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**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawaiʻi**

January 28, 2020

RE: S.B. 1160; RELATING TO EXPERT WITNESS FEES.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauaʻi submits the following testimony in strong support of S.B. 1160.

The purpose of S.B. 1160 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 S.B. 1160. Thank you for this opportunity to testify.

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

January 28, 2020

RE: S.B. 1160; RELATING TO EXPERT WITNESS FEES.

Chair Rhoads, Vice Chair Keohokalole, 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. 1160. This bill is part of the Department's 2020 legislative package.

The purpose of S.B. 1160 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.

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