



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, Regular Session of 2022

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

Thursday, February 24, 2022, 11:00 a.m.
State Capitol, Conference Room 308
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by
Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 1841, H.D. 1, Relating to the Judiciary

Purpose: Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardian ad litem. Appropriates funds.

Judiciary's Position: The Judiciary offers this testimony in support of House Bill No. 1841, H.D. 1.

Guardians ad litem (GALs) perform a critical role in many family court cases, including, for example, child abuse and neglect cases, involuntary hospitalization proceedings, and assisted community treatment proceedings. The subjects of these proceedings are among the most vulnerable members of our community and they frequently are unable to advocate for themselves or meaningfully participate in court proceedings that may significantly impact their lives. It is in our community's interest to attract and retain competent individuals to act as GALs to represent their best interests. One important way to help accomplish this goal is to ensure that GALs are adequately compensated for their work.



House Bill No. 1841, H.D.1, Relating to the Judiciary
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Presently, GALs are paid at rates prescribed under Hawai'i Revised Statutes § 571-87, which sets their compensation at \$60 per hour for out-of-court work and \$90 per hour for in court work. An enhancement in the rates at which the Judiciary can compensate GALs should help to increase the pool of individuals willing and able to perform this critical work by ensuring that they are adequately compensated for their work.

Paying GALs more will, of course, require additional funding. The Judiciary appreciates the appropriation of an additional \$2,300,000 to fund the increase in purchase of service contracts including GAL and court-appointed counsel contracts pursuant to HRS chapter 571, and the Judiciary understands that this additional sum is not intended to supplant the Judiciary's existing funding or budget requests.

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

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY 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 CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 1841, H.D. 1

February 24, 2022
11:00 a.m.
Room 308 and Videoconference

RELATING TO THE JUDICIARY

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 1841, H.D. 1, aims to increase the number of people willing to serve as appointed counsel and guardians ad litem by raising their compensation and appropriating \$2,300,000 in general funds in FY 23 for the Judiciary for that purpose.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



LEGAL AID
SOCIETY OF HAWAII

Telephone: (808) 536-4302 • Fax: (808) 527-8088
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375
924 Bethel Street • Honolulu, Hawaii 96813

J. Blaine Rogers, Esq.,
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.
Executive Director

TESTIMONY ON HB1841 HD1

Committee on Finance

Representative Sylvia Luke, Chair
Representative Kyle Yamashita, Vice-Chair

February 24, 2022 at 11:00 a.m.

The Legal Aid Society of Hawaii submits testimony in strong support of HB1841 HD1 – Relating to the Judiciary. This bill would increase the compensation to be paid to appointed counsel and guardian ad litem and provide an appropriation of funds for the purchase of service contracts for guardian ad litem and court-appointed counsel. I apologize that I am unable to appear to testify.

Legal Aid provides guardian ad litem services on ‘Oahu, Hawai‘i Island and in Maui County and also provides court-appointed counsel representation to parents on Kauai, Hawai‘i Island and in Maui County. We have been providing these services to the state for almost 25 years and are the only statewide agency providing this breadth of services. These contracts provide a critical piece in ensuring the safety of children in child welfare cases by providing an independent fact finder in child welfare cases who is sole interest is the welfare of the child as required by state and federal law.

We are in support of this bill as contracts were significantly cut in FY21 and continue in FY22. In the First Circuit, where contracts for guardian ad litem services are provided by courtroom, the contract was cut by 30%, retroactively to July 1, 2020 in January 2021. This cut resulted in a significant loss of funding to provide services and an effective drop in rate to approximately \$29/hour with respect to the actual hours our dedicated staff commits to providing these services. This cut also lead to the loss of independent guardian ad litem who were contracted to provide services in conflict cases, as they could no longer afford to provide this critical service.

In addition, adjustments were made to the billing structure in the Third Circuit, which we understand led to the loss of a number guardian ad litem and parent counsel attorneys.

Guardian ad litem are appointed for a child to serve throughout the pendency of the child protective proceeding (HRS 587A-16). The statute further requires that guardian ad litem visit with the child at least once every three months as well as submit reports to the court every six months.

In actuality, depending on the status of the case or the breadth of concerns for the child, we may write reports on a more frequent basis (once every 2-3 months) or visit with the child multiple times per week or once a month. In addition to our meetings with the children, we participate in various meetings throughout the pendency of the case: Ohana Conferences, Department of Education IEP or 504 meetings, Department of Health treatment team meetings (which occur on a monthly basis). We also have regular contact with individuals relating to the child: their medical providers, educational contacts (counselors, teachers, principals), the resource caregivers, the social worker, attorney general and the parents (and parents’ counsel) in the case.

During the first shutdown, our guardian ad litem did not stop working and meeting our statutory requirements. We found ways to ensure that children remained safe and that we knew how the pandemic was impacting the children in the child welfare system. To this end, we also headed up a campaign to get reusable masks donated

so that each and every child in the foster care system had at least one. Our work did not stop because of the pandemic and became even more critical.

As parent counsel, our staff is dedicated and committed to working with parents to explain to them how the child welfare system works and to provide representation. While our representation includes defending parents in these cases, so much of this work is between hearings and helping parents get the services they need to provide a safe family home for their children.

As such, we are in strong support of this bill.

Thank you for this opportunity to provide testimony.

Sincerely,

M. Nalani Fujimori Kaina
Executive Director

HB-1841-HD-1

Submitted on: 2/23/2022 11:00:41 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Joseph E Cardoza	Hawai`i Access to Justice Commission	Support	No

Comments:

Chair: Hon. Sylvia Luke, Chair

Vice Chair: Hon. Kyle T. Yamashita Vice Chair

Committee: House Committee on Finance

Testimony of: Joseph E. Cardoza, Chair

Organization: Hawai`i Access To Justice Commission

Hearing Date: Thursday, February 24, 2022

Hearing Time: 11:00 a.m.

Place: Via Videoconference

Conference Room 308

Hawai`i State Capitol

415 South Beretania Street

Honolulu, Hawai`i

House Bill: HB No. 1841

Position: Support of HB1841 Relating to The Judiciary

Dear Chair Luke and Members of the House Committee on Finance:

The Hawai'i Access to Justice Commission strongly supports House Bill 1841, which would increase the hourly rate of compensation and the maximum allowable compensation per case for court-appointed counsel and guardians ad litem.

Section 571-87 of the Hawai'i Revised Statutes provides compensation for court-appointed counsel and guardians ad litem in Family Court cases. These cases are of critical importance to the community. Unfortunately, the compensation authorized on an hourly basis and the maximum allowable per case is currently set at a level that jeopardizes the ability to secure the services of court-appointed counsel and guardians. While HB 1841 will not set compensation a level of compensation that matches current market rates, it nevertheless will be an improvement over the existing level of compensation.

The Commission appreciates the Committee hearing this bill. Thank you for the opportunity to present this written testimony.

I do not plan to testify during the videoconference hearing on this Bill.



Your Future is Our Business.

590 Farrington Hwy #524-440
Kapolei, HI 96707
P: 808.358.4942
F: 808.356.1344
Jake@oahu.law

February 23, 2022

TO: Committee on Finance, House of Representatives, Hawaii State Legislature

FR: Attorney Jacob G. Delaplane

RE: Support for HB 1841

I support this bill, as Parents Counsel and Guardians Ad Litem (GALs) endured drastic cuts in contracted pay rates since the beginning of the pandemic.

In December 2020, the Judiciary cut compensation for GALs by 30% and Parent's Counsel by 19% due to "an emergency need due to COVID-19". This cut only occurred in the First Circuit¹. All other Circuits maintained their pre-covid pay rates.

Shortly after this cut, the Judiciary's budget was restored due to availability of Federal COVID relief funds to state and local governments. Although the Judiciary's budget was restored, the Judiciary of the First Circuit, without justification or explanation, maintained the emergency covid rate pay rates for appointed GALs and Parent Counsel in their FY2022 contracts. Both GALs and Parent Counsel have asked the Judiciary to meet to discuss this unjustifiable pay cut, but the Judiciary has repeatedly refused to meet or discuss this matter with these groups.

It is important to note that the Fifth Circuit (Kauai) is currently the only Judicial Circuit in the State that actually pays GALs and Parent Counsel at a fixed hourly rate of \$60/hr (in court) and

¹ The contracted pay rate for Guardians Ad Litem and Parent Counsel in the Second and Third Districts was already higher than the First Circuit. This "emergency COVID rate" made that pay disparity even wider.

\$90 (out of court) as prescribed by HRS 571-87². The First, Second, and Third Circuits compensate at a contracted rate “guided by” the \$60/\$90 rates. This contracted rate is a flat rate per case, not an hourly rate.³ It is the expectation amongst GALs and Parent Counsel, and should be the expectation of this Legislature, that if HB 1841 is passed increasing the statutory \$60/90 hourly rate, then the contracted rate will go up proportionally.

Legislative intervention is necessary and urgent, since the Judiciary has already lost several skilled and experienced Counsels and GALs due to the extremely low "covid emergency rate." There are already too few attorneys willing to accept appointments for this important and challenging area of law. Attracting new experienced and skilled attorneys to this area is virtually impossible and maintaining the few practicing attorneys in this area has become increasingly difficult. Passing this Bill would be extraordinarily helpful in resolving both of these issues.



Jacob G. Delaplane (9347)

² This assertion only applies to Child Protective Act cases, which make up the overwhelming majority of cases to which this Statute applies

³For example, in the First Circuit, Parent Counsel are paid a flat contracted rate of \$120 per case per month. No matter how many hours they work on a case – they can only bill a total of \$120 per month for that case.

ARLENE A. HARADA-BROWN, ESQ.

P.O. Box 247 Kaneohe, HI 96744 (808) 348-2216 aharadabrown@gmail.com

TESTIMONY ON HB1841

Committee on Finance

Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

February 24, 2022 at 11:00 a.m.

I strongly support HB1841.

I have been contracted by the judiciary of the First Circuit to be appointed as a Guardian Ad Litem (“GAL”) for children involved with Child Welfare Services. I have been a Guardian Ad Litem for approximately thirteen years. I am committed and dedicated to advocate on behalf of these children to ensure that their welfare is not further jeopardized.

In the Fall of 2020, our GAL cohort was faced with our contracts being cut by 30% retroactive to July 1, 2020. The basis for this pay cut was due to predicted budget cuts to the judiciary due to the COVID pandemic. The pay cut has not been reinstated.

The result of this significant pay cut led to our cohort losing highly-skilled attorneys that had filled the role of a GAL for the much-needed children involved in the child welfare system. The loss of these attorneys created an even higher case load for our cohort as cases had to be re-assigned to those who remained.

The role of a GAL is significant. It is time-consuming due to the GAL being tasked with being an independent fact finder by reviewing records and interviewing various individuals to determine what would be in the child’s best interests. The duties of a GAL also includes attending meetings focusing on the child. These meetings include monthly Department of Health treatment team meetings, multi-disciplinary team meetings, Department of Education meetings, monthly collateral meetings with therapists, Ohana Conferences which involve the child’s family, monthly hospital meetings when the child is a prolonged patient (including when the child is placed at the facility for safety concerns to his/her own safety), and meeting with the child sometimes beyond the statutory requirement when the need is present.

Beyond these meetings are the consistent contact with anyone involved with the child (social worker, deputy attorney general assigned to the child's case, resource caregiver, medical and dental providers, therapist, teacher, counselor, behavior health specialist, medical and dental providers, parents and their attorneys). The GAL may also be contacting other agencies such as the Family Support Division of the Attorney General regarding genetic testing and other States regarding the Interstate Compact for the Placement of Children ("ICPC") when there is a possibility that the child may be relocated for placement.

The GAL is also required to write reports for each hearing and attend each hearing. Although past statutory practice was to hold hearings every six months that is no longer the case. It is more often that hearings are being held every three to four months so that the case can be closely monitored. It may also involve the GAL attending a separate court hearing if the child has an active juvenile case of their own. If the child is involved in a specialty court (for example Girl's Court), it involves the GAL attending monthly court hearings. If the family is involved in Zero to Three specialty court the GAL attends these monthly court hearings and additional meetings held for that court. Family Drug Court holds hearings every Friday.

GALs should be fairly and adequately compensated for the significant work they do. The appropriation of additional funding to the judiciary to assist with service contracts with GALs will hopefully accomplish this.

Thank you for the opportunity to provide testimony. My apologies for this late submittal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arlene J. Kelly".