

LATE TESTIMONY

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

February 10, 2012

RE: H.B. 1800; RELATING TO THE JUDICIARY.

Chair Keith-Agaran, Vice Chair Rhoads and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu, generally supports the Judiciary Supplemental Appropriations Act of 2012 embodied by H.B. 1800. However, there are some concerns of programs being funded by this bill.

It is not known how much is being requested for the Drug Court program and the HOPE Probation program because the funding amount is not indicated in the bill.

I have always been a staunch supporter of drug treatment programs and the Drug Court is such a program. In 1995, I met with then Chief Justice Ronald Moon about starting a Drug Court program in Hawaii. He assigned then Administrative Judge Marie Milks to implement the program. In April, 1995, a Memorandum of Understanding was executed to start the Hawaii Drug Court Program (Exhibit 1).

Over the years, the Program has been very successful in diverting drug offenders from the criminal justice system and addressing their drug problems, through treatment. I am in favor of increasing funding for this Program.

However, my first concern is that the Drug Court program is now being used as a dumping ground for HOPE Probation failures. The HOPE violators are taking up available treatment spaces and preventing the Drug Court offenders, whom the program was created for, from entering the program. Eligible drug offenders are being rejected and told to seek their own drug treatment in less intensive drug treatment programs which may be unaffordable for some. They are being preempted by HOPE probationers who are failing their probation supervision and

are being diverted from prison at the expense of drug offenders who WANT DRUG TREATMENT. (Exhibit 2)

In late 2010 or early 2011, Public Defender Jack Tonaki and I met with Judge Steven Alm to express our concerns. Our concerns appeared to be ignored. In April, 2011, we met with Chief Justice Mark Recktenwald to again express our concerns. He said he will look into it. We did not hear from the Judiciary until December of 2011, when we met with two judges including the administrative judge. Again, nothing happened. Today, there is a pending hearing in another judge's courtroom where the judge is questioning the decisions of drug court referrals being rejected.

My other concern is the HOPE Probation Program. I am also in favor of increased funding for the HOPE Program but if it is going to be used to divert offenders from prison who are failing their probation, then perhaps the program should be scaled back. There are many HOPE probation violators who are expending valuable law enforcement resources when bench warrants are issued. The sheriffs must arrest these violators and bring them back to court only to be placed back on supervised release when they really should be incarcerated. In some cases violators of the HOPE Program committed murders after being placed on supervised release. RJ Ham and Kelii Acasia committed murder and manslaughter while on the run. In another case, Aaron Susa murdered a tourist and was convicted in a recent trial. (Exhibit 3)

The reason I am raising these concerns is because the Legislature, which is funding these programs, needs to scrutinize how taxpayers monies are being spent and whether the programs are accomplishing their professed goals.

Thank you for your consideration.

MEMORANDUM OF UNDERSTANDING
HAWAII DRUG COURT PROGRAM

THIS MEMORANDUM OF UNDERSTANDING made and entered into on the 5th day of April, 1995, by and between the Judiciary, State of Hawaii, the Office of the Prosecuting Attorney, City and County of Honolulu, the Office of the Public Defender, State of Hawaii, the Adult Probation Division, First Circuit Court, State of Hawaii, the Department of Public Safety, State of Hawaii, and the Honolulu Police Department.

WHEREAS, the Hawaii Drug Court Program will begin operation on December 15, 1995, if federal funding is awarded, a Memorandum of Understanding is needed to clarify the respective roles of the First Circuit Court, State of Hawaii and the criminal justice agencies, the Drug Court Program has been developed to channel non-violent pre-trial and post-conviction defendants, who would otherwise be incarcerated, into a comprehensive and integrated range of judicial and treatment services.

The parties hereto do mutually agree to the attached Memorandum of Understanding.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized officers.

The FIRST CIRCUIT COURT, STATE OF HAWAII

By: 

Judge Daniel Heely
for the Administrative Director
Judiciary, State of Hawaii

The FIRST CIRCUIT COURT, STATE OF HAWAII

By: 

Judge Marie N. Milks
Administrative Judge, Criminal Division

The OFFICE OF THE PROSECUTING ATTORNEY, CITY AND COUNTY OF HONOLULU

By: 

Keith Kaneshiro
Prosecuting Attorney

The OFFICE OF THE PUBLIC DEFENDER

By: Richard W. Pollack
Richard W. Pollack
Public Defender

The ADULT PROBATION DIVISION, STATE OF HAWAII

By: Ronald T. Hajime
Ronald Hajime
Administrator

The DEPARTMENT OF PUBLIC SAFETY

By: George Imanon
George Imanon
Director

The HONOLULU POLICE DEPARTMENT

By: Michael S. Nakamura
Michael S. Nakamura
Chief of Police

(Pending Resolution by City Council/
City and County of Honolulu)

MEMORANDUM OF UNDERSTANDING
HAWAII DRUG COURT PROGRAM

AIM OF THE PROGRAM

The circumstances surrounding drug-involved offenders make clear the exigent need to develop resources and provide timely correctional options. All agencies concur that the Hawaii Drug Court Program will serve as a viable remedy to court congestion, correctional overcrowding, probation workloads, and limited treatment resources. The purpose is to channel non-violent pre-trial and post-conviction defendants, who would otherwise be incarcerated in Hawaii's correctional system, into a comprehensive and integrated system of judicial and treatment services. The program will operate in the First Circuit Court of Hawaii and serve the people of the State of Hawaii.

PROGRAM GOALS

The goals of the Hawaii Drug Court Program are to:

- 1) Reduce jail admissions and average length of stay for the target population;
- 2) Reduce recidivism caused by alcohol and other drug abuse;
- 3) Reduce costs to the criminal justice system in handling alcohol and drug abusers.
- 4) Establish a continuum of rehabilitation services for eligible participants;

DUTIES AND EXPECTATIONS OF PARTICIPATING AGENCIES

All participating agencies/departments agree to assist in the collection of data for the drug court program.

Subject to the availability of adequate State and Federal funding, the following sections outline the duties and responsibilities each agency agrees to perform as part of the Hawaii Drug Court Program. The duties and responsibilities are as follows:

Judiciary, State of Hawaii - First Circuit Court

Provide a Judge, on a part-time basis, to lead the Drug Court Program

Provide necessary staff for court operation

Provide necessary equipment to manage the court's operation

Develop operation standards and policies, in conjunction with other participating agencies

Provide operational support and direction to the Dedicated Drug Court Unit

Adult Probation Division - First Circuit Court

Provide administrative support to the Dedicated Drug Court Unit

Cooperate in referring eligible post-conviction defendants to the Drug Court Program

Provide financial and staff support for the program

Department of Public Safety

Cooperate in referring eligible defendants to the Drug Court Program

Provide financial and staff support for the program

Provide housing and transportation for defendants ordered into custody as part of the Hawaii Drug Court Program within the provisions of the existing Consent Degree capacities.

Office of the Prosecuting Attorney, City and County of Honolulu

Provide a Deputy Prosecuting Attorney, on a part-time basis, to staff the Hawaii Drug Court Program

Cooperate in screening and referring eligible defendants to the Drug Court Program

Provide training to Deputy Prosecuting Attorneys regarding the program's operations

Office of the Public Defender, State of Hawaii

Provide a Deputy Public Defender, on a part-time basis, to staff the Hawaii Drug Court Program

Provide training in cooperation with other involved agencies to defense attorneys regarding the program's operations

Honolulu Police Department

Provide a location for interviews, and necessary assistance, for the various agency representatives involved in the screening process.

APPENDIX G, FIGURE 1
TRACK I: PRE-ARRAIGNMENT TRACK

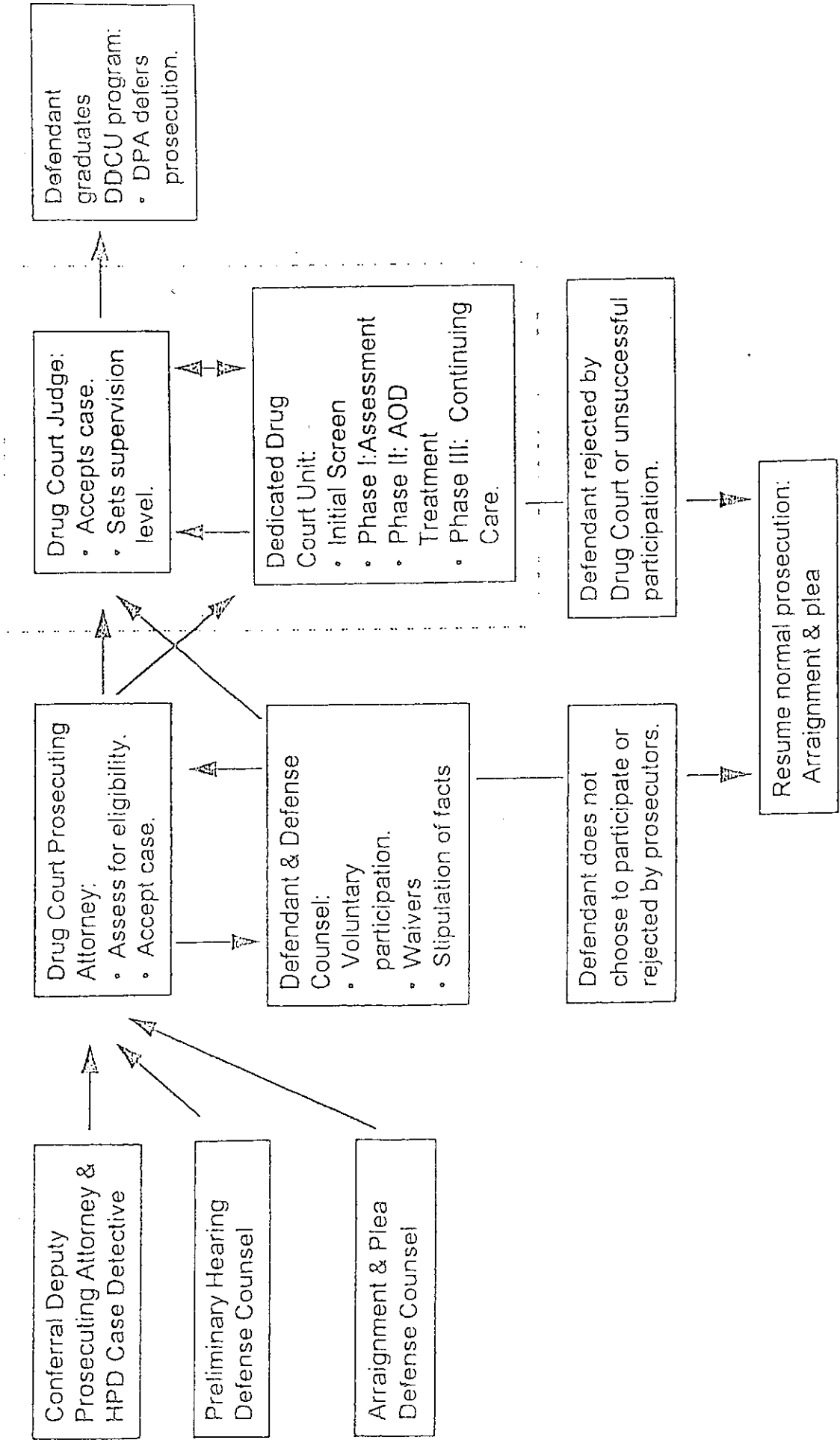
Summary

1. In the case of felony arrests, the case detective has 48 hours within which to have the defendant charged by the prosecutor and arraigned in district court. In addition, a preliminary hearing must be set within 48 hours of the district court arraignment and plea. During the initial 48 hours, when the case detective brings the case reports to the conferral Deputy Prosecuting Attorney ("DPA") assigned to screen that incoming case, the DPA will identify anyone who fits the four basic criteria for Drug Court.
2. The conferral DPA will check whether the defendant meets the targeting criteria, including 1) age, 2) indication of a drug problem, 3) charged with a class "C" or "B" felony, and 4) no criminal history of violent behavior.
3. The conferral DPA will contact the Drug Court DPA, who will be on 24-hour call, for a decision whether the prospective participant is acceptable for the Drug Court program. If the prospective participant is rejected by the Drug Court DPA, then the case will continue to be conferred by the screening DPA. If the Drug Court, DPA accepts the prospective participant, then a representative from the Public Defender's Office (or a private attorney, appointed or retained at the applicant's expense, hereafter "defense attorney") will contact the prospective participant for the Drug Court Program before the preliminary hearing to have the prospective participant decide whether or not to participate. No one will be accepted in this track of the Drug Court if, having been offered the program, the person declines to participate, or if the person had previously been terminated from the program.
4. The defense attorney shall explain general program parameters, the deferred prosecution aspect of participation, and concessions the applicant would make in order to be eligible for the program, including: 1) waiver of the 48 hour charging requirements, if applicable; 2) waiver of the 48 hour preliminary hearing requirement; 3) speedy trial and Rule 48 waivers, as applicable, for the delay caused by participation in the Drug Court; 4) Pre-Indictment delay; and 5) an explanation that a stipulation as to the basic facts of the currently charged case will be required if the applicant is accepted.
5. The defense attorney will be allowed to review the preliminary police reports at the time that the attorney is explaining the Drug Court option to the applicant. If the applicant then declines to participate in the Drug Court Program, the Preliminary Hearing or Circuit Court arraignment and plea, as the case may be, shall be commenced. If the applicant accepts participation

in the Drug Court, but the Drug Court Judge later refuses the applicant entry into the program, any delay will be charged to the defendant for purposes of Speedy Trial, Rule 48 HRPP, and Pre-Indictment Delay.

6. If the applicant agrees to participate, then the applicant will be set for arraignment and plea in the Drug Court within one week before the Drug Court Judge and copies of the police reports and criminal abstract shall be forwarded to the Drug Court Judge for review.
7. If the applicant is accepted by the Drug Court Judge, the charge(s) will be read, and defendant will waive indictment, but the applicant will not enter a plea to the charge(s). The Drug Court Judge will again review with the applicant the conditions placed on the applicant, and the benefits of participation in the Drug Court Program. The Court will review with the participant a written stipulation of the facts, that will be signed by the participant, establishing the charges, which will be used by the State should the participant be terminated from the Drug Court for any reason.

HAWAII DRUG COURT PROGRAM TRACK I: PRE-ARRAIGNMENT DIVERSION TRACK



APPENDIX G, FIGURE 2
TRACK II: POST-CHARGE (Diversion)

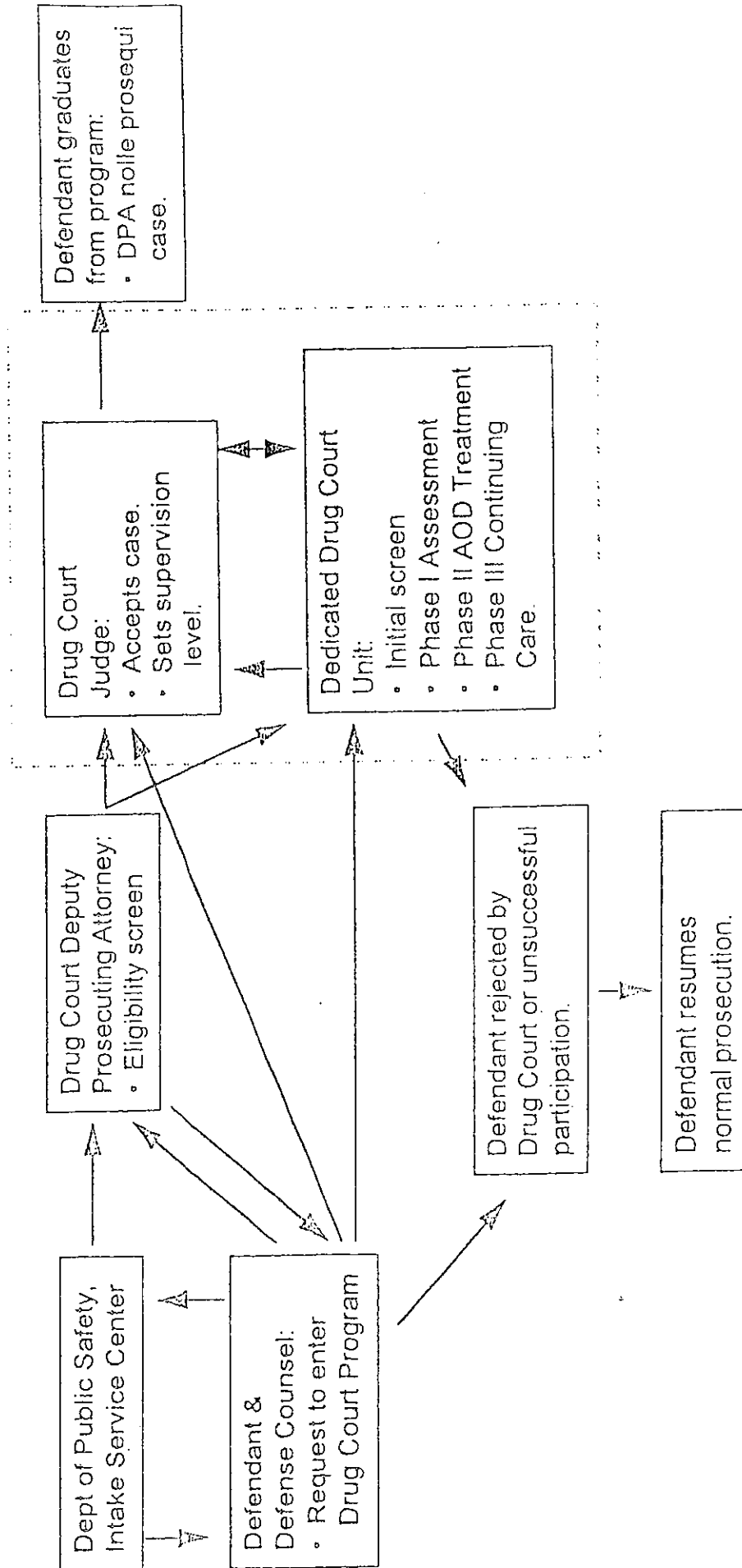
Summary

1. Defendant may seek to enter the Drug Court at any time prior to trial. Defense Counsel shall notify the State that Defendant seeks to enter the Drug Court and the State shall inform the defense within three working days if it believes that Defendant does not meet the eligibility criteria. A presumption exists that any Defendant who meets the eligibility criteria will be approved by the State for entry into the Drug Court, provided that the request for entry into the program is made prior to the date of the pre-trial motion deadline. This presumption may be rebutted upon a finding of good cause by the Drug Court based upon information provided to the Court. If a Defendant who meets the eligibility criteria requests entry into the Drug Court after a motion to suppress or dismiss has been heard, the State's objection to entry shall preclude entry into the Drug Court on this track. Defendant agrees that the period of time from notification to the State that Defendant seeks entry into the Drug Court until a determination on that request is made by the Court shall be charged to the Defendant for purposes of speedy trial and/or HRPP Rule 48 purposes, provided that where defendant is refused entry into the program, defendant retains the right to pursue any appropriate pre-trial motions.
2. If an objection to eligibility is noted and Defendant contests that determination by the State, Defendant may request a conference in the Drug Court which the Court may grant at its discretion. The Court shall determine issues of contested eligibility.
3. Upon a determination that Defendant is eligible, an initial diversion hearing shall be scheduled. At the initial diversion hearing, the Court shall determine if Defendant will be accepted into the Drug Court. If accepted, the Court shall set the date for entry into the Drug Court Program, provided that if Defendant is in custody and accepted into the Drug Court, entry into the program shall be within three working days of release from custody.
4. The Court will review with Defendant a stipulation of facts relating to the charge(s) against Defendant which will be used by the State should Defendant be terminated from the Drug Court for any reason prior to successful completion of the program; if terminated, Defendant retains the right to pursue any appropriate pre-trial motions.
5. Upon acceptance into the Drug Court Program, Defendant will waive any speedy trial, and/or HRPP Rule 48 claims for the period of participation in the Drug Court; Defendant will also execute a Waiver of Extradition. Defendant will enter into a Diversion Contract setting out the specific terms and

conditions of the diversion and the expected timelines within which these terms and conditions are to be met, unless the timelines are extended at the Court's discretion. The Contract shall set out that continued drug usage will result in increasing supervision, drug testing, treatment and/or limited periods of incarceration which may be increased incrementally. The Contract shall state that repeated failure to abide by the terms and conditions of diversion which results in an assessment that Defendant is no longer an effective participant in the diversion program will result in termination of Defendant from the Drug Court Program.

6. If Defendant successfully completes the program, the State will nolle prosequi the charge(s).

HAWAII DRUG COURT PROGRAM TRACK II: POST-CHARGE DIVERSION TRACK

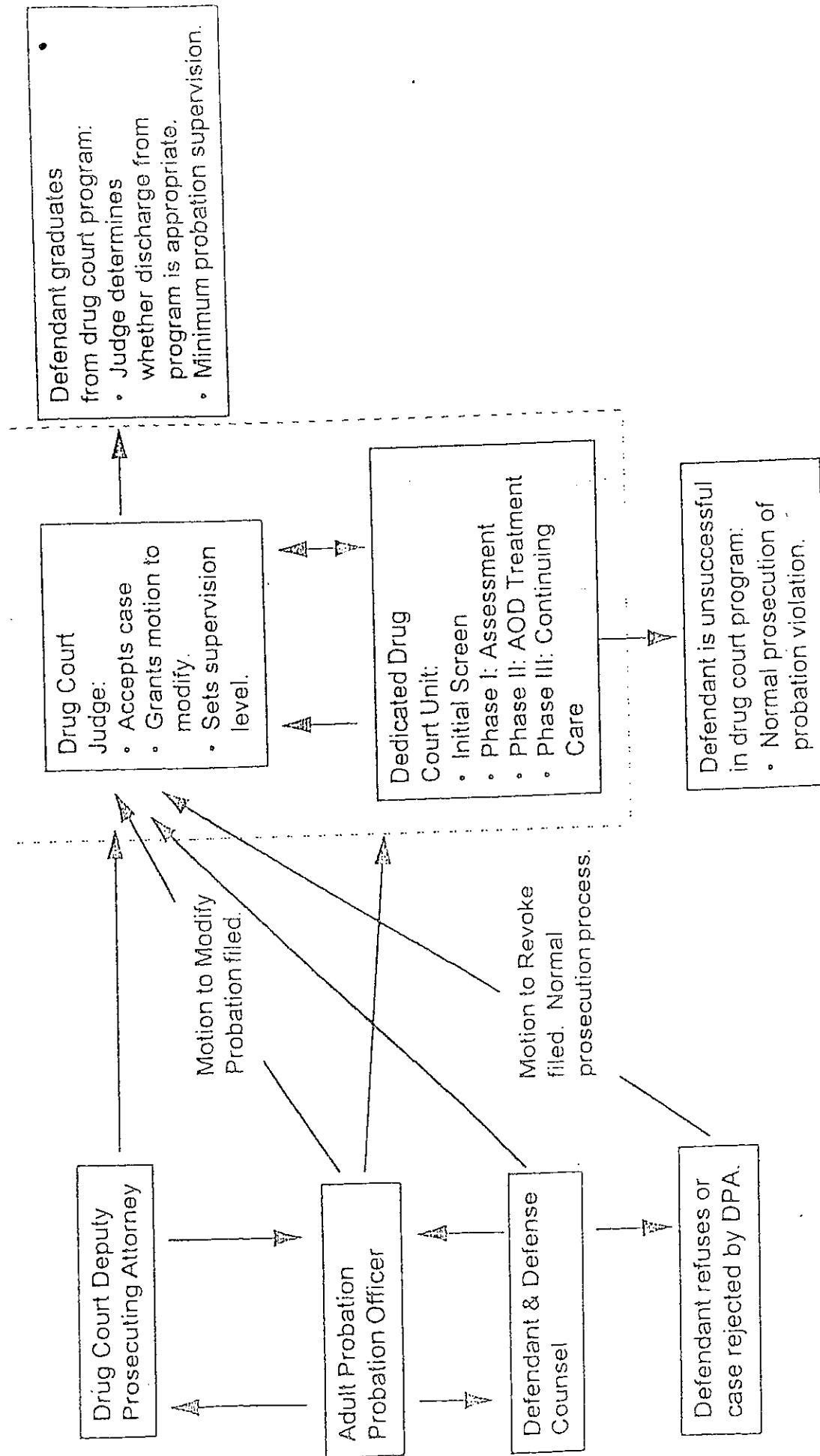


APPENDIX G, FIGURE 3
TRACK III: PROBATION VIOLATION

Summary

1. Probation officer before filing either a motion to revoke or modify confers with the prosecutor, defense attorney, and defendant (this can be done separately or together) about the officer's intention to file a motion to revoke or modify. The officer also informs the parties that the probationer is eligible to enter the drug court program.
2. If the parties agree to participation within the drug court, then a motion to modify terms and conditions of probation will be filed with the drug court; reflecting the defendants successful completion of the drug court program as a condition of probation.
3. If the defendant does not wish to enter the program, or the prosecutor or probation officer objects to the defendant's participation in the drug court then the motion to revoke or modify is filed immediately with the drug court.
4. If the court denies the motion or resentence defendant to probation and allows the defendant into the drug court, then the terms and conditions of probation will be modified to reflect the need to successfully complete the drug court program.
5. The court at the conclusion of the program will consider whether discharge on the defendant is appropriate.

HAWAII DRUG COURT PROGRAM
TRACK III: PROBATION VIOLATION TRACK



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Prison Alternatives Team Up: Drug Court & HOPE

Hawaii Programs Team Up To Keep Offenders Out Of Prison

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HONOLULU -- A probation program started in Hawaii that helps keep people out of prison has received national attention.

It's being adopted as a model in four other states and is now being expanded on Oahu.

There is hope within the corridors of the first Circuit Court and the numbers show the program is working.

Circuit Judge Steven Alm started the program called Hawaii's Opportunity Probation with Enforcement -- or HOPE -- in 2004.

A study shows people on probation in the HOPE program are 55 percent less likely to be arrested than criminals on traditional probation and 48 percent had fewer days of incarceration.

"Hope is swift, certain and proportionate," said Alm.

Taking a cue from parenting 101, offenders are warned once, then given immediate jail time for any violation of probation thereafter.

"It's personal responsibility. Unless people are willing to take responsibility for their actions, they're never going to change and get better," Alm said.

Now, Hawaii's Drug Court, which has been around for 20 years, is being added into the mix as a prison alternative.

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"If folks aren't making it in HOPE and they're headed for state prison at \$50,000 a year per person, we're giving them a chance in drug court," said Alm.

Regular probation costs about \$1,000 per person a year, while HOPE costs about \$2,000. Drug Court runs around \$6,000 to \$7,000 a year.

But not everyone is a strong believer that it works. Friday was Robert Peete's first day in the HOPE program.

"As far as what I've seen personally, I haven't seen any success stories. I never seen anybody just walk out the door and just walk out the door. I always see them come back at least once or twice," said Peete.

Peete plans on completing the five-year program despite his skepticism.

"I think I can make it. It's not that hard, just stay clean," said Peete.

About 8,000 people are on probation on Oahu. Currently, almost 2,000 offenders are in the HOPE program.

The U.S. Justice Department has given funding to create similar programs in counties in Oregon, Arkansas, Texas and Massachusetts.

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Hawaii's Most Wanted
From KHON and MidWeek

Jan. 8, 2011

Joshua Bagayas-Cabalar

6/7/11 – Pleaded guilty as charged to UEMV-1 and Theft-1.

At the time, was being sought on \$20,000 bench warrant for HOPE probation violation.

Jan. 29, 2011

Jesse Ancheta

5/20/10 – Pleaded guilty as charged to Theft-2, received 5 years probation.

At the time, was being sought on two \$20,000 bench warrants for failure to comply with HOPE probation.

Feb. 5, 2011

Sally Tagaolo

4/11/05 – Pleaded guilty as charged to Assault Against a Law Enforcement Officer-1 and UEMV.

11/29/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Feb. 12, 2011

Caroline Kaina

11/25/09 – Pleaded guilty as charged to UEMV.

12/9/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 7/18/11 – In custody.

Feb. 26, 2011

Stuart Kawainui

11/18/09 – Pleaded guilty as charged to UCPV.

Sought on two \$20,000 bench warrants for failure to comply with HOPE probation.

As of 5/3/11 – In custody.

March 12, 2011

Carl Enos Jr.

11/4/09 – Pleaded guilty as charged to Promotion of Dangerous Drug-3.

5/5/10 – Placed on HOPE probation.

5/21/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 7/27/11 – In custody.

March 26, 2011

Tiffani Macatiag

7/13/10 – Pleaded guilty as charged to Forgery, Unauthorized Possession of Confidential Personal Information, Identity Theft and Fraudulent Use of Credit Card charges.

12/13/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 8/24/11 – In custody.

April 4, 2011

Ricky Pavong

7/11/11 – Pleaded guilty as charged for UCPV.

Was featured for being sought on three \$20,000 bench warrants in connection with separate vehicle theft cases for not complying with HOPE probation.

April 23, 2011

Nico McLean

9/20/10 – Pleaded guilty to Criminal Trespass-1, Assault-2.

9/15/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As off 11/22/11 – In custody.

May 5, 2011

Joshua Lopes-Keli

11/3/09 – Plead guilty as charged to two counts of Robbery-2.

1/20/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 7/6/11 – In custody.

June 18, 2011

David Martin

8/6/08 – Plead guilty as charged to Theft-2, UEMV, Unauthorized Possession of Confidential Personal Information and Promotion of Dangerous Drug.

7/1/09 – Placed in HOPE probation.

3/3/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 7/5/11 – In custody.

June 22, 2011

Edward Kekoa III

10/18/07 – Plead guilty as charged to Theft-1

6/27/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Bill Turner II

6/18/07 – Plead guilty to multiple Forgery-2 and Theft-2 charges

8/11/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

July 13, 2011

Joefrey Ancheta

7/27/07 – Plead guilty as charged to UCPV and Criminal Property Damage-1

4/10/08 – Placed on HOPE probation

3/9/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; in custody

July 23, 2011

Darrell Kaneshiro

1/23/09 – Pledaded guilty to Unauthorized Entry into a Dwelling and Harassment.

5/25/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 11/22/11 – In custody.

July 27, 2011

Michael T. Gordon

4/24/09 – Pledaded guilty as charged to UEMV.

12/17/09 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 8/24/11 – In custody.

Aug. 13, 2011

Mark Kainuma

10/18/99 – Pledaded guilty as charged to Kidnapping and Assault charges.

5/11/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Nov. 5, 2011

Andrea Chang

1/28/10 – Pledaded guilty as charged to UEMV-2, Promotion of Dangerous Drug-3 and Drug Paraphernalia.

9/29/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 12/26/11 – In custody.

Nov. 19, 2011

Ronson Silva

8/25/10 – Pleads guilty as charged to Burglary-1, Temporary Restraining Order violation, Theft-4 and Assault-3.

10/7/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 12/1/11 – In custody.

Nov. 2, 2011

James Kaoihana

4/27/05 – Pleaded guilty as charged to Promotion of Dangerous Drug-3.

8/24/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Dec. 14, 2011

Shaun Fleetwood

1/18/11 – Pleaded guilty as charged to two counts Sex Assault-1, one count Sex Assault -3.

11/8/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

11/21/11 – NCIC extradition inquiry

Delia Lunasco

4/23/01 – Pleaded no contest to Fraudulent Use of Credit Card, Theft-2.

11/1/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Dec. 21, 2011

Joseph Pearce III

3/4/04 – Pleaded no contest to Forgery-2.

11/8/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Dec. 28, 2011

Teddy Roylo

6/30/09 – Pleaded guilty as charged to Attempted UCPV and UEMV.

11/18/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

Cheyenne Belford

3/1/11 – Pleaded guilty as charged to Robbery-2.

11/18/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation.

As of 12/27/11 – In custody.

Also, from CrimeStoppers website

Robin Takiguchi

5/12/06 – Pleaded no contest to Promotion of Dangerous Drug-2.

11/1/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

James Kaoihana

4/27/05 – Pleaded guilty as charged to Promotion of Dangerous Drug-3.

8/24/10 – \$20,000 bench warrant issued to failure to comply with HOPE probation.

Wilfred Dela Cruz

8/30/05 – Pleaded no contest to Theft-2

3/17/11 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.

James Gaw

1/4/10 – Pleaded guilty as charged to Theft-2.

5/17/10 – \$20,000 bench warrant issued to failure to comply with HOPE probation; still outstanding.

Nesaline Leniu

11/5/07 – Pleaded guilty as charged to Promotion of Dangerous Drug-1

4/26/10 – \$20,000 bench warrant issued for failure to comply with HOPE probation; still outstanding.