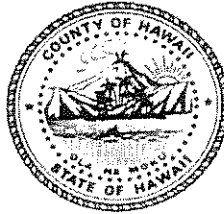


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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1749

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

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Wednesday, February 5, 2020, 3:30 p.m.  
State Capitol, Conference Room 325

Honorable Chair Lee, Vice-Chair San Buenaventura, 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 House Bill 1749.

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. Thank you for the opportunity to testify on this matter.

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**THE HONORABLE CHRIS LEE, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Thirtieth State Legislature  
Regular Session of 2020  
State of Hawai'i**

February 5, 2020

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

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, 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. This bill is part of the Department's 2020 legislative package.

The purpose of H.B. 1749 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. Thank you for this opportunity to testify.

**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

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**THE HONORABLE CHRIS LEE, CHAIR  
THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Thirtieth State Legislature  
Regular Session of 2020  
State of Hawaiʻi**

February 5, 2020

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

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauaʻi submits the following testimony in strong support of H.B. 1749.

The purpose of H.B. 1749 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:

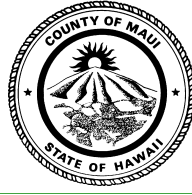
“At present, the courts have an account titled “Legal Expenses” which is looked to by both the prosecutor and indigent defendants to pay for witness expenses, transcript costs in the case of indigent defendants and investigatory, expert and other services.”

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 Office of the Prosecuting Attorney strongly supports the passage of H.B. 1749. Thank you for this opportunity to testify.

MICHAEL P. VICTORINO  
Mayor



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TESTIMONY  
ON  
H.B. 1749 - RELATING TO  
EXPERT WITNESS FEES  
AND REIMBURSEMENTS IN  
CRIMINAL CASES

February 4, 2020

The Honorable Chris Lee  
Chair  
The Honorable Joy A. San Buenaventura  
Vice Chair  
and Members of the Committee on Judiciary

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning H.B. 1749, Relating to Expert Witness Fees and Reimbursements in Criminal Cases. Specifically, we would like to express our strong support for the applicable reimbursements allowable for expert witnesses per §§621-7, 621-9 and 836-3 of the Hawaii Revised Statutes.

Generally, the party who subpoenas an expert witness incurs multiple costs in doing so, especially when that witness is from a different island or from outside of Hawaii altogether. These costs include both travel expenses and compensation for the expert's time spent reviewing information, rendering an opinion, preparing for trial and actual time spent testifying. In criminal cases, it was previously established that the State would reimburse both the prosecution and the defense for these expenses. However, the Governor recently signed Governor's Administrative Directive No. 18-01 which, in relevant part, directed that legislative action be taken to clarify allowable expenses to ensure efficient administration of criminal cases.

In our Department's view, the ability of the State to prosecute violations of the law and to provide for a defendant's constitutional right to a defense is paramount. The ability to utilize expert witnesses, especially in cases involving homicide or sexual assault where medical, scientific or other expert testimony is often a requirement, is an important factor in whether justice can be served. Moreover, our Department's resources in this area are already limited, and

removing or limiting the possibility for reimbursement of expert witness fees will result in the very real scenario that we would be unable to prosecute serious criminal violations due to lack of funding.

For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly supports the passage of H.B. 1749. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.