

State of the Judiciary  
Chief Justice Mark E. Recktenwald, Hawaii Supreme Court  
Message to the Hawaii Legislature  
January 25, 2023, in Honolulu, Hawaii

President Kouchi, Speaker Saiki, Governor Green and First Lady Jamie Green, Lt. Governor Luke and Second Gentleman Michael Luke, members of the Senate and House, former Governor John Waihee and Ms. Lynn Waihee, former Governor Linda Lingle, members of the Consular Corps and the Royal Order of Kamehameha, distinguished guests, family, and friends, good morning and aloha.

After all the challenges of the pandemic, it is indeed a blessing to be back here in person. Mahalo to President Kouchi and his team for welcoming us into this beautiful chamber.

An event was held this past Sunday that brought such pride and joy to our State – the running of the Eddie Aikau Big Wave Invitational. I am honored that we are joined today by Eddie's brother, Clyde Aikau, who organized this epic event, and his sister Myra. I'd like to ask them to please stand and be recognized.

The Judiciary 'ohana is made up of 1,700 dedicated and hard-working members. As Chief Justice, I am proud to be one them. I thank the Legislature for this opportunity to tell our story, to explain how we are advancing the cause of justice, and serving our community.

To Governor Green, we are eager to collaborate with your administration and are encouraged by your focus on homelessness and mental illness in our community.

I wish to recognize my two friends and colleagues, Justice Paula Nakayama and Justice Michael Wilson. They are retiring this year after serving a combined total of over 50 years in the Judiciary. Would they please stand so we can recognize their outstanding contributions to our State.

On a sad note, I wish to acknowledge the recent passing of two beloved members of the Judiciary 'ohana, my predecessor Chief Justice Ronald T.Y. Moon, and Judge Darolyn Lendio Heim.

As the first person of Korean ancestry to serve as Chief Justice on any American court, CJ Moon helped shape the Judiciary into the institution it is today. Judge Lendio Heim made her mark in district court, by taking the court out into the community to reach those in need.

We dearly miss them both.

Public service is the lifeblood of the Judiciary. It defines who we are as an institution. The Judiciary's role in our democracy is different from other branches of government, but we share the common goal of serving the public.

Our core mission is to decide cases fairly and impartially in accordance with the law. But our work doesn't end when the gavel falls. We implement programs to address the root causes of recidivism, such as drug use and mental illness, and to respond to other urgent community needs. We embrace this expanded role.

Like everyone else, the pandemic tested us, but we have emerged as a stronger, more resilient institution. We have harnessed new technologies to make us more accessible. We are forging new partnerships to make our community safer. We are expanding programs to support vulnerable children and families. And we are improving access to justice, nurturing diversity, and promoting civic engagement. I look forward to sharing these priorities with you today.

### **Meeting Pandemic Challenges and Building on Lessons Learned**

The pandemic created immense challenges to a court system accustomed to conducting business in-person. Despite personal hardships, our judges and staff have always met those challenges and kept providing justice to our community. I want to thank our chief judges – Lisa Ginoza, Mark Browning, Peter Cahill, Bob Kim, and Randal Valenciano – for their leadership. But it is truly a team effort, and I would ask all the members of the Judiciary 'ohana here in attendance to stand and be recognized for keeping the Judiciary strong.

We learned from the pandemic. We could not meet in person, so we harnessed new technologies to conduct proceedings remotely. Instead of having to miss work, people can now appear in a traffic infraction case by simply using their phone. Since the pandemic began, we have held more than half a million remote hearings, and this number is rapidly climbing. We also started an eReminder service and have sent more than 24,000 texts and emails to notify parties of upcoming court dates. Guess what happened? The appearance rate has significantly increased, and is now almost 90 percent in O'ahu District Court.

We are also more transparent. The Supreme Court now livestreams all of our oral arguments, and more than 17,000 people have tuned in.

And last April, we made electronic filing available 24/7 for all courts throughout our system, a huge milestone, by adding family court civil cases. In short, we have created modern courts that use new technologies to meet the needs of a community accustomed to doing business online.

### **Accomplishment During the Pandemic Through Partnerships Formed**

In his opening-day speech, Speaker Saiki said the Sesame Street word of the day was cooperation. Indeed, the pandemic demonstrated the importance of partnerships -- working together with others -- to achieve far more than we could do on our own.

When the pandemic hit, there were predictions that there would be thousands of evictions – a literal tsunami – but that didn't happen. One big reason why is because the Legislature enacted Act 57, which required eviction cases to go to mediation. It was a win-win for both landlords and tenants. It kept people in their homes, while treating landlords fairly. Statewide, over 85% of the

1,600 cases mediated were settled without going to court. And here on O‘ahu, 85% of the settlements resulted in the tenants remaining in their homes.

Mahalo to Representatives Troy Hashimoto and Nadine Nakamura for crafting Act 57, and our district court judges, the bar, and mediation providers for implementing it. Act 57 expired last year, but we look forward to working with the Legislature to re-establish a similar program.

Hale Hilina‘i is another example of a successful partnership. If you’ve driven up Pi‘ikoi Street recently, you’ve seen it: a gleaming new 20-story tower. It provides both 200 affordable rental units and critical resources for juveniles. We could not have completed this innovative project without the Legislature’s cooperation, and particularly that of Speaker Saiki, and our partner, the Hawai‘i Housing Finance & Development Corporation. This new facility symbolizes the Judiciary’s commitment to prevention and healing for at-risk youth. It enables us to intervene earlier and connect youth and their families with meaningful, culturally responsive, services. In short, it will empower at-risk youth to forge a better future.

The new Wahiawā Civic Center, which will house the Wahiawā District Court and probation offices, is another multi-use project that will provide much needed benefits to the community. Mahalo to Senator Donovan Dela Cruz for having the vision for this project.

### **Beyond Adjudicating Cases – Treatment Courts and Measures to Address Homelessness, Mental Illness, and Substance Use**

Our core mission is deciding cases. Last year, we resolved more than 92,000 criminal cases, 35,000 civil cases, and 13,000 family court cases, not to mention several hundred thousand traffic and parking infractions.

Deciding that many cases gives us unique insights into the challenges facing the community. We use these insights to find ways to help people, and identify broader solutions.

We can keep our community safer by addressing the root causes that bring people into the criminal justice system. The rates of serious mental illness and substance use disorders are four to seven times higher for those in jail than the general population, and many inmates suffer from both conditions. Yet these individuals often cycle repeatedly in and out of incarceration without access to needed services and treatment. We must stop that revolving door.

One answer is treatment courts. They use intense supervision and a team approach to break the cycle of recidivism. From our ground-breaking Girls Court to our Drug, Mental Health, and Veterans Treatment Courts, we have developed specialized programs that enable participants to overcome deep-seated challenges and lead productive lives.

Building on this success, the Legislature last session approved funding for Women’s Court. It recognizes the simple fact that women experience very different pathways to criminal involvement than men. Women in prison are 80 to 90% more likely to have extensive histories of trauma, such as sexual or physical abuse. In just six months, our Women’s Court team, led by Judge Trish Morikawa, has developed programs tailored to address women’s needs, collaborated

with treatment providers, and selected participants. We are excited to announce that Women's Court will officially go live later this afternoon.

Mahalo to Judge Mark Browning for having the vision for Women's Court – and to the Women's Legislative Caucus for its support, and in particular, Representative Linda Ichiyama and Lt. Governor Sylvia Luke.

Mahalo also to the Women's Prison Project, a grass-roots group organized by former Gov. Linda Lingle, that supported Women's Court and other legislation focusing on the special needs of women in the criminal justice system.

Homelessness. We see it around us every day. People in makeshift tents lining the sidewalk, in parks, and at beaches. Indeed, right outside this building. I'd bet that for many legislators here, it is the number one concern voiced by constituents.

We know there are no simple solutions, and no branch of government can hope to address homelessness on its own. But the Judiciary is committed to doing our part to find more effective solutions.

Our Community Outreach Court represents a novel approach that has achieved positive results. The Court focuses on non-violent individuals who are houseless or on the verge of becoming houseless and who have pending matters for minor offenses. Participants agree to perform community service to resolve those matters and are matched with service providers, who assist them in obtaining housing, mental health and drug treatment, and other services.

Community Outreach Court is unique in that teams go out into the community, sometimes tent to tent, to find participants to enroll, and the court itself travels to convene where those in need live.

More than 465 individuals have completed the outreach court program, 7,600 cases have been cleared, and 5,600 hours of community service have been completed. We are holding Community Outreach Court on O'ahu in Wai'anae, Kāne'ōhe, and Kaka'ako, and on Maui in Kīhei, and we plan to expand the court to Waikīkī.

In 2019, we held a summit that identified major shortcomings in how people suffering from mental illness are treated in the criminal justice system. It simply makes no sense to hold in custody for months non-violent petty misdemeanor defendants who are incompetent – only to release them back to the streets with no ongoing treatment or services. The Legislature responded by passing Act 26, giving those offenders the chance to obtain treatment, rather than having them languish in custody and we appreciate Representative Della Au Belatti and Senator Joy San Buenaventura for their work on Act 26. In the short time since it was enacted, the State has saved over \$8.5 million due to reduced incarceration and state hospital costs, over 70 defendants have been discharged and linked to services, and more than 25 have received an extended commitment for treatment. We should build on that success, and consider diverting other non-violent individuals with mental illness.

All of us -- the Legislature, the Executive Branch, and the Judiciary -- are strongly committed to resolving the mental health emergency afflicting our community. Let's seize the opportunity and work together. Let's invest in resources such as mental health drop-off centers and crisis stabilization units successfully used in Arizona and Miami to get people appropriate treatment away from the criminal justice system. Let's explore all options to get treatment for those who need it. Let's join forces to implement effective, comprehensive solutions

### **Protection of Children and Families**

Family court is where hope, healing, and new beginnings occur. It is where the profound impact of our expanding role in providing essential services can most clearly be seen.

Reducing the detention of minors has been a critical focus of the family courts. Almost all the minors in the juvenile justice system are themselves victims of abuse and trauma. Research shows that placing them in detention often inflicts additional harm which can spiral into more serious offenses. Our reforms -- which have been underway for more than a decade -- focus on detaining youth only when necessary for public safety and diverting the others into appropriate supervision and treatment.

These efforts have been a resounding success. We have drastically reduced the number of juveniles held in detention, while enhancing public safety. In the last 15 years, the number of juveniles admitted to secure detention or committed to the Hawai'i Youth Correctional Facility has dropped by more than 80%. But juvenile crime did not go up -- quite the opposite. There has been an 85% reduction in juvenile felony petitions. But there is one statistic that exemplifies the tremendous progress that we have made. Last June, for the first time ever, there were no girls detained at the Hawai'i Youth Correctional Facility. You cannot do better than zero.

The pandemic was particularly hard on our state's students. Many faced obstacles to participating meaningfully in classes. Our Truancy Court program is helping students who aren't attending school to get back on track. The key is early intervention. Our juvenile probation officers engage with students, parents, and counselors to resolve the issues causing students to miss school. These early interventions are highly successful in getting students back to attending classes and only rarely are formal court proceedings required. From its start at Wai'anae Intermediate, the Truancy Court program has expanded to other middle schools, with the goal of spreading further as resources allow. Family court is also targeting absenteeism in elementary schools, and is currently working with the families of 88 students at eight schools. I thank Judges Matthew Viola, Rebecca Copeland, Jessi Hall, and Darien Nagata for all their efforts.

### **Access to Justice; Diversity and Inclusion; Civic Engagement**

To ensure the public's trust, courts must be transparent and accessible, judges should reflect the diversity of the communities they serve, and the public must understand the Judiciary's role in our democracy.

So how are we building trust? First, we must ensure that everyone's voice is heard. We have established self-help centers across the state where volunteer attorneys provide free legal

information or assistance to people in civil cases who otherwise would have to navigate the system alone. Over the past decade, there have been more than 35,000 self-help consultations at little or no cost to the public, and remote consultations added during the pandemic have expanded the centers' reach. We could not provide this critical resource without the steadfast support of the Access to Justice Commission, the Hawai'i State Bar Association, the Legal Aid Society of Hawai'i, the County Bar Associations, and the hundreds of attorneys who have donated their time. Will all those who I just mentioned stand to be recognized.

We must ensure that 'olelo Hawai'i can flourish in our courts. We recently hired a Hawaiian Language coordinator and I thank Senator Karl Rhoads for his support of that position. One of the first projects she will tackle is to make foundational legal documents, our constitution, key cases and statutes, readily available in 'olelo Hawai'i.

Public trust is also bolstered by a judiciary that reflects the diversity of the communities we serve. Here in Hawai'i, our merit-based judicial selection system has enabled us to secure highly qualified judges from many different backgrounds. The Senate is a crucial component of the selection process and I thank President Kouchi and the members of the Senate for their commitment.

Here's one important sign of the progress we've made on diversity. I am pleased to report, that as of today, 49 percent of our full-time judges are women.

And, our judges reflect Hawai'i's rich diversity of races, ethnicities, and backgrounds. In cultivating the values of diversity and inclusion, our website contains demographic information about our judges, and we require implicit bias training for all judges and staff.

Finally, trust requires public understanding of the importance of a strong and independent judiciary. Our Courts in the Community program promotes that awareness by holding supreme court oral arguments live, in actual cases, at high schools across the state. Over the past decade, more than 5,000 students have participated. Just last month, we convened at Lahainaluna High School with over 300 enthusiastic high school students from Maui, Moloka'i, and Lāna'i. The energy in that gym was amazing! We are so grateful to the lawyers who volunteered their time to teach the students about the case.

Courts in the Community is part of a much broader effort. The Supreme Court has created the PACE Commission to "promote and advance civic education for students and citizens throughout Hawai'i." The Commission, led by Chief Judge Lisa Ginoza and Representative Amy Perruso, recently hosted a free, three-day academy for high school students on Maui. They learned about the legal system, community involvement, and law-related careers. Mahalo to the American Judicature Society, and its chair, Larry Okinaga, for supporting the PACE Commission, and to the William S. Richardson School of Law, the University of Hawai'i Maui College, and the Maui County Bar Association for making the Academy such a success.

## **Funding Requests**

Although we are proud of what we have accomplished, much remains to be done. We thank the Legislature for your past funding support. As we move forward, we respectfully ask for funding that will enable the Judiciary to provide justice and meet our community's needs.

For our operating budget, we are requesting a modest increase of 4.4% in the coming fiscal year, and 4% the year after. Most critically, we are seeking restoration of funding for more than 30 positions statewide that were de-funded early in the pandemic. We curtailed our budget requests during the pandemic, and did everything we could to stretch our limited resources. But without restoration of funding, our ability to provide needed services is severely compromised.

We are also seeking a new district court judge in the First Circuit to provide stability and continuity for rural courts on Oahu, funding for our programs in the community, including our new juvenile resource center at Hale Hilina'i, and funding for court-appointed counsel, guardians ad litem, and to permit children to stay with their mothers undergoing residential treatment.

Our capital improvement requests total \$16 million. They include fixtures and equipment for the new Wahiawā District Court and funds for essential repair and maintenance for our aging courthouses to keep the roofs from leaking and elevators working.

These requests reflect what we need to restore the services impaired by the pandemic, and to forge ahead with new initiatives to serve the community. We sincerely appreciate the Legislature's consideration.

## **Conclusion**

In sum, the Judiciary is moving forward from the pandemic a stronger and more resilient institution, applying the lessons we learned, and building on the partnerships we formed. We have harnessed new technologies to make us more accessible. We are expanding programs to reach and assist vulnerable children and families. And we are raising awareness of the Judiciary's critical role in our democracy. We are doing everything in our power to provide justice and serve our community.

This past Sunday, in monster waves with 50-foot faces, the Eddie Aikau Big Wave Invitational was held at Waimea Bay. The contest honors Eddie Aikau, the legendary lifeguard and waterman. Eddie risked, and ultimately gave his life, to help others. His legacy is captured in the simple phrase: "Eddie would go."

Just as Eddie would go, the three branches of government must be bold and courageous in finding solutions to the daunting challenges facing our community. Each branch must be faithful to the separate roles we play in our democracy. But we can still collaborate to find solutions. On issues such as homelessness and mental illness, the ideas are out there, the resources are out there, the will is out there. Let's dive in and find the way forward, together.

Once again, thank you to the Legislature for inviting me to be here today, and best wishes for a productive session.

Mahalo and aloha.