

**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 30, 2024

SB 2521            RELATING TO THE OFFICE OF THE PUBLIC DEFENDER

Chair Rhoads, Vice Chair Gabbard and Members of the Committee:

The Office of the Public Defender supports SB 2521.

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,<sup>1</sup> drug courts, mental health courts, environmental courts, the Veteran’s treatment courts and the Oahu Community Outreach Court.<sup>2</sup>

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<sup>1</sup> “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.

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> The cost of outside counsel when aggregated will easily exceed the cost of funding the proposed positions.

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<sup>3</sup> 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).

<sup>4</sup> 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 SB 2521.

The OPD appreciates the recognition of the sponsors of this bill – Chair Rhoads, Senator Elefante and Senator San Buenaventura – of the critical importance of restoring positions to our office. Thank you for allowing the OPD to comment on SB 2521.

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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>)

**SB-2521**

Submitted on: 1/27/2024 7:12:41 PM

Testimony for JDC on 1/30/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
David Pullman	Individual	Support	Written Testimony Only

Comments:

As a public defender, I absolutely support this bill. We are up against prosecutors who have twice as many lawyers per case as we do and are paid nearly twice what we are. Because of our high caseload and low pay, it's hard to attract quality lawyers and give the service that our clients deserve. I do think this bill is mistaken in that it appears to add four new positions at the lowest levels Deputy Public Defender I or II. In our office, we have enough of those, but need higher paying positions in the higher levels, Deputy Public Defender IV and V, or we will keep losing our experienced attorneys to much higher paying positions working for the county. To competently represent our clients, we need something remotely approaching parity between the prosecution and the defense in terms of resources and personnel. Sadly, anything approaching parity is nowhere on the horizon.

**SB-2521**

Submitted on: 1/28/2024 2:58:23 PM

Testimony for JDC on 1/30/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Antoinette Lilley	Individual	Support	Written Testimony Only

Comments:

Aloha,

Thank you for giving me the opportunity to provide input on this important bill. I am employed as an attorney in the felony division of the Office of the Public Defender, and I am very much in favor of SB2521.

People don't work at our office for the money or the laid-back lifestyle, they do this work because they're passionate about giving a voice to the disenfranchised. That being said, it's very disheartening for our attorneys and staff to deal with a work load that grows more complex with each passing year with fewer resources than any other agency involved with the criminal justice system. Our attorneys are expected to get our clients into substance abuse or mental health treatment programs, schedule meetings for our clients with interpreters and mental health examiners, visit our many clients in custody to review discovery (these visits are limited to weekdays 8-10am and 11am-1pm), attend court hearings for our clients case (which often conflict with OCCC visiting hours), prepare cases for trial, attend parole minimum hearings, prepare pretrial motions and court orders, interview potential witnesses and prepare investigation requests... the list goes on and on. The work is never done. There is always more to do no matter how late we stay at night or how many Saturdays and Sundays we work. Given these demands, t's hard to stomach the idea that we have the least amount of support staff, the smallest operating budget, and now get paid the least out of any government attorneys in this arena.

Restoring the positions that were cut for budgeting reasons during the COVID-19 pandemic will provide much-needed relief to our entire office because the work never went away. These positions were cut due to budgetary concerns that never came to fruition, and the rest of us dealt with an increased workload to cover for these empty positions that could no longer be filled. As a result of this increased workload, we've lost many great workers to burnout in the last year. Please pass SB2521 and give our office the lifeline that it needs.

Best,

Antoinette Lilley

Deputy Public Defender

Taryn Tomasa  
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Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
415 South Beretania Street, Room 016  
State Capital  
Honolulu, HI 96813  
via email: JDCtestimony@capitol.hawaii.gov

January 29, 2024

Re: Testimony in Support of S.B. 2521  
Hearing: January 30, 2024, 9:45 AM

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

This letter is in support of S.B. 2521 providing funding for 4 deputy public defender positions, one specified for family court section.

The Office of the Public Defender (“OPD”) is constitutionally mandated to provide legal representation for those at risk of imprisonment or losing their liberty in a civil context. As a deputy public defender for the last twenty-five years, I know the importance of public defenders in our legal system. Since the COVID pandemic, 6 deputy public defender positions were permanently removed. Now, the number of clients and prosecutions have raised to pre-pandemic numbers without any additional attorney positions in the OPD. The OPD is consistently short attorneys and due to the demanding work schedule, the heavy case load and the disproportionate pay. This measure, to provide funding for 4 deputy public defenders, though does not fully address the shortage at the OPD, it is necessary and vital for the OPD to continue its constitutional mandate.

Thank you for taking these comments into consideration.

Sincerely,  
Taryn Tomasa



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January 29, 2024

S.B. No. 2521: RELATING TO THE OFFICE OF THE PUBLIC DEFENDER

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Honorable Committee Members

I was a public defender for over 18 years. We were always underpaid and overworked. I strongly support this bill.

The Constitutions of our State and the United States give everyone accused of committing a crime the right to an effective criminal defense lawyer. The Office of the Public Defender fulfills that mandate and represents the majority of people accused of committing crimes in our State.

Sadly, public defenders have more cases than average trial lawyers and are overstretched. In some situations, there are so many cases that attorneys cannot effectively represent their clients in violation of their constitutional rights. The remedy in these situations is to vacate judgments and retry cases. Funding more positions will alleviate the pressure associated with the job and help reduce costly post-conviction litigation. It is about time for this much-needed bill to become law.

Very truly yours,

*Wendy A. Hudson, Esq.*

Wendy A. Hudson, Esq.









**SB-2521**

Submitted on: 1/29/2024 10:41:17 AM

Testimony for JDC on 1/30/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Katelyn Martin	Individual	Support	Written Testimony Only

Comments:

Good morning,

I am writing in support of SB2521 largely in part because our community would benefit from the passage of this bill. Public Defenders are an integral part of the legal framework in that they help support and advocate for the rights of the people. Diminishing resources and support of this profession only increases strain on the legal system and the fairness and equity it is stressed to uphold. To support this bill is to support the community and the validity of our legal system.

Moreover, I am writing in support of this bill because the Public Defenders as individuals deserve support, resources, and validation. The strain on the office from being denied much needed funding impacts the individual worker on a day to day basis as it decreases morale the longer it continues. Short staffing and increased workload are but a few issues that could be addressed if funding was provided to the office. In being supported, the office will be able to work more efficiently and better support the community and people we serve.

The community at large and the office are in need of support and the resources necessary to continue moving forward with efficacy.

Thank you,

Katelyn

## Testimony of Sara K. Haley to the Senate Committee on Judiciary

January 29, 2024

S.B. No. 2521: RELATING TO THE OFFICE OF THE PUBLIC DEFENDER

To the Senate Committee on Judiciary:

I write in support of S.B. No. 2521. I am a Deputy Public Defender at the Office of the Public Defender at the Honolulu Office. I have been in this role for over four years and have been assigned to represent clients in both the District Court and Family Court of the First Circuit.

Excessive caseloads strain our ability to uphold our ethical and constitutional duties to our clients. The Hawai'i and United States constitutions guarantee the right to counsel to our clients. The right to counsel is not just a warm body in a suit standing at the courthouse. Our high caseload makes it extremely difficult to conduct investigations, review discovery materials, research legal matters, write motions, prepare for our appearances in court, and talk with our clients.

All of the Deputy Public Defenders put in extra hours. We take time away from our families and precious moments we cannot get back. I'll give you a simple example—I recently missed my young daughter's first time going to a movie theater because I was preparing for a trial. My colleagues and I put in extra hours because we believe in giving our clients adequate representation. I expect to put in extra hours as part of my job. That said, I want to put in extra hours to go the extra mile for my clients, not to do the basics.

Four additional deputy public defender positions will help to alleviate our overburdened office.

Please allocate this funding so that we can reasonably do our jobs *and do our jobs well*.

Sincerely,

/s/ Sara K. Haley

Sara K. Haley

Deputy Public Defender

**SB-2521**

Submitted on: 1/29/2024 12:34:58 PM

Testimony for JDC on 1/30/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Aubrey Bento	Individual	Support	Written Testimony Only

Comments:

Aloha Senate Committee on the Judiciary,

I am currently a Deputy Public Defender at the Oahu office and have been for almost 2 and a half years. In my time as a public defender, I have witnessed the hard work that each attorney puts in to make sure that our clients receive the best legal advice and advocacy that we can offer. The right to an attorney in criminal prosecutions is protected by the US Constitution, and we are proud to fill this role. However, since positions were defunded, attorneys have experienced growing caseloads. It would be incredibly helpful to get those positions back so that we can hire more attorneys to assist with the growing caseloads so that we can continue to provide the quality representation that we are proud of.

Thank you for your consideration,

Aubrey M. M Bento

**SB-2521**

Submitted on: 1/29/2024 6:22:34 PM

Testimony for JDC on 1/30/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kaitlyn Iwashita	Individual	Support	Written Testimony Only

Comments:

Aloha,

I have been a Deputy Public Defender at the O'ahu office since May 2021. In my work, I witness daily my colleagues' hard work, great effort, long hours, and exemplary representation of indigent clients. Public defenders are an integral part of the criminal justice system and are a constitutionally-afforded right to all who are charged with a crime and who cannot afford an attorney.

An immense benefit of our office is each and every one of the attorneys' steadfast dedication to the Office of the Public Defender and its message; we are all eager to put in hard work to help our clients. That being said, since several positions were defunded, attorneys at the O'ahu office and the neighbor island offices have experienced increased caseloads and longer hours.

We often wear many hats in our job: attorney, mental health advocate, social worker, to name a few. Many of my colleagues go out of their way to help their clients beyond strictly representing in them in court-- we guide them to housing, shelter, and other resources. Adding attorney positions to the Office of the Public Defender would decrease our caseloads so that we can dedicate more time, care, and additional resources to each individual client.

Thank you for your consideration.

Kaitlyn M.H. Iwashita



Committee: Judiciary  
Hearing Date/Time: Tuesday, January 30, 2024 at 9:45am  
Place: Conference Room 016 & Videoconference  
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of SB2521 Relating to the Office of the Public Defender**

Dear Chair Rhoads, Vice Chair Gabbard and Members of the Committee:

The American Civil Liberties Union of Hawai'i **SUPPORTS SB2521** which appropriates funding for four full-time deputy public defender positions within the Office of the Public Defender.

The U.S. Supreme Court's landmark case of *Gideon v. Wainwright*,<sup>1</sup> decided 60 years ago, 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](#).

Significantly, a recent **National Public Defense Workload Study**,<sup>2</sup> examined the number of cases that public defense attorneys can reasonably handle. The NPDWS highlighted evidence that many public defense systems around the United States are overburdened. ***An overburdened public defense system inevitably jeopardizes the constitutional rights of public defenders' clients and undermines the integrity of the justice system.***

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

<sup>2</sup> The [National Public Defense Workload Study](#) (NPDWS) finds that the last national workload standards, developed in 1973, are outdated and do not give attorneys enough time to provide constitutionally adequate representation to every client. These old national standards were not developed using a rigorous or reliable methodology. In contrast, the new NPDWS standards are a more effective benchmark for public defense attorneys, policymakers, and other stakeholders to use when evaluating whether a given public defense system is living up to the promise of our Constitution. [https://www.rand.org/pubs/research\\_reports/RRA2559-1.html](https://www.rand.org/pubs/research_reports/RRA2559-1.html)

According to Emma Anderson, deputy director of the American Civil Liberties Union's Criminal Law Reform Project, "The NPDWS study is yet another alarm indicating that we have much more work to do to make the constitutional right to counsel real for everyone." She also remarked that **"In this era of mass incarceration and overcriminalization public defenders work to challenge systemic oppression every day. Despite their essential role, public defenders are consistently undervalued. Lawmakers and decisionmakers must invest in public defense systems, while simultaneously reducing mass incarceration."**

The new standards account for the increasing demands that modern technology places on criminal defense lawyers. To provide constitutionally adequate criminal defense, for example, attorneys need time in many cases to review voluminous information from body-worn cameras, cell phones, social media data, and forensic evidence.

**In Hawai'i, Deputy Public Defenders carry a caseload that is well above the recommendations in the NPDWS Report.**

For these reasons, we respectfully request that you adequately staff the Office of the Public Defender and pass SB2521.

Sincerely,

**Carrie Ann Shiota**

Policy Director  
ACLU of Hawai'i  
cshiota@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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**SB-2521**

Submitted on: 1/30/2024 7:54:39 AM

Testimony for JDC on 1/30/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

My apologies for submitting late testimony, but I think this is one of the more important bills this session. In court cases, while the State has the constitutional obligation to provide counsel to a person who is unable to provide their own lawyer, the State of Hawaii makes so little counsel available that it risks law suits. At present, the public defender's office is so short staffed that they often spend less than 10 minutes with the defendant and have little opportunity to develop a defense. Meanwhile, the prosecutor's office has far more resources to develop their case. Ideally, this bill would restore all 6 deputy defender positions that were previously deleted.

Please pass SB2521.