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LAW WEEK

## Burden of proof is critical

*Editor's note: This is the last in a series of articles written by members of the state Judiciary in commemoration of Law Week in Hawai'i.*

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The "burden of proof" plays a pivotal role in our justice system. The term describes the burden a party must carry in order to prevail in a case.

Burdens of proof differ significantly depending on whether the case involved is criminal or civil.

In criminal cases, the burden of proof is on the government because the government has made the accusation. A defendant is presumed innocent and is constitutionally protected from conviction unless the government proves beyond a reasonable doubt that the defendant is guilty. The high degree of certainty is necessary to protect the rights of citizens whose liberty is at stake. The reasonable-doubt standard may have been used in America as early as 1770, and is guaranteed by the due process clause of our Constitution.

Civil litigation involves cases where one party generally seeks monetary damages for alleged wrongs. In these cases, because liberty is not at stake, the burden of proving one's case is significantly lower. A claim must be proved by a "preponderance of the evidence," meaning the claim is more likely true than not true.

Under Hawai'i's decriminalized traffic system, less serious traffic offenses such as speeding are considered traffic infractions. The government's burden of proof is "preponderance of the evidence" at the civil hearing.

If judgment is rendered in favor of the government, the defendant may request a trial. The burden of proof at trial is "beyond a reasonable doubt," as the defendant has exercised the right to have the case decided in the criminal system.

If all this sounds simple, rest assured that the law always has variations. In criminal cases, if the government proves the elements of the charge beyond a reasonable doubt, the burden of proof then rests upon the defendant to prove, by a preponderance of evidence, such affirmative defenses as duress, entrapment and insanity.

In the civil arena, a lawsuit alleging fraud or other quasi-criminal wrongdoing must be proved by "clear and convincing evidence" because the interests involved are deemed to be more substantial than mere loss of money. This standard is higher than "preponderance of the evidence" but lower than "beyond a reasonable doubt."