

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

DWIGHT K. NADAMOTO  
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE SYLVIA LUKE, CHAIR**  
**HOUSE COMMITTEE ON FINANCE**  
**Thirtieth State Legislature**  
**Regular Session of 2020**  
**State of Hawai'i**

February 25, 2020

**RE: H.B. 1749, H.D. 1; RELATING TO EXPERT WITNESS FEES.**

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 1749, H.D. 1. This bill is part of the Department's 2020 legislative package.

The purpose of H.B. 1749, H.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.”

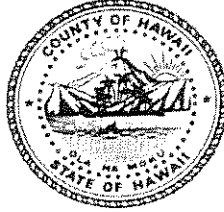
After discussions with the Office of the Attorney General, the Governor signed and issued Governor’s Administrative Directive No. 18-01, on January 2, 2018. The directive essentially re-established the guidelines and procedures regarding expert witness reimbursements, to what they were prior to March 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 H.B. 1749, H.D. 1. Thank you for this opportunity to testify.

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 HALEKI'I ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1749, HD 1

A BILL FOR AN ACT RELATING TO WITNESS FEES AND  
REIMBURSEMENTS IN CRIMINAL CASES

COMMITTEE ON FINANCE  
Rep. Sylvia Luke, Chair  
Rep. Ty J.K. Cullen, Vice Chair

Tuesday, February 25, 2020, 11:00 a.m.  
State Capitol, Conference Room 308

Honorable Chair Luke, Honorable Vice-Chair Cullen, and Members of the Committee on Finance, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in STRONG SUPPORT of House Bill 1749, HD 1.

This measure clarifies the legislative intent of HRS 621-7 and continues the long standing practice of reimbursements going to Prosecutor Offices, Public Defenders and 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 issued 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 Governor's Administrative Directive No. 18-01 proposes that legislative action be taken to clarify allowable expenses.

In certain cases, such as Sexual 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 Hawaii, Strongly Supports the passage of House Bill No. 1749, HD 1. Thank you for the opportunity to testify on this matter.

**LATE**

**HB-1749-HD-1**

Submitted on: 2/25/2020 10:32:08 AM  
Testimony for FIN on 2/25/2020 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rayne	Individual	Oppose	No

Comments: