



**Supreme Court** — THE JUDICIARY • STATE OF HAWAII

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CHIEF JUSTICE

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**State of the Judiciary**  
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President Kouchi, Speaker Saiki, members of the Senate and House, and everyone watching remotely, good morning, and aloha.

To the President and Speaker, and all of the legislators, thank you for this opportunity, and for your ongoing support. Since I last addressed you, we opened the state-of-the-art Keahuolū Courthouse in Kona. At this time, I'd like to acknowledge the passing of Mayor Billy Kenoi, who was a strong supporter of that project, and extend my sympathy and aloha to his wife and family.

Now, as we look ahead, we are excited about the development of the new Wahiawā Civic Center, which will house our Wahiawā District Court. We are grateful to the Legislature for making these much-needed investments in our justice system.

To Governor Ige and Lt. Governor Green, thank you for your abiding support and that of your team. Time and again during the COVID-19 pandemic, we have relied on the expertise and assistance of the Executive Branch to protect everyone in our courthouses, and we deeply appreciate it.

On behalf of the Judiciary, our hearts go out to all those who lost loved ones or suffered other hardships due to the pandemic. Thank you to all of the healthcare workers and frontline responders who have worked tirelessly to keep us all safe.

The pandemic has forced us all to face challenges that we never could have expected a year ago. While the pandemic seemed to bring our society to a halt, the conflicts that our courts resolve didn't go on lockdown. Indeed, some – such as domestic violence and sexual exploitation – have likely intensified.

So we've had to craft new ways to provide justice safely. Courts are traditionally places where many people, sometimes hundreds, come together in person. Obviously, that couldn't continue, so we turned to technology to hold court hearings remotely. As a result, we have reinvented the way justice is administered. This transformation has made us more accessible to the public, and will undoubtedly shape the way we do business in the future.

At the same time, we could not let the pandemic derail the vital work of improving our justice system, and building public trust and confidence in the courts. The deaths of George Floyd,

Breonna Taylor, Ahmaud Arbery, and so many others were stark reminders of the urgent work that remains to ensure that our system truly provides justice for all. And, recent events in our nation's capital have made abundantly clear the importance of the rule of law to our democracy. The courts provide a forum where even the most divisive and bitter disputes can be resolved with fairness and respect. I am proud of the efforts of our judges and staff to keep this cornerstone of democracy functioning even in these difficult times.

I am pleased to share with you today the pressing challenges we faced during the pandemic, and how the Judiciary adapted and innovated to sustain our programs. I will also share how we will navigate the road that lies ahead, from continuing the critical work of building trust in our courts to our plan for administering justice with more limited resources.

### **Pandemic Challenges & Judiciary's Response**

As the realities of the pandemic became clear, we shifted as many of our in-court proceedings as possible onto remote platforms. We have gone from essentially no use of Zoom or WebEx in March, to conducting more than 128,000 cases on those platforms statewide between August and December. This progress has been a true bright spot — for example, we have seen court appearances increase in our online traffic infraction hearings. Many people welcome the convenience of appearing remotely, rather than coming into a brick and mortar courthouse. We are, in effect, creating the courts of the future, courts that are more responsive to the needs of a community accustomed to doing business online. Clearly, remote proceedings will be a significant part of our operations even after the pandemic.

These courts of the future are also more transparent. Since the pandemic began, the Hawai'i Supreme Court has conducted 17 oral arguments remotely. It can be difficult for members of the public to come to our courthouse in downtown Honolulu, but remote technology made the court more accessible. In one case from Maui, close to 500 people tuned in to oral argument, giving the community most directly affected increased access to the process. This is true beyond the Supreme Court, too. In many courtrooms across the state, trials and other court proceedings are now accessible to the public via video conferencing platforms.

That said, some of our work cannot be done remotely — most notably, criminal defendants have the constitutional right to be present in the courtroom and confront the witnesses against them during trial. We suspended jury trials at the beginning of the pandemic because they require bringing many people together — jurors, parties, witnesses, attorneys, the judge and staff.

Restarting jury trials has been critical, since large backlogs developed while they were suspended. On O'ahu alone, more than 2,200 criminal jury trials are pending. Defendants have the right to a speedy trial, and can seek outright dismissal of the case as a remedy if that right is violated. And, victims should not have to wait interminably for justice to be done.

Our judges and staff have measured courtrooms to ensure social distancing, acquired masks and air purifiers, built clear barriers, held walkthroughs with representatives of the Department of Health, and brought together stakeholders for mock-trial proceedings. We have now restarted jury trials across the state, beginning in November on the neighbor islands. So far, we have completed thirteen on O'ahu, and one each on Maui and the Big Island.

The right to a jury trial is fundamental to our democracy, and I deeply appreciate the hundreds of prospective jurors who answered the call. It is our highest priority to keep those who serve safe,

and we will absolutely pause if we are not confident that we can do so.

As we faced these unprecedented challenges, the Hawai'i State Bar Association has been with us every step of the way. I would like to extend my thanks to the HSBA for their critical contributions to the Judiciary's pandemic response, and particularly, to 2020 president Greg Frey and executive director Pat Mau-Shimizu.

My deepest gratitude also goes to all of the judiciary 'ohana – our judges, court staff, and administrators – who have worked tirelessly over the past ten months to ensure that we can keep the community safe and maintain our essential services, even when COVID-19 has hit close to home. I thank every single Judiciary employee, who have been nothing short of extraordinary. And a special mahalo to our chief judges: Mark Browning – who was recognized as jurist of the year – Lisa Ginoza, Randal Valenciano, Rick Bissen, and Bob Kim. All have been unwavering and resilient leaders.

### **Innovating & Adapting**

In the face of the pandemic, we have also continued to serve the public by adapting our existing programs in inventive new ways. I'd like to share some examples of that innovation:

We restarted our Community Outreach Court remotely and expanded it to a new location at Villages of Ma'ili. The court provides individuals charged with nonviolent, low-level crimes the opportunity to perform community service in lieu of paying fines and fees. Many participants are experiencing homelessness, and the program provides needed services that help give them a fresh start. We are grateful to our partners – the prosecutor's office, the public defender, and other community groups – and excited to resume this program. I'd like to share now the thoughts of Emanuel Prichett, one of the 230 graduates. [VIDEO] Thank you, Emanuel. Clearly, the program has impacted his life in profound ways.

We also helped ensure that the digital divide wouldn't be a barrier to justice. Many people don't have access to the internet or other tools needed to participate in court hearings remotely. We have taken huge strides to ensure access to our virtual courtrooms by, for example, creating a guide to online access and a map of free Wi-Fi hotspots, and opening a remote hearing kiosk in the Supreme Court Law Library.

We also kept our access to justice efforts vibrant. Our six self-help centers across the state provide free legal information to those who cannot afford an attorney in civil cases. After briefly closing during the early days of the pandemic, the self-help centers reopened remotely and have served more than 1,400 people since May, at little-to-no cost to the public. Mahalo to the Access to Justice Commission and its chair Judge Joseph Cardoza, the Legal Aid Society of Hawai'i, the Hawai'i State Bar Association, and, most importantly, the attorney volunteers for their dedication to access to justice.

And, we increased treatment options for those in the criminal justice system with mental health challenges. In November of 2019, the Judiciary partnered with Governor Ige and the Department of Health to host a mental health summit that brought together national experts and local stakeholders. That collaboration led to the passage of Act 26, which directs non-violent defendants who are charged with petty misdemeanors into appropriate community-based treatment. Rather than take up scarce bed space at the Hawai'i State Hospital, these individuals can now be treated more effectively, more humanely, and more efficiently.

In short, the Judiciary has stayed committed to initiatives that streamline processes make courts more accessible and improve outcomes.

### **Equity & Trust**

An effective court system requires public confidence and we have worked hard in recent years to increase civic understanding about the role of the courts. One signature example is the Courts in the Community program, which brings Supreme Court oral argument in actual cases to high schools across the state. We reached more than 5,000 students statewide since 2012, most recently at Waipahu High School in November 2019. Seeing is believing, and Courts in the Community helps make the protections of the legal system real to young people. We are looking forward to restarting the program.

Another critical initiative is the newly-formed Commission to Promote and Advance Civic Education. The PACE Commission will serve as a catalyst for civic education throughout the state, and increase understanding and respect for the institutions of our democracy. Mahalo to Chief Judge Lisa Ginoza and attorney Ted Pettit for spearheading this effort, as well as the American Judicature Society and its chair Larry Okinaga for their tireless advocacy in support of the Commission.

In order to build trust in the justice system, we must acknowledge and address systemic inequities, and we have redoubled our efforts to ensure the Judiciary lives up to the promise of equal justice for all. Hawai'i is far from immune from the racial inequity that spurred this summer's protests, across the country and at home. We have already taken some important steps: by reforming bail and other aspects of our criminal justice system that may have disproportionate impacts by training our judges and judiciary staff on how to recognize and address implicit bias and by increasing access to our civil justice system. Moreover, the newly-created Criminal Justice Research Institute will leverage data to identify inequity within the criminal justice system.

It's clear that there is a lot of work to do and that this will be a long and sometimes-difficult conversation. But it's one that we must have. Earlier this month, our Committee on Equality and Access to the Courts sponsored a virtual panel discussion on racial equity, and the response was astounding: almost 400 people attended. I thank the Committee, and in particular, Willie Bagasol, Judges Rebecca Copeland and Sandra Simms, and Justice Sabrina McKenna, for their leadership. There are four more events scheduled in the coming weeks. We are listening to those who have bravely raised their voices to fight for a more equitable future and we are committed to heeding the call to action.

### **Challenges to Come & Impact of Resource Constraints**

Like everyone in Hawai'i, the courts have had to accomplish more, with fewer resources, during the economic upheaval caused by the pandemic. And at the same time, other impacts of the pandemic are manifesting in our courtrooms.

Last year, our district courts on Oahu received more than 60,000 criminal citations for violations of pandemic emergency orders. To put that in context, we had only 20,000 criminal citations in first circuit district court the prior year. Each emergency order violation is a full misdemeanor, carrying a possible sentence of up to a year in prison, and each defendant is entitled to a jury trial if requested. We are working with lawmakers and other stakeholders on legislation that will

provide more flexible options to law enforcement.

The strain of the pandemic is also profoundly affecting Hawai'i's families. The Domestic Violence Action Center reports a 652% increase in client contacts for the six-month period from April-September of 2020, when compared to the prior year. Moreover, there are approximately 800 pending jury trials in Honolulu's domestic violence criminal division. And of course, new cases are coming in every week.

Survivors of domestic violence deserve timely justice and accountability. Waiting years to get a resolution is unacceptable. Delay in these cases puts lives at risk, and reducing the services that we provide to prevent future abuse only worsens the harm.

As another example, the economic strife caused by the pandemic, in tandem with increased isolation and closure of schools, have created conditions in which, tragically, sexual violence and trafficking can flourish. Indeed, local non-profit Imua Alliance, an anti-trafficking organization, reported a five-fold increase in their monthly calls during the pandemic. The courts see the devastating effects of commercial sexual exploitation in many ways. Too often, survivors of trafficking or sexual violence end up in the courtroom as defendants themselves.

This is one reason why alternative and treatment-based programs are so essential – we must address the underlying causes of criminal conduct to truly do justice. For example, some participants in our Girls Court, a program for teenage girls involved in the juvenile justice system, are themselves survivors of sexual exploitation. Some face different challenges, like drug use or family instability, but all of the girls benefit from a holistic program, rooted in teamwork and support, that centers around the specific needs of young women. The Women's Legislative Caucus has been an important voice in this and other initiatives, and we are proud to continue to collaborate with its members. I'd like to share with you a video from one of our Girls Court graduates, who found a promising path forward through the program. [VIDEO] I thank this young woman for sharing her story.

In our district civil courtrooms, we are facing a coming surge of residential eviction cases when the moratorium on evictions expires. We have been working with the mediation centers and other groups to have alternative dispute resolution options in place to keep those cases out of the courts and, if possible, to keep people in their homes.

In our criminal courtrooms, the restart of jury trials has been essential to working through the backlog of cases. But we simply cannot conduct as many jury trials as we could before the pandemic, particularly here on O'ahu given the space limitations in our courtrooms. With our current budget restraints, renting larger spaces is cost-prohibitive. As a result, trials on O'ahu involving the most serious criminal offenses – for example, homicide cases that require a larger jury pool, or cases involving more than one defendant – have so far been unable to move forward.

We are grateful to our government partners for their assistance: both Governor Ige and former Mayor Caldwell approved CARES Act funds for our use, the Department of Defense provided National Guard assistance at Judiciary facilities, and the Department of Health has been an invaluable resource.

That said, we are facing these challenges with significantly reduced resources. At the end of the last fiscal year, our entire budget was reduced by 5.3%. In the current fiscal year, our entire

budget was reduced by 8.6%. We fully understand the need for these reductions. We appreciate the Legislature's deferral of a portion into the current fiscal year and thank Ways and Means Chair Dela Cruz and Finance Chair Luke for their leadership. Nevertheless, we have had to make some very difficult decisions. We've curtailed court operations in some locations, such as closing the courtroom in South Kohala and not filled vacant positions of experienced staff retirees, as well as delayed the filling of several judicial vacancies. Our current workforce has shrunk by 6.5% in a little over a year. We've also had to reduce funding by more than \$3 million statewide for programs that help some of the most vulnerable members of the community, such as services for victims of domestic violence, and other programs that help keep our community safe, including substance abuse testing and mental health services for criminal defendants.

The Judiciary, as the third branch of government, currently accounts for less than 2% of the overall state budget. And, over the past decade our share has decreased. In short, we were already a lean operation before the pandemic hit, and are even more so now. We have embraced the need to rethink government operations and have become more nimble and efficient as a result. While we know the road ahead is difficult, we respectfully request an operating budget that remains steady, with no increases but no further reductions and a capital improvements budget that allocates modest resources towards shovel-ready projects that will stimulate the economy and keep our buildings safe.

Although courts first and foremost decide cases, our essential work goes far deeper. Drug court, for instance, uses an intensive team approach to help defendants overcome substance abuse. There is nothing quite like the feeling of accomplishment that graduates of the drug court experience when they successfully complete the program. You will hear about families that have come back together, and once-repeat offenders who are now gainfully employed and reconciled with their loved ones. Steven Tyler of the band Aerosmith is a big supporter of Maui Drug Court, and put it like this in a virtual congratulations to a graduate from Moloka'i. [VIDEO]

Word to the wise from Steven: get jiggy with treatment courts. Eliminating these programs will make our community less safe, because the data shows that treatment courts significantly reduce recidivism. And, eliminating treatment courts will cost more in the long run: one study showed that the criminal justice system ultimately saves \$3.36 for every \$1 spent on drug courts like ours. In short, treatment courts aren't just effective – they're a good investment.

I hope the examples I have shared with you illustrate that we deliver services essential to the health, safety and functioning of our community, and to the well-being of our children and families. We are on the front lines of the response to the pandemic, delivering core services that keep people safe, and society functioning so that we can recover economically. With 2,200 criminal jury trials pending on O'ahu alone and many hundreds more on the neighbor islands, it is imperative that we have the resources we need to fulfill the obligation of a speedy trial. Indeed, the demand for our services will only increase as criminal trials return to full speed, emergency order citation cases make their way through the system, eviction matters resume and as other impacts of the pandemic, such as increases in domestic violence and sex trafficking become even more evident.

### **Closing**

There is perhaps no principle more treasured in a free society than the tenet of "equal justice for all" and a fair and impartial court system is the lifeblood of that ideal. But earlier this month, the attack on the nation's capital served as a painful reminder that we cannot take democracy for granted, and that we must continually work to fulfill the ideals of our nation.

I am proud to lead a Judiciary that is committed steadfastly to the pursuit of “equal justice for all” in its truest and richest sense. This requires facing past inequity listening and learning and doing the hard work to improve. This work is both the right thing to do and it’s imperative to earning the faith and trust of those whom we serve.

The challenges of the past year have made this much clear: the fair and impartial administration of justice is more important than ever to our democracy, and to the very fabric of our community. The Judiciary’s ability to fulfill that critical mission has been tested but I am extremely proud that, through innovation and determination, we have continued to provide essential services that keep us all safe and on the road to recovery. I am deeply grateful for the support of the Legislature and the Executive Branch as we work together to serve the people of Hawai‘i. I am acutely aware that there are more challenges to come. But I am confident we can meet those challenges, and forge a Judiciary that will be even more accessible and responsive to the needs of our community, long after the pandemic has ended.

Mahalo.