STATE OF HAWAII
Department of the Attorney General

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CRIMINAL APPEALS IN HAWAII

HAWAII CRIMINAL JUSTICE DATA CENTER

RESEARCH AND STATISTICS REPORT (RS04)

APRIL 1988

FOREWORD

The Hawaii Criminal Justice Data Center of the Department of the Attorney General, undertook a study of criminal appeals in Hawaii. Statistics have shown that criminal appeals is one of the fastest growing areas of the criminal justice system. Since appeals have an effect on both length of time in the system and on the outcome of trials, this study was begun to assess these effects on the justice system.

The Data Center wishes to thank the State Judiciary, Chief Justice Herman Lum and the Associate Justices of the Hawaii Supreme Court; Mr. Mathew Goodbody, Staff Counsel; Mr. Samuel Makekau, Chief Clerk, and his staff for their assistance. Special thanks to Mr. Darrell Phillips.

Without the cooperation and assistance of the above mentioned people, this study would not have been possible.

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INTRODUCTION

Decisions of the courts of appeals can affect the outcome of criminal trials, and since more and more cases are being appealed each year, the Hawaii Criminal Justice Data Center (HCJDC) undertook this study.

The purpose of this study is twofold:

1) To assess the nature of appeals in terms of who is appealing and why,

2) To examine the effect of appeals on the outcome of criminal cases.

TRENDS IN CRIMINAL APPEALS

A report by the Bureau of Justice Statistics (BJS) entitled, "The Growth of Appeals," showed that for 42 states plus the District of Columbia, criminal appeal filings grew by 107 percent for the period 1973 to 1983.[1] For that period, the report showed that criminal appeals in Hawaii grew by 483 percent making such appeals one of the fastest growing areas in the criminal justice system.[2]

Recent data shows that the growth in criminal appeal filings has slowed (See Table 1).[3] Although criminal appeal filings grew at a rate of 38.4 percent from FY 81-82 to FY 82-83, such filings have grown at a much slower rate since, averaging 6.1 percent. Overall, the growth rate for the period from FY 81-82 to 85-86 was 65.3 percent.

TABLE 1
CRIMINAL APPEAL FILINGS

Fiscal Year	Supreme Court	Intermediate Court of Appeals	Total	Percent Change
81-82	153	37	190	---
82-83	240	23	263	38.4
83-84	257	26	283	7.6
84-85	266	39	305	7.8
85-86	282	32	314	3.0

The factors that may be associated with the growth of appellate filings, as stated in the BJS report, include population, judgeships, crime rate, arrest rate, trial court filings, and prison commitments.

Population increased, on the average, 1.9 percent per year for the calendar year period 1980 to 1985. The increase in population alone cannot fully account for the rise in the number of appeals. Over that same period, the crime rate has generally decreased except for a slight increase in 1982.[4] The arrest rate has fluctuated with an average decrease of 1.6 percent from 1980 to 1985. Both the crime rate and arrest rate take population into account.

The number of appellate judgeships remained at eight throughout the period from fiscal years 81-82 to 85-86. Overall the number of trial court judgeships increased by 17.4 percent; three in circuit court and five in district court.[5] Over the same period, trial court filings grew at a rate of approximately 4.0 percent per year.

Of the variables listed only prison commitments grew at a faster rate than appellate filings. For the period fiscal year 80-81 to 83-84, prison commitments grew by an average of 39.0 percent per year.[6]

In addition to the factors listed above, other factors may also influence the growth of appeals. One such factor examined in this report is the type of crime. The Data Center hypothesized that defendants convicted of serious crimes and given harsh sentences or defendants in cases involving search and seizure may be more likely to appeal.

METHOD

The HCJDC examined cases docketed in 1984. A list of cases was provided by the Supreme Court clerk's office. Information on the appeals aspect of the

case was collected from appellate court records. Trial court and offender data were collected from the OBTS/CCH information system, HAJIS information system, and trial court records.[7]

Some of the cases in this study were consolidated. A case may be consolidated by order of the appellate court upon its own motion, the motion of a party, or upon stipulation by the parties involved.[8] Basically, cases are consolidated when the facts of the cases are similar and the issues to be determined are the same. For statistical purposes in this report, consolidated cases were counted as one case. In the criminal appeals data section, only information from the first appeal filed in the consolidated appeal was compiled.

In cases with multiple defendants, the defendants may file separate appeals or they may file a single joint appeal. If they took separate appeals, each appeal was counted. If they took a joint appeal, only one appeal was counted.

For the purpose of providing information on defendants, each defendant was counted. For example, if a case involved three defendants, data were collected on the three defendants.

The sample in this study consisted of 258 appeal cases docketed with the supreme court in 1984. The 258 appeals include 7 consolidated cases. Appeals docketed in 1984 were selected because it was felt that those cases should have been completed and the effect on the trial case, if any, could be studied. The cutoff date for data collection was January 31, 1987.

TABLE 2
CASES DOCKETED IN 1984

	Number
Notice of Appeal Filed Prior to 1984	61
Notice of Appeal Filed in 1984	185
Notice of Appeal Date Unavailable	12
TOTAL	258

Of the 258 appeals, 6 are appeals from unfavorable rulings in petitions for post-conviction relief. A convicted offender may petition for relief to the court in which the conviction took place. Post-conviction proceedings are governed by Rule 40 of the Hawaii Rules of Penal Procedure (HRPP).[9] The clerk of the court dockets the petition as a special proceeding, and the State is named as the respondent. Any party may appeal to the supreme court from a judgment entered as a result of the proceeding.

APPELLATE COURTS

The appellate system in Hawaii consists of two courts, the Hawaii State Supreme Court and the Hawaii State Intermediate Court of Appeals (ICA). The supreme court consists of a chief justice and four associate justices. The justices are appointed by the governor from a list of nominees provided by the Judicial Selection Commission, and are confirmed by the State Senate. They serve ten-year renewable terms.

When temporary vacancies occur on the supreme court bench, the chief justice has the authority to assign a retired justice, a judge of the intermediate court of appeals, or a circuit court judge to fill the vacancy. The appellant is entitled to bring an appeal before the full court.[10] Temporary vacancies occur when justices disqualify themselves because of conflict of interest or when they

recuse themselves. A recusal is like a disqualification, but disqualification is mandatory, whereas recusal is normally voluntary. No reason need be given for a recusal.

The supreme court has original and appellate jurisdiction. The supreme court may correct, where appropriate, errors and abuses of all courts of inferior jurisdiction. The supreme court's jurisdiction and powers include: determining all questions of law, or of mixed law and fact brought before it on appeal; answering any question of law reserved by a circuit, land, or tax appeal court; answering any question or proposition of law certified to it by a federal district or appellate court; exercising original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court; issuing writs of habeas corpus; and issuing any order or writ necessary in aid of its appellate or original jurisdiction. Other areas of supreme court involvement include: writs of certiorari; reapportionment; election challenges; judicial/attorney discipline; and administration of the bar exam.[11] The supreme court also has the power to promulgate rules in all civil and criminal cases relating to process, practices, procedure and appeals. One such set of rules is the Hawaii Rules of Appellate Procedures (HRAP). Such rules have the force and effect of law.[12] In addition, the chief justice is the administrative head of the judiciary.[13]

The intermediate court of appeals was established in 1978 by constitutional amendment. The ICA consists of a chief judge and two associate judges. They serve ten year renewable terms. The ICA has concurrent jurisdiction with the supreme court on matters assigned to it. Temporary vacancies are filled by circuit court judges appointed by the chief justice.

OPINIONS

Supreme court and ICA decisions may be made by published opinion or memorandum opinion. Published opinions set precedent for all cases. Memorandum opinions do not. Memorandum opinions are not published and may not be cited in any other action.

A justice or judge is designated to write the opinion. The opinion reflects the feelings of the majority of the justices or judges. If the decision is not unanimous, a dissenting opinion accompanies the majority opinion.

An appellate court may affirm, reverse, modify, or remand a case. A case is affirmed when the appellate court upholds the lower or trial court ruling, essentially a finding that the lower court committed no errors or harmless ones. When a case is reversed, the lower court ruling is set aside. The appellate court may modify a lower court ruling; changing it in part but not totally reversing the ruling. The appellate court may also remand the case back to the lower court with instructions for further proceedings. A combination of the above dispositions may also be involved. For example, the appellate court may affirm in part and reverse in part a lower court ruling. Hawaii Revised Statutes (HRS) section 641-16 concerns appellate court judgments.

> **§641-16 Judgment; no reversal when.** The supreme court, or the intermediate appellate court, as the case may be, may affirm, reverse, or modify the order, judgment, or sentence of the trial court in a criminal matter. It may enter such order, judgment, or sentence, or may remand the case to the trial court for the entry of the same or for such other or further proceedings, as in its opinion the facts and law warrant. It may correct any error appearing on the record.
>
> In case of a conviction and sentence in a criminal case, if in its opinion the sentence is illegal or excessive it may correct the sentence to correspond with the verdict or finding or reduce the same,

as the case may be. In case of a sentence to imprisonment for life not subject to parole, the court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is alleged as error or not. Any order, judgment, or sentence entered by the court may be enforced by it or remitted for enforcement by the trial court.

No order, judgment, or sentence shall be reversed or modified unless the court is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. Nor shall there be a reversal in any criminal case for any defect of form merely in any indictment or information or for any matter held for the benefit of the appellant or for any finding depending on the credibility of witnesses or the weight of the evidence. Except as otherwise provided by the rules of court, there shall be no reversal for any alleged error in the admission or rejection of evidence or the giving of or refusing to give an instruction to the jury unless such alleged error was made the subject of an objection noted at the time it was committed or brought to the attention of the court in another appropriate manner.

APPEAL BY THE DEFENDANT

Any party in a criminal proceeding may appeal. However, there are differences between appeals made by the defendant and the prosecution. The right to appeal is more restrictive for the prosecution.

Appeals may be made from both circuit and district courts. From circuit court, a defendant has the right to appeal from the judgment of conviction or from an order which runs counter to his interest. A judgment of conviction is final when it includes a sentence.[14] From district court, a defendant may appeal from final decisions and final judgments. Statutes governing appeals from circuit and district courts are listed below.

§641-11 From circuit courts. Any party deeming oneself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court, subject to chapter 602 in the manner and within the time provided by the Hawaii Rules of Criminal Procedure. The sentence of the court in a criminal case shall be the judgment. All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.

§641-12 From district courts. Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters. Such appeals may be made to the supreme court, subject to chapter 602 whenever the party appealing shall file notice of the party's appeal within thirty days, or such other time as may be provided by the rules of the court.

Within a reasonable time after an appeal has been perfected from a decision of a district court to the appellate court in a criminal matter, it shall be incumbent upon the district court to make a return thereof, together with all papers and exhibits filed in such case.

It shall be the duty of the respective clerk of the supreme or the intermediate appellate court whichever has heard the appeal, to transmit within a reasonable time to the district court from whose decision the appeal was made, a statement showing the disposition of the case.

All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.

An appeal by the defendant does not automatically suspend the execution of his sentence. The defendant may move at the time of sentencing for a stay pending appeal. The trial court decides whether or not a stay is proper, and if proper, the conditions of the stay. Stays in criminal proceedings are governed by HRS §641-14.

§641-14 Stay in criminal cases. (a) The filing of a notice of appeal or the giving of oral notice in open court at the time of sentence by the defendant or the defendant's counsel of intention to take an appeal may operate as a stay of execution and may suspend the operation of any sentence or order of probation, in the discretion of the trial court. If the court determines that a stay of execution is proper, the court shall state the conditions under which the stay of execution is granted. No stay granted on the giving of oral notice shall be operative beyond the time within which an appeal may be taken; provided that if an appeal is properly filed, the stay shall continue in effect as if the stay was based on a filing of the appeal.

The court may revoke the stay of execution or amend the conditions thereof for a violation of the conditions of the stay of execution.

(b) Admission to bail after the giving of oral notice in open court of intention to take an appeal or upon an appeal shall be as provided in the rules of court.

A defendant may be released on bail in accordance with HRS Section 804-3, which states:[15]

§804-3 Bailable offenses. (b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and:

(1) There is a serious risk that the person will flee;

(2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;

(3) There is a serious risk that the defendant poses a danger to any person or the community; or

(4) There is a serious risk that the defendant will engage in illegal activity.

Section 804-3(a), as amended by Act 259 Session Laws 1987, defines serious crime as murder or attempted murder in the first degree, murder or attempted murder in the second degree, or a class A or B felony, except forgery in the first degree and failing to render aid under section 291C-12.

The burden of proof that the defendant is not a risk lies with the defendant.[16] In Section 804-3(c), rebuttable presumption rules are set forth.

> (c) Under subsection (b)(1) a rebuttable presumption arises that there is a serious risk that the person will flee or will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life without possibility of parole. For purposes of subsection (b)(3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:
>
> (1) The defendant has been previously convicted of a serious crime involving violence against a person within the ten year period preceding the date of the charge against the defendant;
>
> (2) The defendant is already on bail on a felony charge involving violence against a person; or
>
> (3) The defendant is on probation or parole for a serious crime involving violence to a person.

While bail is allowable under section 804-3, section 804-4 states when bail is a matter of right before conviction. It also states when right to bail continues after conviction and when it does not. Section 804-4 is listed below as amended by Act 259 Session Laws 1987.

> **§804-4 When a matter of right.** If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right. The right to

bail shall continue after conviction of a misdemeanor, petty misdemeanor or violation, and release on bail may continue, in the discretion of the court after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings which are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; except that no bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; and provided further that no bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed. The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for writ or certiorari, be detain [sic], unless the court finds:

1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
2) that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes such findings, he shall order the release of the person in accordance with the provisions of section 804-7.1. No defendant entitled to bail, whether bailed or not, shall, without the defendant's written consent, be subject to the operation of any sentence passed upon the defendant while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a).

HRS §804-4 and §841-14 work together. The Hawaii Appellate Handbook states "Although in theory the question of release on bail is separate from whether a sentence is stayed, it would make no sense for a defendant to seek a stay of his

sentence if he is prohibited from posting bail, and thus for all practical purposes the prohibition on bail means that a sentence of imprisonment for a felony cannot be stayed pending appeal."[17]

APPEAL BY THE STATE

The State's right to appeal, unlike the defendant's, is very limited. Section 13 of chapter 641 of the HRS specifically lists the instances when the State may appeal in criminal cases.[18]

> **§641-13 By State in criminal cases.** An appeal may be taken by and on behalf of the State from the district or circuit courts to the supreme court, subject to chapter 602, in all criminal cases, in the following instances:
>
> (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment or information or any count thereof;
>
> (2) From an order or judgment, sustaining a special plea in bar, or dismissing the case where the defendant has not been put in jeopardy;
>
> (3) From an order granting a new trial;
>
> (4) From an order arresting judgment;
>
> (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
>
> (6) From the sentence, on the ground that it is illegal;
>
> (7) From a pretrial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal;
>
> (8) From an order denying a request by the State for protective

order for nondisclosure of witness for their personal safety under Rule 16(e)(4) of the Hawaii Rules of Penal Procedure, in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to such appeal and the order shall be stayed pending outcome of such appeal;

(9) From a judgment of acquittal following a jury verdict of guilty.

The State does not have the right to appeal after an acquittal of the defendant by verdict of the jury. The reason is that the defendant has a constitutional right against twice being placed in jeopardy, or as it is more commonly known, he has a right against double jeopardy.[19]

CRIMINAL APPEAL PROCESS[20]

The party who files an appeal is called the appellant. The other party is the appellee. If both parties appeal, whoever appeals last is referred to as the cross-appellant.

Both the defendant and the state must file a notice of appeal with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from.[21] The judgment or order is entered upon its filling in the court clerk's office. Within the 30 day period, the appellant may move for an extension of time to file the notice of appeal.

The notice of appeal names the appellant and designates the judgment, order or part thereof appealed from. The appellant pays a fee, which may be waived for indigency, at the time of filing. A cross-appeal may be filed within 14 days from the date the party was notified of the filing of an appeal.

Within 10 days after the filing of the notice, the appellant orders from the court reporter parts of the transcript necessary for the appeal. Within the same

time, if appellant has not ordered the entire transcript, appellant must file a statement of points of error intended to be raised. If the entire transcript is not included, the appellee may request other parts of the transcript deemed necessary. The reporter in turn must provide the requested transcript within 30 days or request an extension.

The record on appeal is due within 40 days after the filing of the notice of appeal. The record on appeal consists of original papers and exhibits filed in the trial court, the transcript of the pertinent parts of the proceedings, and the indexes prepared by the clerk of the trial court.[22] An extension of up to 90 days may be obtained from the trial court by motion or stipulation. The supreme court may extend the due date beyond the 90 days.[23]

DOCKETING

When the record is complete, the trial court clerk certifies the record and transmits it to the clerk of the supreme court. The supreme court clerk then enters the appeal on the docket. Once the record has been docketed, the appellant has 40 days to file an opening brief. The opening brief contains:

1) A subject index including table of authorities,
2) A statement showing the grounds on which the jurisdiction of the court has been invoked including the nature of the offense,
3) A statement of the case,
4) A statement of the points on which the appellant intends to rely,
5) A standard of review section,
6) A statement of questions to be decided,
7) The argument,
8) A section on the relevant parts of the constitutional provisions, statutes, ordinances, etc.,
9) The conclusion specifying the relief sought, and
10) A statement of related cases.

Anything not part of the record cannot be appended to the brief.

The appellee has 40 days after service of the appellant's opening brief to file an "answering brief."[24] The composition of the answering brief is similar to the opening brief except that no statement of points is required.

The appellant may file a reply brief within 10 days of service of the appellee's answering brief. The reply brief is confined to matters brought up in the answering brief.

The time period for filing briefs may be extended by the signed order of an appellate justice or judge.

An appeal may be dismissed if the opening brief is not filed on time or is not in compliance with the rules. In addition, fines may be assessed. If an answering brief is not submitted, the court may accept as true the statement of facts presented by the appellant.

ASSIGNMENT OF CASES

Within 5 business days after briefing has been completed, the supreme court clerk forwards the complete file to the assignment judge or justice. The assignment justice is the chief justice or his designee appointed from the appellate court. The case is assigned to either the supreme court or the intermediate court of appeals within 20 working days.[25] Whenever there are related cases on appeal, the assignment judge may delay assignment until the related case or cases are assigned. A case assigned to the ICA may be reassigned to the supreme court if a majority of justices so choose. A case assigned to the supreme court may be transferred to the ICA by the chief justice.

Following the assignment of a case, oral arguments may be scheduled. Oral

argument is allowed unless the appellate court decides it is unnecessary. If oral argument is not allowed, the appellate court will decide the case on briefs alone.

The supreme court, insofar as practicable, has 12 months to render a ruling. The ICA has 6 months.

FURTHER APPEAL

HRS section 602-59 establishes a mechanism to appeal an ICA decision to the supreme court. If a party is dissatisfied with the decision or ruling by the ICA, that party has 10 days after the decision or ruling, or after a denial of a timely motion for reconsideration, to apply in writing to the supreme court for a writ of certiorari to review the ICA decision. The supreme court may or may not accept the application for writ of certiorari. Opinions of the ICA are not binding on the supreme court, but in the absence of a supreme court precedent, they are binding on all trial courts.

A party dissatisfied with the Hawaii Supreme Court decision or ruling, may also file a motion for reconsideration. If the motion is denied, the dissatisfied party may apply for a discretionary writ of certiorari with the U.S. Supreme Court or may file a direct appeal to that court as a matter of right in certain limited circumstances, such as where the case involves a federal constitutional issue.

CRIMINAL APPEALS

Of the 258 cases in this study, rulings or decisions "on the merits" were made in 187 cases. Of the remaining 71 appeals, 18 were dismissed, 47 were withdrawn, and 6 were resolved by stipulations to vacate judgment or sentence and/or to remand the case to the lower court.

TABLE 3
CASE DISPOSITION

Disposition		Number
Decision on merits		187
Dismissed		18
By Order - Motion to Dismiss	(6)	
By Order - Default of Opening Brief	(9)	
By Stipulation	(1)	
By Memorandum Opinion	(2)	
Withdrawn		47
Stipulation or Motion to Vacate Judgment/Sentence or to Remand		6
TOTAL		258

Of the 258 cases, 168 were assigned to the supreme court and 26 to the ICA. Of the 187 cases with decisions, 164 were decided by the supreme court and 23 by the ICA.

TABLE 4
APPEAL CASES BY COURT

Court	Number Assigned	Decisions
Supreme Court	168	164
Intermediate Court	26	23
Unassigned	64	--
TOTAL	258	187

Of 258 appeal cases, 200 were filed by the defendant. One case involved a consolidation of appeals by the defendant in one case and the state in the other. One defendant was an adult involved in a family court case. Defendant-appellants accounted for approximately 3 in 4 cases.

The state accounted for 54 of the 258 appeals. One of the state's appeals involved a juvenile defendant.

Four appeals were filed on behalf of juvenile defendants.

Of the 200 appeals by the defendant, 147 were decided "on the merits." Of the 54 appeals by the state, 37 were decided "on the merits."

TABLE 5
APPEAL CASES BY APPELLANT

Appellant	Total Appeals	Percent of Total	Appeals Decided
State	54	20.9	37
Defendant	200	77.5	147
Juvenile	4	1.6	3
TOTAL	258	100.0	187

REASONS FOR APPEAL

Appellants appeal because they believe the trial court committed an error or abused its discretion. In general, they appeal from the judgment, findings of fact, conclusions of law, sentence, orders or motions of the trial court. Specifically, the appellant lists in the case file the points being contended.

Table 6 lists the major points of contention for the 187 cases decided on the merits. Up to four points per case were collected so that a single case may be classified in a maximum of four different categories. As a result, the total in the table may exceed 187.

The figures in Table 6, except where noted, represent cases where the listed point was one of the reasons given for bringing the appeal. Four categories in the table however, need special explanations. Since all cases involve to some degree, "Trial Court Error," that category was reserved for cases where the sole reason for the appeal was a trial court error that was not classified in any other category. This means that for the 15 cases listed, a trial court error was the single reason given in the case file and it was not classified elsewhere.

The categories of "Other Constitutional Issues," "Evidence," and "Laws" are combined categories. A single case may have several points in those categories. For example, one case may have brought up two points based on evidence. As a result, for these three categories, the figures represent the number of such points brought up in the sample and does not represent the number of cases where such points were brought up.

The question of search and seizure was brought up in 33 of the 187 cases, 20 of which were filed by the state. When the state appealed on this issue, it usually involved the court's granting of a defendant's motion to suppress

evidence.

In 33 appeals, the defendant questioned whether their conviction was supported by the evidence. In 31 appeals, the appellant questioned the propriety of including or excluding a particular jury instruction.

Other issues involving evidence include the use of hearsay evidence, the use of evidence obtained under hypnosis, inadmissible testimony, credibility of witness, use of line-up photos, and wiretaps. Issues involving evidence were raised 41 times in the 187 cases.

Questions involving the law were raised 34 times. These issues included questions of constitutionality and vagueness. Other questions involved the proper use of conspiracy, repeat offender, and mandatory sentencing laws. Prosecution under the wrong statute was another issue.

TABLE 6
MAJOR POINTS UNDER APPEAL

Point	State	Defendant[a]	Total
Search & Seizure	20	13	33
Invasion of Privacy	3	5	8
Due Process	0	8	8
Speedy Trial	2	13	15
Right to Confrontation	0	3	3
Other Constitutional Issues[b]	1	7	8
Evidence[c]	4	37	41
Laws[d]	2	32	34
Trial Court Error	5	10	15
Ineffective Counsel	0	17	17
Police Misconduct	2	6	8
Prosecutor Misconduct	0	7	7
No Probable Cause for Arrest	7	10	17
Conviction not Supported by Evidence	0	33	33
Jury Instruction	1	30	31
Harsh Sentence	0	5	5
Post Conviction Relief	0	4	4
Accuracy of Testing Equipment[e]	4	4	8

Notes:

[a]Juvenile defendant appellants have been included in the defendant category.

[b]Combined category. Includes constitutional issues not elsewhere classified, such as freedom of religion and equal rights under the law.

[c]Combined category. Includes issues such as hearsay evidence, inadmissible testimony, testimony under hypnotism, and wiretaps.

[d]Combined category. Includes issues such as the constitutionality of a law, conspiracy, repeat offender, mandatory sentencing, and prosecution under the wrong statute.

[e]Includes equipment such as breathalyzers and radar guns.

TIME LAPSES

Table 7 shows the time elapsed between filing of the notice of appeal (NOA) and docketing, and between docketing and decision. The majority of the 187 cases were docketed within 180 days of the filing of the notice of appeal. Although the rules stipulate 40 days, extensions of the time to docket are allowed. Once docketed, approximately 60 percent were decided within one year.

The average length of time between notice of appeal and docketing for the 180 cases where the time elapsed was known, was 102 days. The average length of time between docketing and decision was 355 days. The average docketing time was less when the state filed the appeal, 76 days.

Overall, the average length of time between notice of appeal and decision for cases decided on merit was 457 days.

TABLE 7
TIME LAPSES (IN DAYS)

	Number	Percent[a]
NOA to Docket:		
0 - 30	26	13.9
31 - 60	28	15.0
61 - 180	104	55.6
181 - 365	18	9.6
Over 365	4	2.1
Unknown	7	3.7
TOTAL	187	99.9
Docket to Decision:		
61 - 180	2	1.1
181 - 365	107	57.2
Over 365	78	41.7
TOTAL	187	100.0

Note: [a]Percentages may not add to 100.0 because of rounding.

DECISIONS

Overall, the chance of winning an appeal is slight. Table 8 shows that in approximately three out of four cases, the appellate court ruling affirmed in total the lower court ruling or action. Table 9 shows that in terms of appellants, the state is more likely than the defendant to get at least part of a decision in its favor. The difference is statistically significant ($X^2 = 9.980$ $P < 0.01$).

This may be expected for two reasons. First, the Anders rule affects the statistics. In Anders v. California, 386 U.S. 738, 87 S.Ct. 2094, 18 L.Ed.2d 493 (1967), the U.S. Supreme Court stated that a state appellate court is severely limited in its power to grant a motion by defense counsel to withdraw on the ground that the appeal is frivolous. The Anders ruling allows the possibility of withdrawal only upon filing of an "Anders brief." In the Anders brief, the defense counsel must prove that there are no arguable issues. However, in Hawaii, the appellate courts will not consider an Anders brief, believing that it is essentially impossible to prove that there are no arguable issues. A court-appointed attorney is required to file an opening brief, even though the attorney may believe that the appeal has no real chance of success. Furthermore, the court-appointed counsel is obligated to file a notice of appeal and take the necessary steps to prosecute the appeal unless the defendant clearly communicates that he has knowingly and voluntarily waived his right to appeal.[26] In other words, the convicted indigent criminal defendant has a right to take an appeal even though its chance of success is very low. Because of cases like these, the overall reversal percentage for defendant-appellants is lowered.

Second, the appellate process is not a retrial of trial issues, but a review of the trial court's handling of the case for prejudicial errors. Since trials are

generally time consuming and expensive, it is up to the defendant to be sure that all issues are raised and addressed at the trial level. The appellate courts may be reluctant to overturn convictions unless it can be demonstrated that serious errors occurred at trial.

TABLE 8
APPELLATE COURT DECISIONS

Decision	Appellant		Total	Percent[b]
	State	Defendant[a]		
Affirmed	19	116	135	72.2
Reversed	8	9	17	9.1
Affirmed in part/ Reversed in part	1	3	4	2.1
Remanded	2	3	5	2.7
Affirmed in part/ Remanded	1	3	4	2.1
Reversed in part/ Remanded	6	15	21	11.2
Affirmed in part/ Reversed in part/ Remanded	0	1	1	0.5
TOTAL	37	150	187	99.9

Notes:
[a]Juvenile defendant appellants are included in the defendant category.
[b]Percentages may not add to 100.0 because of rounding.

TABLE 9
LIKELIHOOD OF WINNING APPEAL

Decision	State	Defendant[a]	Total
Affirmed	19	116	135
Other	18	34	52
TOTAL	37	150	187

Note: [a]Juvenile defendant appellants are included in the defendant category.

For cases where search and seizure was an issue, the lower court ruling was overturned in 14 out of 33 cases. Table 10 shows the results of such appeals.

TABLE 10
SEARCH AND SEIZURE CASE DECISIONS

Appellant	Affirmed	Reversed	Decision Aff/Rev	Rev/Rem	Total
State	13	3	1	3	20
Defendant	6	3	0	4	13
TOTAL	19	6	1	7	33

OPINIONS

The majority of the decisions were by memorandum opinion which, as a general rule, cannot be cited in any other action or proceeding. Only 36 of 187 decisions were by published opinion. The vast majority of decisions were unanimous. Of 187 decisions, only 4 were accompanied by dissenting opinions.

TABLE 11
OPINIONS

	Number	Percent
Method:		
Published Opinion	36	19.3
Memorandum Opinion	151	80.7
TOTAL	187	100.0
Dissent:		
Dissenting Opinion	4	2.1
No Dissenting Opinion	183	97.9
TOTAL	187	100.0

Opinions dealt with various issues including search and seizure, road blocks, police sting operations, and jury trials. The following section presents a few of the opinions rendered in the cases in this study.

As listed in the section on reasons for appeal, one of the most frequent issues was the propriety of a search and seizure. Most of the search and seizure cases involved warrantless searches. In State v. Mahone, 67 Haw. 644, 701 P.2d 171 (1985) for example, a third party, the tenant of a studio apartment, consented to a search of the entire apartment, which the defendants had occupied as overnight quests. During the search, the police found incriminating evidence in a bag in one of the rooms. The defendants appealed, claiming the search was illegal. The appellate court ruled that the search and seizure was legal because the third party had full access to, authority over, and a substantial interest in every part of the apartment. While that in itself accorded the party the right to consent to the search of general areas jointly and commonly used by the party and the defendants, it did not validate a search of a specific item, the bag. However, since the defendants in this case denied ownership of the

bag, they abandoned their 4th Amendment protection.

In State v. Tanaka, 67 Haw. 658, 701 P.2d 1274 (1985), the police searched the defendant's trash and found gambling records. The defendant appealed. The court ruled that a warrantless search is constitutional if it involves property in which the defendant has no legitimate expectation of privacy. In regards to trash, however, people reasonably believe that the police would not indiscriminately rummage through their trash to discover personal effects. In the absence of exigent circumstances, the police should have obtained a search warrant based on probable cause.

The expectation of privacy arose in another case. In State v. Barnett, Supreme Court No. 9934, __Haw.__, 703 P.2d 680 (1985), the police walked along a path from which they saw marijuana in the defendants' yard. The marijuana was seized. The defendants appealed the lower court's refusal to suppress the evidence. The appellate court ruled that the defendants had a reasonable expectation of privacy, and that the record did not show that consent to walk the path was given. When exigent circumstances are absent, a search warrant must be obtained. The test to be applied in determining the legitimacy of the defendants' expectation of privacy are:

(1) Whether the defendant exhibited an actual expectation of privacy;
(2) Whether the expectation of privacy was one which society would deem reasonable.

In State v. Wong, Supreme Court No. 9785, __Haw.__, 708 P.2d 825 (1985), the use of binoculars was questioned. The police used binoculars to observe the activities of a defendant in a parked car in a parking lot open to the public. The activities included holding clear plastic bags which appeared to contain marijuana up to the light, replacing the plastic bags in a paper bag, and placing

the paper bag behind the seat. The police seized the paper bag and after searching the vehicle, seized a handbag in which, after further searching, drugs were found. The defendant claimed that the use of binoculars was an unreasonable search and seizure, and that it violated the defendant's expectation of privacy. The court ruled that the use of the binoculars was legal since the defendant was parked in a parking lot open to the general public and that the seizure of the paper bag was permissible. It also ruled that the seizure of the handbag for safekeeping purposes was legal. However, the search of the handbag and subsequent seizure of drugs was unreasonable and a warrant should have been obtained.

On points of contention other than search and seizure, one case involved the use of hypnosis. In State v. Moreno, Supreme Court No. 9143, __Haw.__, 709 P.2d 103 (1985), the court ruled that a hypnotized witness may not testify as to facts which were not remembered prior to hypnosis.

Another case, State v. Tookes, Supreme Court No. 9279, __Haw.__, 699 P.2d 983 (1985), questioned police conduct. This case concerned the use of a civilian agent by police, to secure convictions for prostitution by actually engaging in sexual activity with the defendants. Although the court itself questioned whether the police practice was ethical, it was unwilling to rule that the acts breached decency of a constitutional magnitude.

Police interrogation was an issue in another case. In State v. Uganiza, Supreme Court No. 9503, __Haw.__, 702 P.2d 1352 (1985), the court ruled that if an individual indicates at any time that he wishes to remain silent, the interrogation must cease. Any statements made during continued interrogation are inadmissible at trial. The court made the following points:

1. Before the State may use statements stemming from custodial interrogation, it must first demonstrate the use of

procedural safeguards effective to secure the privilege against self-incrimination.

2. If an individual indicates, in any manner, at any time prior to or during interrogation that he wished to remain silent, the interrogation must cease and statements made during continued interrogation are inadmissible at trial.
3. In determining whether a police officer's words or conduct constituted interrogation, the test is whether the officer should have known that his words or actions were reasonably likely to evoke an incriminating response from the defendant.
4. The right to remain silent does not create a per se proscription of infinite duration upon any further police-initiated questioning but where police immediately engage in interrogation upon learning that defendant wished to remain silent, his constitutional right has been violated.

One case illustrates the occurrence of a harmless error. State v. Rodriques, Supreme Court No. 9604, __Haw.__, 706 P.2d 1293 (1985), concerned HRS §706-606.5. In this case, the lower court counted three prior convictions in sentencing the defendant to a mandatory ten year prison term as a repeat offender. The appellate court ruled that for purposes of HRS §706-606.5, a conviction refers to judgment rather than a finding of guilt, and therefore only two prior convictions should have been counted. However, since the sentence would still have been the same with two prior convictions, the supreme court affirmed the lower court's decision.

Ineffective assistance of counsel was another issue. In State v. DeGuzman, Supreme Court No. 9676, __Haw.__, 701 P.2d 1287 (1985), the defendant and defense counsel disagreed on the strategy of the trial and the counsel requested, but was not allowed to withdraw. The counsel thereafter failed to call any

defense witnesses, and the defendant was convicted. The defendant claimed ineffective assistance of counsel. The appellate court agreed. The court outlined the duties of counsel.

1. A lawyer has a duty to represent his client zealously but within the bounds of the law.
2. A lawyer presenting a case cannot knowingly participate in the introduction of perjured testimony.
3. A lawyer's belief that a witness intends to offer false testimony must be based upon independent investigation of the evidence or upon distinct statements by his client or the witness which support that belief. Mere inconsistency in client's story is insufficient in and of itself to support the conclusion that the witness will offer false testimony.
4. A refusal by an attorney to call witnesses prima facie violates the duty of zealous representation and can be the basis for a holding of ineffective assistance of counsel.
5. Where a defendant's counsel refuses to put on evidence and it appears that there is a disagreement on the matter between defendant and his counsel, court or counsel should make it a matter of record that defendant's rights to call witnesses and to testify has been explained to him.
6. Where the court refuses to allow counsel for a criminal defendant to withdraw and counsel believes that stating with reasons for his withdrawal would prejudice his client's case, counsel should make a record of the reasons before a reporter in the absence of the judge, the jury and opposing counsel.

Driving while intoxicated arose several times. In State v. O'Brien, Supreme Court No. 9728, __Haw.__ , 704 P.2d 883 (1985), the 6th Amendment right to a speedy and public jury trial was the issue. The lower court denied trial by jury to a defendant charged with DUI. The appellate court ruled that the 6th Amendment to the Constitution allows trial by jury for defendants charged with

serious offenses. DUI is a constitutionally serious offense, therefore the defendant has a right to jury trial. In State v. Nakahara, Supreme Court No. 10241, __Haw. App.__, 704 P.2d 927 (1985), the Intermediate Court of Appeals ruled that breath test results are not admissible to prove a DUI offense if the police fail to strictly follow Department of Health (DOH) rules and the police officer administering the test had less than eight hours training and was qualified as an operator of breath testing instruments under DOH rules.

In State v. Nagamine, Supreme Court No. 9555, the defendant-appellant was convicted of possessing an intoxicating liquor while a passenger in a motor vehicle. The arrest was the result of a stop at a police roadblock. The question on appeal was whether the roadblock was constitutionally permissible. The memorandum opinion in this case cited the U.S. Supreme Court case, Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). The U.S. Supreme Court held that a random stop of an automobile and detention of the driver for checks of driver's license and vehicle's registration were violative of the 4th amendment as unreasonable seizure. The holding however, did not preclude a state from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Citing this opinion, the Hawaii Supreme Court found in Nagamine, that the vehicle in which the appellant was riding was not stopped as a result of a random, discretionary decision by the police, but that it was stopped according to a definite and ordered plan, which eliminated random discretion on the part of the officers conducting the roadblocks. The case was affirmed.

A dissenting opinion voiced concern about such roadblocks. The dissenting justice was not satisfied that the stop in Nagamine was less intrusive than the random stop condemned in Prouse, or that it was free of discretionary control by

the officers manning the roadblocks. Furthermore, there was no reasonable basis for suspecting that the defendant has committed or is committing a crime. Article I, Section 7 of the State Constitution expressly protects people from unreasonable invasions of privacy.

The last example also shows that although the majority of the opinions are unanimous, there are dissenting opinions.

FURTHER APPEAL

Of the 23 cases decided by the ICA, 7 appellants applied for a writ of certiorari to the Hawaii Supreme Court. Of these, the supreme court accepted 2 cases; one was affirmed and the other was reversed in part. (See Table 12.)

Of the 164 cases decided by the Hawaii Supreme Court, only 2 appellants petitioned for further review by the U.S. Supreme Court. One application was denied, the other was pending at the time data collection for this study ended.

It should be noted that the U.S. Supreme Court has complete discretion to take or decline a case in most instances. The U.S. Supreme Court has had a long-standing practice of accepting very few cases on a petition for writ of certiorari. Moreover, in recent years, it has increasingly declined to take any but selected cases with potentially wide ranging impact.

TABLE 12
APPLICATION FOR WRIT OF CERTIORARI

Petition To:	Number	Accepted
Hawaii Supreme Court (From ICA)	7	2
U.S. Supreme Court (From Hawaii Supreme Court)	2	0[a]

Disposition of Accepted Cases:	Number
Hawaii Supreme Court Decisions:	
Affirmed	1
Affirmed in part/Reversed in part	1

Note: [a]One case was pending.

DEFENDANT AND LOWER COURT INFORMATION

This section presents information on the defendant and on the lower court where the appeal originated.[27] The 258 appeal cases involved 289 defendants. Since eight defendants were involved in two appeals, there was a total of 281 individuals involved in the appeals. The 258 appeals involved 260 different court cases.[28] Of the 260 lower court cases, 5 resulted in at least two different appeals.

Table 13 presents background information on the 281 individual defendants. The majority were white, male, and under 30 years of age. Approximately half of the defendants were age 29 or younger. Age was computed at the time of docketing.

TABLE 13
DEFENDANT PROFILE

Characteristic	Number	Percent[a]
Race:		
Hawaiian/Part-Hawaiian	54	19.2
White	98	34.9
Japanese	26	9.3
Chinese	9	3.2
Korean	4	1.4
Filipino	19	6.8
Polynesian	6	2.1
Black	17	6.0
Other	27	9.6
Unknown	21	7.5
TOTAL	281	100.0

Note: Note is at end of Table.

TABLE 13 (Cont.)
DEFENDANT PROFILE

Characteristic	Number	Percent[a]
Sex:		
Male	240	85.4
Female	39	13.9
Unknown	2	0.7
TOTAL	281	100.0
Age:		
Juvenile	4	1.4
18 to 20	13	4.6
21 to 25	69	24.6
26 to 30	53	18.9
31 to 35	42	14.9
36 to 40	37	13.2
41 to 45	17	6.0
46 to 50	8	2.8
Over 50	18	6.4
Unknown	21	7.1
TOTAL	281	99.9

Note:
[a]Percentages may not add to 100.0 because of rounding.

Table 14 shows that the majority of the appeals involved trial court cases from the first judicial circuit (84.2 percent.) This is to be expected as 77.5 percent of the population of the state live in the City and County of Honolulu.[29] Table 14 also shows that the majority of the appeals involved cases from the circuit courts (74.6 percent.) District courts accounted for 23.1 percent and family court for 2.3 percent of the cases. No distinction was made between district family court and circuit family court.

TABLE 14
TRIAL COURT

Circuit	District	Court Circuit	Family	Total	Percent
First	51	162	6	219	84.2
Second	5	15	0	20	7.7
Third	4	11	0	15	5.8
Fifth	0	6	0	6	2.3
Total	60	194	6	260	100.0
Percent	23.1	74.6	2.3	100.0	

Table 15 presents data on the defendant's most serious trial charge. A charge was counted for each defendant in an appeal case. If a defendant was involved in more than one appeal, then a charge was recorded for each case in which he was involved. No charge was recorded where the defendant requested post-conviction relief. This also applies to Table 16.

The most serious charge was selected on the basis of charge severity and a predetermined hierarchy.[30] For example, a class A felony would be chosen over a class B felony. A class B felony would in turn be chosen over a class C felony and so forth. Within a severity category violent or personal crimes were selected over property crimes.

The most frequently recorded charges included drug offenses, driving under the influence of liquor (DUI), murder, and robbery. These four categories accounted for almost half (45.3 percent) of all the charges.

It should be emphasized that since Table 15 looks only at the most serious charge, the number of DUI or drug charges is actually higher than it appears. There were a total of 30 defendants with at least one DUI charge and 55 defendants with at least one drug charge.

Felonies constituted the majority of the most serious charges, accounting

for almost 3 in 4 charges. (See Table 16.)

TABLE 15
MOST SERIOUS CHARGE

Charge Group	Number	Percent[a]
Murder	29	10.0
Rape Offenses	18	6.2
Other Sex Offenses	4	1.4
Robbery Offenses	27	9.3
Assault & Related Offenses[b]	14	4.8
Burglary Offenses	20	6.9
Theft Offenses[c]	24	8.3
Motor Vehicle Theft	3	1.0
Drug Offenses[d]	47	16.3
DUI	28	9.7
Weapons Offenses	10	3.5
Harassment/Disord. Conduct	7	2.4
Gambling	4	1.4
Prostitution	3	1.0
Escape	4	1.4
Trespass	7	2.4
Permit Violation	8	2.8
Traffic Offenses	8	2.8
Other Offenses	17	5.9
Unknown	1	0.3
No charge		
Post-Conviction Relief	6	2.1
TOTAL	289	99.9

Notes:

[a]Percentages may not add to 100.0 because of rounding.

[b]Includes reckless endangering and terroristic threatening.

[c]Includes stolen property.

[d]Includes HRS statutes 712-1241 through 712-1249 and 329-0042.

TABLE 16
TYPE OF CHARGE

Type[a]	Number	Percent[b]
Felonies (Total)	203	70.2
Class A	76	
Class B	43	
Class C	84	
Misdemeanors (Total)	79	27.3
Misdemeanor	47	
Petty Misdemeanor	15	
Violation	17	
Unknown	1	0.3
No Charge		
Post Conviction Relief	6	2.1
TOTAL	289	99.9

Notes:
[a]Where an offense could be classified in multiple categories, the higher classification was chosen.
[b]Percentages may not add to 100.0 because of rounding.

The 187 appeal cases decided on the merits involved 215 defendants including juveniles. Table 17 shows the time elapsed from the date of arrest of those defendants to the date of the appellate court decision. The average length of time between arrest and decision for cases where the arrest date was known was 866 days or a little more than 2 years. Most defendants were arrested in 1983.

Table 18 shows time elapsed from the date of the indictment or the date a complaint was filed to the date of the appellate court decision. The average length of time between those events was 873 days. The average length here is slightly longer than from arrest because many of the defendants were indicted, then arrested on the strength of a bench warrant.

Most defendants were indicted in 1983. Four cases were known to be still in progress when data collection ended. In 2 of the 4 cases, the defendants were arrested in 1982. Those cases were entering their fifth year without final adjudication.

TABLE 17
TIME FROM ARREST TO APPELLATE COURT DECISION
IN CASES DECIDED ON MERIT

Days	Defendants
181 to 365 (1 year)	2
366 to 730 (2 years)	74
731 to 1095 (3 years)	69
1096 to 1460 (4 years)	27
1461 to 1825 (5 years)	9
Over 1825	1
Unknown	33
TOTAL	215

TABLE 18
TIME FROM DATE OF INDICTMENT OR COMPLAINT
TO APPELLATE COURT DECISION
IN CASES DECIDED ON MERIT

Days	Defendants
181 to 365 (1 year)	1
366 to 730 (2 years)	62
731 to 1095 (3 years)	73
1096 to 1460 (4 years)	22
1461 to 1825 (5 years)	7
Over 1825	2
Unknown	48
TOTAL	215

OUTCOME

Table 19 shows what happens to defendants in appeal cases. It presents the appellate court decision together with the final lower court disposition for

cases decided on merit. It is broken down by appellant and the general issue being appealed. Table 19 also presents data on the defendants' criminal activities beginning from the time the appeal was docketed to the time data collection ended (See section on rearrests.)

Of the 285 adult defendants, 212 were involved in appeals decided on merit.[31] Of these, 170 were appellants and 42 were appellees. Of the 170 defendant-appellants, 14 had their convictions overturned. Two defendants were granted new trials and subsequently released when the state moved for nolle prosequi, and two defendants won the right to have evidence against them suppressed and were subsequently not convicted. Twelve defendant-appellants received new sentences. The majority of defendant-appellants, 125, had their conviction or sentence affirmed by the appellate court.

Of the 42 defendant-appellees, 10 were convicted following an appellate decision favorable to state. This included 8 defendants where the lower court order suppressing evidence was reversed and the defendants were subsequently convicted, and 2 defendants where the lower court order granting a new trial was overturned and conviction affirmed. In one case, although the suppression of evidence was affirmed, the defendant was later convicted on another charge.

REARRESTS

Of the 212 adult defendants involved in cases decided on merit, 19 were rearrested in the time period after the appeal was filed but before the appellate court decision was rendered and 22 were rearrested in the period after the decision but before the time data collection ended. The above figures include 8 defendants who were rearrested in both time periods. Overall, a total of 33 different defendants were rearrested at least once after the appeal was filed.

Of the 33 defendants rearrested, 11 were rearrested for the same or similar type of charge. Rearrests were most often for DUI, gambling, and prostitution.

Of 73 adults who were involved in cases not decided on merit, 12 were rearrested after the lower court judgment.

TABLE 19
OUTCOME OF APPEALS INVOLVING ADULT DEFENDANTS
DECIDED ON MERIT; REARREST STATISTICS

Appellant/ Appeal From	Decision[a]/ Outcome	Number of Defendants	Rearrested[b] WOA	ADC	SIM
Defendant Appeals:					
Conviction/Sentence	Affirmed	125	15	6	5
Conviction	Reversed				
	Dismissed[c]	14	0	2	0
	New trial granted				
	Conviction	6[d]	0	0	0
	Nolle pros	2	0	0	0
	Pending	1	0	1	0
	Not Available	4	0	3	2
Sentence	Reversed				
	New Sentence	12	0	1	0
Denial of Motion to Suppress evidence	Reversed				
	Dismissed	2	0	0	0
	Not Available	2	1	1	1
Other	Reversed	2	0	0	0
SUBTOTAL		170	16	14	8

Notes: Notes are at the end of the Table.

TABLE 19 (Cont.)
OUTCOME OF APPEALS INVOLVING ADULT DEFENDANTS
DECIDED ON MERIT; REARREST STATISTICS

Appellant/ Appeal From	Decision[a]/ Outcome	Number of Defendants	Rearrested[b] WOA	ADC	SIM
State Appeals:					
Granting of New Trial	Reversed				
	Conviction	2	0	0	0
	Affirmed				
	Dismissed	1	0	0	0
	Pending	1	0	0	0
Granting of Motion to Suppress Evidence, Testimony or Test Results	Reversed				
	Conviction	8	1	3	2
	Acquitted	2	0	0	0
	Not Available	5	0	0	0
	Affirmed				
	Nolle pros	11	2	2	1
	Dismissed	1	0	0	0
	Conviction	1	0	0	0
	Not available	4	0	0	0
Granting of Motion to Dismiss	Reversed				
	Dismissed[e]	2	0	0	0
	Not Available	1	0	1	0
	Affirmed	2	0	1	0
Denied of Other Motions	Reversed				
	New Sentence	1	0	1	0
SUBTOTAL		42	3	8	3
GRAND TOTAL		212	19	22	11

Notes:

[a]Reversed includes reversed in part. Outcome refers to the lower court's final disposition.

[b]Rearrests include arrests for contempt of court.

WOA - Rearrested while on appeal.

ADC - Rearrested after appellate court decision.

SIM - Rearrested for an offense similar to the original offense.

WOA and ADC groups are not mutually exclusive. A defendant may have been arrested both while on appeal and after the appellate court decision.

[c]The cases involving the defendants were remanded to the lower court for dismissal.

[d]Includes 2 cases where after a conviction was obtained in the new trial, further appeals were made. Those cases are still pending.

[e]The cases were eventually dismissed again in the lower court.

There was no statistically significant difference between the rearrest rate of defendants in cases decided on merit versus defendants in cases not decided on merit ($X^2=0.031$ $p>0.05$.) In other words, the appeal seemed to have no effect on the rearrest rate of defendants.

There was also no significant difference between the rearrest rate of defendants in cases where the state received a favorable ruling versus in cases where the defendant received a favorable ruling ($X^2=0.027$ $p>0.05$.)

CONCLUSION

The majority of the appeals, 78 percent, were filed by the defendant. The defendant is typically male, white, under 30 years of age, and involved in a felony. In terms of offenses, drug offenses, DUI, murder, and robbery accounted for almost half of the offenses. By their nature, these offenses are very serious or involve search and seizure or both.

From 1982 to 1986, arrests for both drug offenses and DUI have, in general, increased with a peak occurring in 1985. Other factors held constant, this alone may be enough to predict that the number of appeals will continue to increase.

Of the adult defendants, 212 involved appeal cases decided on merit, 170 as appellants and 42 as appellees. The remaining 73 adult defendants involved appeal cases that were withdrawn, dismissed, or resolved by stipulation. Those cases were not examined in detail.

The defendant usually appeals a conviction or sentence arguing the improper admission of evidence, error in using a law, error in giving instructions to the jury, unsupported conviction, or ineffective counsel. However, the defendant's chance of winning an appeal are slight. For cases decided on merit, the lower court's decision was reversed, reversed in part, or the case was remanded back to the lower court, in only 34 out of 150 cases appealed by the defendant, and a total of only 18 out of 170 adult defendants involved in those cases were released either as a direct result of the appellate court decision or as an end result of further trial court proceedings.

The state appeals far less often than the defendant because it is restricted in terms of what it can appeal. However, the state has a higher likelihood of

winning an appeal. The state most often appeals from orders granting a motion to suppress evidence (including testimony, test results, etc.) A reversal of such orders played a role in the conviction of at least eight defendants in this study.

Overall the rearrest rate of defendants involved in appeals is relatively low. Of the 284 adult defendants studied in this report, 45 or approximately 16 percent were rearrested. This included arrests for contempt of court. The rearrest rate is low because most of the defendants have been convicted and incarcerated, and most lose their appeal. Of the 18 defendants who appealed, won, and were eventually released, only 2 were rearrested.

The appeals process has an impact on the criminal justice system in terms of time and justice. With respect to time, the appeals process extended a criminal case by an average of 457 days or 1 year, 3 months. Four cases were still pending and the final outcome of 20 cases had not been ascertained by the cutoff date for data collection. With respect to justice, 18 defendants who had been convicted or may have been convicted and possibly incarcerated were released, and 10 defendants who may have been freed, were convicted.

As the number of criminal appeals grow, the impact of criminal appeals on the criminal justice system can also be expected to grow.

NOTES

1. Bureau of Justice Statistics, The Growth of Appeals, Bulletin, U.S. Department of Justice, February 1985.

2. Caution should be applied in interpreting this figure. Small actual number increases may lead to large percentage increases when dealing with relatively small numbers.

3. The Judiciary, State of Hawaii, Annual Report Statistical Supplements for Fiscal Years 81-82 through 85-86.

4. Hawaii Criminal Justice Data Center, Crime in Hawaii 1985, Department of the Attorney General, May 1986.

5. The Judiciary, State of Hawaii, Annual Report, Reports for July 1, 1981 to June 30, 1982 through July 1, 1985 to June 30, 1986.

6. State Intake Service Centers, Hawaii's Felons: A Statistical Report on Hawaii's Prison Population, Report No. 85-001, Department of Social Services and Housing, August 1985.

7. Only court records from the First Circuit were examined. Research was conducted at Legal Documents.

8. Hawaii Rules of Appellate Procedure (HRAP) - Rule 3(b).

9. Rule 40 matters are not actually considered appeals, but are the equivalent of a habeas corpus. The rule 40 hearing occurs at the trial level.

10. Hawaii Revised Statutes (HRS) - §602-10 (1985).

11. HRS - §602-5 (1985) as amended by Act 199, Session Laws of Hawaii 1986.

12. HRS - §602-11 (1985).

13. HRS - §601-2 (1985).

14. HRS - §641-11 (1985) case notes.

15. The section on bail reflects the most recent changes in the laws governing bail. Bail statistics were not collected for this report. It should be noted however, that bail, if allowed for the defendants in this study, would be under pre-1987 laws.

16. HRAP - Rule 9(c).

17. Hawaii Institute for Continuing Legal Education, Hawaii Appellate Handbook, Section 11.9.1, page 68, 1985

18. Section 641-13 as presented here is from the Hawaii Revised Statutes, 1985 Replacement. Act 84, Session Laws of Hawaii 1987 changes the word "information" in §641-13(1) to "complaint." This was done to bring the statute on appeals in criminal cases into conformity with current practices.

19. Hawaii State Constitution, Article I Section 10; U.S. Constitution, Amendment 5.

20. General source of information for this section:
Hawaii Institute for Continuing Legal Education, Hawaii Appellate Handbook, 1985.

21. HRAP - Rule 4.

22. HRAP - Rule 10(a).

23. Hawaii Institute for Continuing Legal Education, Hawaii Appellate Handbook, Part Seven, Section 27 - Flowcharts, 1985.

24. Papers presented for filing must contain a proof of service. Proof of service includes the date and manner of service, and the name of the person the papers were given.

25. HRS section 602-6 list questions that the assignment judge may consider when deciding which court to assign a case.

26. Hawaii Institute for Continuing Legal Education, Hawaii Appellate Handbook, Section 8.6, pp 45-46, 1985.

27. The terms "lower court" and "trial court" are used interchangeably in this report.

28. The difference between the number of appeals and the number of lower court cases reflect the effect of consolidation of appeal cases and multiple appeals from the same lower court case.

29. Hawaii Criminal Justice Data Center, Crime in Hawaii 1986, page 46.

30. The hierarchy was based on the one used in the Uniform Crime Reporting program and on ones used in previous studies.

31. Of the 4 juvenile-appellants, 3 were involved in cases not dropped. The rearrest status of these juveniles are unknown.