



The Judiciary, State of Hawai‘i

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

House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

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

Hawai‘i State Capitol, Conference Room 325 & Videoconference

by

Dyan M. Medeiros

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: House Bill No. 398, Relating to Compensation for Court-Appointed Representation.

Purpose: Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardians ad litem in family court proceedings.

Judiciary's Position:

The Judiciary offers this testimony in strong support of House Bill No. 398.

Guardians Ad Litem (“GALs”) perform a critical role in a wide range of family court cases. They represent the best interests of children who have been abused or neglected in Child Protective Act (“CPA”) cases brought under Hawai‘i Revised Statutes (“HRS”) Chapter 587A. They are appointed in many involuntary hospitalization proceedings initiated pursuant to HRS § 334-60.3 and in all assisted community treatment proceedings initiated pursuant to HRS § 334-123. They may be appointed to represent the best interests of children in child custody and visitation matters, such as in divorce and paternity cases. They may also be appointed to represent the interests of a defendant in a divorce, annulment, or separation case if the court believes the defendant is not fully competent pursuant to HRS § 580-6. They may be appointed for incapacitated adults or minor children in guardianship cases. The subjects of these proceedings are among the most vulnerable members of our community and they frequently are unable to advocate for themselves or



meaningfully participate in court proceedings that may significantly impact their lives. GALs give a voice to and advocate for their best interests.

Court appointed attorneys play a similarly critical role in family court cases. They provide constitutionally-mandated representation to individuals whose parental rights are at stake in CPA cases and to minors who have been charged with law violations. They are sometimes appointed to represent minors in CPA cases as well. They are also required under federal law to protect the interests of absent military members in all cases if a default is being requested.

The work court-appointed GALs and attorneys perform in family court cases is extremely important. The cases can be extremely complex. The work requires expertise and experience. It is in our community's interest to attract and retain highly competent individuals to serve as GALs and attorneys in family court cases.

The pool of individuals who are willing and able to serve as GALs and court appointed attorneys is small. For example, in the first judicial circuit, there are only two individuals who are consistently willing and available to be appointed as GALs in involuntary hospitalization cases. There is only one individual who is consistently willing and available to be appointed as a GAL in assisted community treatment cases down from two individuals last year. There are three attorneys (down from four) who are consistently willing and available to take on juvenile law violator cases without limitation. (Other attorneys may be able to take on cases but limit the types of cases they will accept.) In CPA cases, the limited number of attorneys who are willing to serve as parent counsel is particularly concerning. In the first judicial circuit, for example, there are only four attorneys who are under contracts to represent parents (down from six last year), and we are concerned that number may drop even more. There is one attorney who is not under contract but it is unclear whether he will continue to accept cases. The other judicial circuits have similarly limited pools of available GALs and attorneys.

The Judiciary has taken steps to recruit more GALs and court-appointed attorneys. For example, the family court, in partnership with several government and community-based organizations and attorneys, has held training sessions for potential GALs in assisted community treatment cases and for parent counsel in CPA cases. A local non-profit law firm has graciously agreed to accept appointments as counsel in CPA cases but they can only represent Native Hawaiian parents and the number of cases they can accept is limited by the fact that they only have one attorney to accept the appointments.

While these efforts have had some success, the need is still significant. The Judiciary is very concerned that, unless the number of individuals who are willing and available to serve as GALs and court-appointed attorneys increases, there will be delays in these cases. In addition, we are concerned that increasing the workload of the available GALs and attorneys may negatively impact the quality of the representation they are able to provide.

The number of individuals and attorneys who are willing and able to serve as family court appointed GALs and attorneys needs to increase. One important way to encourage



attorneys to be willing to undertake this demanding work is to ensure that they are adequately compensated for that work.

The last time the statutory compensation rates for family court appointed attorneys and GALs was increased was in 2007, approximately eighteen years ago. Presently, family court appointed attorneys and GALs are paid at rates prescribed under HRS § 571-87, which sets their compensation at \$60 per hour for out-of-court work and \$90 per hour for in-court work. In contrast, attorneys in private practice who specialize in family court cases routinely charge between \$250 and \$450 per hour regardless of whether they are working in court or out of court.

A significant increase in the rates at which the Judiciary can compensate GALs and attorneys and the elimination of the compensation distinction between in-court and equally valuable out-of-court work should help increase the pool of individuals willing and able to perform this critical work. (Out of court work includes but is not limited to drafting court pleadings, preparing clients for court, making sure parents in CPA cases are following their service plan, etc.) This, in turn, will ensure that the parties in these important cases have access to representation and will allow the family courts to hear these cases without unnecessary delay.

Thank you for the opportunity to provide testimony on this measure.

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

APPELLATE DIVISION
TEL. No. (808) 586-2080

DISTRICT COURT DIVISION
TEL. No. (808) 586-2100

FAMILY COURT DIVISION
TEL. No. (808) 586-2300

FELONY DIVISION
TEL. No. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y.C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWI STREET
SUITE 201
HILO, HAWAI'I 96720
TEL. No. (808) 974-4571
FAX No. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. No. (808) 327-4650
FAX No. (808) 327-4651

KAUA'I OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAI'I 96766
TEL. No. (808) 241-7128
FAX No. (808) 274-3422

MAU'I OFFICE
81 N. MARKET STREET
WAILUKU, HAWAI'I 96793
TEL. No. (808) 984-5018
FAX No. (808) 984-5022

**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. 398: RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.

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

The Office of the Public Defender **strongly supports the intent of H.B. 398.**

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

Thank you for the opportunity to comment on this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

January 28, 2025

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary and Hawaiian Affairs

FROM: Ryan I. Yamane, Director

SUBJECT: **HB 398 – RELATING TO RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.**

Hearing: January 30, 2025, 2:00 p.m.
Conference Room 325 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the Judiciary's measure for funds to increase the compensation of court-appointed counsel and guardian ad litem in family court proceedings.

PURPOSE: This bill increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardians ad litem in family court proceedings.

The legal representation provided by court-appointed counsel and guardian ad litem is necessary at every point of decision-making, especially in child welfare cases (Chapters 587A and 346, Hawaii Revised Statutes). Increasing compensation will assist counsel with keeping up with the cost of doing business in Hawaii and may encourage more counsel to provide these essential services. This will help to ensure quality legal representation for parents and children.

Thank you for the opportunity to provide comments on this measure.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515 • WEBSITE: www.honoluluprosecutor.org

STEVEN S. ALM
PROSECUTING ATTORNEY
LOIO HO'OPI'I



THOMAS J. BRADY
FIRST DEPUTY PROSECUTING ATTORNEY
HOPE MUA LOIO HO'OPI'I

**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. 398; COMPENSATION FOR COURT-APPOINTED REPRESENTATION.

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. 398.

Guardian Ad Litem ("GALs") are an important part of the Family Court process. In particular, GALs are needed to serve as an advocate for individuals who are the subject of an Assisted Community Treatment ("ACT") petition. An ACT petition can be submitted for an individual who is chronically homeless and found to be dangerous to themselves or others and/or suffering from severed, untreated mental illness and incapable of making informed decisions about their own care and well-being. Once an ACT petition is granted, the individual can be treated, provided with required medication, and case management.

Currently there are not enough GALs to assist individuals in this process. Many of the homeless/houseless individuals residing in Hawai'i need this type of help. Increasing the pay for GALs could increase the number of attorneys to provide this type of legal counsel and advocacy which, in turn, would provide access to resources, treatment, and case management to address some of the homelessness issues, including crime that we are facing as a community.

For the above reasons, the Department of the Prosecuting Attorney for the City and County of Honolulu supports the passage of H.B. 398. Thank you for the opportunity to testify on this matter.

Representative Tarnas and committee,

On behalf of the Hawaii Coalition for Child Protective Reform, I fully support an increase in stipend for court appointed lawyers because a majority of parents in the child welfare system are low income. I would, however, like to comment.

For years, advocates for family defense have called for an increase in the stipend for court-appointed attorneys in child welfare cases. Hourly rates that do not measure up to standard fees are inadequate given the complexity of these cases. It is suggested that attorneys handling such cases typically manage between 50 and 150 cases, a workload that limits the time and resources they can devote to each one.

As a result, parents are often denied the legal representation they deserve, while Child Welfare Services (CWS) maintains a distinct advantage in court with exclusive testimony on the record.

More concerning, recent reports have revealed that federal funding has been available from 2022 to support legal services for both parents and children. However, both the Department of Human Services (DHS) and the Judiciary have failed to follow through with the application process for this critical funding. Please look into withdrawal of federal funding.

Without a reasonable hourly fee for parent and child legal services, quality representation will remain out of reach for many families. Adequate defense for parents in the child welfare system is not only a matter of fairness but is also proven to reduce unnecessary child removals and foster care placements. This, in turn, leads to a reduction in court costs and better long-term outcomes for children and families.

Hawai'i Coalition for Child Protective Reform



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 398 - RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION

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 398, Relating to Compensation for Court-Appointed Representation. This measure would increase the rate of compensation for court-appointed counsel and guardians ad litem (GAL) in family court proceedings.

Qualified legal representation is necessary and critical in family court proceedings. The rates of compensation have remained stagnant for this critical work, which makes it increasingly difficult to recruit and retain qualified counsel to provide these services.

Court-appointed counsel and GAL serve a critical role in ensuring children's best interest are served and family safety remains a priority. Therefore, the HSBA **STRONGLY SUPPORTS** HB 398, recognizing the need for an increased rate of compensation for court-appointed counsel and guardians ad litem (GAL) in family court proceedings.

Mahalo for this opportunity to provide testimony in strong support.

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EXECUTIVE DIRECTOR

Catherine A. Betts



LEGAL AID
SOCIETY OF HAWAII

Telephone: (808) 536-4302 • Fax: (808) 527-8088
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375
924 Bethel Street • Honolulu, Hawaii 96813

Regan Iwao
President, Board of Directors

David Kauila Kopper
Executive Director

TESTIMONY OF THE LEGAL AID SOCIETY OF HAWAII
TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS ON
HB398

Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice-Chair

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

The Legal Aid Society of Hawai'i **strongly supports** HB398 – Relating to Compensation for Court-Appointed Representation.

For over 20 years, Legal Aid has been providing guardian ad litem and parent counsel services across the state, assisting close to 4,000 children in the child welfare system and representing over 500 parents. Increasing the compensation for providers of these critical services is vital to ensuring that Hawai'i's 'ohana continue to receive the highest quality services by recruiting, retaining, and adequately compensating the attorneys and advocates who serve our communities through these roles.

Guardian ad litem contracts plays a critical role in ensuring the safety and wellbeing of children in child welfare cases by providing an independent fact finder whose sole role is to safeguard the welfare and best interests of children as required by state and federal law. Parents' counsel are also necessary to assert the rights of parents when a child is wrongfully removed, and also to counsel parents to enter treatment, counseling or receive other services to reunify with their children. When done right with the right support and compassion, we've seen amazing changes and growth in parents who are now able to provide safe family homes for their children.

This bill proposes to increase the current in-court and out-of-court hourly rates from \$90/\$60 to \$150/\$122, and the caps on the totals that can be paid. These increases are much needed and overdue. The last time the rates were raised was in 2007 (17 years ago), when Act 218 (2007) increased the rates to \$90/\$60 from \$60/\$40.

If the current rates were adjusted for inflation (based on the consumer price index), this measure increase those inflation-adjusted rates by \$13.20 and \$30.80, respectively. These are reasonable increases that will go directly to helping Hawai'i's 'ohana.

A comprehensive 2003 study into Hawai'i's guardian ad litem and court appointed counsel services underscores the need for this bill and still rings true today:

Adequate compensation for guardians ad litem is necessary to ensure adequate services are provided. To some extent, the amount spent reflects the priority put on the representation of children. Attorneys providing guardian ad litem services should be compensated equivalent to other "public service" attorneys. Insufficient compensation leads to guardians ad litem being overextended, as they take on more cases, but without adequate time and resources to devote sufficient attention to each case. This compromises the entire system of guardian ad litem services to children. States must set compensation at realistic levels that will result in the provision of decent services.

Legislative Reference Bureau Report No. 2, 2003. It also remains true that “sufficient resources” are vital to “ensure quality guardian ad litem services are provided to Hawaii's children.”

Thank you for this opportunity to provide testimony.

Respectfully,

David Kauila Kopper, Executive Director
Makia Minerbi, Managing Attorney, Family Unit
For the Legal Aid Society of Hawai‘i

HB-398

Submitted on: 1/29/2025 10:36:26 AM

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

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Michael EKM Olderr | Individual | Support | Written Testimony Only |

Comments:

I support this bill

HB-398

Submitted on: 1/29/2025 12:35:14 PM

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

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

Comments:

As a past president of the West Hawai`i Bar Association, I fully support the increase in court-appointed attorney fees for family court cases. The fee structure, as is, is antiquated and fails to take into account the rising costs of everything post-2019. Its time to bring the compensation levels in-line with the reality of our current economy, so that our children and families get the representation they deserve in family court proceedings. Please pass this measure without delay. Thank you,

Charles E. Murray III