

State of Hawai‘i  
The Office of the Public Defender

H.B. No. 1914: RELATING TO COMPENSATION FOR COURT-  
APPOINTED COUNSEL

Chair David Tarnas  
Vice Chair Gregg Takayama  
Honorable Committee Members

The Office of the Public Defender **supports** this bill.

The Office of the Public Defender’s main and primary role in our criminal justice system is to ensure that people who cannot afford an attorney will be represented by competent and effective counsel. Our attorneys are dedicated public servants who believe that zealous representation is one of the pillars of a true system of justice.

But our office cannot represent everyone who needs a lawyer. There are times when the rules of professional conduct or breakdowns in the attorney-client relationship prevent our attorneys from representing a client. In those cases, the OPD will withdraw and judges will appoint new counsel, a Hawai‘i licensed attorney willing to take on the case. Their fees are dictated by statute and have been fixed at \$90.00 for more than twenty years.

Judges—especially on the Neighbor Islands—struggle to find private counsel willing to take on difficult and challenging cases at a fraction of their going rate. Sadly, those who do take court-appointed cases resort to taking them in bulk to make ends meet and run the risk of being constitutionally ineffective.

Ineffective defense counsel is costly for not only clients and the justice system, but for the Judiciary and our State. It leads to more litigation, more attorneys, and is highly inefficient. Our system is built on the premise that things should be done correctly the first time around. Raising the rate will attract more attorneys to court-appointed cases and will ease the pressure on an ever-increasing caseload for criminal defense attorneys and prosecutors.



## *The Judiciary, State of Hawai'i*

**Testimony to the Thirty-Second State Legislature  
2024 Regular Session**

**House Committee on Judiciary and Hawaiian Affairs**  
Representative David A. Tarnas, Chair  
Representative Gregg Takayama, Vice-Chair

Wednesday, January 31, 2024 at 2:00 p.m.  
Conference Room 325 & Videoconference

by

Ronald G. Johnson  
Deputy Chief Judge, Criminal Administrative Judge  
Circuit Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1914, Relating to Compensation for Court-Appointed Counsel.

**Purpose:** Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings. Appropriates funds. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025.

### **Judiciary's Position:**

The Judiciary **strongly supports** this measure as it will greatly aid in recruiting and retaining competent and qualified counsel willing to be appointed in criminal proceedings. Appointed counsel represent indigent criminal defendants whenever the Office of the Public Defender determines that they have a conflict.

Most indigent criminal defendants have a right to representation by competent counsel appointed by the court. Once qualified, they are usually represented by the Office of the Public Defender. However, in cases where there is, or there arises, a conflict between the defendant and the Office of the Public Defender, the defendant has a right to the appointment of a private

defense counsel. These private defense counsel are appointed by the court from a list of qualified applicants maintained by the court.

Over the last decade there has been a dramatic decrease in qualified applicants to the court-appointed lists of each circuit, which has in turn caused a shortage of available counsel to take indigent defendant criminal cases statewide. The primary factor driving this reduction is the low hourly rate of pay offered for these cases. In order to attract competent individuals to serve as appointed counsel for these defendants, we must ensure that appointed counsel are adequately compensated for their work.

The current rate of pay has not been adjusted in almost twenty years. For comparison, on the federal level, the non-capital case rate is \$164 per hour, with maximum per-case amounts of \$12,800 for felony cases, \$3,600 for misdemeanors, and \$9,100 for appeals. This measure raises the compensation rates and maximums to those similar to the federal rates in order to safeguard the rights of indigent defendants, by ensuring the demand for competent court-appointed private counsel can be met.

Thank you for the opportunity to testify on this measure.



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January 29, 2024

HB 1914: RELATING TO COMPENSATION FOR COURT APPOINTED COUNSEL  
Judiciary and Hawaiian Affairs  
Rep. David A. Tarnas, Chair  
Rep. Gregg Takayama, Vice Chair

Agriculture and Food Systems  
Rep. Cedric Asuega Gates, Chair  
Rep. Kirstin Kahaloa, Vice Chair

Honorable Committee Members

I'm a criminal defense attorney, living and working on Maui. I was a Public Defender for over 18 years and have been in private practice for 7 years now.

I fully support this bill. The rates for court-appointed counsel has been fixed for decades, while the cost of living, fine schedules, and other costs have increased. This bill is overdue and is a step in the right direction.

Judges in criminal cases all over the State have struggled to find competent counsel willing to represent people who cannot, either under the law through conflicts of interest matters or other ethical issues, be represented by attorneys at the Office of the Public Defender. Raising the rates will help encourage attorneys to take on these cases.

As an example, my hourly rate is \$350, yet the court appointed rate is \$90/hr. I am extremely reluctant to take court appointed cases because of the huge discrepancy. I handle A level felonies and \$90/hr is simply not enough to support me or my practice in these cases. I sincerely hope this much-needed bill becomes law.

Very truly yours,

*/s/ Wendy A. Hudson*

Wendy A. Hudson