

# JUSTICE IN JEOPARDY

**THE IMPACT OF BUDGET CUTS AND  
FURLOUGHS ON THE JUDICIARY, STATE OF HAWAI‘I  
DECEMBER 2010**

**TABLE OF CONTENTS**

A Message from Chief Justice Mark Recktenwald ..... 1

Hawai‘i State Courts at Work ..... 2

Judiciary General Fund Appropriation ..... 6

Hawai‘i State Judiciary Expenses ..... 8

Judiciary Budget Reductions ..... 10

Specific Budget Impacts on the Courts ..... 12

## A MESSAGE FROM CHIEF JUSTICE MARK RECKTENWALD

These have been difficult economic times for all of Hawai'i, and the Judiciary has been no exception. In the last two years, the Hawai'i State Judiciary's general fund appropriation has been reduced by \$19.7 million (or 13.1% of its overall budget), while demand for Judiciary services has increased due to the impact of the difficult economy on our citizens. Furloughs alone have eliminated over 600,000 available staff hours of work.

These reductions have had substantial negative effects throughout the judicial system, by reducing, delaying and in some cases eliminating important services. Notably, Hawaii's families and most vulnerable citizens have been significantly impacted. The time it takes to process an uncontested divorce has doubled, and the wait time for children to participate in the Judiciary's Kids First program in Kapolei, which seeks to alleviate the impacts of divorce by having children participate in a group counseling session, has more than doubled.

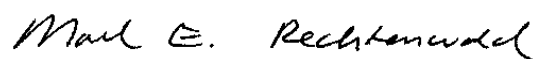
Budgetary reductions have also had negative effects in criminal cases. For example, 24 adult probation positions were eliminated in the First Circuit, including positions in high risk areas such as the sex offender unit and the domestic violence unit. Individual probation officers now supervise as many as 180 defendants, well above the nationally recommended ratio.

Justice has been delayed in civil cases as well. From FY2008 through FY2010, the median age of pending Circuit Court civil cases has increased by more than 40 percent. By delaying the time it takes to resolve civil disputes, the cost and uncertainty of litigation increases and our community's efforts at economic recovery are hindered.

Finally, the Judiciary's programs and services can save the public money in the long run. The cost of supervising a criminal defendant in the HOPE probation program, or providing intensive supervision and treatment through programs such as drug court, is far less than the \$137/day that it costs to incarcerate a defendant.

This report highlights some of the impacts that furloughs and budget cuts have had on the Judiciary's ability to fulfill its mission "to administer justice in an impartial, efficient, and accessible manner in accordance with the law."

Adequately funding the state court system is an investment in justice, and an investment in our democracy, that should not be compromised even during tough economic times.



Mark E. Recktenwald  
Chief Justice

## HAWAI‘I STATE COURTS AT WORK

The Hawai‘i State Judiciary resolves a wide-range of disputes facing our local community.

### CIVIL JUSTICE

Hawai‘i residents and businesses rely on the courts to fairly resolve their civil conflicts.

In FY2010, the Judiciary was involved with:

- ◆ 600,835 non-criminal traffic cases
- ◆ 60,575 District Court civil cases including:
  - 44,292 Regular Claims Division cases (claims between \$3,500 - \$25,000)
  - 6,141 Small Claims Division cases (claims less than \$3,500)
- ◆ 37,251 Circuit Court civil proceedings including:
  - 14,090 condemnation, contract and personal injury cases
  - 8,736 probate proceedings
  - 6,938 conservatorship and guardianship proceedings
  - 1,422 trust proceedings
  - 6,065 land court, tax appeal and mechanic’s lien cases

*“It is time to ensure that, in a country founded on the rule of law and the principle of access to justice, our judicial branch does not wither under the burden of financial stress...It is time for our lawmakers to recognize the value of our judicial branch as more than a line item in a budget. A strong judicial branch is essential to maintaining responsible government and protecting citizens’ rights.”*

**– Stephen N. Zack, President of the American Bar Association**

## CRIMINAL JUSTICE

The Judiciary strives to expeditiously and fairly adjudicate or resolve all criminal matters. In FY2010, the Judiciary was involved with:

- ◆ 68,041 criminal traffic cases including:
  - 13,593 DWI/DUI cases
  - 1,264 reckless driving cases
- ◆ 94,479 District Court criminal cases including:
  - 9,413 larceny/theft cases
  - 6,154 assault cases
  - 2,169 vandalism cases
  - 1,349 prostitution cases
  - 4,096 narcotics cases
  - 1,232 sex offense cases
- ◆ 17,220 Circuit Court criminal cases including:
  - 178 murder & manslaughter cases
  - 97 forcible rape cases
  - 1,602 aggravated assault cases
  - 1,235 burglary cases
  - 2,686 larceny/theft cases
  - 3,633 narcotics cases

*“[A]s a practicing litigator, I can share with you the impact that the budget cuts on the Judiciary have caused. Among my case load, I have a case that is about four years old that has been ready to go to trial since late last year. It has been delayed because of the backlog of criminal trials and was recently reset to [redacted], 2011 - a year away. Many of my colleagues are reporting similar occurrences. The Judiciary allows economic, political and social life to function properly and it must be spared any further budget cuts.”*

**- An attorney in private practice**

## FAMILY COURT

The Family Court hears all legal matters involving children, such as delinquency, waiver of jurisdiction, status offenses, abuse and neglect, termination of parental rights, adoption, guardianships, and detention. The Family Court also hears domestic relations cases, including divorce, domestic violence, temporary restraining order, nonsupport, paternity, and uniform child custody jurisdiction cases. In FY2010, the Family Court workload involved:

- ◆ 57,696 Family Court proceedings including:
  - 10,761 divorces
  - 5,150 domestic abuse protective orders
  - 1,604 child abuse and neglect cases
  - 926 adoptions
  - 3,674 paternity cases
- ◆ 1,557 foster custody cases
- ◆ 2,326 juvenile probation cases

*“As a current participant, the Family Drug Court program has helped me do things I never thought I could do. I have learned the skills I need to remain clean and sober for the rest of my life...Without the support and instruction given to me by the Family Drug Court, I would not have the hope I have in my life today, and I am currently on the path to being reunified with my children... I will continue to battle this disease of addiction with the skills the Family Drug Court has armed me with and my children will never return to the foster care system.”*

**- Family Drug Court participant**

## TREATMENT COURTS

Many criminal defendants have substance abuse and/or mental health issues. When appropriate, the Judiciary provides these defendants with probation and treatment in lieu of incarceration. Treatment can help defendants live a clean and sober life, allowing them to reunite with their families and become productive citizens. In FY2010, the Judiciary's treatment courts served 1,085 clients statewide. The strength of the treatment courts lies in their ability to lower recidivism rates and costs to the State of Hawai'i. Less recidivism means less court and incarceration costs. Hawaii's Adult Drug Courts have an average recidivism rate of about 8 percent as opposed to a recidivism rate of 50 percent for those persons on general probation. The cost of treatment in these courts averages about \$5,000 per client per year as opposed to a cost of about \$50,000 per year for incarceration.

## PROBATION

Most convicted criminal defendants are sentenced to probation in lieu of or in addition to incarceration. The Judiciary supervises probationers to reduce recidivism and encourage the rehabilitation and reintegration of these individuals into the community. In FY2009, the Judiciary's 129 probation officers supervised:

- ◆ 20,586 probationers
- ◆ 23,534 cases

*“It makes social and economic sense to provide treatment rather than incarceration when appropriate. Treatment courts, besides being cost effective, are a major tool in breaking the cycles of substance abuse, domestic violence and many other social issues facing our state.”*

**- Dee Dee Letts, Treatment Court Coordinator**

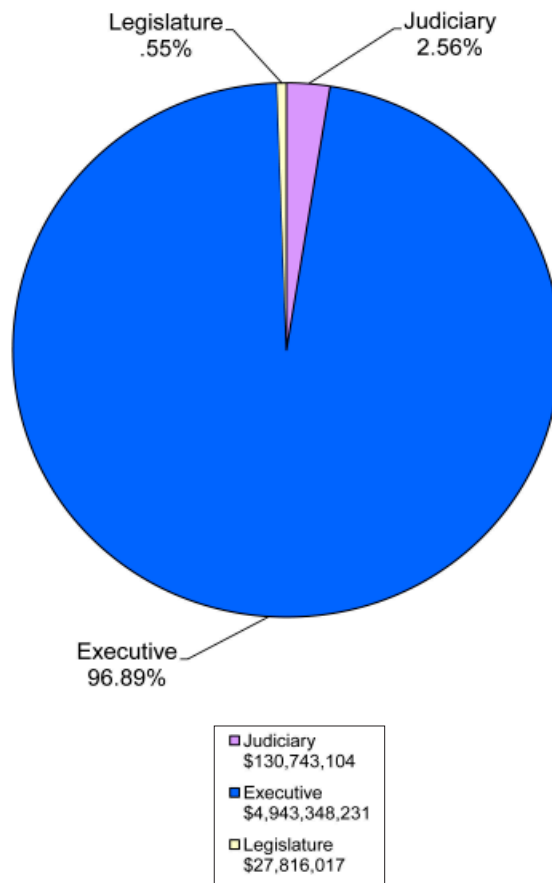
*“Due to the limited number of slots available, we have a waiting list to get into Mental Health Court. There are not enough resources in the community for treatment and housing which puts defendants and community at risk.”*

**- Louise Crum , First Circuit, Adult Client Services, Mental Health Court**

## JUDICIARY GENERAL FUND APPROPRIATION

The Judiciary’s Hawai‘i general fund appropriation is its most important funding source, accounting for over 90 percent of its funding. The Judiciary receives less than three percent of Hawaii’s general fund appropriations.

**Hawai'i General Fund Appropriations (FY2011)**

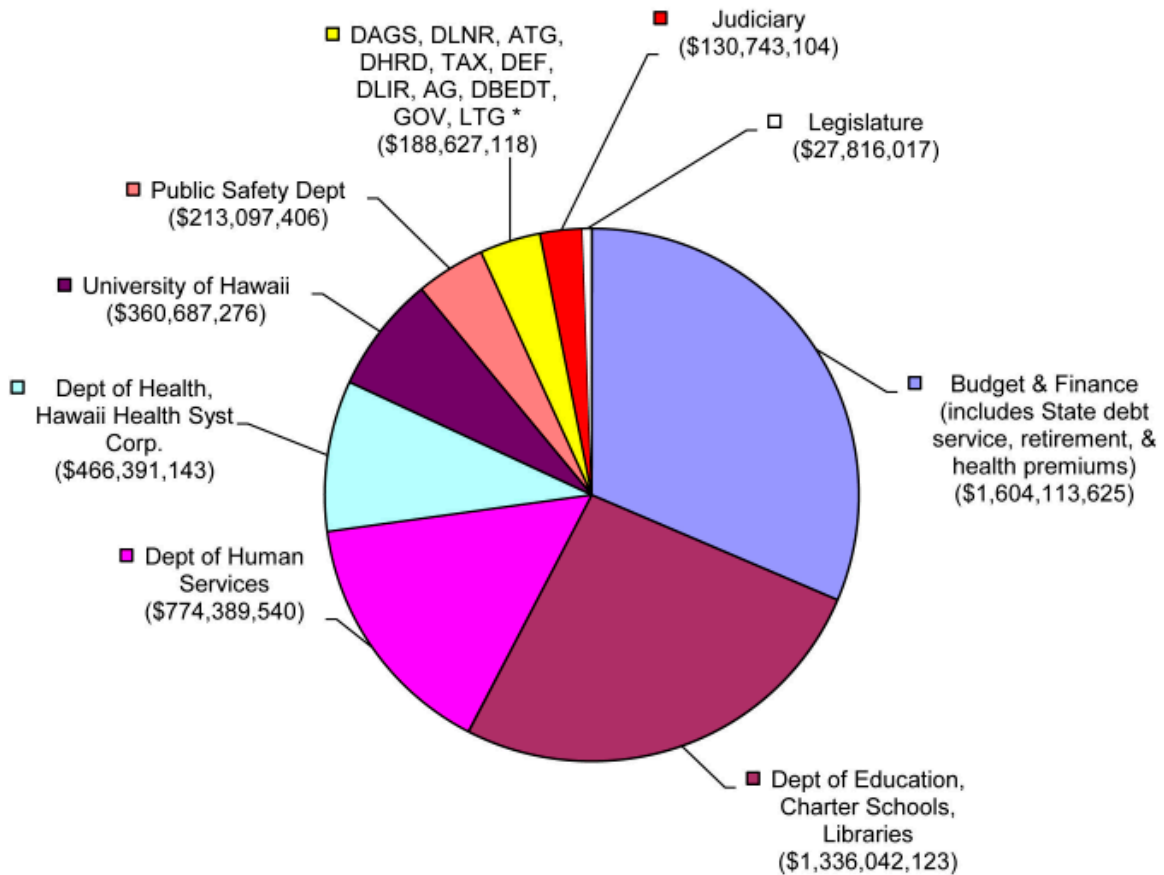


*“The Legal Documents Branch of the Circuit Court on O‘ahu receives, files and processes, on average per year, approximately 300,000 original documents, depositions, and exhibits (approximately 116,000 Family Court, 80,000 criminal and Family Court criminal, and 104,000 civil documents, depositions, and exhibits).”*

**- Lori Okita, First Circuit, Legal Documents Branch 1**



## FY2011 Hawai'i General Fund Appropriations (\$5,101,907,352)

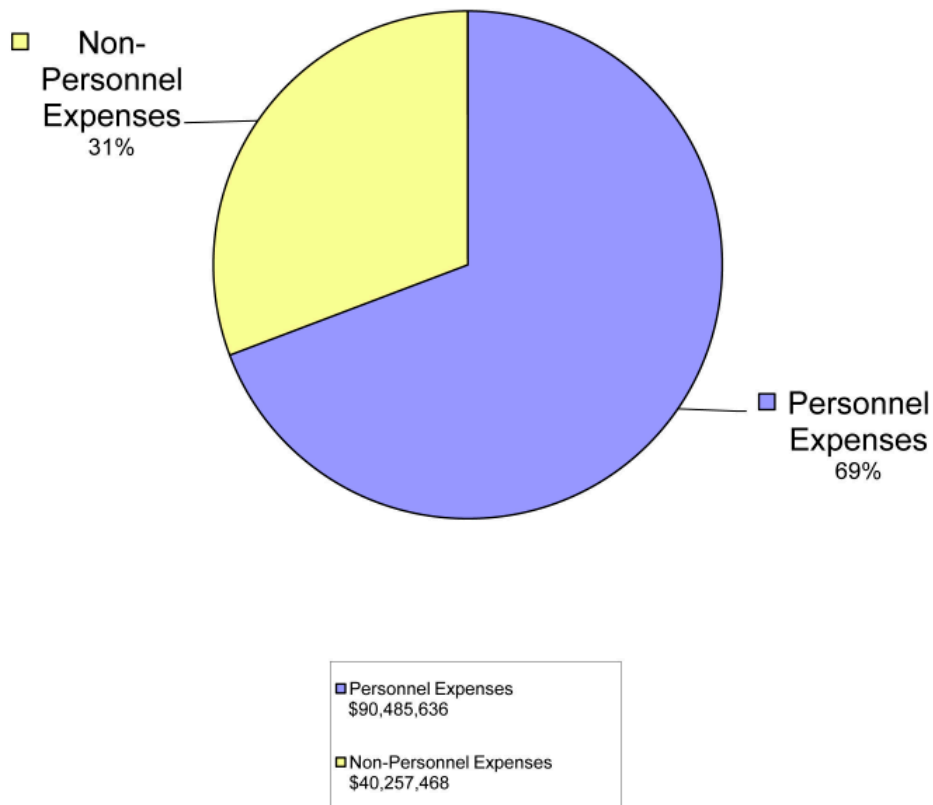


- \* Dept of Accounting & General Svcs  
 Dept of Land & Natural Resources  
 Dept of Attorney General  
 Dept of Human Resources Development  
 Dept of Taxation  
 Dept of Defense  
 Dept of Labor & Industrial Relations  
 Dept of Agriculture  
 Dept of Business & Economic Development  
 Office of the Governor & Lt. Governor

## HAWAI‘I STATE JUDICIARY EXPENSES

The Judiciary uses its general fund appropriation to pay its 1,900 employees, operate its 21 facilities, and provide court services to thousands of Hawai‘i residents each year.

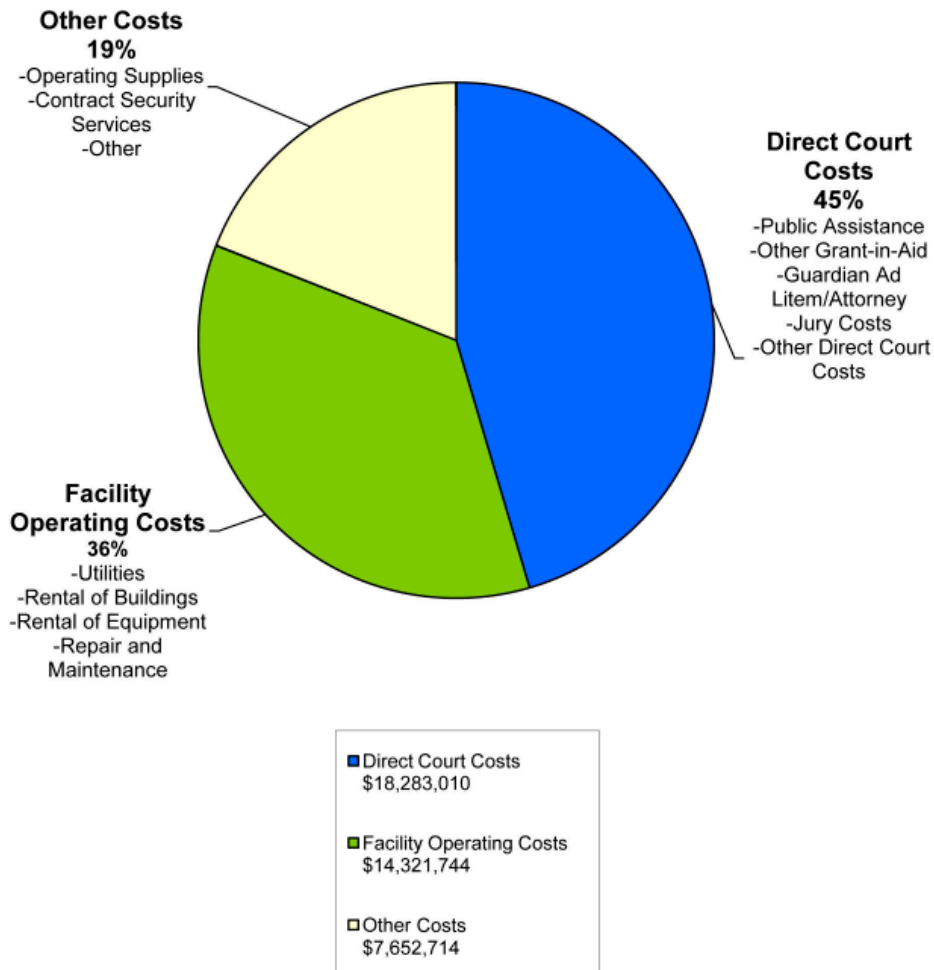
**Judicial Branch Expenses  
(FY2011)**



*“Our greatest concern is that the furloughs negatively impact our system’s response/coordination of cases involving children who are alleged victims of abuse or who are witnesses to crime. For example, delays in scheduling forensic interviews of these young victims and witnesses may result in concern for their safety. Justice may not be served for the crimes.”*

**- Jasmine Mau-Mukai, Children’s Justice Centers of Hawai‘i**

### Judicial Branch Non-Personnel Expenses (FY2011)



*“The ‘Achieving Access to Justice for Hawaii’s People: The 2007 Assessment of Civil Legal Needs and Barriers to Low- and Moderate-Income People in Hawaii Report’ found that due to a lack of resources, legal service providers are able to assist only one of three of those who seek their help. Since 2007 it has only gotten worse, resulting in more persons appearing in court without representation. Greater resources are required from the Judiciary to assist these persons to navigate the court system.”*

**- Judge Daniel Foley, Chair, Access to Justice Commission**

## JUDICIARY BUDGET REDUCTIONS

### FY2009

- ◆ Judiciary's general fund appropriation was \$150.5 million
- ◆ The Legislature applied a 7 percent reduction (about \$1 million) in discretionary costs to the Judiciary's core budget base
- ◆ The Legislature provided Capital Improvement Program (CIP) funding of about \$13.8 million
- ◆ The Legislature took \$1 million from the Computer System Special Fund to help balance the state general fund budget deficit

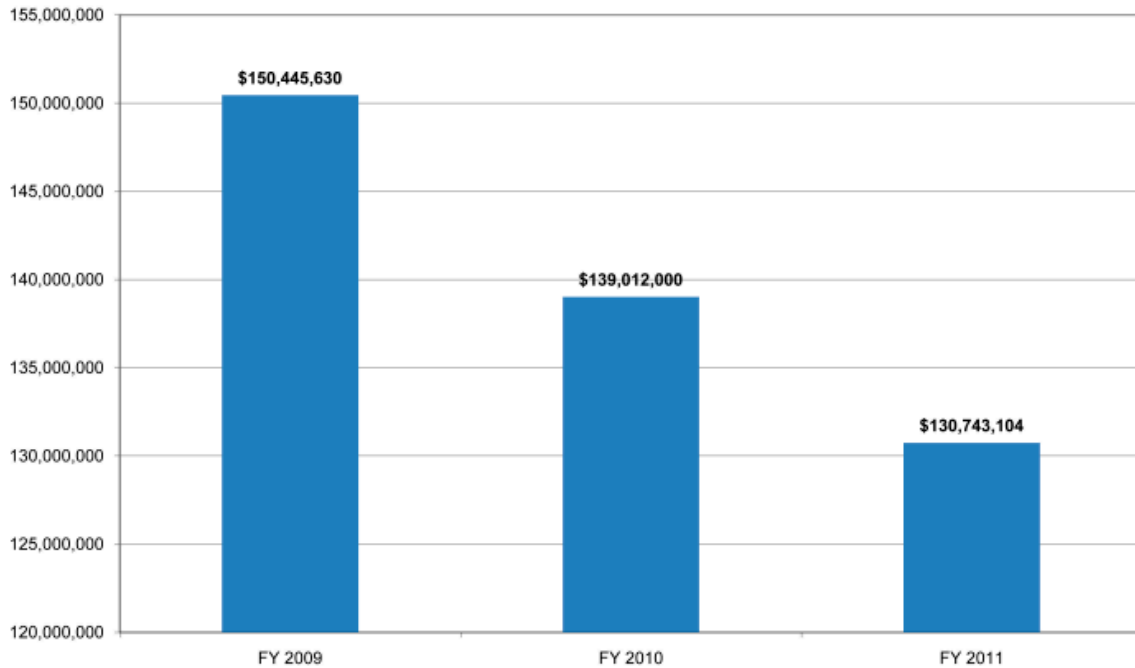
### FY2010

- ◆ Judiciary's general fund appropriation was reduced to \$139 million, \$11.5 million lower than in FY2009
- ◆ The Judiciary initiated furloughs for its employees
- ◆ The Legislature reduced the salaries of state judges by 5 percent
- ◆ The Legislature eliminated 79 vacant positions
- ◆ The Legislature authorized \$2 million and 22 positions to staff the Kapolei Judiciary Complex
- ◆ The Legislature provided a one-time \$2.5 million ceiling increase for the Computer System Special Fund
- ◆ The Legislature provided CIP funding of about \$9.8 million

### FY2011

- ◆ Judiciary's general fund appropriation was reduced to \$130.7 million, an \$8.3 million reduction from FY2010
- ◆ No CIP funding was provided as the Legislature indicated it would wait for the results of the Judiciary's Facilities Master Plan Study
- ◆ The Legislature allocated an additional \$2.5 million to the Judiciary for domestic violence (\$1 million) and legal/treatment service providers (\$1.5 million)
- ◆ The Legislature authorized the transfer of \$2 million in funds from the Computer System Special Fund and \$1.5 million from the Drivers Education Fund to the general fund

**Judiciary General Fund Appropriations**  
 (including collective bargaining & specific appropriations)



*“We are unable to keep up with the demands and backlogs that occur in almost every area due to lack of manpower resources. The law enforcement divisions work 24/7 and are making arrests and issuing citations around the clock. With the economic downturn, there are more lawsuits being filed thereby increasing the courts’ caseloads. There are two less work days a month due to the furloughs; however, the workload has increased.”*

**- Iris Murayama, First Circuit Court, Deputy Chief Court Administrator**

## SPECIFIC BUDGET IMPACTS ON THE COURTS

### JUSTICE DELAYED

- ◆ From FY2008 through FY2010, there was a 28.4 percent increase in pending Circuit Court civil actions and a 19.6 percent increase in the number of cases filed. Since the budget cuts and furloughs, the median age of pending Circuit Court civil cases increased by 41.8 percent.
- ◆ From FY2008 through FY2010, the number of pending court foreclosure cases increased by 80 percent. The median age of pending foreclosure cases increased by 44 percent.
- ◆ From FY2008 through FY2010, there was a 98.2 percent increase in pending District Court civil actions and a 36.4 percent increase in the number of cases filed.
- ◆ At the District Court of the First Circuit, furloughs and position reductions have resulted in substantial delays in scheduling hearings and trials. Traffic and DUI trials typically took 1-2 months to be heard prior to furloughs and now take 4-5 months to schedule. Trials in regular claims cases were scheduled within two weeks prior to the furloughs but now take 4-6 weeks to schedule.
- ◆ In the Family Court of the First Circuit, the time it takes to process an uncontested divorce has increased from 3-4 weeks, to 6-8 weeks since furloughs and budget cuts were implemented. The wait to schedule a mandatory session with the Judiciary's Kids First program in Kapolei has increased from 4 weeks up to 10 weeks. Filing for divorce can be the start of a traumatic process for a child that may involve physical relocation, a new school, financial insecurity and the inability to see one parent. Delays in processing divorce cases increase the stress that children experience.

*“The judiciary is currently on a two day per month furlough system where, in addition to state holidays, the courts close for two workdays per month. Two days equate to 16 hours per month of court time. On Oahu, there are approximately 12 circuit court criminal divisions. As a result, the furloughs result in about 192 hours of lost court time per month for the circuit court criminal calendar on Oahu. Conservatively speaking, that time could accommodate approximately 8 average-length criminal jury trials, 192 evidentiary motions, 384 plea hearings or 576 non-evidentiary motions. This is an illustration of the very direct and serious consequences that budget shortfalls are having on the criminal justice system.”*

**- John M. Tonaki, Office of the Public Defender**

## MORE SELF-REPRESENTED LITIGANTS

- ◆ More Hawai'i residents are entering the court system without the benefit of an attorney. Even with reduced hours and resources, the Judiciary's Ho'okele service centers on O'ahu assisted 103,009 self-represented litigants in 2009, a 5.6 percent increase from the year before.
- ◆ The Fifth Circuit Service Center in Lihue opened in March 2008 to assist self-represented litigants with court forms and questions about court procedures. It was closed in December 2008 due to staffing shortages.

## COURT SERVICES REDUCED

- ◆ In 2005, the Honolulu Traffic Violations Bureau was open five nights a week to serve the public after working hours. It is only open one night a week now. In the near future, it will probably close at night altogether, requiring more non-criminal defendants to take off from work to resolve their cases.
- ◆ Due to a staffing shortage by the Department of Public Safety's Sheriff Division, there were not enough sheriffs to provide security for Judiciary facilities on the Big Island. The Judiciary was forced to close the North Kohala, Hamakua, and Ka'u rural courts in October 2010, requiring court customers to make a 20-60 minute drive to a courthouse.

*“Increasing numbers of self-represented litigants in civil cases receive less in terms of court services because they are often disadvantaged due to lack of education, language barriers, and/or sometimes suffer from mental health issues.”*

**- Judge Barbara Richardson, Deputy Chief Judge, District Court**

## PROBATION STAFFING ELIMINATED

- ◆ In the Client Services Division of the First Circuit, 24 positions were lost last year due to budget cuts, including positions in both the Sex Offender Unit and the Domestic Violence Unit. These units work with some of the most dangerous offenders who are at a higher risk than others to recidivate. According to the American Probation and Parole Association, the caseload standard is 30:1 to 120:1 depending on the risk level of the probationer. In Hawai'i, the ratio of cases to probation officers is as high as 180:1.
- ◆ Furloughs also are affecting public safety. Our probation officers have 24 fewer days a year to supervise offenders. As a result, revocations of probation are being delayed, and probation officers are unable to provide the level of supervision necessary for certain clients because there are fewer hours in the week to monitor the same, or increasing, numbers of probation clients.

## EFFECT ON FAMILIES AND VICTIMS

- ◆ To efficiently use public funds, the Judiciary contracts with external entities to provide services that are not performed internally. These contracts were cut by more than \$2.8 million in FY2010 to balance the Judiciary budget. The contracts involve the purchase of assessment and/or treatment services for substance abuse, child sex abuse, and mental health, as well as domestic violence emergency shelter services, juvenile client and family services, anger management, victim impact classes, and more.
- ◆ The reduction in purchase of service (POS) contracts has resulted in fewer social services for crime victims. For example, reduced Judiciary funding of Catholic Charities Hawai'i in FY2010 resulted in the loss of two positions which led to 165 fewer child sexual abuse clients being served compared to the previous year.
- ◆ Cutting treatment court budgets has resulted in taxpayers having to pay more, not less. As a result of the budget cuts, 5 of the 11 treatment courts have waitlists for admittance due to a reduction in the programs' capacity. Many people on a waitlist are incarcerated at a cost of \$137 per day to taxpayers as compared to about \$14 a day when they are in a treatment court.



- ◆ In FY2010, the Judiciary's Maui/Moloka'i Drug Court program lost four full-time equivalent (FTE) positions after it had its annual allocation cut over \$420,000. There is now at least a 13-month wait for men to receive drug treatment services on Maui. The wait for treatment was already between 8 and 12 months in May 2008 when the Legislature authorized four FTE positions to reduce the delay.
- ◆ Due to budget cuts, the O'ahu Adult Drug Court has had to reduce electronic and voice monitoring of clients by 30 percent. Since monitoring is used to ensure clients' compliance with curfew restrictions, the decrease in monitoring reduces community safety and increases the likelihood of clients relapsing. Furthermore, the court lacks sufficient funding to accept new clients who need residential treatment after March 2011 until the start of the next fiscal year.
- ◆ The budget cuts forced a reduction to the Judiciary's POS contract for mediation and other dispute resolution services. The Mediation Centers of Hawai'i are now expected to provide services for approximately 3,100 cases, as opposed to 4,000 prior to the reduction in the contract amount for the POS. Mediation is provided in many types of cases including domestic and family, landlord/tenant, temporary restraining orders, and neighbor disputes.

*"I felt all was lost and no one could help let alone begin to understand the difficulties I was facing. It is because of Girls Court that I now know that I am not alone...Help had finally arrived...I do not wish to imagine what our lives would be like had Girls Court not intervened. I implore that additional funding be granted so that this program may continue its vital work in helping young ladies and their families."*

**- Girls Court participant**