



## *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

Tuesday, March 11, 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:** Senate Bill No. 264, SD1, 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 funds. Effective 4/23/2057. (SD1)

#### **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 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



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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.<sup>1</sup> 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.

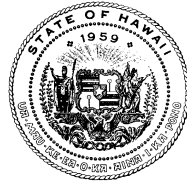
This bill will increase the rate paid by the Judiciary to \$2,000 and make clear, through the statutory amendment, that the fee is to be paid by the Judiciary and shall include the examination, the written report, and any testimony that may be required. The Judiciary respectfully requests that the appropriation of \$975,000 be included in Section 3 of the proposed legislation.

Thank you for the opportunity to testify.

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<sup>1</sup> 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.

JOSH GREEN, M.D.  
GOVERNOR OF HAWAII  
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII



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**Testimony in SUPPORT of SB264 SD1  
RELATING TO THE EXAMINATION OF CRIMINAL DEFENDANTS**

REPRESENTATIVE DAVID A. TARNAS, CHAIR  
REPRESENTATIVE MAHINA POEPOE, VICE CHAIR  
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date: March 11, 2025, 2:00 p.m. Location: Room 325 and Video

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

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

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

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

Thank you for the opportunity to testify.



# Hawai'i Psychological Association

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## HOUSE COMMITTEE ON JUDICIEARY AND HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

March 11, 2025 2:00 P.M. - VIA VIDEO CONFERENCE – ROOM 325

### TESTIMONY IN STRONG SUPPORT OF SB 264, RELATED TO THE EXAMINATION OF CRIMINAL DEFENDANTS

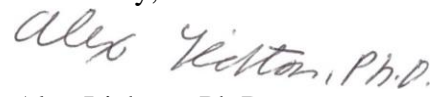
The Hawaii Psychological Association (HPA) strongly supports SB264, which is badly needed to address the critical shortage of qualified psychologists available to conduct assessments of fitness to proceed, sanity and dangerousness in criminal defendants. On average, it takes approximately nine hours 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 with a potential lawsuit. This legislation is long overdue.

If SB264 is not enacted we greatly fear that the examiner shortage will result in a lowering of standards as proposed in SB955, which would result in a proliferation of inadequate fitness examinations, making it much easier for malingerers to be found unfit or insane and committed to the State Hospital. The State Hospital is already well over capacity, and this influx of new patients would further exacerbate the strain on our already limited services and resources, compromising the quality of care for those who genuinely need it.

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

Sincerely,

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

Alex Lichton, Ph.D.,  
Chair, HPA Legislative Action Committee

**MARVIN W. ACKLIN, PH.D.**

*Diplomate in Clinical & Forensic Psychology*

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March 9, 2025

HOUSE COMMITTEE ON WAYS AND MEANS

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Tuesday, March 11, 2025 - 2:00 PM – Via Videoconference Room 325

TESTIMONY IN STRONG SUPPORT OF SENATE BILL 264

RELATED TO THE EXAMINATION OF CRIMINAL DEFENDANTS

Functions of Examiners: Under Hawaii's statutory scheme for the court appointment of mental examiners, licensed psychologists and psychiatrists provide a critical function and service in the criminal justice system. Mental examinations are complex and high stakes for all stakeholders: prosecution, defense, and judiciary. Complex cases may require review of thousands of pages of records at the ACSB, examination of defendants, and preparation of a report to the appointing judge.

The conduct of mental examinations is an advanced forensic specialty. The methods for conduct of these examinations is not taught in graduate curricula, whether in psychology, psychiatry, or nursing. Examiners are specialists who serve as expert consultants and witnesses as subject matter experts, frequently in high stakes and controversial matters.

The current insufficient compensation scheme for examiners is responsible for the dwindling number of new recruits to the pool of examiners. Currently, examiners are seriously underpaid for their work. Even if motivated by the professional challenges of the work, compensation is a significant factor in the choice to specialize in this work. When compensation is not competitive examiners will find other livelihood options.

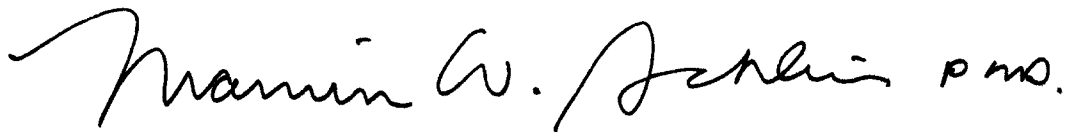
Reimbursement of Examiners. The proposed legislation addressing compensation for forensic examiners is a laudable motivation since appropriate compensation is necessary to recruit the necessary cadre of competent forensic examiners. Competitive compensation is likely to be one expedient in increasing the number of examiners performing this important work to support the efficiency of the 704 system for all circuits.

I am a licensed psychologist in the State of Hawaii (PSY#394) and have been performing court ordered forensic evaluations since 1995. At the current time, I have

conducted approximately 900 evaluations. I have published peer-reviewed empirical research in national forensic journals concerning Hawaii's 704 system for competency to stand trial and criminal responsibility evaluations (references attached). I lecture in the UH school of medicine and law school. I have been a close observer of the 707 panel system in all five circuits in the State of Hawaii. I supervise graduate students in forensic psychology and support their career paths, including public service as 704 examiners. My concern is that the next generation of forensic examiners will not be attracted to this interesting and vital professional activity based on economic factors.

It is essential that the 704 system remain one of the best systems in the United States.

Thank you for the opportunity to provide this testimony in strong support of SB 264.

A handwritten signature in black ink that reads "Marvin W. Acklin PhD". The signature is fluid and cursive, with the letters "M", "A", and "D" being particularly prominent.

Marvin W. Acklin, PhD, ABAP, ABPP  
Board-Certified Clinical & Forensic Psychologist  
Clinical & Forensic Neuropsychology  
Licensed Psychologist  
Hawaii #394  
Associate Clinical Professor of Psychiatry  
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#### References

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