

State of the Judiciary
Chief Justice Mark E. Recktenwald, Hawaii Supreme Court
Message to the Hawaii Legislature
January 24, 2019, in Honolulu, Hawaii

President Kouchi, Speaker Saiki, Governor and Mrs. Ige, Lt. Governor and Mrs. Green, members of the Senate and House, Mrs. Ariyoshi, Governor and Mrs. Waihe'e, Chief Justice Moon, my fellow justices, judges and Judiciary staff, members of the Consular Corps and the Royal Order of Kamehameha, distinguished guests and friends, good morning, and aloha.

I'd like to thank the Legislature for this opportunity to speak today. I am grateful for your strong support of the Judiciary, and in particular, for enabling us to achieve the decades-old vision of constructing a modern, secure courthouse for the people of Kona. Thanks to you, the new Keahuolu Courthouse will open this fall, on time and on budget.

The judiciary has one mission — to provide justice. We offer a fair and impartial forum where people can peacefully resolve their disputes. We strive to ensure that the peace they find is a lasting one by helping them address the causes of what brought them before the courts. And, we provide justice for all, regardless of the person's background or economic status. Under our constitution, the Judiciary is sometimes called upon to protect the rights of those whose views may be unpopular. In making decisions, our judges must faithfully apply the constitutions and laws of the United States and Hawai'i to the facts of each case — free from passion, pressure or outside influence.

While our core values are timeless, the tools we use to achieve our mission cannot be frozen in time. We must constantly ask whether our justice system is achieving the results that our people rightfully expect. We appreciate it when the Legislature asks tough questions, because we are asking those questions ourselves: Is our criminal justice system keeping our communities safe, while respecting the constitutional rights of defendants who are awaiting trial? Are we rehabilitating those who have been convicted? Is our civil justice system providing justice that is timely and affordable?

While there is much work to do, we have a strong foundation to build on. Our efforts to increase access to our civil courts have received national recognition. With the support of the Legislature and the Bar, we are exploring new ways to use technology. These range from using text messages to remind criminal defendants to appear for court to using Artificial Intelligence to make the civil litigation process more understandable for self-represented litigants.

We have made progress because we have so many partners who share our passion for providing justice for all including the Legislature, the executive branch, with Governor Ige and Lieutenant Governor Green, the Hawai'i State Bar Association, the William S. Richardson School of Law, the American Judicature Society, and the community as a whole.

Last year, approximately 500,000 cases were filed in our courts, including traffic offenses. Every

day, our judges address some of the most sensitive and challenging problems facing our community — from violent crimes, to bitter disagreements between divorcing spouses, to complex environmental cases. I will address each of those areas — our criminal, family and civil courts — to highlight the challenges we face and the opportunities we see.

Keeping Our Communities Safe

Our criminal courts are home to some of our most innovative programs. In order to keep our communities truly safe, we are often called upon to address the underlying challenges — such as substance abuse and mental illness — that defendants face. “One size fits all” simply doesn’t work in this context, so we offer programs that are targeted to specific populations: Drug Court, HOPE probation, Mental Health Court, and Veterans Treatment Court, to name a few.

One recent example of this approach involves homeless individuals, some of whom have multiple cases in our district courts for non-violent offenses such as sleeping in public parks. With the strong support of the Legislature, we have partnered with the Prosecuting Attorney and the Public Defender to launch Community Outreach Court on O’ahu. The goal is to enable homeless individuals to resolve their pending cases by performing community service, while offering them services that can get them back on their feet.

Since the program started in 2017, 102 participants have performed more than 2,100 hours of community service, and more than 1,100 pending cases have been cleared. Many participants have found jobs, housing and more stable shelter, and have earned driver’s license permits.

When we started the program, court sessions were held in a typical setting — a courthouse in downtown Honolulu, with a judge sitting up high on the bench. Thanks to funding from the Legislature, we were able to expand the program to the Wahiawa district court. But the vision has always been to hold sessions outside of a traditional courthouse to make the program more accessible. This became a reality in September, when Judge Darolyn Lendio held court at the Wai’anae Public Library. She sat at a plastic folding table, at eye level with the participants. And that truly is justice in action! We have several participants from Community Outreach Court in the gallery today, along with Deputy Chief Judge Lono Lee, Deputy Court Administrator Calvin Ching, and the staff and community partners. Could they all please stand and be recognized?

There are other significant developments underway in our criminal justice system. The first involves reforming the way that we handle criminal defendants who have been accused of crimes, but are awaiting trial. Under the law, they are presumed innocent and are entitled to bail or other forms of release, except to the extent necessary to ensure their appearance and protect the community if they pose a danger. Low-risk defendants should not be in jail simply because they are too poor to afford bail. At the same time, the community must be protected from those who are dangerous.

A number of states have undertaken pretrial reforms. In response to House Concurrent Resolution 134, the Judiciary convened a task force led by circuit judges Rom Trader and Shirley

Kawamura. That task force had 30 members, including the chiefs of police and prosecuting attorneys of all four counties, defense attorneys, the Office of Hawaiian Affairs and other agencies, and Senator Clarence Nishihara and Representative Scott Nishimoto. They recently delivered a comprehensive report with recommendations for legislative and administrative action.

The Judiciary is already implementing several of the recommendations, such as obtaining more information about each defendant's ability to afford bail. We are also creating an electronic reminder system for defendants so they can receive text reminders before their next scheduled court date. We have implemented this system on the neighbor islands, and expect to extend it to First Circuit district court in February. These reminders increase the likelihood that defendants will appear and save scarce public resources by decreasing the number of bench warrants that are issued.

Another important statewide initiative is the Prison Reform Task Force chaired by my colleague Justice Michael Wilson. This task force, with broad representation from the community, including Senator Nishihara and Representative Gregg Takayama, studied effective incarceration policies in other jurisdictions, and has made recommendations to improve Hawai'i's correctional system by focusing on rehabilitation. Those recommendations include expanding drug court to provide an alternative to incarceration for defendants with serious drug problems.

I thank Judges Trader and Kawamura, Justice Wilson, and the members of both task forces. Thanks to their hard work, we have a unique opportunity to make Hawai'i safer, and our criminal justice system more fair and effective.

Protecting Children and Supporting Families

Our family courts also have a long tradition of innovation and working collaboratively with many partners to protect Hawai'i's children and support Hawai'i's families. Virtually all of the youth in our juvenile justice system have been subjected to trauma in their lives, so we have focused on addressing the effects of that trauma. That approach has worked. Over the last ten years, the number of youth held in custody has decreased by sixty-one percent. I want to thank the senior family court judges who have led this effort, including Mark Browning, Cathy Remigio, and Christine Kuriyama, and our entire family court team. While these strategies require additional resources up front, that expense is modest in comparison to the cost, both financial and social, of having these children become adult offenders.

We have many programs, such as Girls Court, that have contributed to these positive results by providing individualized care where it can help the most. Notably, our O'ahu Juvenile Drug Court, which provides drug treatment and intense supervision, last year had the lowest recidivism rate since the program began in 2001.

Another example of this individualized approach is the Family Court's effort to address truancy by collaborating with the Department of Education to intervene early when children start missing

school, and addressing the circumstances that caused them to be absent.

This approach resulted in a significant decrease in unexcused absences when we first used it at Wai'anae Intermediate School. Building upon that success, the Judiciary launched another truancy collaboration on Kaua'i, under the leadership of Judge Edmund Acoba, at Waimea Canyon Middle and High School. That effort reduced truancy petitions in the district from 56 in 2016 to only six the following year. And on the Big Island, we recently launched another truancy collaboration project under the leadership of Judge Darien Nagata at Kea'au Middle School, with partners including the Salvation Army and the Children's Law Project.

Other important innovations include a public-private partnership to build a center for youth offenders, along with nearly 200 affordable rental apartments on Alder Street in Honolulu. This project – which is expected to be completed by 2021 - will include a 24-hour youth shelter, and a meeting space for youth to take after-school classes and receive other vital services. We are grateful to Speaker Scott Saiki, Councilmember Ann Kobayashi, the Hawai'i Housing and Finance Development Corporation, and the many others who have helped make this project possible. This is the first joint partnership of its kind between two branches of government and a private entity.

Our family court also addresses some of the most heartbreaking cases we see involving the abuse and neglect of children. Some are newborns whose mothers abused crystal meth or alcohol during their pregnancy; others are mere toddlers. To meet their special needs, we have created a Zero to Three Court designed to provide them with permanency as quickly as possible, whether through reunification with their parents, legal guardianship, or adoption to a safe, new home.

To cite one example, a homeless family entered the program as a result of a domestic violence report. The Zero to Three team helped them obtain employment and find an apartment, furniture and household goods. Thanks to these steps, the family eventually was reunited. The judge and the court team members took the time to show these parents that they mattered – and sometimes, that is the most important thing we can do to help families succeed.

Finally, I want to thank the Legislature for its support of our efforts to more effectively address domestic violence. In 2017, the Women's Legislative Caucus held meetings across the state to hear from stakeholders, including domestic violence survivors and advocates. We made several significant changes as a result. For example, the Kaua'i YWCA is now providing free assistance in our Līhu'e courthouse to individuals who are seeking petitions for temporary restraining orders.

Improving the Administration of Civil Justice

Turning to our civil courts, there have been profound changes in the civil justice system nationwide. In 2008, a national survey of several thousand lawyers concluded that America's civil justice system "is in serious need of repair — it takes too long and costs too much[.]"

This report jump started interest in rethinking how civil litigation is conducted. A number of states and the federal courts explored ways to improve.

Here in Hawai'i, there has been much discussion about this issue during our annual bench-bar meetings, which have become a valuable source of feedback for the Judiciary. In June of last year, I created the Task Force on Civil Justice Improvements for Hawai'i's Circuit Courts, chaired by retired Chief Judge Craig Nakamura. Seven current and retired judges and 17 attorneys are also serving on the task force, and expect to submit their report later this year.

In our district courts, we have a high percentage of litigants who are representing themselves. To make the court more accessible to them, we are revising our most commonly used forms to make them more understandable. Moreover, we are identifying opportunities to use technology to help them.

Deputy Chief Judge Lono Lee is leading a group that is evaluating an online dispute resolution alternative for small claims cases. This project could enable civil litigants to mediate certain types of claims online, and if online mediation is unsuccessful, the parties could then, by agreement, have a judge quickly resolve the case, based on documents and other materials submitted online. Online dispute resolution is not appropriate for every litigant, such as those with limited English proficiency or without access to the internet, but for some people, the possibility of being able to resolve their dispute without having to come into a brick-and-mortar courthouse will be very appealing.

Also, I am happy to share that the Judiciary's online electronic filing system is set to launch in our civil courtrooms this Fall. People will be able to file documents electronically and access case information 24/7, much like what is available now for criminal and appellate cases. I'd like to thank Judge Gary Chang and his team for their hard work in developing this system.

Increasing Access to the Courts

We are also making significant strides in increasing access to our civil courtrooms for those who cannot afford an attorney. Last year marked the 10th anniversary of the Hawai'i Access to Justice Commission, which is chaired by retired Justice Simeon Acoba. The Commission has championed many significant initiatives, such as our self-help centers, where volunteer attorneys provide legal assistance to self-represented litigants. More than 24,000 people have been helped so far. The centers are a great example of what can be accomplished when we work together, and I want to thank the Hawai'i State Bar Association and its President, Derek Kobayashi, and Executive Director Pat Mau-Shimizu, the Legal Aid Society of Hawai'i, and its Executive Director, Nalani Fujimori Kaina, the county bar associations, and all the volunteer attorneys for making this resource available to our community.

Often, people find themselves in court when they are experiencing turmoil in their lives, and the experience can be daunting. The Judiciary launched a Volunteer Court Navigator Program in the Second Circuit that helps those who do not have an attorney. Court navigators assist individuals

when they appear in district court civil cases, such as landlord-tenant disputes or debt collection cases. Court navigators help in small, but important ways, by helping to ensure that parties arrive at the proper courtroom, check-in, and respond when called on, among other things.

Thanks to the enthusiasm of the volunteer navigators, and the leadership of 2018 Jurist of the Year Chief Judge Joseph Cardoza, more than 200 people have been helped through the program, and it is now being piloted in the First Circuit.

All of our work on access to justice has helped establish national recognition for Hawai'i, which has opened doors to increased resources for our efforts. One project championed by Majority Leader Della Au Belatti is creating an interagency roundtable on access to justice. Another involves training for "community navigators," trusted leaders such as a respected teacher, church pastor, or kupuna. By providing them with the necessary tools and information, they can then help members of the community access our civil legal system.

Another project that is garnering national attention is the "Legal Navigator" portal, which was made possible thanks to the contributions of Microsoft, the Legal Services Corporation, ProBono Net, and the leadership of the Legal Aid Society of Hawai'i. Microsoft has dedicated close to \$2 million worth of resources to Hawai'i and Alaska to develop an online legal services portal that will use Artificial Intelligence to help people identify legal problems, and then access critical resources. This transformative project will launch later this year, and will empower those whose voices might not otherwise be heard.

Collaboration with the Legislature

Although we have undertaken many of these initiatives with existing resources, in some instances we need additional funding to address new challenges. This session, we are respectfully requesting funding for four new judges: a family court judge on Kaua'i, where we currently only have one full-time family court judge, a family court judge on O'ahu, where some judges have calendars nearing 3,000 cases per year, a district court judge on O'ahu to help handle the increased number of DUI cases and expand Drug Court, and a district court judge on Maui, where the population has more than doubled since the last position was added in 1982. Additionally, we are asking for several staff to support the Community Outreach Court, a permanent position for the Zero to Three Court, maintenance staff and funds to operate the Keahuolū courthouse when it opens, and additional funds for domestic violence services for Maui County, among other needs. Finally, our construction-related requests are all focused on repairs, maintenance, and keeping our current buildings safe and secure.

We appreciate your consideration of our requests and stand ready to provide any information you may need.

Looking Toward the Future

In conclusion, one of the most fundamental challenges we face as an independent branch of

government is building trust and understanding of the Judiciary's mission. We do this in many different ways. For example, it became apparent last year that we needed to do more to ensure that the use of 'ōlelo Hawai'i was encouraged and protected in our courts. We adopted a policy to ensure that parties who want to express themselves to the court in the Hawaiian language are able to do so, and we have actively recruited more interpreters for that purpose. Also, in response to House Resolution 110, we have held Hawaiian language training for more than 400 judges and staff. And earlier this month, we began calling cases in the Hawai'i Supreme Court in both Hawaiian and English.

In addition, we are engaging our young people so they understand the role of the courts in our democracy. Under the Courts in the Community program, the Supreme Court holds oral argument in schools across the state in real cases with volunteer attorneys visiting classrooms to help the students understand the issues. This program has had an incredible impact. So far, we have held 13 oral arguments, with more than 4,500 students from 61 schools participating. Many partners assist us with this program – the volunteer attorneys who visit the classrooms; the Hawai'i State Bar Foundation which provides buses and lunches for the students; law students from the William S. Richardson School of Law, which has been a great partner in so many initiatives; and the teachers who work with the Judiciary History Center to incorporate our program in their lesson plans, and who welcome the volunteer attorneys into their classrooms.

Another important component of building public trust is a judicial selection process that ensures that we have highly qualified judges who reflect and understand our community. Although there are many reasons why people become judges, our robust system of judicial selection and retention has attracted individuals who are highly qualified and who reflect the diversity of our community. As Chief Justice, I appoint the judges who serve in our district and family courts. I am pleased to report that we now have an equal number of men and women serving on the bench in these courts.

We can never forget that our diversity is a great source of strength. The late Governor John A. Burns, stood before this Legislature nearly fifty years ago, in February 1969, and delivered one of his most famous speeches. Governor Burns spoke about the “tremendous power of Hawai'i as a source of inspiration” and reminded his listeners about how “It is through an understanding of our backgrounds, our heritage, that we can best achieve amicable accommodation of the diversity of views that is the hallmark of a truly democratic society. Let us clearly understand that diversity and division are not the same. In diversity there can be unity.”

The wisdom reflected in those words guides us at the Judiciary. I thank our dedicated judges, staff, and volunteers for treating everyone who comes before us with respect, fairness and compassion. By doing so, we provide a place where all of Hawai'i's people can find justice. We thank the Legislature and our other partners for supporting us in that cause, and look forward to working with each of you in the years ahead.

Mahalo and aloha.