

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third 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, 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

Bill No. and Title: House Bill No. 397, Relating to the Examination of Criminal Defendants.

Purpose: Establishes the amount of compensation for private-sector examiners who evaluate a criminal defendant's penal responsibility or fitness to proceed in a legal case. Appropriates moneys.

Judiciary's Position:

The Judiciary **strongly supports** this measure.

Chapter 704 of the Hawaii Revised Statutes (HRS) requires the Court in felony cases to appoint three examiners in various situations to aid the court in determining a defendant's fitness to proceed with the case (HRS §§ 704-404 and 704-406), their responsibility for the offense alleged to have occurred (HRS § 704-407.5), and once acquitted on the basis of a mental disease, disorder, or defect, whether they may be released or remain in the public without danger or should be committed to the custody of the director of health (HRS §§ 704-411, 704-414). All of the examiners are appointed from a list of certified examiners as determined by the Department of Health. Two of the appointed examiners are required to be psychiatrists, licensed psychologists, or qualified physicians chosen by the court from the certified list maintained by the Department of Health. They are private doctors that are paid by the court. The final doctor is a Department of Health designee, a State employee with the Court Evaluations Branch of the



House Bill No. 397, Relating to the Examination of Criminal Defendants
House Committee on Judiciary and Hawaiian Affairs
Thursday, January 30, 2025
Page 2

Adult Mental Health Division (“CEB”). Chapter 704 requires the compensation paid to the private examiners “shall be paid by the State.”

For the First Circuit there are currently only six examiners on the certified examiner list willing to take the court appointments for the fees paid by the Judiciary. While more examiners are potentially available, they are unwilling (or unable) to provide these services to the court at the currently offered rate of \$1,000 (plus GET). In fiscal year 2010, with fifteen examiners, the First Circuit ordered 142 Chapter 704 mental evaluations, appointing two private examiners in each of those cases for a total of 284 exams (the remaining 142 examinations were completed by the Department of Health designated doctor). That figure has more than doubled in the last fourteen years. For fiscal year 2024, the First Circuit ordered 302 mental evaluations for a total of 906 examinations, 604 of which were done by the private appointed examiners. For fiscal year 2023 the total number of evaluations ordered was 286 (or 858 examinations). As of December 31, 2024, there have been 169 three panel examinations ordered (an average of 28 per month) for fiscal year 2025. These numbers will only continue to increase every year.

For our six examiners in the First Circuit, that is over nine examinations per month over the last six months. Because of this, some of the current examiners have asked the court to “cap” their monthly appointments at a certain number per month and others are requesting extensions of time so that they can complete their examinations and reports. The requests for an extension of time have come from both the CEB examiners from within the Department of Health and the private doctors. These collective challenges have forced the First Circuit Criminal Divisions to significantly extend the deadlines set forth for the examiner’s reports in order to accommodate both the private examiners and the Department of Health designated examiner. The extensions requested are in degrees of months and weeks, not days. In 2010 the court-ordered Chapter 704 examinations were completed within eight weeks, with the return hearings heard at ten weeks. Currently, and due entirely to the limited number of examiners available, it takes a minimum of 12 to 16 weeks and, in some cases, up to 24 weeks, to obtain a complete Chapter 704 examination of a defendant in the First Circuit Court. These delays are being felt statewide.

Unless more doctors are enlisted to conduct these examinations, the courts will be unable to meet obligations required by the Hawai‘i Revised Statutes and the state and federal constitutions. Except for those defendants who are out of custody and in placement, defendants are awaiting these examinations in either the custody of the director of health (the vast majority, if not all, of whom are at the Hawai‘i State Hospital) or in the custody of the Department of Corrections and Rehabilitation for far longer than they would be if the examinations were timely. The social and fiscal impacts of these delays are severe: This has needlessly increased the Hawai‘i State Hospital’s census and caused the department of corrections and rehabilitation to retain custody of defendants who have serious mental health issues, who would be far better served in the custody of the director of health. Because of these delays, the cost to the State of Hawai‘i to house these individuals has also drastically increased. Thus there are real fiscal and procedural impacts created by the current shortage of qualified examiners and the inability to attract additional qualified examiners to conduct the Chapter 704 examinations. The fiscal and



House Bill No. 397, Relating to the Examination of Criminal Defendants
House Committee on Judiciary and Hawaiian Affairs
Thursday, January 30, 2025
Page 3

procedural impacts are felt not just by the Judiciary, but by other State agencies and stakeholders.

The fee paid to the panel examiners has not been increased since approximately 2008 when it was raised from \$500 (with additional fees outlined for out of court work and testimony) to \$1,000 with no allocation of funds for out of court work or testimony.¹ There are several former certified examiners who no longer accept appointments from the First Circuit Court solely due to the low rate of pay for the examination and report. It has been indicated to the Judiciary that if the fee was increased, examiners would return to accepting the appointments.

This bill will increase the rate paid by the Judiciary to \$2,000 and make clear, through the statutory amendment, that the fee is to be paid by the Judiciary and shall include the examination, the written report, and any testimony that may be required. It also includes the appropriation to fulfill this obligation statewide.

Thank you for the opportunity to testify.

¹ Over time this has led to the problematic process where examiners are being paid additional sums by the State (Office of the County Prosecutor or Attorney General) or the Defense when said examiners are subpoenaed for testimony. There is currently no uniformity in the compensation of the examiners for time spent in hearing preparation or for testifying. This is unusual as the examination is being conducted pursuant to the court's appointment of the examiners as experts.

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 PONAHAHAWAI 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 EIIWA 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

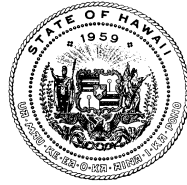
H.B. 397: RELATING TO THE EXAMINATION OF CRIMINAL DEFENDANTS.

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

The Office of the Public Defender **supports the intent of H.B. 397.**

This measure would increase the compensation that a court-appointed forensic examiner would receive for services to the Judiciary. Services would include the forensic mental health examination of a defendant, the drafting of a report documenting the examination and findings, preparation for this process, testimony in court as deemed necessary, and court attendance. This rate increase is necessary to ensure the quality and availability of examiners 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 examiners qualified to provide these services. The Judiciary is in need of qualified examiners and we submit this measure necessary for the administration of justice.

Thank you for the opportunity to comment on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony in SUPPORT of HB397
RELATING TO THE EXAMINATION OF CRIMINAL DEFENDANTS

REPRESENTATIVE DAVID A. TARNAS, CHAIRPERSON
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date: January 30, 2025, 2:00 p.m. Location: Room 325 & via videoconference

1 **Department Position:** The Department of Health (Department) supports this measure provided
2 that its passage does not replace or adversely impact priorities indicated in our Executive
3 Budget.

4 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
5 testimony on behalf of the Department.

6 The Department supports this measure, which proposes to increase compensation for
7 examiners conducting HRS chapter 704 evaluations who are not undertaking the designation
8 under the Department of Health as part of their normal duties as a state employee.

9 Recruiting and retaining qualified psychologists to provide mental health services in
10 Hawaii has become increasingly difficult. Current reimbursement rates/salaries have not been
11 sufficient to attract needed qualified examiners. The list of doctors available to be selected by
12 the judiciary to complete three-panel evaluations consists of only sixteen individuals. By
13 increasing the compensation for the completion of evaluations from \$1,000 to \$2,000,
14 additional doctors may become interested in performing competency and/or criminal
15 responsibility evaluations.

16 Thank you for the opportunity to testify.

**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. 397; RELATING TO THE TO THE EXAMINATION OF CRIMINAL
DEFENDANTS.**

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. 397.

The Department supports this bill as it will hopefully encourage more professionals to provide mental health examinations ordered pursuant to Chapter 704 of the Hawai'i Revised Statutes. This will aid in cases moving through the court system expeditiously and ensure the speedy rights to a trial for criminal defendants. This in turn will also provide closure to victims as their cases may be resolved in a quick and efficient manner if there are more examiners to provide these assessments.

For the above reasons, the Department of the Prosecuting Attorney for the City and County of Honolulu supports the passage of H.B. 397. Thank you for the opportunity to testify on this matter.



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 397 - RELATING TO THE EXAMINATION OF CRIMINAL DEFENDANTS

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 397, which would increase the compensation for court-appointed forensic examiners providing services to the Judiciary.

The proposed rate increase is essential to maintaining a pool of qualified and available examiners across the State of Hawaii, who provide many essential services for documenting and reporting their findings to the court. The current fee structure has made it challenging to recruit and retain professionals with the necessary expertise.

Ensuring access to qualified examiners is critical for the effective administration of justice. Therefore, the HSBA **STRONGLY SUPPORTS** HB 397, recognizing the imperative need for increased compensation for court-appointed forensic examiners providing services to the Judiciary.

Mahalo for this opportunity to provide testimony in support.

OFFICERS

Mark M. Murakami, President
Mark K. Murakami, President-Elect
Kristin E. Izumi-Nitao, Vice President
Erin M. Kobayashi, Secretary
Lanson K. Kupau, Treasurer

DIRECTORS

Jocelyn W.C. Chong
Steven J.T. Chow
Jessica R. Domingo
Geraldine N. Hasegawa (East Hawaii)
Chastity T. Imamura
Amanda M. Jones
Ronette M. Kawakami
Carol S. Kitaoka (West Hawaii)
Jacob K. Lowenthal (Maui)
Simeona L.L.A. Mariano
Emiko Meyers (Kauai)
Robert S. Miyashita
Arsima A. Muller
Paul W. Naso
Zale T. Okazaki

YLD PRESIDENT

Chad K.L. Au

IMMEDIATE PAST PRESIDENT

Jesse K. Souki

HSBA/ABA DELEGATE

Leslie A. Hayashi

EXECUTIVE DIRECTOR

Catherine A. Betts



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521-8995

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

February 30, 2025 2:00 P.M. - VIA VIDEO CONFERENCE – ROOM 325

TESTIMONY IN STRONG SUPPORT OF HB 397, RELATED TO THE EXAMINATION OF CRIMINAL DEFENDANTS

The Hawaii Psychological Association (HPA) strongly supports HB 307, which is badly needed to address the critical shortage of qualified psychologists available to conduct assessments of fitness to proceed, sanity and dangerousness in criminal defendants. On average, it takes approximately nine hours to complete these evaluations. The current fee of \$1,000 per evaluation has been in place for almost 20 years while the rate of inflation has gone up at least 63%. The \$1,000 rate is substantially lower than other psychologists and psychiatrists are paid for child custody, worker's compensation and civil tort litigation cases. The current fee is also well below the national average for states that require three determinations, i.e. sanity and dangerousness in addition to fitness to proceed. According to the U.S. Bureau of Labor Statistics, Zip Recruiter and Indeed, forensic psychologists earn more money than traditional psychologists who perform psychotherapy but in Hawaii, psychotherapists earn more than double what the State is paying for court-ordered three panel examinations.

Statewide, roughly 1400 Chapter 704 evaluations are ordered annually. In 2023 there were 22 examiners on the private examiner list. Many have taken their name off the list due to low payments. Others have capped the number of cases they are willing to accept each month and have restricted their practice to just one or two counties. On Oahu, there are only six private examiners currently available to perform over 900 exams per year. Due to the examiner shortage, exams that should be completed within six weeks are taking, at minimum, 12 to 16 weeks to complete, and in some cases 24 weeks, most often while defendants, who may be severely mentally ill, languish in the state's jails, thus adding to crowded conditions and running up taxpayer costs. This legislation is long overdue.

Thank you for the opportunity to provide input on this very important bill.

Sincerely,

A handwritten signature in cursive script that reads "Alex Lichten, Ph.D.".

Alex Lichten, Ph.D.,

Chair, HPA Legislative Action Committee