



## *The Judiciary, State of Hawai‘i*

### **Testimony to the Senate Committee on Judiciary**

Senator Karl Rhoads, Chair  
Senator Glenn Wakai, Vice Chair

Thursday, February 7, 2019, 9:00 a.m.  
State Capitol, Conference Room 016

by:

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**Bill No. and Title:** Senate Bill No. 187, Relating to District Court Judges.

**Purpose:** To increase the number of district court judges in the First and Second Circuits by amending HRS Section 604-1 (b).

### **Judiciary's Position:**

The Judiciary strongly supports this bill which is part of the Judiciary's 2019 legislative package. This bill is an authorization request for one additional district court judge in the First Circuit and one additional district judge in the Second Circuit. Requests for an appropriation for each of these judgeships are being included in the Judiciary's Fiscal Year 2019-2021 Biennium Budget request.

### **Authorization for First Circuit Judgeship**

The First Circuit serves the island of O‘ahu and is separated by venue into five areas: Honolulu, ‘Ewa, Kāne‘ohe, Wahiawā, and Wai‘anae. At the present time, the District Court has fourteen (14) full-time sitting judges to serve the entire circuit. An additional judgeship is needed to effectively allocate resources in order to alleviate court congestion, case backlog, and case dismissals.



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Operating a Vehicle Under the Influence of an Intoxicant (OVUII) case initiations have been on the rise in the First Circuit. There has been a significant increase in population on the island of O‘ahu since 1982, which was the last time the Legislature authorized an additional First Circuit District Court judge position. There has been a disproportionately large increase in the number of OVUII cases initiated – the amount of OVUII cases initiated in 1995 (2,179 cases) has more than doubled in 2018 (4,622 cases). Between January 2009 and December 2017, 44,153 OVUII cases were initiated in the First Circuit or an average of 4,905 per year, as compared to the previous nine years (2000 to 2008) where there was a total of 29,702 cases or an average of 3,300 per year. By December 31, 2018, there were a total of 3,178 OVUII cases (1,401 active; 19 admin review; 1,184 inactive (cases on bench warrant status, and cases in which the defendant has not complied with the sentence or incomplete proof of compliance; 570 reactivated; and 4 reopened cases) that were not closed. These cases remain in our system and are continued to 2019, contributing to the current backlog. Meanwhile, new cases are initiated every day. Honolulu District Court has addressed this problem by creating overflow courtrooms. By this method, we try to expand our current resources to hear more OVUII cases. Currently, a judge hears about 30 to 60 OVUII cases, daily. The First Circuit allots 210 trial slots per week for OVUII cases to be heard.

Court congestion is often the result of continuances when there are too many trials scheduled on the same day. Continuances may be due to the unavailability of witnesses and discovery issues. These continuances create a backlog as cases are continued while an increasing number of new OVUII cases are being initiated. At the same time, many cases are ready for trial. With limited courtrooms, judges, and staff, it has become increasingly difficult to start trials on all “ready” cases during a single court session. Often, there is no trial on the merits due to procedural delays. This can eventually result in the expiration of the 180 day Hawai‘i Rules of Penal Procedure (HRPP) Rule 48 deadline.

HRPP Rule 48 provides that, with the exception of certain excludable periods, the court shall dismiss a case if trial is not commenced within 180 days of the date of arrest if bail is set or filing of the charge, whichever is sooner. If the prosecution has not started trial before the Rule 48 deadline, the case must be dismissed. Generally, cases ready for trial on a given day are heard in the order of their Rule 48 deadlines. If there is not enough time to hear all the cases ready for trial, the remaining cases are continued for “court congestion.” Court congestion is not an excludable period and the time is charged against the State.

In order to avoid court congestion, case backlog, and Rule 48 dismissals, an additional judge is needed in District Court. This will allow the Judiciary to increase the overall effectiveness of the District Court, increase the pace of litigation, and provide for greater access



and effectiveness of justice. Moreover, it is anticipated that, following the recommendation of the HCR 85 Task Force, the District Court OVUII Judge would assist the Circuit Court Drug Court with hearings and supervision cases. District Court does not have a drug court but this Judge would be backup to the Drug Court Judge. Conceptually, assistance may be needed two to three days a week.

### **Authorization for Second Circuit Judgeship**

An additional District Court judge is crucial to addressing the demands that have increased over the past thirty-seven years since a Second Circuit District Court judge was last legislatively authorized. Equally important is having the ability to effectively address significant and specific needs. During the past two years, the Second Circuit has been meeting with different community stakeholders to develop a Community Court to address the problems faced by those less fortunate and struggling with homelessness and the often co-occurring problems of mental illness and substance abuse. Also, a dedicated District Court Mental Health docket must be built upon to respond to the needs of those in the criminal justice system who are not homeless, but nonetheless suffer with mental health issues. Additionally, the District Court must be in a position to deal with the tragic consequences caused by those operating a vehicle while under the influence of an intoxicant. Finally, the response to domestic and community violence issues, including compliance hearings, must also be enhanced in the outer districts of Hāna, Lahaina, Lānaʻi, and Molokaʻi. The Second Circuit has not always been able to have a judge physically present during certain outer district hearings involving allegations of household or non-household violence given the deadlines associated with such hearings. Instead, the hearings are conducted via Polycom to comply with statutory deadlines. This has resulted in the judge not being able to observe all of the interaction between the parties despite the risk of intimidation and/or physical violence by one or both parties. An additional judge would allow the Second Circuit to have a judge physically present during such hearings. An additional judge is essential to meeting all of these needs.

The last Second Circuit District Court Judgeship was legislatively authorized in 1982, 37 years ago. That authorization increased the number of District Court judge positions from two to three. Since that time, the Maui County population has more than doubled from 77,000 in 1982 to more than 166,000 in 2018. From 2011-2018 the population increased by over 9,000 or some 6%. The present indicators suggest that this population growth will continue, especially with Maui's demand as a desired tourist destination. Indeed, the foregoing statistics do not take into account the high de facto population in the Second Circuit.

The Second Circuit serves the islands of Maui, Molokaʻi, and Lānaʻi. At the present time, the District Court has three (3) full-time sitting judges to serve the entire circuit. The



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additional judgeship is needed to address the increase in criminal and traffic cases as well as the time required to schedule and hear cases on the court calendars.

The Second Circuit has been experiencing an increase in criminal and traffic filings that have resulted in court calendars often taking all day to complete. For example, from FY 2011 to 2018, new criminal filings increased by 29.4% from 2,859 to 3,700 cases, and new traffic filings by 16.6% from 21,964 to 25,306 cases (note that these numbers include traffic criminal filings which increased by 30%, from 3,311 to 4,303, during this period.) These increases in cases leave District Court Judges unable to timely attend to other essential judicial duties such as requests for finding of probable cause for extended restraint of liberty of warrantless arrestees (JDPCs); requests for review and approval of charging by felony information packet; requests for orders pertaining to bail; requests for execution of search warrants; requests for orders to show cause; requests for approval of temporary restraining orders and protective orders; review of civil traffic written statements; review of traffic notices of discrepancies; and review and action on ex-parte and non-hearing motions.

District Court judges are “on-call” every night of the week to respond to the needs of law enforcement agencies. In the past, “after hours” requests were limited to “emergency” situations, weekends and holidays only. Recent federal decisions have impacted state appellate decisions which have necessitated changes in police investigative procedures whereby judges must now be routinely available to review “after hours” search warrant and arrest warrant applications, hear telephonic requests for the issuance of search warrants or arrest warrants and to screen pre-arrest requests for arrest warrants made during any of the three police department work shifts, “24/7”. In the past, these judicial determinations of probable cause were either not required by law or were attended to during court business hours if and when a judge was available. The additional judge is needed to satisfy the law enforcement needs of the community.

The District Court convenes in Hāna and Lāna‘i only once a month, in Moloka‘i only three times a month, and in Lahaina three days a week. These calendars are insufficient to keep up with the growing number of cases being filed in the rural courts and off-island courts. The Lahaina District Court needs to expand to a full-time court. The additional judge and staff will allow for such expansion; will allow the District Court to work on initiatives such as jail diversion for mentally ill offenders; and add needed calendars in Wailuku, as well as its rural courts in Hāna, Lahaina, Moloka‘i and Lāna‘i.

The additional judge will assist in addressing the specific twenty-first century needs of the community in the areas of homelessness, mental health, intoxicated driving, and domestic and community violence, while dealing with the increased caseload in criminal and traffic filings, and accommodating the needs of our rural communities that are underserved at present.

Thank you for the opportunity to testify on this measure.