

DAVID Y. IGE
GOVERNOR



LAUREL A. JOHNSTON
ACTING DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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 JUDICIARY
ON
SENATE BILL NO. 2172

February 1, 2018
9:00 a.m.
Conference Room 016

RELATING TO EXPERT WITNESS FEES

Senate Bill No. 2172 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.

A stipulation that requires and limits the amounts that pertains to testimony preparation and in-court attendance costs to “reasonable” fees is respectfully requested.

Thank you for your consideration of our comments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHASID M. SAPULU
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

February 1, 2018

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

Chair Taniguchi, Vice Chair Rhoads, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 2172. This bill is part of the Department's 2018 legislative package.

The purpose of S.B. 2172 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. 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:

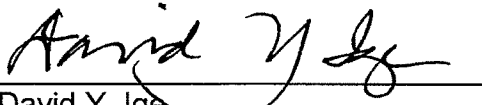
Costs for law enforcement officers, including overtime, to transport a defendant.

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.



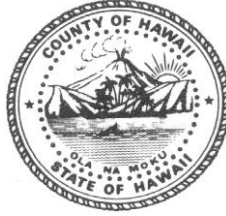
David Y. Ige
Governor, State of Hawai'i

JAN - 2 2018

Date

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAII UNIT
81-980 HALEKĪ'I ST, SUITE 150
KEALAKEKUA, HAWAII 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2172

RELATING TO EXPERT WITNESS FEES

COMMITTEE ON JUDICIARY
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

Thursday February 1, 2018, 9:00 P.M.
State Capitol, Conference Room 016

Honorable Chair Taniguchi, Vice-Chair Rhoads and Members of the Committee on Judiciary. The Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **STRONG** support of Senate Bill No. 2172.

This measure clarifies the legislative intent of HRS 621-7 and continues the long standing practice of reimbursements to Prosecutor and cases handled by the Public Defenders as well as court appointed attorneys for expert witnesses in criminal cases.

Clarification is needed because, the Dept. of Budget and Finance recently decided to interpret the HRS sections 621-7, 621-9 and 836-3 differently from the way they had been interpreted for over 30 years, and decided to discontinue reimbursements of certain expert witness fees and created new rules about when witnesses would be reimbursed. This new interpretation clearly seems to go against the legislative purpose as set out in the 1976 House Journal Conference Committee Report which not only contemplated, but also anticipated expert witness fees to be included and any reimbursements.

On January 2, 2018, the Governor signed and issues Administrative Directive No. 18-01, which re-established the procedures regarding expert witness reimbursements prior to the new interpretation by the Dept. of Budget and Finance made on March 2, 2017. However, the Governors Administrative Directive No. 18-01 proposes that legislative action be taken to clarify allowable expenses.

In certain cases, such as Sex Assaults, often times cases cannot be made without the assistance of an expert witness. Last year, our State made the decision that having sex assault kits tested was a top priority. One of the reasons was to determine if there was DNA on rape kits so these cases can be brought to trial. A change in the interpretation of the HRS 621-7 would negatively impact these cases and send a message that the State does not care about victims of Sexual Assault.

County Prosecutors prosecute cases in the name of the State. Unfortunately, at least for the County of Hawaii, The Office of the Prosecuting Attorney, like other County of Hawaii agencies has been asked to submit a status quo budget together with a budget with a possible cut for the last 5 years. We have cut our budget to the bone, and do not have funds set aside for expert witnesses.

For the above stated reasons, the Office of the Prosecuting Attorney, County of Hawai'i Strongly supports the passage of Senate Bill No. 2172. Thank you for the opportunity to testify on this matter.

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

February 1, 2018

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

Chair Taniguchi 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 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 but suggest that the allowable expert witness fees be limited to "reasonable" fees. The concern is that expert witnesses, left unchecked, will drive up fees unjustifiably. Also, if the fund is exhausted in any given fiscal year, payments will not be processed until the fund is replenished at the start of the next fiscal period.

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