

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State
of Hawai‘i to the Committee on the Judiciary**

January 31, 2024

HB 1608 RELATING TO THE OFFICE OF THE PUBLIC DEFENDER

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Office of the Public Defender supports HB 1608.

Effective July 1, 2001, due to the budget cuts as a result of the COVID-19 pandemic, six positions at the Office of the Public Defender (OPD) were abolished: PN100689 (PD Investigator, Kauai Branch); PN 107819 (DPD III, Oahu Branch); PN 101672 (DPD III, Hawai‘i-Hilo Branch); PN 102108 (DPD I, Oahu Branch); PN 100603 (Office Assistant I, Oahu Branch); and PN 101700 (Office Assistant I, Oahu Branch). This bill seeks to restore four deputy public defender positions.

The mission of the OPD is to provide legal representation for indigent defendants charged in state court with offenses involving the possibility of incarceration. Both the U.S. and Hawai‘i Constitutions require that every criminal defendant be afforded the right to counsel. Hawai‘i Revised Statutes, Chapter 802, establishes that the OPD provide the right to counsel to indigent defendants. Thus, the services provided by the OPD are mandated both constitutionally and statutorily. It is important to note, however, that not only are criminal defendants afforded the right to counsel, but also the right to effective assistance of counsel.

For the criminal justice system to operate efficiently and in accordance with constitutional and statutory mandates, it is essential that the OPD be adequately staffed. Deputy Public Defenders (DPDs) appear daily on behalf of clients in the Circuit, District, and Family Courts of every circuit in the state. DPDs also represent indigent defendants in the Hawai‘i Supreme Court and the Hawai‘i Intermediate Court of Appeals. DPDs represent sentenced defendants before the Hawai‘i Paroling Authority and individuals subject to involuntary hospital commitment petitions. In addition to the traditional courts, the OPD staffs specialty courts across the state such as the HOPE program courts,¹ drug courts, mental health courts, environmental courts, the Veteran’s treatment courts and the Oahu Community Outreach Court.²

¹ “HOPE” is an acronym for “Hawai‘i’s Opportunity Probation with Enforcement,” a high-intensity supervision program to reduce probation violations by drug offenders and others at high risk of recidivism.

² The mission of the Community Outreach Court (COC) Unit of the OPD is to assist non-violent offenders charged with offenses which target the homeless community to attend court sessions and resolve their outstanding cases.

It would be virtually impossible for the vast majority of cases to move through the criminal justice system if the OPD is understaffed for extended periods of time. Case overloads caused by inadequate staffing will result in defendants charged in criminal cases from obtaining assigned counsel in a timely manner which will, in turn, result in the continuances of cases, backlogs in the courts and other major problems in the justice system. But, more significantly, exceeding a maximum caseload for a DPD may result in the ineffective assistance of counsel.

The 6th Amendment Center, an organization that provides expert support to state and local policy makers to ensure that indigent defendants receive constitutionally effective legal counsel, cautions:

The role of the indigent defense system, therefore, is to ensure that the individual attorneys have access to ongoing training, are properly supervised, are provided with sufficient resources, and have enough time to effectively represent every single client. Where a defendant is represented by an attorney who lacks the time necessary to properly investigate the case, to meet with the defendant, to file pre-trial motions, to study the prosecution's plea offer, etc. – essentially, where the attorney is forced to triage services in favor of one client over another – then both the system and the attorney are in breach of their ethical and constitutional obligations to that defendant.³

Put another way, the National Association of Criminal Defense Lawyers (NACDL) also cautioned: “The guarantees of the 6th Amendment are not met simply by providing the defendant a warm body with a bar card. An accused is in need of and is entitled to a zealous, capable advocate who can provide effective assistance consistent with prevailing professional norms. When public defense attorneys are burdened with excessive caseloads, they are unable to fulfill their ethical and constitutional responsibilities to their clients and the community.”

Ineffective assistance of counsel claims pursuant to a post-conviction petition to set aside a conviction pursuant to Rule 40 of the Hawai'i Rules of Penal Procedure or a review by an appellate court may lead to the vacating of convictions and pleas. Excessive caseloads that drive DPDs into compromising ethical situations will eventually lead to the OPD having to reject cases, forcing the courts to appoint outside counsel to represent indigent defendants.⁴ The cost of outside counsel when aggregated will easily exceed the cost of funding the proposed positions.

³ Sixth Amendment Center, “Sufficient Time to Ensure Quality Representation.” (<https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/sufficient-time-to-ensure-quality-representation-aba-principle-4/#:~:text=National%20caseload%20standards&text=400%20misdemeanors%20per%20attorney%20per,appeals%20per%20attorney%20per%20year>) (last visited, August 10, 2022).

⁴ In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC), established and funded by the federal government, recommended annual maximum caseloads for public defense programs. The NAC's recommendations have had—and continue to have—significant influence in the field of public defense respecting annual caseloads of public defenders. Specifically, the NAC recommended that annual maximum caseloads ‘of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per

As the State recovers from the Pandemic, case counts are climbing. New specialty courts are being established, all of which need to be staffed by DPDs. In order to ensure that the OPD is able to continue to provide the constitutionally-mandated level of representation, it is necessary for the OPD to be adequately staffed. The OPD supports HB 1608.

The OPD appreciates the recognition of the sponsors of this bill of the critical importance of restoring positions to our office. Thank you for allowing the OPD to comment on HB 1608.

year: not more than 200; Mental Health Act cases per attorney per year; not more than 200; and appeals per attorney per year: not more than 25. National Legal Aid and Defender Association, “National Advisory Commission on Criminal Justice Standards and Goals, The Defense (Black Letter), Standard 13.12 Workload of Public Defenders. (<https://www.nlada.org/defender-standards/national-advisory-commission/black-letter>)