



## *The Judiciary, State of Hawai‘i*

### **Testimony to the Thirty-Third Legislature, 2025 Regular Session**

#### **House Committee on Judiciary & Hawaiian Affairs**

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Thursday, January 30, 2025, 2:00 p.m.

State Capitol, Conference Room 325

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. 396, 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 moneys.

#### **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.



Indigent criminal defendants have a constitutional 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.

On Oahu, the court maintains 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 thirteen qualified attorneys on the Circuit Court of the First Circuit’s “A” felony list. The same thirteen are on the murder case appointment list and only eleven of those are willing to take “A” felony sexual assault cases. Our largest list, those willing to take “C” felony cases, contains only twenty-five qualified attorneys and we only have nine attorneys willing to take appeals to the appellate courts. There are simply not enough qualified attorneys willing and able to take indigent criminal cases, especially the serious felony cases.<sup>1</sup>

The situation on the outer islands is more critical, 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 situation is exacerbated on Hawai‘i Island as, due to their own shortage of attorneys, the Office of the Public Defender is no longer able to take any “A” felony or operating a vehicle under the influence of an intoxicant (“DUI”) cases out of the Kona District. It is currently taking the court between three to four weeks to find counsel willing to accept the appointments and as of last fall there were 35 defendants awaiting appointment of counsel between Kona’s District and Circuit Court.

The current rate of pay of \$90 per hour has not been adjusted in twenty years and went into effect on July 1, 2006. In stark contrast, on the federal level during that same time period, the rate has been increased every year and currently the non-capital case rate is \$175 per hour and \$223 per hour in capital cases, with maximum per-case amounts of \$13,600 for felony cases, \$3,900 for misdemeanors, and \$9,700 for appeals.<sup>2</sup> 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 and qualified court-appointed private counsel can be met.

Thank you for the opportunity to testify on this measure.

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<sup>1</sup> For context, in 2024, there were approximately 1468 Circuit Court Criminal and 1374 Family Court Criminal felony and misdemeanor cases filed in the First Circuit. Therefore, not even counting the District Court misdemeanor and petty misdemeanor cases, there were 2842 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.

<sup>2</sup> There is no maximum in capital cases on the federal level.

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**Testimony of the Office of the Public Defender,  
State of Hawai'i to the House Committee on Judiciary & Hawaiian Affairs**

January 30, 2025

**H.B. 396: RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL.**

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Office of the Public Defender **strongly supports the intent of H.B. 396.**

This measure would increase the compensation that a court-appointed attorney would receive for legal services in our Statewide justice system. This rate increase is necessary to ensure the quality and availability of attorneys willing and able to provide these essential services across the State of Hawaii. The current fee structure has rendered it difficult to recruit and maintain attorneys qualified to provide these services. The Judiciary and the criminal justice system need dedicated qualified attorneys to provide these constitutionally mandated services and we submit this measure is long overdue and necessary for the administration of justice.

Court-appointed attorneys must be qualified and have the requisite specialized legal knowledge and skills to provide zealous and competent counsel to adults and juveniles charged with criminal offenses and law violations in each Circuit, District and Family Courts across our State. There is an acute shortage of attorneys available to provide these services based on a variety of factors – but the most pressing factor is the low pay. Attorneys who may be qualified and who have the requisite experience levels are refusing to accept court-appointments or they have simply

removed their names from the list of available counsel because they can find other work that pays a living wage and compensates them more fairly for their time and work. Attorneys are skilled professionals and the practice of criminal defense for adult defendant and juvenile defendants is highly specialized – requiring extensive knowledge on trial rules and procedures, evidentiary rules and objections, motions practice, practical knowledge on the workings of the different Circuit, District and Family Courts, and the ability to communicate effectively with clients of all ages, all backgrounds, and levels of criminality. Court-appointed attorneys are often the last resort when working with a mentally ill defendant with communication challenges and trust issues because of past trauma, cognitive damage, recurring bouts of decompensation, drug use, and other serious personality and stability challenges. Court-appointed attorneys often work with the most difficult and time-consuming clients in the criminal justice system and their work and skills with this population must be compensated fairly. Court-appointed attorneys are essential when the Office of the Public Defender cannot represent an indigent person because of a legal conflict and they provide a critical safety net for defendants in need of independent legal advice and counsel.

It should be noted that the criminal justice system has become more complex with advancements in forensic science, there has been a steady increase in materials to review as cases become more involved requiring more time and more expertise – including access to hours of body worn camera videos and other types of surveillance, the need to do legal research and keep up with advancements in science, and the constant need to maintain current knowledge of the laws – statutory and case law. Qualified court-appointed attorneys should be considered essential and valuable assets in the administration of justice.

Constitutionally mandated Due Process and the Right to Counsel require skilled professionals be made available to any person accused of a crime. Court-appointed attorneys deserve fair pay and should be compensated appropriately for their time, skills, and dedication to the administration of justice. This measure is necessary to alleviate the acute shortage of attorneys able and willing to accept court-appointments Statewide.

Thank you for the opportunity to comment on this measure.

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**THE HONORABLE, CHAIR DAVID A. TARNAS  
COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
Thirty-Third State Legislature  
Regular Session of 2025  
State of Hawai`i**

January 30, 2025

**RE: H.B. 396; RELATING TO THE COMPENSATION FOR COURT-APPOINTED  
COUNSEL.**

Chair Tarnas, Vice-Chair Poepoe and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of H.B. 396.

The Department supports this bill as it will hopefully provide more licensed attorneys to represent defendants. This will also assist in the administration of cases in the judiciary.

For the above reasons, the Department of the Prosecuting Attorney for the City and County of Honolulu supports the passage of S.B. 263. Thank you for the opportunity to testify on this matter.

**Rebecca V. Like**  
Prosecuting Attorney



**Keola Siu**  
First Deputy  
Prosecuting Attorney

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The Honorable David A. Tarnas, Chair  
House Committee on Judiciary & Hawaiian Affairs  
Thirty-third State Legislature  
Regular session of 2025  
State of Hawai'i  
January 26, 2025

**RE: HB 396 Related to Compensation for Court Appointed Counsel**

Dear Chair Tarnas:

HB 396 would increase the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings from \$90/hour to \$150/hour and increases the maximum allowable fee for cases based on the severity of the charge. Our Office SUPPORTS HB 396.

It is increasingly difficult to find defense counsel willing to take court-appointed cases. Given the size of Kauai, frequent conflicts arise preventing the Office of the Public Defender from being able to represent clients. Not being able to secure counsel, especially in more serious cases, causes unnecessary delays and can lead to public safety concerns. Most of the current court appointed counsel for serious cases on Kauai come from Oahu. This means added costs for flights as well as less time with their client who is likely housed on Kauai.

We want to take this opportunity to highlight that the Deputy Public Defenders who have training, expertise and experience in working with indigent defendants make nowhere near \$90/hour, much less the newly proposed amount. For example, there are currently openings at the Office of the Public Defender for entry level attorney positions that pay \$86,968/year for a Deputy Public Defender II. A Deputy Public Defender IV needs to have handled felony cases for at least 3 years, preferably completing 10 or more jury trials would receive \$119,208/year. Court appointed counsel need not have this level of experience but at the rate of \$150/hour would earn \$312,000/year.

Our Office has concerns that increasing the hourly court appointed rate could also have a negative impact on our Office where our deputies make between \$120,000 and \$136,512. Under this court-appointed pay scale, our deputies could work less than half time as court appointed counsel and make more money.

The Kauai Office of the Prosecuting Attorney submits this testimony in SUPPORT of HB 396.

Thank you for the opportunity to testify.

A|N|H  
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January 28, 2025

David A. Tarnas - Chair  
Gregg Takayama - Vice Chair  
Luke A. Evslin  
Daniel Holt  
Linda Ichiyama  
Greggor Ilagan  
Sam Satoru Kong  
Tyson K. Miyake  
Kalani Souza  
Judiciary & Hawaiian Affairs Committee

Re: HB 396 - Relating to Compensation for Court Appointed  
Counsel

Chair David A. Tarnas, Vice Chair Gregg Takayama, and Judiciary & Hawaiian Affairs Committee Representatives Luke A. Evslin, Daniel Holt, Linda Ichiyama, Greggor Ilagan, Sam Satoru Kong, Tyson K. Miyake, and Kalani Souza:

I write to you in strong support of House Bill 396 *Relating to Compensation for Court Appointed Counsel* both as the current **President of the Hawaii County Bar Association** which represents many court-appointed attorneys (criminal and family) but also as an attorney who does criminal court appointed attorney work. This change in court appointed criminal attorney compensation is long overdue, having last been adjusted in 2006, or almost nineteen (19) years ago.

In 2006, the compensation for court-appointed attorneys for State cases in Hawaii was raised to \$90 an hour and was like the then rate Federal court-appointed criminal attorneys made or \$92 an hour. (See attached pages 1-3 of Chapter 2, § 230; Compensation and Expenses of Appointed Counsel, with relevant portions highlighted.)

Per Federal Statutes, the Federal compensation has automatically risen annually, and Federal court-appointed criminal attorneys now make **\$175** an hour vs. \$90 an hour for Hawaii State court appointed criminals. According to the official U.S. Consumer Price, it now takes \$139.58 to buy what \$90 would buy in July 2006. (See attached *Printout of U.S. Consumer Price Index Calculator* from July 2006 to December 2024, relevant portions highlighted.)

I am unaware of ANY person or entity that is paid 2006 rates for work for the State of Hawaii in 2025.

This increase is necessary because Hawaii Courts are having an increasingly difficult time getting attorneys to do court-appointed work as the compensation rate is so low, and the work is so immediate and demanding. (For example, my hourly rate for Family Court cases is currently \$400 an hour, more than 300% higher than the court appointed rate.)

This is especially a problem on the Big Island, because the pool of attorneys doing court-appointed work is so small and shrinking. Often, my partner and I will get calls from the Courts in Waimea and Kona as multiple conflicts may exist, and no other attorneys are available. We sometimes take these cases as a public service, but they are a financial hardship (in addition to the low rates, we are not compensated at an hourly rate to drive to and from Waimea or Kona) and are often time pressing if the client is in custody. (Last week, for the first time, we got a phone call from First Circuit Family Court to see if we can take a Family Criminal Court case!)

This problem is unsustainable and will soon cause some serious public safety issues in the State of Hawaii. At a recent Third Circuit Bench Bar Meeting, it was stated that more than seventy (70) Operating a Vehicle Under the Influence of an Intoxicant (OVUII, or Hawaii's version of DUI/DWI) active cases in Kona District Court were awaiting appointment of court-appointed counsel, since nobody would accept appointment (due to the low rate of compensation. Under Hawaii law, a criminal defendant has the right to a speedy trial within one hundred eighty (180) days of the time they are arrested.

What happens when a person cannot have trial within that time period? **It is possible that the cases will be dismissed for lack of prosecution.** How does that help public safety in the State of Hawaii if cases start being dismissed because the Defendant does not have counsel? It may start out with petty misdemeanor cases being dismissed, but what happens when the courts are forced to dismiss felony cases?

Not having an adequate number of attorneys willing to do court appointed criminal work due to low compensation eventually costs everyone

more, as innocent people can get ground up by the system, cases take longer to resolve, (costing more time and money, and possibly risk dismissal for lack of prosecution) and can be a cause of increased incarceration. Furthermore, if shoddy criminal defense work is done, it can further clog up the system with unnecessary appeals. Hawaii's court-appointed criminal defense rate has not risen in almost twenty (20) years, all the while local cost of living has skyrocketed. This increase is long past due, and hopefully it will not take this long to re-examine this issue in the future.

The \$150 an hour for criminal court-appointed rate is reasonable and cost effective. As a court-appointed attorney, the State of Hawaii does not pay my medical or malpractice insurance, my rent, or my retirement. I pay that. Respectfully, the compensation for court-appointed attorneys in criminal cases in Hawaii should have been increased a long time ago, and \$150 an hour is a reasonable increase; and it should not take almost twenty (20) years to readdress this issue in the future, and I strongly urge this committee to support the increase, and not wait another nineteen (19) years to readdress this.

Truly yours,



William B. Heflin

Encl: Pages 1-3 of *Chapter 2, § 230; Compensation and Expenses of Appointed Counsel*, relevant portions highlighted.

Printout of U.S. Consumer Price Index Calculator from July 2006 to December 2024.

## § 230 Compensation and Expenses of Appointed Counsel

### § 230.10 Forms for Compensation and Reimbursement of Expenses

The eVoucher system is the judiciary's primary method for CJA panel voucher submission and processing. See: Guide, Vol. 7A, § 140. Legacy forms for the compensation and reimbursement of expenses to appointed counsel, together with instructions for their use, may be found on the public judiciary website. A copy of all supporting documents that itemize or expand the amounts shown on the face of Form CJA 20 must be attached when submitting vouchers in the eVoucher system.

### § 230.13 Time Limits

(a) Vouchers should be submitted no later than 45 days after the representation concludes, unless good cause is shown. The clerks or CJA supervisory attorneys of the concerned courts should ensure that panel attorneys comply with the prescribed limits. Every effort should be made to have counsel submit the claim as soon as possible upon completion of services rendered. While extremely late submissions may impact the ability to adequately substantiate claims, voucher reductions based solely on submissions outside of the 45-day time limit are not authorized. See: § 230.33.10 (Standard for Voucher Review).

(b) Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.

### § 230.16 Hourly Rates and Effective Dates in Non-Capital Cases

(a) Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel for time expended in court or out of court or before a U.S. magistrate judge may not exceed the rates in the following table. For information on compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings, see: Guide, Vol 7A, § 630.

## § 230.16(a) Non-Capital Hourly Rates

If services were performed between...	The maximum hourly rate is...
01/01/2025 to present	\$175
01/01/2024 through 12/31/2024	\$172
01/01/2023 through 12/31/2023	\$164
01/01/2022 through 12/31/2022	\$158
01/01/2021 through 12/31/2021	\$155
01/01/2020 through 12/31/2020	\$152
02/15/2019 through 12/31/2019	\$148
03/23/2018 through 02/14/2019	\$140
05/05/2017 through 03/22/2018	\$132
01/01/2016 through 05/04/2017	\$129
01/01/2015 through 12/31/2015	\$127
03/01/2014 through 12/31/2014	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125

### § 230.16(a) Non-Capital Hourly Rates

If services were performed between...	The maximum hourly rate is...
03/11/2009 through 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94
01/01/2006 through 05/19/2007	\$92

(b) For rates applicable to services performed prior to May 1, 2002 for non-capital cases, please contact the AO's Defender Services Office, Legal and Policy Division Duty Day Attorney, at 202-502-3030 or via email at [DSO\\_LPD@ao.uscourts.gov](mailto:DSO_LPD@ao.uscourts.gov).

### § 230.20 Annual Increase in Hourly Rate Maximums

Under 18 U.S.C. § 3006A (d)(1), the Judicial Conference is authorized to increase annually all hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal employees. Hourly rate maximums will be adjusted automatically each year according to any federal pay comparability adjustment, contingent upon the availability of sufficient funds. The new rates will apply with respect to services performed on or after the effective date.



## CPI Inflation Calculator

### CPI Inflation Calculator

\$ 90.00

in year1 month July    ▼ year1 year 2006 ▼

has the same buying power as

\$139.58

in year2 month December    ▼ year2 year 2024 ▼

Calculate

#### About the CPI Inflation Calculator

The CPI inflation calculator uses the [Consumer Price Index](#) for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. [This data](#) represents changes in the prices of all goods and services purchased for consumption by urban households.



## TESTIMONY

House Committee on Judiciary & Hawaiian Affairs  
**Hearing: Tuesday, January 30, 2025 (2:00 PM)**

TO: Representative David A. Tarnas, Chair  
Representative Mahina Poepoe, Vice Chair

FROM: Mark M. Murakami, HSBA President

RE: HB 396 - RELATING TO COMPENSATION FOR COURT-  
APPOINTED COUNSEL

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee on Judiciary & Hawaiian Affairs:

The Hawaii State Bar Association (HSBA) appreciates the opportunity to offer testimony in **STRONG SUPPORT** for HB 396, which would increase the rates of compensation for court appointed counsel in criminal proceedings.

Currently, there is a small pool of qualified applicants to serve as court-appointed counsel. The rate of pay for court-appointed counsel has not been adjusted in twenty years, which makes it difficult for the judiciary to recruit and retain qualified counsel to represent indigent defendants in criminal cases across the state.

Mahalo for this opportunity to provide testimony in support.

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**Testimony to the Thirty-Third Legislature, 2025 Regular Session**

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Hearing: January 30, 2025, 2:00 p.m.

State Capitol Building  
415 South Beretania Street  
Honolulu, HI 96813

**Re: House Bill 396 - Relating to Compensation for Court Appointed Counsel**

Honorable Chair Tarnas, Honorable Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs:

I am submitting this testimony as a practicing attorney in Hawaii County and the City and County of Honolulu. I support HB396, which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Third Circuit and the First Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters.

Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community. In 2022, I was hired to represent an individual who was charged with murder in the Third Circuit (Hilo) who was eventually acquitted after trial. At that time, I had just finished representing 100 individuals “pro-bono” in both the First and Third Circuit and my family made a decision to move to the Third Circuit to live, work, and help in the community on the Big Island as a whole.

I am currently on the Felony A/Murder Court-appointed list for the First Circuit Court on Oahu, Third Circuit Court in Hilo, and Third Circuit Court in Kailua-Kona. Over the past four years, I have accepted and completed many of the high-profile cases in both the First and Third Circuits. Travel Cost and Overhead business expenses can be very high given the amount of travel needed to cover the areas of Oahu, Hilo, and Kailua-Kona.



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My practice is based upon a heavy case load of court-appointed criminal cases for indigent individuals. In order to practice law and to afford all of the expenses of running a law business for expenses such as “professional liability insurance, car insurance, legal research applications, hiring of investigators, taking depositions plus cost of transcription, food, gas, etc.” the bottom hour private rate that can be agreed to in criminal cases, to cover all the expenses, where A Felony or more is charged, is **\$350/hr.**

At the current rate of \$90 an hour, many times I have to front the cost of most if not all of these services. I then will have to submit a request for reimbursement for costs, which must be reviewed for reasonableness and could be denied. Nevertheless, if the Costs are approved it will be sent in a “paper check” through the USPS mail at an average of 8-9 weeks after the request is submitted. Many times, you need to have a hefty caseload to be able to produce any profit at all, but the most debilitating part is having to have a healthy amount of available “cash” on hand to be able to pay for the expenses (up front), for multiple cases, that will inevitably occur when you represent indigent criminal defendants who have been charged with a Felony A or Murder.

Because of the low hourly pay (\$90) and the delay in cost reimbursement for work completed, my firm has weathered through serious financial hardship while continuing to work and accept court-appointed cases from both the First and Third Circuits. My commitment to court-appointed cases will remain strong and steadfast because we are a vital part of the criminal justice system in Hawaii. I have witnessed the mass exodus of terrific defense attorneys who refuse to accept or work for the State of Hawaii, because they feel the pay is insulting, when right across the street at the Federal building, they are offering \$175 an hour to do the same services you would provide to the State. Many attorneys have left and have never returned to accept any further State court-appointed cases. I also have felt the temptation to go across the street to start working some cases as well.

However, my commitment will remain with the State of Hawaii and Court-Appointed indigent clients, because I feel it is a critical area in our criminal justice system that needs robust advocacy and defense. The approving of this bill will allow for the continuing representation of the same clients, without suffering the financial hardship that is happening now with the low pay rate and delay in reimbursement for fees and costs.

The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment’s notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict



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matters where the Office of the Public Defender is ethically unable to proceed with representation.

The current compensation rate of \$90/hour does not adequately compensate an attorney for the significant responsibilities they shoulder while handling a criminal case or acting as a guardian ad litem, and it does not even cover the costs of overhead for many attorneys. **The statutory rate of pay has not increased in almost 20 years. Federal cases pay a substantially higher rate, and as of January 2025, was at least \$175/hour.** The situation in the Third Circuit is so dire that judges are asking attorneys to come from other islands to assist our community. The rate of compensation must be raised to a viable wage to ensure that attorneys who live on Hawaii Island can afford to assist their community by providing representation to those in need.

Sincerely,

Aaron K. Wills, Esq.

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January 26, 2025

Rep. David Tarnas, Chair  
Rep. Mahina Poepoe, Vice Chair  
Committee on Judiciary & Hawaiian Affairs  
House of Representatives  
33<sup>rd</sup> Legislature, State of Hawai`i

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

Dear Committee leadership and members,

Re: **STRONG SUPPORT FOR HB396 RELATING TO COMPENSATION  
FOR COURT APPOINTED COUNSEL**

Hearing Date: Thursday, January 30, 2025  
Time: 2:00 p.m.  
Location: Conference Room 325  
State Capitol  
415 South Beretania Street

I write in strong support of this proposed legislation. While titled the same as last year's HB1914 HD1 that ultimately failed to advance, this version is fully loaded (funded for 2 years each @ 2.89 million dollars) and ready to go (effective upon approval).

In support of last year's HB1914 HD1, the legislature received compelling testimony, including from the Judiciary, "The compensation rate for court-appointed criminal defense counsel has not been adjusted in twenty years"; from the ACLU-Hawai`i, "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"; from HSBA, "The current compensation rates for court-appointed counsel in Hawai`i does not reflect the challenging nature of their work, the time and effort invested in each case, and the significant responsibilities they shoulder"; and from Hawaii County Deputy Prosecuting Attorney Chase Murray, "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 [last year's] 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.”

Since 2012, I have served as court-appointed counsel in the 3<sup>rd</sup> circuit criminal courts. While increasing the hourly compensation to \$150/hr. not only is fair and reasonable after 20 years, it is equally important that the maximum amounts set for handling each case is increased, as again proposed in this year’s bill. That is because 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.

Also, HB396 allows for an attorney to expend more time on a case without having to motion the court for an allowance of extraordinary fee, which typically must be done before counsel reaches the statutory threshold. Under the current regime, a \$6,000 felony representation at @ \$90/hour, for example, therefore contemplates counsel expending only 66.66 hours in a felony representation. SB263’s proposed cap of \$12,000 at \$150.00/hour contemplates a more realistic 80 hours will be expended in such representation.

Thank you, Representative Nakamura, for introducing this bill, and thank you committee members, for your attention to this issue and consideration of my letter. Mahalo.

Sincerely,

/s/ Georgette A. Yaindl  
GEORGETTE ANNE YAINDL

## Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Judiciary & Hawaiian Affairs  
Representative David A. Tarnas, Chair  
Representative Mahina Poepoe, Vice Chair

Hearing: January 30, 2025, 2:00 p.m.

State Capitol Building  
415 South Beretania Street  
Honolulu, HI 96813

### **Re: House Bill 396 - Relating to Compensation for Court Appointed Counsel**

Honorable Chair Tarnas, Honorable Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs:

I am submitting this testimony as a practicing attorney in Hawaii County. I support HB396, which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Third Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters and to protect the interests of our keiki who require a guardian ad litem. Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community.

The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment's notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict matters where the Office of the Public Defender is ethically unable to proceed with representation.

The current compensation rate of \$90/hour does not adequately compensate an attorney for the significant responsibilities they shoulder while handling a criminal case or acting as a guardian ad litem, and it does not even cover the costs of overhead for many attorneys. The statutory rate of pay has not increased in almost 20 years. Federal cases pay a substantially higher rate, and as of January 2025, was at least \$175/hour. The situation in the Third Circuit is so dire that judges are asking attorneys to come from other islands to assist our community. The rate of compensation must be raised to a viable wage to ensure that attorneys who live on Hawaii Island can afford to assist their community by providing representation to those in need.

Sincerely,

Donna Davis, Esq.

**HB-396**

Submitted on: 1/28/2025 5:52:26 PM

Testimony for JHA on 1/30/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rachel Thompson	Individual	Support	Written Testimony Only

Comments:

Aloha,

I would like to express my strong support for this bill as an individual citizen and attorney practicing in the Third Circuit. I have personally witnessed the impact that the failure to increase the Court-Appointed Counsel (CAC) rate has had on the Big Island. I believe the extremely low pay and unreasonably low cap on cases discourages competent and capable attorneys from accepting court appointed work.

I know the low CAC rate has been a long-standing issue in both family and criminal courts across the State. My understanding is the hourly rate has not been increased for well over a decade. The CAC case caps should be increased to align with the amount of work needed to adequately represent clients in both criminal and family court cases. Attorneys deserve to be adequately compensated for their time, and clients deserve counsel that will dedicate sufficient time and resources on their case(s). I believe that increasing the rate will encourage more attorneys to accept cases, which will in turn lead to better outcomes for clients.

Respectfully submitted,

Rachel L. Thompson, Esq.

R. HERMANN HEIMGARTNER

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January 29, 2025

House Committee on Judiciary & Hawaiian Affairs  
Representative David A. Tarnas, Chair  
Representative Mahina Poepoe, Vice Chair

*RE: SB396 – Relating To Compensation For Court-Appointed Counsel.  
Hearing: January 30, 2025, at 2:00 PM*

**IN SUPPORT**

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary and Hawaiian Affairs:

I am an attorney in Kailua-Kona, Hawai'i, and I have been in private practice for 10 years. Previously, I worked as a deputy public defender and as a deputy prosecuting attorney. Over the last 10 years, I have taken numerous court-appointed criminal defense cases. I am testifying in favor of SB396 and the increase in compensation for court-appointed attorneys. Court-appointed criminal defense attorneys serve an important role in the judicial system, and we provide legal representation to indigent persons accused of crimes.

It is critical for all criminally accused persons to have effective, experienced, and capable attorneys. First, effective, experienced, and capable attorneys are needed to safeguard against innocent persons from being wrongfully imprisoned or found guilty of crimes. Second, effective, experienced, and capable attorneys are needed for the smooth function of the courts and criminal justice system. Third, effective, experience, and capable attorneys are needed to avoid collateral attack when the State secures a conviction.

As a solo attorney in Kona, I must balance accepting court-appointed cases with making a livelihood. The inflation of costs, rent, and housing has made it very difficult to sustain a livelihood at the current rate of compensation. My overhead includes rent, insurances, utilities, online research subscriptions, professional printer lease, and secretary/paralegal salaries.

The current rate of \$90 per hour is multiple factors below the hourly rated for privately retained work. The Federal court appointed CJA rate is \$175 per hour...essentially double of the current State rate. Unless the State court appointed rate increases, I will be financially precluded from taking on any State court appointed cases. I'm assuming that is the financial reality of most other attorneys.

Thank you for your time and consideration.

Sincerely,



R. Hermann Heimgartner

**HB-396**

Submitted on: 1/29/2025 9:43:03 AM

Testimony for JHA on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Matthew A. Sylva, Esq.	Individual	Support	Written Testimony Only

Comments:

To: The Honorable JHA Committee

From: Matthew A. Sylva, Esq.

Re: Increasing Pay for Court Appointed Counsel

I am writing in full support of this measure. Frankly, this measure falls **SHORT** of what the State needs to pay Court Appointed Counsel (hereinafter "CAC"). Do you all know what the private hourly rate is for solo and non-senior partner attorneys just in the Third Circuit? \$350+ AN HOUR. I have seen motions of several Big Island attorneys claim rates of \$350 per hour and even \$365. I myself charge an hourly rate of \$300 per hour because I know with the cost of living here people can't afford more than that or even that sometimes. Flat fees for DUI cases on Big Island? \$5,000 is the average I've seen. Larger multi-attorney firms charging more. Even I charge between \$3-4k depending on the specifics involved. The cap for CAC Petty Misdemeanors is currently \$900 at \$90 per hour for 10 hours of work on a case. That is pitiful. The going attorney rate even when I was in law school between 2014-2017 was already \$200-300 per hour. Maybe \$150 for a newly hired associate. That was 8 years ago. Along with the issues plaguing the Public Defender's Office being unable to keep attorneys because the pay just isn't worth the workload and damage to your health because **THERE NEEDS TO BE MORE MONEY ALLOTTED TO THE PDs OFFICE FOR ADDITIONAL POSITIONS STATEWIDE**, the Court's have been desperate here in Kona and on Big Island to find court appointed counsel. Frankly the entire thing hasn't come to a head sooner because literally 1-2 other attorneys and myself had been taking on more CAC cases out of pity and to do good for our community. But the pay is so little and I already turn down multiple private clients a week (and I don't even pay for advertising or Google SEO or anything) that there's just no way it can keep going like this. Ninety dollars an hour with such low caps? I've written off almost all of my CAC cases the past 2 years as pro bono work towards my HSBA 50-hour pro bono requirement. (Because the billing process is also needlessly cumbersome and time consuming (time we can't bill for).

I fully support this measure. And it should have passed **YEARS AGO**. Even if it falls short, you may get some new attorneys willing to take on cases again at \$150 per hour at least and with the

increased caps. But this needs to be passed this year and then updated or a new measure brought before this Honorable Committee and the entire Legislature again VERY SOON to further increase these rates. I can tell that if this bill had passed LAST YEAR and at a rate more like \$200 or \$250 an hour, I would be accepting a lot more of the cases I get called about and have to decline due to my caseload. Because the situation is DIRE. The State is responsible for this. And the State is responsible for the many citizens (our fellow neighbors and friends) who are deprived adequate legal representation because no attorneys will accept the \$90 rate anymore. (This Committee also should have passed the measure last year increasing pay for Family Court civil cases too such as for GAL and parents counsel in CPS cases because there are almost no attorneys left willing to touch those at \$60 per hour for out of court work). I'm just waiting for the class-action lawsuit against the State that we the taxpayers will all have to bear brought on behalf of criminal defendants and parents in CPS cases who have not been properly represented because the Court can't find counsel for them because the CAC pay is so outdated and pitiful. Please remember that a good number of these people who have been and continue to be affected aren't "scum," "habitual criminals," or some other image you may have of "the dregs of society"; many, especially in district court and family court, are your neighbors, my neighbors, that friend of your friend or even family members who can't afford the crazy rates we private attorneys can charge (because our services are in such high demand - see my testimony about the need for HB401). If it was your aunty or your friend who was having to take out a massive personal loan or refinance their mortgage to afford an attorney because they know they either won't get one or they won't get a good one via CAC, would you believe that to be the kind of Hawai'i you want for them? For all of us? Please pass this measure this session. Before a mother is killed by another DUI driver whose case got dismissed because their speedy trial rights were violated because the courts couldn't find an attorney for them, before another parent who maybe shouldn't get their children back gets them back because the courts couldn't find them counsel, before another child is wrongfully taken and kept from their homes by DHS because the courts couldn't find capable counsel to represent the parents. These tragedies are on each member of this committee who votes to kill this measure or let it die in the dark. And it doesn't have to be. The reverse is that the credit for each of these tragedies that is prevented from the effective date of this bill will also fall upon each member of this committee who votes to pass this measure this year.

Mahalo nui loa for your hard work for the people of Hawai'i,

Matthew A. Sylva, Esq.

**HB-396**

Submitted on: 1/29/2025 10:33:54 AM

Testimony for JHA on 1/30/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
john knoebber	Individual	Support	Written Testimony Only

Comments:

**Testimony to the Thirty-Third Legislature, 2025 Regular Session**

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Hearing: January 30, 2025, 2:00 p.m.

State Capitol Building

415 South Beretania Street

Honolulu, HI 96813

**Re: House Bill 396 - Relating to Compensation for Court Appointed Counsel**

Honorable Chair Tarnas, Honorable Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs:

I am submitting this testimony as a practicing attorney in Hawai'i County. I support HB396, which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour.

I have been practicing law in Kona for 9+ years. During that time, I have taken many court appointments. While the pay has not increased, the cost of living has dramatically. For example, rent has tripled. Moreover, groceries have gone up at least 25%, mostly in the last few years.

I still enjoy taking appointments to assist the Court and my community, especially those that are disadvantaged. However, to be frank, the rate of pay makes it financially very unattractive.

Sincerely,

John Knoebber,

Attorney at Law

**HB-396**

Submitted on: 1/29/2025 12:12:51 PM

Testimony for JHA on 1/30/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Doris Lum	Individual	Support	Written Testimony Only

Comments:

Aloha,

My name is Doris Lum and I have been in private practice for about 3 years now. I am currently one of the attorneys on the court appointed list. I have seen many of my colleagues remove themselves from the court appointed list simply because of the compensation rate. When the courts reach out with a court appointment request, they are usually desparate because I believe fewer and fewer attorneys are willing to accept cases.

Before going into private practice, I was a public defender for 14 years. I could see from my time there that getting court appointed attorneys for confict cases was a problem. Before I was a public defender, I was a law clerk in circuit court processing court appointed fee requests at \$90/hour. Essentially, from the moment I graduated law school, the court appointed rate has always remained the same. It seems wild to me that in the nearly 2 decades of my career the court appointed rate has NEVER increased.

I have also seen many attorneys pivot to taking federal court appointed cases because the compensation is far greater. Others, just flat out refuse to do state court appointed cases. I just had a conversation last week with an attorney who is starting private practice. He indicated that he won't even consider applying to be on the state court appointed list. This bill, beyond just fairness and keeping up with inflation, is needed in order for the judiciary to function the way it should. It is my sincere hope that the bill passes so that there is quality representation that is needed by our justice system and community. I thank you for taking the time to read my input in making a decision regarding this bill.

Sincerely,

Doris Lum

**HB-396**

Submitted on: 1/29/2025 12:25:20 PM

Testimony for JHA on 1/30/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Randall Hironaka	Individual	Support	Written Testimony Only

Comments:

Honorable Committee Members,

My name is Randy Hironaka. I am writing to support House Bill 396.

I was a deputy public defender from 2000 to 2011. I have been in private practice since I left the public defender's office. My entire career has been dedicated almost exclusively to criminal defense. In particular, I have a passion for representing indigent defendants and protecting individual rights. I am on the court-appointed list of attorneys for the State.

Over the course of my professional career, in particular the last several years, there has been a noticeable and significant decline in the number of attorneys who have made themselves available to accept court-appointed cases. Although the decline can be attributed in part to an overall labor shortage, there is no denying that the major factors are that both the court-appointed compensation rate and case maximums have not increased in over 20 years.

I am certain that many of the letters and testimonial support for HB 396 have focused on the unchanging compensation. While I write to express concern in this regard, I also want to focus the legislature's attention on the fact that this has had a severely negative impact on individuals' constitutional rights. I can attest that I have accepted more cases in recent years than I or any attorney reasonably should have. The issue is not merely obtaining representation for criminal defendants. When a small group of attorneys are representing too many clients there is going to be a negative impact on the quality of that representation, regardless of how experienced or good those attorneys are.

All three branches of government are dedicated to supporting and defending the Constitutions, so I am sure the legislature understands the importance of the constitutional rights that court-appointed attorneys defend on a daily basis. Rights that are shared and held by everyone -- even those who are not criminal defendants. Please help us attract additional qualified attorneys to fortify and strengthen our numbers by passing HB 396.

Thank you for your consideration.

Randy Hironaka

**HB-396**

Submitted on: 1/29/2025 12:30:11 PM

Testimony for JHA on 1/30/2025 2:00:00 PM

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

Comments:

As a Deputy Prosecuting Attorney and past president of the West Hawai`i Bar Association, I am all too aware of the need to raise the compensation rate for court-appointed counsel. Here in Kona, we are desperately short of public defenders and have a large number of cases requiring conflict-counsel. Because of these issues, we rely on court-appointed counsel for many criminal defendants. And due to the woefully inadequate compensation rates currently mandated by law, we are also faced with few attorneys willing to take on those appointments. As costs have risen in everything else, many of the attorneys in Kona that previously took on these cases, cannot afford to anymore. The attorneys who do take such appointments are spread too thin. And it is defendants, victims, and our criminal justice system as a whole, that suffers. It is past time to raise the court appointment rate, for all situations, not just for those appointed to represent criminal defendants. This bill is a step in the right direction and should be a no-brainer. I hope you will pass it this year, before the problem gets even worse and justice is further delayed.

Charles E. Murray III

## **JAMES S. TABE**

P.O. BOX 893846, MILILANI, HAWAII 96789  
E-MAIL: JAMES.S.TABE@GMAIL.COM

January 30, 2025

### **H.B. No. 396 RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION**

Chair Tarnas, Vice-Chair Poepoe and Members of the Committee:

I am respectfully submitting this testimony to express my strong support for H.B. No. 396, which seeks to increase the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings.

After thirty years with the Office of the Public Defender (the last four years as the State Public Defender), I am currently practicing law as a solo practitioner on a part-time basis. In the past year, I have, on occasion, been appointed by the courts to represent indigent criminal defendants.

There is simply a shortage of competent court-appointed attorneys. The current compensation rate of \$90 per hour, which has not been adjusted in nearly twenty years, no longer attracts competent attorneys to serve as court-appointed counsel for indigent defendants. Privately retained attorneys routinely charge at the rate of \$250/hour minimum. Many charge much higher. To make matters worse, the state courts must also compete with the federal courts. Attorneys appointed by the federal court are paid a rate of \$164 per for non-capital cases, with maximum per-case amounts of \$12,800 for felony cases, \$3,600 for misdemeanors, and \$9,100 for appellate work. The State Judiciary simply cannot compete at the rate of \$90 per hour.

Currently, the Circuit Court of the First Circuit has a very difficult time in finding attorneys to accept court-appointment on felony and appellate cases, especially in cases in which the charges include murder, sex assault, and other Class A felonies. Indeed, the circuit court has even enlisted the Office of the Public Defender to help in the recruitment of court-appointed counsel. The attorney supervising the Felony Division spends too much time away from their office duties to contact and persuade (beg) attorneys to accept cases.

The Family Court of the First Circuit also has a very difficulty in finding attorneys to represent juvenile offenders, whose hearings are held at the Ronald T.Y. Moon

Kapolei Courthouse. Currently, the family court can only rely on *three* attorneys, the youngest being sixty-two years old, to accept these cases. Moreover, one of the three attorneys only works part-time. The low compensation rate combined with the location of the courthouse (and no compensation for mileage and parking) discourages competent attorneys to accept appointment.

H.B. No. 396 will attract more competent attorneys to accept court-appointed cases and thus will ensure the rights of the indigent defendants to be protected.

Thank you for the opportunity to comment on this measure.