rate comparable to that of permanent employees of the State.

Expenses Specifically Excluded:

Costs in excess of the per diem, except as approved by the Department of Budget and Finance. Approval must be obtained prior to the excess expense being incurred.



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David Y. Ige  
Governor, State of Hawai'i

JAN - 2 2018

\_\_\_\_\_  
Date

DAVID Y. IGE  
GOVERNOR



LAUREL A. JOHNSTON  
ACTING DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

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EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY LAUREL A. JOHNSTON  
ACTING DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
SENATE BILL NO. 2172, S.D. 1

**February 14, 2018  
10:00 a.m.  
Conference Room 211**

**RELATING TO EXPERT WITNESS FEES**

Senate Bill No. 2172, S.D. 1 proposes to clarify the expenses that are to be covered as it pertains to testimony preparation, and in-court attendance of expert witnesses who are subpoenaed on behalf of either the State or defendant at the expense of the State in regards to criminal cases.

The Department of Budget and Finance (Department) serves as the fiscal administrator for witness fee payments certified by the prosecuting attorney or county attorney for witnesses subpoenaed on behalf of the State and by the Public Defender for witnesses subpoenaed on behalf of the defendant. FY 18 funding levels for witness fees that are budgeted in the Department totals \$1.89 million from the general fund. We are concerned that should there be no limitation on the amounts requested for these reimbursements that the funding level could be depleted prior to the end of the fiscal year and result in other types of witness fee payments being delayed until such time that sufficient appropriation becomes available in the following fiscal year.

The stipulation in S.B. 2172, S.D. 1, that requires and limits the amounts that pertains to testimony preparation and in-court attendance costs to “reasonable and applicable” fees is prudent.

Thank you for your consideration of our comments.