



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

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

#### House Committee on Finance

Representative Kyle T. Yamashita, Chair  
Representative Lisa Kitagawa, Vice-Chair

Tuesday, February 22, 2024 at 11:30 a.m.  
Conference Room 308 & 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, H.D. 1, 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. Effective 7/1/3000. (HD1)

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

The Judiciary **strongly supports** this measure. 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 skilled and experienced individuals to serve as appointed counsel for these defendants, we must ensure that appointed counsel are adequately compensated for their work. This measure will greatly aid in recruiting and retaining counsel who are qualified and willing to be appointed in criminal proceedings.

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

Testimony for House Bill No. 1914, H.D1, Relating to Compensation for Court-Appointed Counsel.

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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 lists of qualified applicants maintained by the court. The courts maintain separate lists for appellate cases, misdemeanors, “A”, “B”, and “C” felonies, sexual assaults, and murder cases. Private counsel are placed on the list, or lists, appropriate to their level of skill and experience. Currently there are only 17 qualified attorneys on the Circuit Court of the First Circuit’s “A” felony list (substantially fewer qualified attorneys are willing to take sexual assault or murder cases) and only 30 qualified attorneys on our largest list, which are those willing to take “C” felony cases. There are simply not enough qualified attorneys willing and able to take indigent criminal cases, especially the serious felony cases.<sup>1</sup>

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 \$174 per hour and \$220 per hour in capital cases, with maximum per-case amounts of \$12,800 for felony cases, \$3,600 for misdemeanors, and \$9,100 for appeals. There are several private attorneys who will only take federal court appointed cases for this very reason. This measure raises the compensation rates and maximums to those similar to the federal rates in order to safeguard the rights of indigent State 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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<sup>1</sup> In 2023, there were 1500 Circuit Court Criminal cases filed and 1073 Family Court Criminal cases filed. Therefore, not counting District Court misdemeanor and petty misdemeanor cases, there were at a minimum 2573 cases filed in the First Circuit where a defendant had the constitutional right to counsel. The vast majority of these defendants qualify for court appointed counsel.

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H.B. No. 1914 H.D. 1: RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

Chair Kyle T. Yamashita  
Vice Chair Lisa Kitagawa  
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 close to 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.



Committee: Finance  
Hearing Date/Time: Thursday, February 22, 2024 at 11:30am  
Place: Conference Room 308 & Videoconference  
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1914 HD1 Relating to Compensation for Court Appointed Counsel**

Dear Chair Yamashita, Vice Chair Kitagawa and Members of the Committee:

The American Civil Liberties Union of Hawai'i **SUPPORTS HB1914 HD1** which increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings and appropriates funds.

The U.S. Supreme Court's landmark case of *Gideon v. Wainwright*<sup>1</sup> established the fundamental right to an attorney for people accused of crimes and facing incarceration, regardless of their wealth or poverty. Since *Gideon*, the right to counsel has been expanded to include [children](#) in juvenile delinquency proceedings, [probationers](#) in probation revocation proceedings, and people charged with [misdemeanors](#). The Supreme Court has established that the right includes an obligation for lawyers to correctly advise their clients about certain [immigration consequences](#) of criminal convictions, and that the right includes effective assistance of counsel during [plea bargaining](#).

The overwhelming majority of criminal cases in Hawai'i proceed against people who cannot afford to hire their own attorney, and disproportionately impacts Native Hawaiians and Pacific Islanders. **Roughly [four out of five](#) criminal defendants do not have the means to hire a lawyer and rely on public defenders or court-appointed lawyers.** Without adequate public defense, most people in the criminal legal system face the full force of government power with nothing more than illusory rights.

The right to counsel also protects other constitutional rights. When we don't protect the right to counsel, we also sacrifice our rights against unreasonable searches and seizures, against excessive bail, to confront one's accusers, to have prosecutors disclose exculpatory evidence before trial, and many others.

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<sup>1</sup> <https://supreme.justia.com/cases/federal/us/372/335/>

Court-appointed counsel protect the rights of indigent persons enshrined in our federal and Hawai'i Constitutions and deserve fair compensation.

For these reasons, we respectfully request that you pass **HB1914 HD1** and increase the rate of compensation and maximum allowable amount per case for court-appointed counsel in criminal proceedings.

Sincerely,

**Carrie Ann Shirota**

Policy Director  
ACLU of Hawai'i  
cshirota@acluhawaii.org

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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## TESTIMONY

House Committee on Finance

Hearing: Thursday, February 22, 2024 (11:30 AM)

TO: Representative Kyle T. Yamashita, Chair  
Representative Lisa Kitagawa, Vice Chair

FROM: Jesse K. Souki, HSBA President

RE: HB 1914, HD1 - RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

Chair Tarnas, Vice Chair Takayama and members of the House Committee on Judiciary & Hawaiian Affairs, the Hawaii State Bar Association (HSBA) appreciates the opportunity to offer testimony in **STRONG SUPPORT** of HB 1914, HD1.

I am writing to express my strong support for increased rates for court-appointed public defenders in Hawaii, as proposed in Chapter 802 of the Hawaii Revised Statutes. Adequate compensation for public defenders is essential to ensuring the fair administration of justice and upholding the constitutional right to legal representation for all individuals, regardless of their financial means.

Appointed counsel represent indigent criminal defendants in cases where there is, or there arises, a conflict between the defendant and the Office of the Public Defender. These private defense counselors are appointed by the court from a list of qualified applicants and have committed to ensuring that every person receives a fair trial, which is a Constitutional right and fundamental to the principles of justice and due process.

The current compensation rates for court-appointed counsel in Hawaii does not reflect the challenging nature of their work, the time and effort invested in each case, and the significant responsibilities they shoulder. Accordingly, there has been a dramatic decrease in available court-appointed private counsel to represent indigent defendants throughout the state. In order to attract competent individuals to serve as appointed counsel for these defendants.

For these reasons, HSBA **STRONGLY SUPPORTS** HB 1914, HD1 to increase the compensation of court-appointed counsel as provided in the bill. Mahalo for your consideration.

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