

Supreme Court — THE JUDICIARY • STATE OF HAWAII

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Mark E. Recktenwald
CHIEF JUSTICE

December 20, 2017

RE: 519 OS 030 11

The Honorable Ronald D. Kouchi
President, Hawai'i State Senate
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Scott K. Saiki
Speaker, Hawai'i House of Representatives
State Capitol, Room 431
Honolulu, HI 96813

Dear President Kouchi and Speaker Saiki:

Please find enclosed the Report to the Twenty-ninth Legislature, 2018 Session on the Community Outreach Court Project, as mandated by Acts 55 (Senate Bill 718), Act 49 (House Bill 100), and Act 195 (SB 469), Session Laws of Hawai'i 2017.

On behalf of our partners in the Community Outreach Court Project, the Office of the Public Defender and the City and County of Honolulu Department of the Prosecutor, the Judiciary expresses our appreciation for the Legislature's support in this endeavor.

Also as required by law, a copy of the report is being transmitted to Governor Ige.

Please accept our warm wishes for the holidays and a productive 2018 Session.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark E. Recktenwald".

MARK E. RECKTENWALD
Chief Justice

Enclosure: Report to the Twenty-ninth Legislature, 2018 Session
on the Community Outreach Court Project,

c: Governor David Y. Ige
Honorable R. Mark Browning, Chief Judge, First Circuit
Honorable Lono J. Lee, Deputy Chief Judge, First Circuit
Rodney A. Maile, Administrative Director of the Courts

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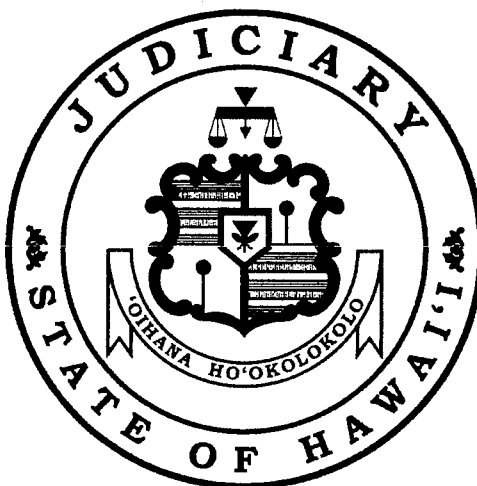
JUDICIARY COMM. NO. 2

**ANNUAL REPORT TO THE TWENTY-NINTH LEGISLATURE
2018 REGULAR SESSION**

ON

ACT 55, SESSION LAWS OF HAWAI'I 2017

A Report on the Community Outreach Court (COC)



Prepared by:

District Court, First Circuit

Submitted by:

The Office of the Chief Justice

The Judiciary, State of Hawai'i

December 2017

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*Received by publication date

**ANNUAL REPORT FOR THE TWENTY-NINTH LEGISLATURE
2018 REGULAR SESSION
ON
ACT 55, SESSION LAWS OF HAWAII 2017**

A Report on the Community Outreach Court (COC) Project

This report is respectfully submitted to the Twenty-ninth Legislature, 2018 Regular Session as required by Act 55, Session Laws of Hawaii (SLH) 2017, by Chief Justice Mark E. Recktenwald and the District Court of the First Circuit.

SECTION I: EXECUTIVE SUMMARY

Establishment of the Community Outreach Court (COC)

The Community Outreach Court (COC) started in January 2017 as a collaborative pilot project among the Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu, and the Office of the Public Defender, State of Hawaii. The Prosecutor's Office received a grant for this project from the Center for Court Innovation. Although the Judiciary did not receive funding from this grant, it committed to participate in this project by utilizing existing resources, including designation of a COC judge.

The 2017 Legislature passed Senate Bill No. 718, C. D. 1, to further develop Hawaii's COC program. The bill was signed into law as Act 55, SLH 2017 by Governor David Ige on June 22, 2017 to take effect on July 1, 2017.

For FY 2017-2018 and FY 2018-2019, Acts 49 and 195 provided the following resources to implement a memorandum of agreement (MOA, see Appendix A) that was signed by the Judiciary, Prosecutor's Office, and Office of the Public Defender:

- Judiciary: \$126,364 for administration and operation of the COC project (transfer by Office of the Public Defender per Act 49) for 2.00 permanent positions (Act 195, SLH2017)
- Public Defender: \$154,000 for 3.00 permanent positions (Act 49, SLH 2017)
- Prosecuting Attorney, City & County of Honolulu: \$165,404 for 2.00 permanent positions (Act 49, SLH 2017)

Progress

Since January 2017, the COC project served the public as follows:

- 18 community outreach court sessions were held as of November 30, 2017, and the first COC hearing outside of downtown Honolulu has been scheduled on

December 18, 2017 in the Wahiawā District Court to develop logistics needed to establish a mobile COC.

- 46 unique (excluding repeats) persons participated in the program and 528 cases were cleared.
- 36 of the 54 participants (including repeats) have completed their sentences by performing a total of 542 hours of community service.
- COC sessions currently are scheduled in Honolulu District Court twice a month, usually the second and fourth Thursdays, with a modified schedule around holidays.

Findings and conclusion

Not only has the COC been successful in clearing cases, it has brought life-changing experiences to the COC participants. As noted in the following section, participants have obtained a driver's license, housing or shelter services, and/or employment.

Overall, the Judiciary, Prosecutor's Office, and Office of the Public Defender have collaboratively made progress towards the development of a mobile COC and continue to meet the common goal of working with people who want to re-start and improve their lives in our community.

The Judiciary continues to build on this collaborative effort and plans to develop a COC program that is unique to Hawai'i.

SECTION II: BACKGROUND AND COMMUNITY OUTREACH COURT CONCEPT

Background

As noted above, the COC partners began collaboration on the Hawai'i COC project even before enactment of Act 55. Effective on July 1, 2017, Act 55 directed the Judiciary to administer and operate the COC project in the City and County of Honolulu to help nonviolent offenders who face problems such as drug abuse and mental health challenges to obtain basic services and necessities, like food and shelter, and to offer combined accountability and treatment options to offenders that would reduce crime and recidivism. As envisioned, the mobile court would travel to the communities where defendants are located, and convene court sessions in non-traditional court settings. The COC is structured to dispose of cases in which defendants, after negotiations between the Prosecuting Attorney and Office of the Public Defender, enter into plea agreements.

In addition to Act 55, Acts 49 and 195 were also enacted in 2017 to provide for funding and other administrative components for the COC and require the Chief Justice to include the COC project memoranda of agreement (MOA) in the annual report, if requested by the Office of the Public Defender.

Act 55 requires the Chief Justice to submit a report on the project to the Legislature and the Governor at least 20 days prior to the convening of the regular sessions of 2018, 2019, and 2020.

Community Outreach Court Concept

According to the National Center for State Courts (NCSC), several states operate "homeless courts" in the United States. NCSC lists "homeless courts" as one of the "problem solving" courts described in its online Resource Guide to Homeless Courts:

Homeless Court programs often target homeless veterans, therefore their mission emulates Veterans Courts. Homeless Courts work closely with community shelters and other housing agencies and focus on promoting access to court. Homeless Courts frequently assist participants with outstanding criminal warrants and aim to reduce recidivism for nonviolent low-level offenders¹

Programs listed by NCSC vary in terms of program entry processes, target populations, court locations, services offered, and partnerships. For example, Alabama's Turning Point Court is a collaboration between local non-profit social service agencies and local attorneys to assist homeless citizens within the City of Birmingham and surrounding areas

¹<http://www.ncsc.org/Topics/Alternative-Dockets/Problem-Solving-Courts/Homeless-Courts/Resource-Guide.aspx>

transition back into society. In Houston, Texas, participants voluntarily sign up for Homeless Court by requesting the service from a local homeless service provider.

Hawaii's COC currently operates in the Honolulu District Court building in downtown Honolulu. Office of the Public Defender engages a social service or health care professional to provide outreach services to defendants charged with the identified offenses who are willing to participate in the project. The target population is nonviolent offenders who face problems such as drug abuse and mental health challenges to obtain basic services and necessities, like food and shelter. Current services include connecting COC participants to shelters/housing, health services, identification documents, and employment.

Pursuant to Act 55, the Hawaii COC's goal is to hold court sessions outside of the traditional court building to be closer to the target population and increase the likelihood of court appearance by defendants. The concept of a mobile court has been introduced internationally and domestically.

The COC does not want to criminalize homelessness, but rather connect homeless individuals to services through case managers, while providing accountability for outstanding charges and bench warrants. Only nonviolent offenders are eligible for COC, and the majority face problems such as drug abuse and/or mental health issues.

Hawaii's warm weather and public beach facilities contribute to the high homeless population. *Homeless Service Utilization Report Hawaii 2015*² suggests that Hawaii's homeless population is also found in rural areas, whereas the homeless populations in other States are concentrated in metropolitan areas. While most outreach courts in other states are held in one or two non-traditional locations within downtown or business districts, Hawaii's mobile COC will attempt to go beyond the downtown area to accommodate Hawaii's distinct geographical challenges. The mobile COC, supported by the Legislature and Act 55, would be responsive to Hawaii's unique needs. Traveling to other areas on O'ahu to reach defendants in rural areas will be an opportunity and challenge to the Hawaii Judiciary, Prosecutor's Office, and Office of the Public Defender.

² http://uhfamily.hawaii.edu/publications/brochures/789af_HomelessServiceUtilization2015.pdf

SECTION III: COC FUNDING AND OPERATIONAL MECHANISMS

Funding mechanism

Acts 49 and 195, SLH 2017 describe the COC funding mechanism and require that the Office of the Public Defender shall submit the MOA to the Legislature or may request the Chief Justice to include the MOA with the report. Funding amounts and positions were noted in the Executive Summary and are detailed in the MOA. (Appendix A)

Operational mechanism

Under the COC model, the court holds hearings on cases for which the Prosecuting Attorney and Office of the Public Defender have negotiated a plea agreement on the disposition of the defendants' outstanding charges and bench warrants. Only cases involving nonviolent, nonfelony offenses under state law and city ordinance may be heard and disposed of under the program. Currently, only one district judge is designated as the COC judge; however, more judge will be necessary for full implementation. Presently, the COC Judge is also assigned to other duties with a full calendar

Prior to Court

The Office of the Public Defender engages a social service or health care professional to provide outreach services to defendants who are willing to participate in the project and also be represented by the Office of the Public Defender. After consulting with the social service or health care professional, the Office of the Public Defender develops a list of the defendants who are potential participants in the project and transmits it to the Prosecuting Attorney. (See Appendix B: Office of the Public Defender's letter of comments and recommendations for details.)

The Prosecuting Attorney selects defendants from the list who may be appropriate for participation in the COC project. The Prosecuting Attorney enters into plea negotiations with the Office of the Public Defender for disposition of outstanding charges and bench warrants. The Office of the Public Defender petitions the Court for defendants' charge of plea and sentencing in COC. Proposed disposition of cases may include a fine, community service, court-ordered treatment, or other court-ordered conditions. The motion for change of plea is placed on the COC calendar with appropriate notice to the parties, and is subject to approval by the court.

Compliance

Once the plea negotiations are completed, the defendant, the public defender, and the prosecutor appear before the COC Judge for approval. If the court accepts the plea agreement, the defendant is sentenced and a return date is scheduled for proof of compliance.

If the court orders community service sentencing, the defendant goes directly to the Judiciary's Community Service Sentencing Branch (CSSB) for placement. For the first COC outside of Honolulu, in Wahiawa, CSSB staff will be present. In future off-site COC sessions, CSSB will likely utilize video conferencing with defendants to ensure timely placements. Use of video conferencing will save on CSSB staff travel and waiting time, thereby minimizing disruption to its current caseload.

Following the court appearance, defendants will also meet with service providers to address other conditions of their sentence and determine whether other community resources are available. Resources could include medical or mental health treatment, residential and occupational placement, or other legal services by service providers.

At the POC hearing, both counsels have met with the defendant and service providers to assure that defendant has met all the sentencing conditions. If a defendant needs more time to complete the sentence, the Court will grant additional time to complete any outstanding conditions.

To date, COC sessions were held in Honolulu District Court on:

January 26, 2017

February 23, 2017

March 23, 2017

April 27, 2017

May 11, 2017

May 18, 2017

June 8, 2017

June 22, 2017

July 13, 2017

July 27, 2017

August 10, 2017

August 24, 2017

September 10, 2017

September 28, 2017

October 12, 2017

October 26, 2017

November 9, 2017

November 16, 2017

SECTION IV: PROGRAM MEASURES AND OUTCOME AND PROGRAM QUANTIFICATION

Program measures and outcome

The purpose of the COC project is to develop a mobile court that travels to communities where defendants are located. Defendants eligible for participation may enter into plea agreements with the prosecutor, subject to approval by the court. To measure the effectiveness of the project, the Judiciary reports on the number of participants served and cases cleared. The following report covers dispositions during the period from January 1, 2017 to October 31, 2017. Two COC sessions were held in November but data on November case dispositions were not available as of our publication date.

Program quantification

The Judiciary reports the following data provided by the Prosecutor's Office and Office of the Public Defender.

- 18 COC sessions were held as of November 30, 2017.
- As of October 31, 2017, 46 unique (excluding repeats) persons participated in the program and 528 cases were cleared.
- 36 of the 54 participants (including repeats) have completed their sentences by performing a total of 542 hours of community service.

Behind all of these numbers, there are real life stories. For example:

- Participant obtained a job and is working with a nonprofit agency to obtain housing.
- Participant who lived in a shelter is now renting a portion of a house and working to obtain a social security card.
- Participant is no longer homeless, has moved back to Washington State and is living at a senior center.
- Participant and spouse are no longer living at a church and currently rent a portion of a house.
- Participant moved in with family and completed substance abuse treatment.

The Judiciary, in partnership with the Prosecutor's Office and Office of the Public Defender hopes to continue expanding its services to improve lives of vulnerable individuals on O'ahu and increase accountability in the criminal justice system.

SECTION V: PROGRAM PROGRESS, CHALLENGES, AND OPPORTUNITIES

The Judiciary, the Prosecutor's Office, and Office of the Public Defender have worked collaboratively to establish a COC project as the criminal justice system's response to the many nonviolent, nonfelony offenses that overburden the court and law enforcement. The "pilot" stage of the project started with the first COC session held in the Honolulu District Court on January 26, 2017.

On June 22, 2017, Governor Ige signed Act 55, enabling legislation for COC operations, and signed accompanying Acts 49 and 195, respectively, on June 21, 2017 and July 12, 2017. Since then, the Judiciary, the Prosecutor's Office, and Office of the Public Defender have signed a COC MOA. The Judiciary hired a COC Program Specialist II on October 27, 2017. With the hiring of the program specialist, the Judiciary plans to take the COC project outside of the Honolulu District Court building in two phases:

- First, the COC will convene in one or more rural courts to develop logistics for a mobile COC, and
- Second, the mobile COC will convene in a non-traditional setting in a community when logistical and security issues are addressed.

The first phase will be a COC session scheduled at Wahiawā District Court on December 18, 2017. While rural district courts provide essential resources such as a place (courtroom and client/service provider meeting room), equipment (tables, chairs, recording devices, secured internet, computers, etc.), and personnel (court clerks, bailiff, judge, and security), community-based locations do not provide the same essential resources. These resources are necessary to bring the mobile COC into the communities. Funding and long term support will be essential, as well as coordination with the Department of Public Safety for sheriff services.

Currently, the Judiciary receives funding for two Program Specialist positions to administer the program, and the Prosecuting Attorney and Office of the Public Defender received funding for deputies and support personnel. However, in order to operate the COC as a sustainable service, additional resources need to be funded in the future. These include positions for a court bailiff to maintain order in the court and a COC court clerk to author the official record of all actions in the court minutes. A sheriff is also needed to provide security, enforce the court's entry and identification system, and preserve the peace by protecting all court users and property.

Other COC requirements that affect Judiciary clerks' operations include processing motions, calendaring cases, and updating court records for disposition of cases, compliance and so forth. Additional work is required since many COC defendants have disproportionate a number of cases (often more than 10) compared to non-COC defendants.

SECTION VI: SUMMARY OF FINDINGS AND CONCLUSIONS

The mission of the Judiciary, as an independent branch of government, is to administer justice in an impartial, efficient and accessible manner in accordance with the law. Act 55 enables the Judiciary to continue its mission by increasing access to justice through court services provided by the COC project.

Since the collaboration began in January, 2017, the Judiciary with its COC partners has:

- Held 18 community outreach court days,
- Cleared 528 cases,
- Served 46 unique participants (excludes repeats), and
- Made 85 referrals to essential services such as shelter, food, and human services, with significant successes reported above.

After signing the COC MOA with the Prosecutor's Office and Office of the Public Defender, the Judiciary has hired its first COC Program Specialist with legislative funding. This new staff position has allowed the Judiciary to proactively begin engaging other community partners to provide assistance with other legal matters to defendants. For example, the Judiciary has begun a preliminary discussion with Volunteer Legal Services Hawai'i and the Legal Aid Society of Hawai'i to provide additional services for COC participants to address outstanding civil obligations.

In the COC project's first year, the Judiciary, Prosecutor's Office, and Office of the Public Defender continue to review operations for program improvement. Act 55 provides the partners an opportunity to share their comments and recommendations to improve the program. (See Appendix B) The Judiciary looks forward to incorporating these ideas and its own learning experiences for continuous improvement to better serve the community.

The Judiciary extends its appreciation to the Governor and the Legislature for their support in establishing the COC and looks forward to building upon the progress made in 2017 through the partnership with the Prosecutor's Office and Office of the Public Defender. The Judiciary also looks forward to expanding the partnership in the communities in 2018.

APPENDICES: MOA AND COMMENTS AND RECOMMENDATIONS LETTERS *

A. Memorandum of Agreement signed by the Public Defender, Prosecuting Attorney, and Administrative Director of the Courts

B. Letter dated – from John M. Tonaki, Esq., Public Defender, State of Hawai'i

**Letters received after publication will be printed separately.*

JOHN M. TONAKI
State Public Defender

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STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

September 20, 2017

TIMOTHY E. HO
Chief Deputy

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MAUI OFFICE
81 N. Market Street
Wailuku, Hawai'i 96793
Tel. No. 984-5018 Fax: 984-5022

Memorandum of Agreement

This Agreement is entered into between the Office of the Public Defender (referred to hereinafter as the "OPD"), the Judiciary through the Chief Justice of the Supreme Court of Hawai'i and the Department of the Prosecuting Attorney, City and County of Honolulu (referred to hereinafter as the "DPA") with regard to the administration of the general fund appropriation as specified by Section 21 of Act 49, SLH 2017. The sum of \$445,768 or so much thereof as may be necessary for fiscal year 2017-2018 and the same sum or as much thereof as may be necessary for fiscal year 2018-2019 shall be expended for the community outreach court project which is administered and operated under the Judiciary in collaboration with the OPD and the DPA. The aforementioned sum of \$445,768 is appropriated from the general fund for the OPD (BUF151).

I. DESCRIPTION OF PROGRAM

The worsening problem of homelessness on the island of Oahu has led to hundreds of Oahu residents being cited or arrested for drinking liquor in public, being in public parks after hours of closure, trespassing, illegal camping on sidewalks and other public areas and a list of other minor property or status offenses. Many of those cited are unable to attend court or have their paperwork lost or seized by authorities during "homeless sweeps." Bench warrants are routinely issued for court absences.

Once such offenders are brought to court, monetary fines issued for the citations often lead to additional bench warrants when the fines go unpaid and a cycle is established of repeated bench warrants for non-appearance and non-payment. The prosecution of these cases congests the court system without producing meaningful resolutions that will prevent recurrence of the offenses.

After more than a year of organizational meetings, the Judiciary, the OPD and the DPA began a pilot community outreach court project. The goal of the project is to help non-violent offenders charged with the aforementioned offenses which target the homeless community to attend court and clear all of their outstanding cases. By taking care of their outstanding charges and bench warrants, the participants are in a better position to

obtain basic necessities such as income assistance and housing. To resolve their cases, the community outreach court imposes alternative sentences such as community service and participation in programs deemed appropriate based upon an offender's need for mental health services, substance abuse treatment, sustenance, and shelter.


The 2017 Legislature passed S.B. No. 718 which was signed and enacted into law as Act 55 which supported the establishment of a community outreach court project in the city and county of Honolulu. Act 49, SLH 2017 accompanied Act 55 as the funding component of this project.

II. APPROPRIATIONS


Pursuant to Act 49, SLH 2017, the sum of \$445,768 or so much thereof as may be necessary shall be expended for the community outreach court project in the following amounts:

- A. The OPD, for fiscal year 2017-2018 and fiscal year 2018-2019, shall expend the sum of \$154,000 or so much thereof as may be necessary and may establish the following 3.00 permanent positions for the performance of duties under the community outreach court project:
 - 1.00 permanent deputy public defender;
 - 1.00 permanent paralegal; and
 - 1.00 permanent social worker or advocate.
- B. For fiscal year 2017-2018 and fiscal year 2018-2019, the OPD shall transfer to the Judiciary of the State of Hawai'i the sum of \$126,364 or so much thereof as may be necessary for the administration and operation of the community outreach court project as provided under section 7 of the Judiciary Appropriations Act of 2017.
- C. For fiscal year 2017-2018 and fiscal year 2018-2019, the OPD shall transfer to the DPA the sum of \$165,404 or so much thereof as may be necessary for the payment of the personal services and fringe benefit costs of the following 2.00 permanent positions for the operation of the community outreach court project:
 - 1.00 deputy prosecuting attorney; and
 - 1.00 paralegal.


This agreement is executed between:

 9/21/17

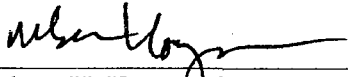
John M. Tonaki Date
Public Defender
State of Hawai'i

 9/25/17

Keith M. Kaneshiro Date
Prosecuting Attorney
City & County of Honolulu
State of Hawai'i

 OCT 16 2017

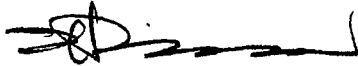
Rodney A. Maile Date
Administrative Director of the Courts
Judiciary
State of Hawai'i



Nelson H. Koyanagi Jr., Director
Budget and Fiscal Services
City and County of Honolulu

Date: OCT - 6 2017

APPROVED AS TO FORM AND LEGALITY



Deputy Corporation Counsel
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November 21, 2017

At the Office of the Public Defender, clients are pre-screened, and assessment is administered during intake hours. Information of individuals who we find fit for the program is sent to the Department of Prosecuting Attorney for further investigation into the clients' citation history. Once we receive the finalized list of individuals, the client is contacted to set up a court date.

We participate in outreach with various service providers such as Institute for Human Services, Kalihi-Palama Health Center, CHOW Project, ALEA Bridge, and H.E.L.P Honolulu. Participating in outreach provides awareness of the program to individuals in our community. Service providers also send a list of their clients' information to the Office of the Public Defender to be referred into the program. This increases the number of clientele coming into Community Outreach Court. Some of the service providers also attend the court hearings to establish rapport with the clients and encourage them to obtain services. Partnering with service providers bring a larger and a stronger support system to the clients we work with.

In addition, we have clients who have successfully completed the program and continue to show progress. We have 2 clients who obtained their driver's license, 8 obtained housing, 8 entered shelters, and 4 clients obtained jobs. These statistics are as of October 2017.

As the program continues, our goal is to not only increase the number of clients coming into the program but also encourage more of the clients to obtain services. Some of the suggestions and improvements that may impact this goal is to accompany the client and be on site with them when they are seeking services; such as applying for shelter or housing programs. This also includes assisting clients with their paper works and setting timeline goals for them to achieve. By doing these tasks, we predict that it will encourage more clients to take advantage of the services provided by the agencies we work with.

We are looking forward to expanding the program beyond the Honolulu District Court. We believe this will not only increase the chance for clients to attend their court dates, but it will also increase awareness of the program in the community and reach out to individuals who need the services.

Mahalo,
John Tonaki
Public Defender