



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Friday, March 28, 2025, 10:02 AM
State Capitol, Conference Room 211 & Videoconference

By

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 396, HD1, SD1, 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.



House Bill No. 396 HD1, SD1, Relating to Compensation for Court-Appointed Counsel
Senate Committee on Ways and Means
Friday, March 28, 2025
Page 2

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 courts 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.¹

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.² 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.

¹ 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.

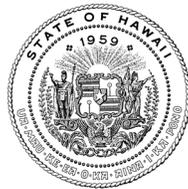
² There is no maximum in capital cases on the federal level.



House Bill No. 396 HD1, SD1, Relating to Compensation for Court-Appointed
Counsel
Senate Committee on Ways and Means
Friday, March 28, 2025
Page 3

The Judiciary respectfully requests that the appropriation of \$2,890,000 be included in Section 2 of the proposed legislation.

Thank you for the opportunity to testify on this measure.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 396, H.D. 1, S.D. 1

March 28, 2025

10:02 a.m.

Room 211 and Videoconference

RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 396, H.D. 1, S.D. 1, amends Section 802-5, HRS, to increase the rate of compensation to appointed counsel from \$90 an hour to \$150 an hour; and doubles the maximum allowable amounts for all case types except appeals, which is instead, increased by 80% from \$5,000 to \$9,000. This bill also appropriates an unspecified amount in general funds in both FY 26 and FY 27 to fund these increases.

B&F is annually appropriated \$5,205,164 in general funds to pay for court-appointed counsel. Should this amount be reached, payments are then halted and deferred to the next fiscal year. As such, any statutory increase in court-appointed counsel compensation will require a proportionate appropriation increase in order for B&F to disburse these funds in a timely manner.

Thank you for your consideration of our comments.



Committee on Ways and Means
Chair Donovan M. Dela Cruz, Vice Chair Sharon Y. Moriwaki

March 28, 2025, 10.02 a.m., CR 211 & Videoconference
HB 396 SD1 Relating to Compensation for Court-Appointed Counsel

TESTIMONY

Stephen Munkelt, Legislative Committee, League of Women Voters of Hawaii

Chair Dela Cruz, Vice Chair Moriwaki, and Committee Members:

The League of Women Voters of Hawaii supports BILL NUMBER HB 396 SD1

The League of Women Voters of Hawaii **SUPPORTS HB 396 SD1** which will raise the fees for court-appointed counsel in criminal cases from \$90/hr to \$150/hr. This bill is part of the Judiciary package and is also supported by the Public Defender, the Kaua'i Prosecutor, the Hawaii State Bar Association and the West Hawaii Bar Association. These pillars of the justice system all recognize the critical need for attorneys with the experience and passion needed for competent and effective representation of the accused.

I personally served as counsel in criminal cases in California for over 45 years. The attorneys who accept court appointments must carry their own office rent, malpractice insurance, staff salaries and overhead. Today these expenses can easily amount to \$100/hr for each of the hours billed by counsel during the year. As highly skilled professionals not many can afford to take these stressful cases just to cover overhead. Nor should they. The proposed increase to \$150/hr is appropriate and still far below the rates charged by private retained counsel at \$300/hr and up. Attorneys who agree to accept appointments will be making a contribution to the community, but they will also be compensated for their time and effort.

The League of Women Voters of Hawaii advocates for a justice system that is equitable, effective, just, and that fosters public trust in the courts and the law. Our founding fathers placed the right to counsel in the Constitution, and the Supreme Court in *Gideon v. Wainwright* (1963) made clear that the states must provide counsel for those who cannot afford one on their own. In the economy of today 70% or more of the accused are unable to afford counsel. The public defender shoulders much of this load, but there are conflicts they can't handle, and maximum caseloads that cannot be exceeded

without reducing the effectiveness of their representation. Private counsel willing to accept cases at the (still reduced) rate of \$150/hr are essential to the justice system.

Thank you for the opportunity to submit testimony on HB 396 SD1.

Stephen A. Munkelt
Legislative Committee



Committee: Ways and Means
Hearing Date/Time: Friday, March 28, 2025, at 10:02am
Place: Conference Room 211 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB396 HD1 SD1 Relating to Compensation for Court-Appointed Counsel**

Dear Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:
The ACLU of Hawai'i supports **HB396 HD1 SD1** which increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings and appropriates funds.

In *Gideon v. Wainwright*,¹ the U.S. Supreme Court established the fundamental right to an attorney for people accused of crimes and facing incarceration, regardless of their wealth or poverty. Since *Gideon*, the right to counsel has been expanded to include [children](#) in juvenile delinquency proceedings, [probationers](#) in probation revocation proceedings, and people charged with [misdemeanors](#).

The Supreme Court has established that the right includes an obligation for lawyers to correctly advise their clients about certain [immigration consequences](#) of criminal convictions, and that the right includes effective assistance of counsel during [plea bargaining](#).

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

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

For these reasons, we respectfully request that you pass **HB396 HD1 SD1** and increase the rate of compensation and maximum allowable amount per case for court-appointed counsel in criminal proceedings who are safeguarding the constitutional rights of indigent persons.

Sincerely,
Carrie Ann Shirota
Policy Director
ACLU of Hawai'i
cshirota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs. 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. Since 1965, the ACLU of Hawai'i has been serving Hawai'i.

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

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Fern Holland
Arryl Kaneshiro



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

March 27, 2025

**TESTIMONY OF ADDISON BULOSAN
COUNCILMEMBER, KAUAI COUNTY COUNCIL**

ON

**HB 396, HD 1, SD 1, RELATING TO COMPENSATION FOR COURT-
APPOINTED COUNSEL**

**HB 398, HD 1, SD 1, RELATING TO COMPENSATION FOR COURT-
APPOINTED REPRESENTATION**

HB 428, HD 1, SD 1, RELATING TO FARM TO FAMILIES

Senate Committee on Ways and Means

Friday, March 28, 2025

10:02 a.m.

Conference Room 211

Via Videoconference

Dear Chair Dela Cruz and Members of the Committee:

Thank you for this opportunity to provide testimony in SUPPORT of HB 396, HD 1, SD 1, Relating to Compensation for Court-Appointed Counsel, HB 398, HD 1, SD 1, Relating to Compensation for Court-Appointed Representation, and HB 428, HD 1, SD 1, Relating to Farm to Families. My testimony is submitted in my individual capacity as a member of the Kaua'i County Council.

I wholeheartedly support the intent of HB 396, HD 1, SD 1, HB 398, HD 1, SD 1, and HB 428, HD 1, SD 1, which would greatly affect the Kaua'i community.

Thank you again for this opportunity to provide testimony in support of HB 396, HD 1, SD 1, HB 398, HD 1, SD 1, HB 428, and HD 1, SD 1. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via email to cokcouncil@kauai.gov.

Sincerely,

ADDISON BULOSAN
Councilmember, Kaua'i County Council

JY:dmc