The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary
The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair

Thursday, January 28, 2010, 2:30 p.m.
State Capitol, Conference Room 325

by
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Bill No. and Title: House Bill No. 2000, Relating to the Judiciary

Purpose: To provide supplemental operating and capital improvement appropriations for FY 2011.

Judiciary's Position:

The Judiciary strongly urges your support of House Bill No. 2000, which reflects the Judiciary's resource requirements for FY 2011. During the informational budget briefings to the members of the Senate Committee on Ways and Means and the House Committee on Finance on January 6, 2010, and the House Committee on Judiciary on January 19, 2010, we provided detailed information on our budget and supplemental request, the impact of recent budget cuts, and the potential costs to society and the State of further cuts to the Judiciary. Consequently, our testimony today will address only a few highlights.

As you know, the basis for a supplemental budget differs markedly from a biennium budget. The biennial budget concept is based upon the premise that planning, evaluation, prioritization, and appropriate resource allocation were done in the previous year and that supplemental budget resources will be requested largely to address unforeseen developments, inadvertent oversights, and special circumstances. However, the Judiciary is very aware of the State's economic situation and projected budget deficits for the fiscal biennium, and realizes that this is not a normal supplemental budget year where such supplemental budget requests can even be entertained. In fact, these conditions, in conjunction with legislative actions last year to reduce the Judiciary's FY 2010 budget base by $11.5 million or 7.6% relative to FY 2009 and to

eliminate 79 positions or 4% of the Judiciary's permanent workforce, have resulted in the Judiciary taking serious cost cutting measures. These include significantly reducing expenditures in such areas as purchase of service (POS) contracts (a $3.5 million reduction or 26% of prior year expenditures in this area), guardian ad-litem/legal counsel services (a $1.5 million reduction), temporary hire positions (a $1.1 million reduction), overtime, electricity, repair and maintenance, and the use of per-diem judges. Further, in helping to contribute to our shared responsibility of balancing the state budget, the Judiciary adopted a furlough plan for all HGEA and related employees that was implemented on November 6, 2009 that will save approximately $4.8 million this current fiscal year and more than $7 million in FY 2011. Also, although additional funding is needed to fully staff and operate our new Kapolei Court Complex and for various, important operational and safety matters, we have not requested any additional general funds in our supplemental budget request. Rather, our general fund budget request remains at the $139 million provided during the last legislative session, which still represents a significant cut from our FY 2009 budget of over $150 million.

The impact of these budget and personnel reductions, together with the two-day-per-month furloughs, is being felt throughout the Judiciary and Hawai'i, especially considering that the Judiciary has no control over its workload and must now accommodate that workload with less financial resources, people, and work days. Significant trial and hearing scheduling problems have arisen as fewer days are available for scheduling, and because prosecutors, public defenders, and sheriffs do not all have the same furlough days as each other or the Judiciary. With fewer days, court calendars are becoming overcrowded and in some cases, jumbled with all different types of cases. The loss of staff positions has resulted in the remaining staff having to supervise/monitor much larger caseloads. For example, the Adult Client Services Branch, First Circuit lost 24 positions, many of which were in the Sex Offender and Domestic Violence Units. The loss of these positions has meant some of the remaining staff personnel have caseloads as high as 180 to 1 for high and medium risk offenders, well in excess of the American Probation and Parole Association caseload standards of no more than 50 to 1 for these type of offenders.

While the reduction to the Judiciary's budget base affects all Judiciary programs statewide, it resulted in funding being cut for POS contracts by an overall 26 percent ($3.5 million), and for treatment court and domestic violence services by about $1.3 million and $1.6 million, respectively. Some programs were eliminated; some others were significantly reduced. These cuts have led to fewer services being available and fewer clients served, and longer waits to access services, resulting in less adherence to program goals and a slow-down in admittance. They have also contributed to the loss of ten or more staff in direct service to victims and perpetrators of domestic violence, resulting in a decrease in parenting groups, crisis intervention services, victim support, and batterers treatment; a 14% to 18% reduction in cases closed, cases opened, temporary restraining order (TRO) clients served at various sites, and victim services delivered; a 20% to 40% reduction in safety planning services and services to children exposed

to domestic violence; an increase in wait time for batterers trying to enter services from one to two weeks in the best case, and two to five months in the worst case, which means more untreated batterers residing in communities, decreasing the safety of their victims and the community in general; a decrease in the number of sites available to obtain services for batterers, victims, or children – on the Neighbor Islands this often means that services are unavailable unless the person seeking services has access to a car and is able to drive many miles; increases in requirements and fees for fee-for-services, making programs unavailable to those who cannot pay; a decrease in supervised visitations to 1.5 hours a week per family; a reduction in staff work hours; and waitlists for almost all services, including waitlists for temporary restraining order (TRO) support and filings. Some of the people who will now not be served by these programs may remain incarcerated or may harm themselves or others, while those with a dual diagnosis of substance abuse and mental illness will likely not be served at all.

The work has not decreased in the Judiciary, yet the funding and personnel resources and days available to do that work have. With less time and people to do that work as well as the additional work required to adjust schedules, trials, and hearings, stress, fatigue, and frustration have increased significantly among court staff, which has led to errors, the inability to meet certain timeframes, and an overall decrease in morale. The public has also been deeply affected as waiting times to be serviced have doubled in some cases and less days are available for the public to do business with the Judiciary.

While certainly there is an immediate economic impact from these reductions, much of the impact might not be felt until later years and will be borne by other agencies as well. For example, the treatment capacity of the Oahu Adult Drug Court dropped from 160 to 130 clients because of the budget reductions, with 30 people now on a wait list. Assuming these 30 people are not admitted to the drug court program and are incarcerated at $139 per day each (about $51,000 per defendant per year), this would cost the State more than $1.5 million for one year, or over $600,000 more than the cost of the entire Oahu Drug Court operation for one year. If we were to experience future budget cuts that necessitated the closure of all the adult drug courts, and if we used the same formula and applied it to the 387 defendants currently enrolled in the adult drug courts statewide, it would cost about $19.6 million to incarcerate everyone for one year, as compared to the entire adult drug court appropriation for FY 2010 of just over $3 million. These potential costs to the State would multiply even more if further cuts meant closing our juvenile and family drug courts. Or, to cite another example, if the Judiciary had to discontinue the Project HOPE program due to lack of funds, where the average cost to supervise an individual on probation is $1.82 per day, and instead incarcerate the 1,483 active probationers at $139 per day, it would cost the State $75.2 million (1,483 X $139 per day X 365 days), as compared to the total FY 2010 allocation of just under $1 million for Project HOPE.

Recidivism (re-offense) and its effects and economic impacts also would not be felt until sometime in the future. Recidivism rates since inception for adult drug court clients range from 3.5% on Kauai to 16% on Maui, or an average low of 9.6% statewide, as compared to over 50% recidivism within three years for persons released from prison (per Bureau of Justice reports). Thus, for the majority of defendants who are incarcerated without the benefit of the drug court program, the doors of the courthouse and prisons become revolving doors with all the attendant costs that are incurred. Clearly, diverting defendants to drug treatment through our drug court programs, whether they be adult, juvenile, or family drug courts, potentially saves millions of dollars.

In summary, further cuts to staffing and treatment providers that service these specialty courts will result in vastly increased costs to the prison, welfare, law enforcement, social services systems, and judicial communities. Further reductions in these services will have an enormous impact on the ability of our community to remain safe and avoid an increase in crime and child abuse and neglect by repeat offenders. The increase of long-range social costs due to the inadequate provision of services and diversion options for children and youth is immense as these children and youth – if not worked with early – develop educational and behavioral problems and are more likely to matriculate to the adult criminal system. It should be noted that we are already seeing the effects of the economic downturn on crime and court filings as FBI statistics show that for the first half of FY 2009, property crime, violent crime, and arson increased on Oahu by 6% as compared to the first six months of FY 2008; and that from FY 2008 to 2009, new cases filed in circuit courts statewide increased by 6%, civil cases in district court by more than 10%, non-criminal traffic violations by 4%, and domestic abuse/protective order filings by 12%.

The Judiciary does have one special fund operating request for a ceiling increase of just over $125,000 in its Probation Services Special Fund to pay for a full-time Interstate Compact Coordinator to handle all interstate compact matters related to the transfer of probationers and parolees between states, and to reimburse the general fund for fringe benefits for the five staff positions supported by this Fund. Capital Improvement Project (CIP) requirements still remain a major item of concern as the Judiciary's infrastructure continues to age and deteriorate. CIP funds are especially needed for repairs and improvements to our roof, lanai, and concrete terrace deck at Kalalahumanu Hale (Circuit Court), and to our roofs, walls, and eaves at our Lahaina and North Kohala District Courts. Additional funds are required for other miscellaneous repairs and

improvements at various Judiciary facilities statewide, but especially at historic Aliiolani Hale (Supreme Court). Moreover, while the population and the services provided by the Judiciary keep expanding and with the move of the detention facility, including much of the Family Court, to Kapolei in FY 2010, CIP funds are needed to continue the planning and design process for a new Judiciary administration building in Kapolei. This administrative facility is vital to ensuring that critical family court support staff is housed in the court complex.

The proposed supplemental budget is the Judiciary's best estimate of the resources necessary to maintain the integrity of the courts and to fulfill our statutory, constitutional, and public service mandates. The Judiciary respectfully requests your support of House Bill No. 2000 which includes the Judiciary's supplemental budget request.

Thank you for the opportunity to testify on this measure.