



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature 2024 Regular Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice-Chair

Tuesday, March 12, 2024 at 10:00 a.m.
Conference Room 016 & Videoconference
by

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

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 qualified and competent 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, experienced, 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, these defendants 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 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 (there are substantially less qualified attorneys 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.¹ The situation on the outer islands is even more serious, with courts in the other circuits often forced to appoint, and pay the travel costs, for attorneys from the First Circuit in order to meet the demand for court-appointed counsel.

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 \$13,400 for felony cases, \$3,800 for misdemeanors, and \$9,600 for appeals. There is no maximum in capital cases on the federal level. 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. The Judiciary appreciates the appropriation contemplated in this measure, and respectfully asks that this request not supplant our other existing funding.

The Judiciary respectfully requests that the defective date of July 1, 3000 on Page 3, Section 5 of this bill be amended to take effect on July 1, 2024.

Thank you for the opportunity to testify on this measure.

¹ 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.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
HAWAII PAROLING AUTHORITY
Ka 'Ākena Palola o Hawai'i
1177 Alakea Street, First Floor
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ACTING ADMINISTRATOR

No. _____

TESTIMONY ON HOUSE BILL 1914, HD1
RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

by
Edmund "Fred" Hyun, Chair
Hawaii Paroling Authority

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, March 12, 2024; 10:00 a.m.
State Capitol, Conference Room 016 and via Video Conference

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

The Hawaii Paroling Authority (HPA) stands in support of HB 1914, HD1 to increase the rate of compensation and maximum allowable amounts per case for court-appointed counsel. Court appointed attorneys represent inmates and parolees throughout the parole process.

Thank you for the opportunity to present testimony on HB 1914, HD1. We will be available to answer any questions the Committee members may have.

JON N. IKENAGA
STATE PUBLIC DEFENDER

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March 11, 2024

**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER STATE OF HAWAII
TO THE COMMITTEE ON JUDICIARY**

**HB 1914, HD1: RELATING TO COMPENSATION FOR COURT-APPOINTED
REPRESENTATION**

March 12, 2024 at 10:00 a.m.

**Chair Karl Rhoads
Vice Chair Mike Gabbard
Honorable Committee Members**

The Office of the Public Defender (OPD) supports this bill.

In instances where the OPD cannot represent a person due to a conflict it is necessary for the court to appoint counsel. Often times the conflict with the OPD occurs when there are several defendants charged. Multiple defendant cases are generally more complex and serious. For the majority of attorneys, the current rate of \$90 per hour is simply insufficient to justify the time and resources which are required to represent a client in even simple criminal cases, let alone serious criminal cases. The current caps (i.e. maximum allowable fees) are also a significant disincentive.

Due to the lower-than-average rate of \$90 per hour which has not changed in approximately twenty years and the low caps on fees in cases, the Judiciary has experienced a decrease in the number of attorneys who are willing to take court-appointed cases.¹ Judges—especially on the Neighbor Islands—struggle to find private counsel willing to take on difficult and challenging cases at a fraction of the rate they charge privately-retained clients.² Sadly, those who do take court-

¹ Notably, the rate for federal court-appointed attorneys is \$172, almost twice the current state rate and still above what this bill is seeking.

² In 2022, the average hourly fee charged by attorneys across the U.S. was \$313 per hour. See Bieber, C., "How Much Do Lawyers Cost? 2024 Guide," Forbes Advisor, Jan. 3, 2023. <https://www.forbes.com/advisor/legal/how-much-lawyers-cost/>

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 OPD supports this bill. Thank you for the opportunity to comment on HB 1914, HD1.



TESTIMONY
Senate Committee on Judiciary
Hearing: Tuesday March 12, 2024 (10:00 AM)

TO: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

FROM: Jesse K. Souki, HSBA President

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

Chair Rhoads, Vice Chair Gabbard and members of the Senate Committee on Judiciary, 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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Lyn Flanigan



Committee: Judiciary
Hearing Date/Time: Tuesday, March 12, 2024, at 10:00am
Place: Conference Room 016 & Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1914 HD1 Relating to Compensation for Court Appointed Counsel**

Dear Chair Rhoads, Vice Chair Gabbard 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*¹ 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.

Court-appointed counsel represent indigent criminal defendants in cases where there is, or there arises, a conflict between the Office of the Public Defender and the defendant. They protect the rights of indigent persons enshrined in our federal and Hawai'i Constitutions and deserve fair compensation.

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

As noted by the Hawai'i Judiciary, "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."

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. This will increase state rates comparable to federal rates and safeguard the rights of indigent individuals in criminal proceedings.

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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March 11, 2024

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
House of Representatives, State of Hawai`i

via: <http://www.capitol.hawaii.gov>

Dear Committee leadership and members,

Re: **STRONG SUPPORT FOR HB1914 HD1 RELATING TO COMPENSATION FOR COURT APPOINTED COUNSEL**

Hearing Date: Tuesday, March 12, 2024
Time: 10:00 a.m.
Location: Conference Room 016
State Capitol
415 South Beretania Street

I write in strong support and to echo the Judiciary's finding expressed in its letter of support of this bill submitted during House deliberations that the compensation rate for court-appointed criminal defense counsel has not been adjusted in twenty years. Since 2012, I have served the 3rd Circuit courts as court-appointed counsel. While increasing the hourly compensation to \$150/hr. is fair and reasonable after 20 years, it even more important that the maximum amounts set for handling each case is increased as proposed in the bill. For example, any felony case can be comprised of a single or multiple felony offense(s), and the present ceiling of \$6,000.00 set as maximum fee in "a felony case" simply does not account for providing defense representation in a complex multi-count case. Additionally, any felony or misdemeanor case going to jury trial involves additional complexities and expense for which the current compensation ceilings are inadequate.

Thank you for your attention to this issue and attention to my letter. Mahalo.

Sincerely,





THE LAW OFFICE OF RICHARD H.S. SING

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March 8, 2024

SENATOR KARL BROADS, Chair
SENATOR MIKE GABBARD, Vice Chair
Senate Committee on Judiciary
Thirty-Second Legislature, Regular Session of 2024

RE: **HB1914 HD1**: Testimony in **STRONG SUPPORT** of Bill Relating to Compensation for Court Appointed Representation.

WRITTEN TESTIMONY ONLY

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

I am a solo practitioner concentrating in criminal defense who has appeared in the District, Family, Circuit, and Federal Courts, on a regular basis over the past 25 years. I am familiar with the history, procedures, and personalities of the Hawaii Judiciary, and the practice of criminal law in the State of Hawaii. I have not accepted court appointed cases for over a decade.

However, I am in **STRONG SUPPORT** of this Bill as it will substantially increase the compensation rate for court appointed attorneys in criminal matters and will greatly assist in the recruitment and retention of qualified private counsel. Through doing this, our local criminal justice system will see vast improvement in its quality and efficiency.

Raising this compensation rate will expand and strengthen the ranks of those attorneys willing and able to accept cases in this area of critical need. This rate has not been increased in many years and the current rate is so low that the Judiciary has struggled to maintain enough competent attorneys on the list of those willing to accept these cases. Without a significant increase in this rate, the problem of having enough qualified applicants to accept cases will never improve.

RICHARD H.S. SING

/s/ Richard H. S. Sing

LAW OFFICE OF RICHARD H.S. SING

HB-1914-HD-1

Submitted on: 3/11/2024 4:37:40 PM

Testimony for JDC on 3/12/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Charles E. Murray III	Individual	Support	Written Testimony Only

Comments:

I urge the committee to support and pass HB 1914. While I write for myself only, drawing from my experience as a Deputy Prosecutor and past President of the West Hawaii Bar Association, it is clear that the appointment rate for attorneys in criminal cases is woefully inadequate to appropriately compensate and recruit the best private attorneys for criminal defense appointments. The current rate fails to account for the significant inflation we've all experienced since the pandemic, much less the generally high cost of living in Hawaii. Here on Hawaii Island, our legal community is already facing a shortage of attorneys more generally, which only compounds the difficulties in recruiting competent counsel for indigent criminal defendants. Without the fee increase proposed in HB 1914, these difficulties, and the delays caused by them, will continue and grow. In practical terms, this means cases will take longer to resolve cases, it means cases will take up more court and community resources, and it means both defendants and victims will wait for justice to be served. Thank you for considering this testimony and for your support of HB 1914.