

November 9, 2017

MEMO TO:

Chair Yuki Lei Sugimura and Committee Members,
Policy, Economic Development, and Agriculture Committee

F R O M:

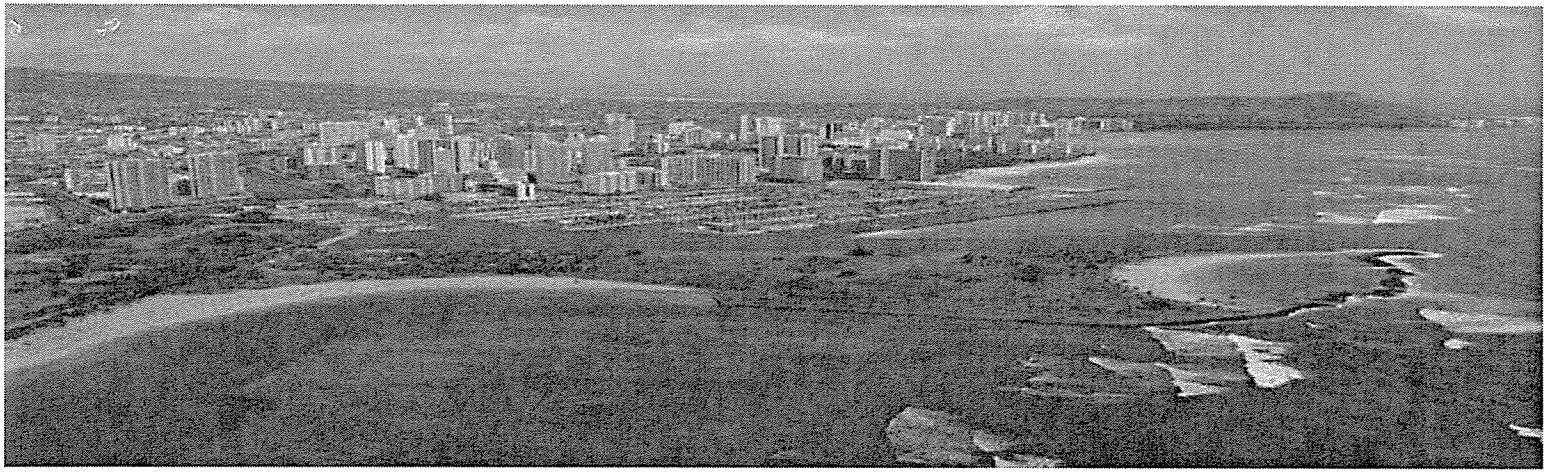
Council Member Elle Cochran, *ec*
Policy, Economic Development, and Agriculture Committee Member

**SUBJECT: TRANSMITTAL OF INFORMATIONAL DOCUMENTS RELATING
TO MAUI COUNTY LEGISLATIVE PACKAGE (2018 MAUI COUNTY
LEGISLATIVE PACKAGE) (PEA-4(1))**

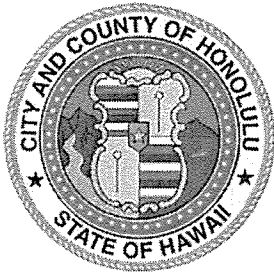
The attached informational documents pertain to Item PEA-4(1) on your
Committee's agenda.

Attachments

RECEIVED AT PEA MEETING ON 11/13/17



Office of the City Auditor



**City and County of
Honolulu
State of Hawai`i**

**Report to the Mayor
and the
City Council of Honolulu**

Audit of How Domestic Violence Cases Are Handled, Processed, and Resolved

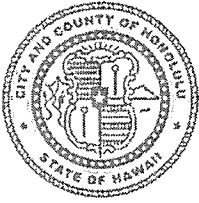
**Report No. 17-02
June 2017**

Audit of How Domestic Violence Cases Are Handled, Processed, and Resolved

A Report to the
Mayor
and the
City Council
of Honolulu

Submitted by

THE CITY AUDITOR
CITY AND COUNTY
OF HONOLULU
STATE OF HAWAII



**OFFICE OF THE CITY AUDITOR
CITY AND COUNTY OF HONOLULU**

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EDWIN S.W. YOUNG
CITY AUDITOR

June 13, 2017

The Honorable Ron Menor, Chair
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawai'i 96813

Dear Chair Menor and Councilmembers:

A copy of our report, *Audit of How Domestic Violence Cases Are Handled, Processed, and Resolved* is attached. This audit was conducted pursuant to City Council Resolution 16-1, CD1 which requested the City Auditor to conduct a performance audit of how *domestic violence cases are handled, processed, and resolved by the City, including the enforcement of temporary restraining orders*. The resolution requested that the city auditor determine whether domestic violence cases are handled, processed, and investigated in an economical, efficient, and effective manner.

Background

Domestic violence affects people of all socioeconomic backgrounds and education levels. It can occur in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating. The National District Attorneys Association (NDAA), which represents America's local prosecutors, states that domestic violence is a serious and pervasive criminal and public health issue with devastating consequences for both the victims and society.

The City Council's Domestic Violence Response Task Force report in December 2015 itemized several challenges and recommendations related to domestic violence in Honolulu. The challenges included the need to develop a single data collection system; address prosecution barriers; and to systemically address the domestic violence problem. The task force recommended domestic violence training for judges and other professionals and to maximizing domestic violence data collection and sharing.

In 2014, the state legislature amended HRS Section 709-906 to classify physical abuse in the presence of a child under 14 years of age as a felony. In Honolulu, three primary governmental entities are involved in implementing and enforcing the domestic violence laws, the Honolulu Police Department (HPD), Department of the Prosecuting Attorney (PAT), and the State of Hawai'i district and circuit courts under the auspices of the family court system.

The Honorable Ron Menor, Chair
and Members
June 13, 2017
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Audit Results

Domestic Violence is a generic term that includes a multitude of potential felonies and misdemeanors. The process of investigating and prosecuting such cases is complex, and the final charges may change over the lifecycle of developing a case and bringing the defendant to trial.

In 2014, the Hawai'i Revised Statutes was amended to classify abuse before a child under 14 years old as a felony. Although intended to deter domestic abuse cases, the amendment created additional work for HPD and PAT and did not result in significantly reducing domestic violence for several reasons: (1) the law was difficult to prosecute because victims were unwilling to testify or were reluctant to appear in court; and (2) the HPD and PAT lifecycle for domestic violence incidents can result in reclassifications and decisions that affect the case.

HPD and PAT have a plethora of data and information systems that allow them to track, monitor, and manage domestic violence cases. The entities, however, lack common definitions, processes, procedures, and reports that could facilitate data sharing and streamline monitoring and processing of domestic violence cases. The lack of formal PAT administrative processes and procedures, reliance on informal guides, and the judicial and trial processes compound the difficulties of successfully prosecuting domestic violence cases.

We would like to express our appreciation for the cooperation and assistance provided us by the managers and staffs of the Honolulu Police Department, the Department of the Prosecuting Attorney, and the many others who assisted us during the audit. We are available to meet with you and your staff to discuss the audit report and to provide more information. If you have any questions regarding the audit report, please call me at 768-3134.

Mahalo,



Edwin S.W. Young
City Auditor

c:

Kirk Caldwell, Mayor
Roy Amemiya, Jr. Managing Director
Keith Kaneshiro, Prosecuting Attorney, Department of the Prosecuting Attorney
Cary Okimoto, Acting Chief of Police, Honolulu Police Department
Nelson Koyanagi, Jr., Director, Department of Budget and Fiscal Services

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Chapter 1

Introduction and Background

Domestic violence is a designation given to certain crimes where the victim and suspect share a specific relationship of:

- Current or prior spouse/ reciprocal beneficiary
- Current or prior dating
- Current or prior cohabitation
- Children in common
- Parents, children, or blood relatives

Background

This audit was conducted pursuant to City Council Resolution City Council Resolution 16-1, CD1, Requesting the City Auditor to conduct a performance audit of how domestic violence cases are handled, processed, and resolved by the City including the enforcement of temporary restraining orders. The audit objective was to determine whether domestic violence cases are handled, processed, and investigated in an economical, efficient, and effective manner.

According to the Department of Justice's Office of Violence Against Women (OVW), domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, or gender. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating.

Domestic violence not only affects those who are abused, but also has a substantial effect on family members, friends, coworkers, other witnesses, and the community at large. Children, who grow up witnessing domestic violence, are among those seriously affected by this crime. Frequent exposure to violence in the home not only predisposes children to numerous social and physical problems, but also teaches them that violence is a normal way of life, therefore, increasing their risk of becoming society's next generation of victims and abusers.

OVW states domestic violence is a widespread community problem that compromises the safety of thousands of families and can have tragic, destructive, and sometimes fatal consequences. Between 2008 and 2012, the Hawai'i Department of the Attorney General reported 38.7% of murders committed in the state were domestic violence related and made up a significant portion of violent crime.

The National District Attorneys Association (NDAA), representing America's local prosecutors, reaffirmed that domestic violence is a serious and pervasive criminal and public health issue with devastating consequences for both the victims and society. The NDAA called for aggressive prosecution of all domestic violence

cases whether they were charged as misdemeanors or felonies to prevent the escalation of violence.

The city council's Domestic Violence Response Task Force report of December 31, 2015 itemized several challenges and recommendations related to domestic violence cases. The challenges included the need to develop a single data collection system; address prosecution barriers; and the need to systemically address the problem. The task force recommended maximizing the collection and sharing of domestic violence data.

In 2014, the state legislature amended Hawai'i Revised Statutes (HRS) Section 709-906, Abuse of family or household members, to classify physical abuse in the presence of a child under 14 years of age as a Class C felony.¹

¹ Per Hawai'i Revised Statutes (HRS) Title 37. Hawai'i Penal Code, 706-606.4, "in the presence of a minor" means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense. A Class C felony is the least serious of three felony classes (Class A, B, and C). A crime declared to be a felony, without specification of class, is a Class C felony and is punishable by up to 5 years imprisonment and a fine of up to \$10,000.

Duties, Roles, and Responsibilities

In Honolulu, three governmental entities are principally involved in implementing the domestic violence laws.

The Honolulu Police Department (HPD) responds to domestic violence incidents, investigates and classifies incident reports, and refers² felonies and misdemeanor cases to the Department of the Prosecuting Attorney (PAT). In FY 2016, the HPD had 2,694 full time equivalents and a budget of \$262,319,567. The HPD Investigative Bureau had 458 full time equivalents, a budget of \$38,318,486, and four divisions. One of the Investigative Bureau divisions is the Criminal Investigative Division (CID) which investigates cases involving domestic violence and child abuse, as well as murder, robbery, sexual assault, and other crimes. CID has 14 officers and detectives to investigate felonies, misdemeanors, and other family violence cases assigned to the division.

The Department of the Prosecuting Attorney (PAT). In FY 2016, PAT had 303 full time equivalents; a budget of \$21,598,570; and represented the people in criminal proceedings in district, circuit, and family courts. The Prosecuting Division is one of three PAT divisions; has 225 full time equivalents; a budget of \$13.01 million; and investigates and prosecutes violations of statutes, ordinances, and city regulations. According to PAT, within the Prosecuting Division, there are currently 6 attorneys assigned to domestic violence felony cases and 4 attorneys assigned to misdemeanor domestic violence cases.

Hawai'i Judicial System. The independent State of Hawai'i judicial system consists of the state Supreme Court, the Intermediate Court of Appeals, Circuit Courts, District Courts, Family Courts, and four other types of courts. Domestic violence cases are tried under the Family Court system which includes family district courts for misdemeanor cases and family circuit courts for felony cases. The family circuit courts use juries to try felony domestic violence cases. Misdemeanor domestic violence defendants may be tried without a jury or, upon request, by jury. Most misdemeanor domestic violence cases are tried in one of three court rooms in downtown Honolulu.³

² The term "confers" has different meanings for HPD and PAT. When HPD "confers" a case to PAT, HPD is referring the case to the Prosecuting Attorney. When PAT "confers" a case, PAT is filing charges against the defendant. To avoid confusion, the report will use the term, "refer".

³ The Juvenile Offender division within the Prosecuting Division prosecutes juvenile offender cases in family courts located in Kapolei, HI.

Domestic Violence Workflow

Process Overview for Two Primary Types of DV Crimes:

- 1) Misdemeanors - less severe
- 2) Felonies - more severe

When a domestic violence call is received by HPD, a patrol officer from one of eight police districts is sent to the scene of the incident. The responding patrol officer will classify the incident, prepare a report, determine if the incident is a misdemeanor or felony, and determine if the call is a domestic violence incident.

After the responding patrol officer's report is filed, it is reviewed and approved by a supervisor who forwards the incident report to a central records division. The report is reviewed by a PAT attorney^{4,5}. If the incident is a felony, the incident is forwarded to the HPD Criminal Investigative Division (CID) for investigation.⁶

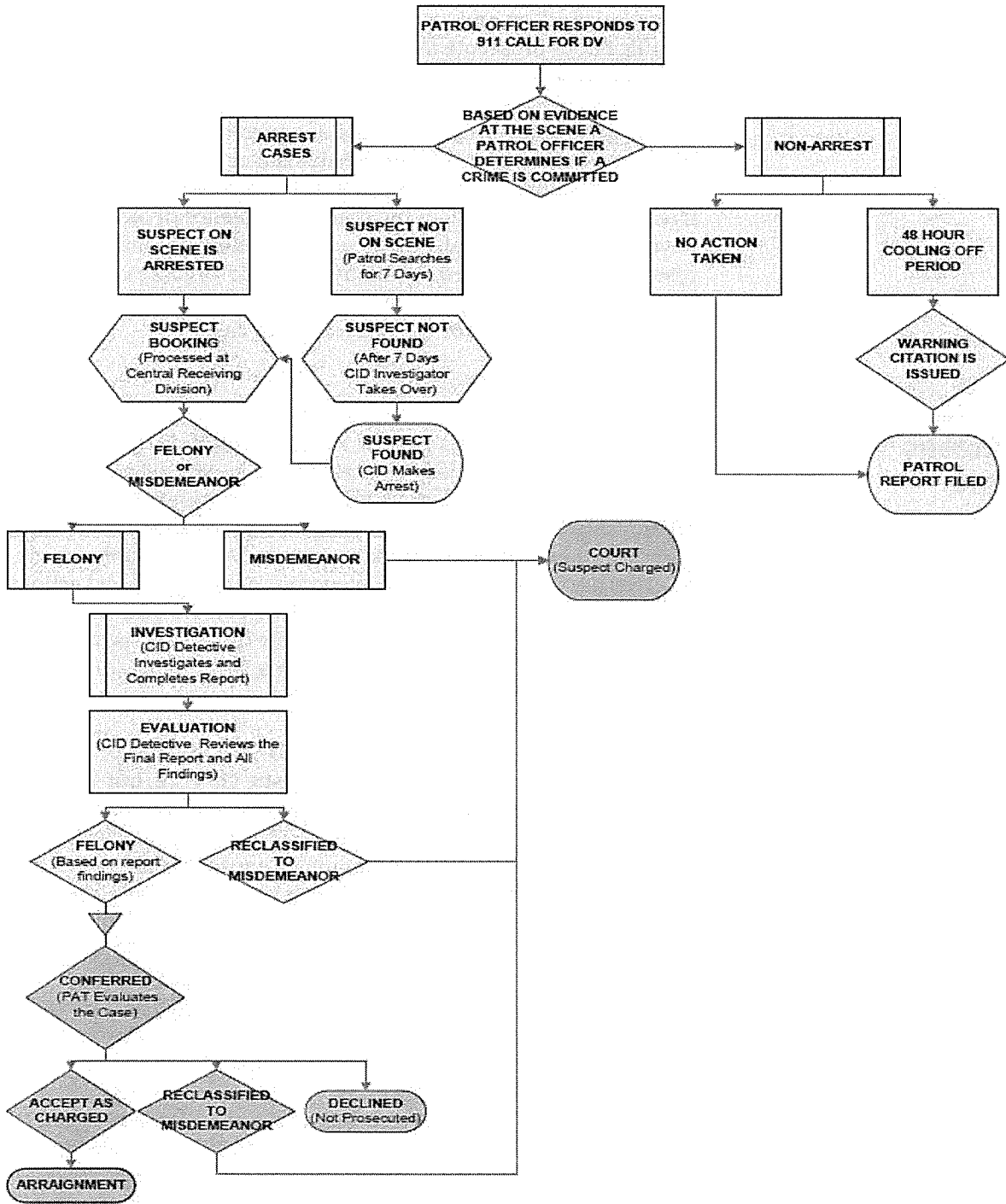
A HPD CID detective is assigned to investigate the felony. The investigating detective will determine if the case classification is substantiated or if it should be changed from a felony to a misdemeanor, the incident category changed, or if sufficient evidence exists to refer the case to the Department of the Prosecuting Attorney (PAT). (See additional flowcharts in Appendices C through E).

⁴ If a defendant is arrested for a misdemeanor domestic violence incident, HPD usually must release the defendant if no charges are filed within 48 hours of the arrest. The PAT review at the HPD central receiving division allows its attorneys time to prepare and file charges against the arrested defendant.

⁵ In this report, Deputy Prosecuting Attorneys are referred to as PAT attorney or DPA.

⁶ Selected misdemeanor cases are also sent to CID for follow-up. For example, if a missing defendant is not found in seven days, the misdemeanor case is sent to CID and CID officers are tasked to locate the missing defendants.

**Exhibit 1.1
Domestic Violence Incident Generic Workflow and Process**



Source: Office of the City Auditor and Honolulu Police Department

After the HPD CID refers a domestic violence incident, the PAT attorney will review the case. The PAT attorney will determine whether the case should be classified as a felony or misdemeanor; if the classification and category are correct; whether the evidence is sufficient to prosecute the case; if the case should be declined; and if the case should be returned to CID for further investigation.

Felony domestic violence cases are assigned to the PAT Domestic Violence – Felony Division and misdemeanor domestic violence cases are assigned to the PAT Domestic Violence – Misdemeanor Division. PAT attorneys in the domestic violence divisions develop, submit for trial, and prosecute domestic violence cases. Juries are selected for felony domestic violence cases. If a misdemeanor domestic violence defendant requests a trial by jury, a jury is also selected for the misdemeanor cases.

Domestic Violence Terms

“Domestic Violence” is a generic term and multiple definitions exist. For example, the U.S. Department of Justice defines domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

- There is no clear definition for domestic violence in the Hawai'i Revised Statutes.

The Hawai'i Revised Statutes (HRS) §709-906 does not provide a succinct or uniform definition for domestic violence, but states “It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member...” Although HRS §709-906 specifies penalties for abuse of family or household members, it is not the exclusive (only) charge that can be made against a person for abusing a family or household member.

HRS §586-1 states domestic abuse means “... physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members..”

HPD defines *domestic violence* as any act that constitutes an offense under Section 709-906 or under Parts V and VI of HRS Chapter 707 that is committed against a minor family or household member by an adult family or household member. This includes (but not limited to) physical harm, bodily injury, assault, or threat of imminent harm, bodily

injury, or assault; extreme psychological abuse or malicious property damage between a family or household member.⁶

Exhibit 1.2
Number of Domestic Violence Cases Investigated by HPD Criminal Investigation Division (CID) (1/1/2012 to 8/31/2016)

- HPD CID reported a total of 7,029 domestic violence incidents occurred between CY2012 and CY2016 (1/1/2012 to 8/31/2016)

Category	Total Cases (CID)	Percent
Abuse - Misdemeanor	2,043	29.07%
Abuse - Felony: Strangulation	444	6.32%
Abuse - Felony: Repeat Offender	36	0.51%
Abuse - <14 Year Old	951	13.53%
Abuse - Neglect of Child	568	8.08%
Attempted Murder	25	0.36%
Kidnapping	93	1.32%
Robbery	72	1.02%
Felony Assault	514	7.31%
Felony - Terroristic Threat	370	5.26%
Other	1,913	27.22%
Total	7,029	100%

Source: HPD CID Hot Sheets (2012-2016)

Audit Objectives, Scope and Methodology

This audit was conducted pursuant to City Council Resolution 16-1, CD1, Requesting the City Auditor to conduct a performance audit of how domestic violence cases are handled, processed, and resolved by the City. The audit objective was to determine whether domestic violence cases are handled, processed, and investigated in an economical, efficient, and effective manner.

The audit team performed a variety of tasks to address the audit objectives. We reviewed applicable federal, state and city laws; city policies and procedures; and HPD and PAT rules, regulations, guidelines, and guides related to domestic violence incidents. We contacted State of Hawai'i public defender representatives, family district and circuit court administrators, and obtained statistics on PAT trial results.

⁶ The HPD domestic violence definition is an abstract from HRS §709-906. HPD and PAT do not have a uniform definition for what categories of incidents should be classified as domestic violence incidents.

We examined HPD and PAT practices; interviewed HPD and PAT administrators, staff, investigators, and attorneys; and obtained flowcharts of HPD and PAT domestic violence processes. We analyzed performance and operating data and statistics for CY 2012 through CY 2016; sampled 100 of the 4,096 domestic violence incidents listed in the database HPD CID provided to our office; and sampled 31 of the 48 domestic violence cases CID referred to PAT.

The team observed court room procedures and processes; examined HPD and PAT calendars, directories, and cases; and reviewed information systems used by HPD and PAT. We assessed information systems and data used to track, monitor, manage, and account for domestic violence cases; assessed internal controls related to domestic violence cases; and reviewed domestic violence information reported by HPD and PAT. The HPD and PAT data bases and internal controls were considered adequate and usable for our audit purposes.

In December 1999, the Hawai'i State Attorney General issued a report, *Domestic Violence and the Criminal Justice System in Hawaii*, which contained recommendations for improving the effectiveness of Hawai'i's criminal justice system to reduce domestic violence and better meet victim's safety needs (https://ag.hawaii.gov/cpja/files/2013/01/DVWG-Report-12_19991.pdf).

There were no prior OCA audits of the domestic violence program for HPD or PAT.

This audit was performed in accordance with generally accepted government auditing standards from April 2016 to May 2017, and suspended from November 2016 to March 2017 for higher priority projects. These standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

A consistent definition for domestic violence does not exist. The generic term includes a multitude of potential felonies and misdemeanors, and the process of investigating and prosecuting domestic violence cases is complex. Domestic violence charges may change over the lifecycle of the case, depending on the professional requirements of the police, prosecuting attorney, and other parties involved in developing and bringing a defendant to trial.

The 2014 amendment to the Hawai'i Revised Statutes that classified physical abuse in the presence of a child under 14 years old as a felony increased the workload for HPD and PAT, but did not result in significantly reducing domestic violence because the amended law was difficult to prosecute. Case reclassifications and related decisions also affected the case outcomes.

HPD and PAT have a plethora of data and information systems that allow them to track, monitor, and manage domestic violence cases. The entities, however, lack common definitions, processes, procedures, and reports that would facilitate data sharing and streamline monitoring and processing of domestic violence cases. The lack of formal PAT administrative processes and procedures, reliance on informal guides, and the judicial and trial processes compound the difficulties of successfully prosecuting domestic violence cases.

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Chapter 2

New Law Increased the HPD and PAT Workload and Produced Questionable Results

Highlights

- The 2014 amendment to HRS Section 709-906 increased the workload of HPD and PAT.
- Less than 14% of the HPD felony domestic violence cases were accepted for prosecution by PAT.
- Amending HRS §709-906, abuse in the presence of a child less than 14 years old, to a misdemeanor could reduce the HPD and PAT workload.
- HRS amendment resulted in expending time and effort to review, process, and reclassify domestic violence cases which never went to trial due to lack of substantial evidence, re-categorizations, and other obstacles.

Background

Hawai'i Revised Statutes §709-906, *Abuse of family or household members, penalty*, states it is unlawful for any person, singly or in concert, to physically abuse a family or household member ...

Family or household is defined to include spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

In June 2014, the state legislature amended HRS §709-906 to include any physical abuse that occurs in the presence of any family or household member who is less than 14 years old as a Class C felony¹. HRS §709-906 prescribes penalties for domestic violence incidents as follows:

- **First Offense Is A Misdemeanor:** Abuse of a family or household member and refusal to comply with a lawful order of a police officer are misdemeanors. The sentence for the first offense is a minimum jail sentence of 48 hours.
- **Second Offense Subject to Jail:** For a second offense within one year of the first conviction, the person is termed a repeat offender and will serve a minimum jail sentence of 30 days.
- **Third Offense Is A Felony:** For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the offense is a Class C felony. A Class C felony also applies to physical abuse of the family or household member by strangulation.

¹ Per Hawai'i Revised Statutes (HRS) Title 37. Hawai'i Penal Code, §706-606.4, "in the presence of a minor" means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense. HRS §706-610 defines a Class C felony as the least serious of three felony classes (Class A, B, and C). A crime declared to be a felony, without specification of class, is a Class C felony and is punishable by up to 5 years imprisonment and a fine of up to \$10,000.

Under the HRS, with the assistance of the PAT attorney, the family or household member who has been physically abused or harmed by another person, may petition the family court to issue and file a criminal complaint. The respondent (defendant) shall be taken into custody and brought before the family court at the first opportunity. The court may dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

Department of the Prosecuting Attorney (PAT) Terminology. After HPD CID completes its investigations, the domestic violence felony cases are referred to PAT for prosecution. PAT attorneys have several options, including accepting, reclassifying, or declining to accept for prosecution the CID domestic violence cases. The PAT terms used are:

- *Charged Cases:* Cases referred by HPD to PAT, accepted by PAT, and charged as felonies.²
- *Reclassification:* Cases that were not accepted by PAT as felonies and/or reclassified as misdemeanors.³
- *Declined:* Cases brought in as felonies, but not accepted by PAT as felonies. If further CID investigation is needed or the case is not accepted for prosecution, PAT will classify the case as “pending follow-up”. PAT may decline the CID referral for several reasons. For example, as the investigation unfolds, there could be factual or legal reasons to decline a case. PAT may decline a case due to insufficient evidence to substantiate the charge.⁴

² *Charged:* In its database, HPD CID enters *conferred* for cases referred to PAT. PAT staff state a more appropriate term is *charged* cases because *conferrals* include all cases reclassified, declined, pending further review, or returned to CID for further investigation. To reduce confusion, the report uses *referred* in lieu of *conferred*.

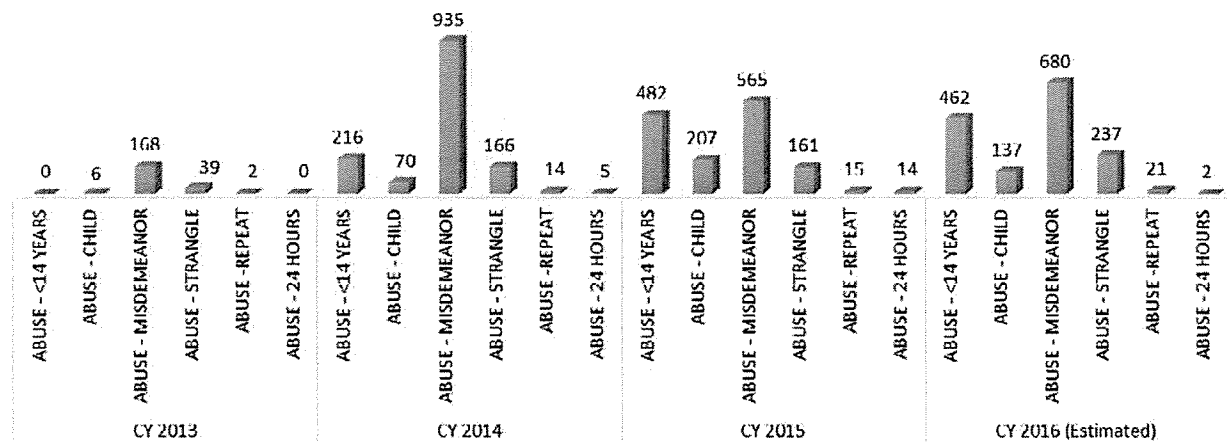
³ Misdemeanor domestic violence cases depend on the relationship of the parties involved. For example, the Family District Court presides over misdemeanor cases such as assault in the third degree that involves spouses. The same crime between a boyfriend and a girlfriend would be tried in the non-family District Court.

⁴ PAT does not allow victims to “drop” cases. PAT has a “no drop” policy, under which PAT will pursue charges if the case can be proven beyond a reasonable doubt even if the victim asks for the incident to be dropped.

HRS Amendment Increased the HPD and PAT Workload

The new law required HPD CID, as well as PAT, staff to expend time, effort, and resources to review, process, and reclassify existing and new domestic violence cases. Exhibits 2.1 and 2.2 show the increased workloads for HPD CID.

Exhibit 2.1
HPD CID Workload by Calendar Year (CY2013-2016)



Source: OCA analysis of HPD CID data

Exhibit 2.2
Table of HPD CID Workload (CY2013-2016)

Analysis Highlights

- Domestic violence –felony cases (particularly those related to abuse in the presence of a child less than 14 years old) increased the HPD CID workload from 0 cases in 2013 to an estimated 462 cases in 2016.
- HPD CID overall felony workload increased from 215 cases in CY2013 to an estimated 1,538 cases (615%) in CY2016.
- Total estimated HPD CID workload between 2013 and 2016 was 4,603 cases.
- 38% of those cases were referred to PAT.

	CY 2013		CY 2014		CY 2015		CY 2016*		Total (CY 2013-CY 2016)	
	HPD Total	Referred to PAT	HPD Total	Referred to PAT	HPD Total	Referred to PAT	HPD Total	Referred to PAT	HPD Total	Referred to PAT
ABUSE - <14 YEARS	0	0	216	112	482	272	462	288	1,160	672
ABUSE - CHILD	6	1	70	1	207	9	137	0	420	11
ABUSE - MISDEMEANOR	168	38	935	295	565	114	680	179	2,348	626
ABUSE - STRANGLE	39	30	166	110	161	105	237	137	603	382
ABUSE - REPEAT	2	2	14	14	15	13	21	5	52	34
ABUSE - 48 HOURS	0	0	5	2	14	2	2	0	21	4
TOTAL**	215	71	1,406	534	1,444	515	1,538	609	4,603	1,729

*HPD CID provided 8 months of data. The results were extrapolated to estimate the workload for 12 months by multiplying the 8 month totals by 1.5.

**Some of the figures may not total due to rounding.

Source: OCA analysis of HPD CID data

Increased PAT Workload

- Of the cases involving abuse in the presence of a child under 14 years, 57.9% were referred to PAT by HPD between 2013 and 2016.

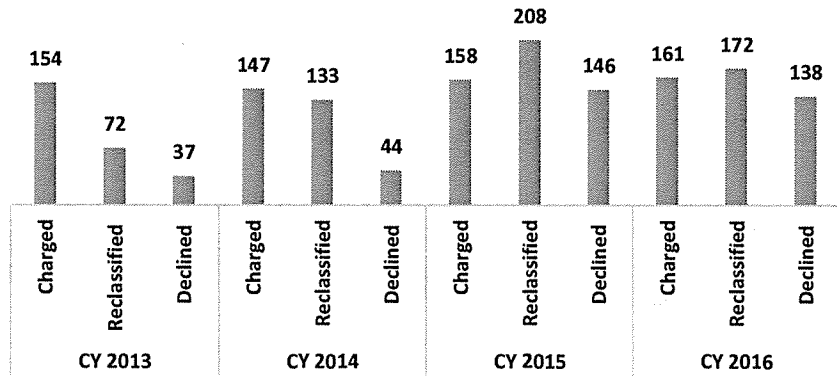
Between CY 2013 – 2016, the PAT workload increased 79% from 263 cases (CY2013) to 471 cases (CY2016). During the same period, HPD CID referred to PAT about 672 of the 1,160 domestic violence cases (abuse in the presence of a child less than 14 years old). The PAT workload increases are illustrated in Exhibits 2.3 and 2.4.

**Exhibit 2.3
Table of PAT Workload (CY2013-2016)**

Calendar Year	Category	No. of Cases	Total
CY 2013	Charged	154	263
	Reclassified	72	
	Declined	37	
CY 2014	Charged	147	324
	Reclassified	133	
	Declined	44	
CY 2015	Charged	158	512
	Reclassified	208	
	Declined	146	
CY 2016	Charged	161	471
	Reclassified	172	
	Declined	138	
TOTAL (CY2013-2016)	Charged	620	1570
	Reclassified	585	
	Declined	365	

Source: OCA analysis of PAT data

**Exhibit 2.4
Increase in PAT Workload (CY2013-2016)**



Source: OCA analysis of PAT data

Prosecution Results

- More than 53% of felony cases were reclassified/ downgraded by PAT.
- Less than 14% of felony cases were accepted and charged as such by PAT.

Our data showed the *abuse in the presence of a child less than 14 years old* cases increased PAT, as well as HPD CID, workloads and created a huge work load that has not produced much for the efforts involved. Our review of the domestic violence –felony cases related to abuse in the presence of a child less than 14 years old showed that over 53% of the felony cases were downgraded or reclassified as misdemeanors and less than 14% of the domestic violence felony cases were accepted as felonies by PAT between CY 2014 – CY 2016.

⁵ PAT has not quantified the number of additional attorneys or funds needed to handle the increased workload, but estimates 57 cases per year for each attorney is manageable.

**Exhibit 2.5
Results of Physical Abuse in the Presence of a Child Less Than 14 Years Old Incidents
(CY 2014 – CY 2016)**

CALENDAR YEAR	FELONY	MISDEMEANOR	DECLINED	OTHER	TOTAL
2014	34	147	9	26	216
2015	62	273	77	70	482
2016	43	121	60	84	308
TOTAL BY CATEGORY	139	541	146	180	1,006
PERCENTAGE	13.82%	53.78%	14.51%	17.89%	100%

Source: OCA analysis of HPD CID and PAT data

Although the results were low, the charges, investigations, and development of the cases were necessary to protect the public and to prevent worse incidents such as assaults or homicides.

HPD

PAT attorneys reported most of the domestic violence felony cases (physical abuse in the presence of a child less than 14 years old) were not prosecuted because victims and children were reluctant to testify. According to PAT attorneys, the HRS amendment, while well intended, was difficult to prosecute in court. For example, the jury was not sympathetic if the victims in the abuse cases did not seem credible to the jury; victims were reluctant to testify in the courtroom against another family member, especially with the defendant present; or the victims did not show up. According to PAT attorneys, no-shows by victims resulted in cases being dismissed by the judges. Besides the dismissed cases, other cases lacked sufficient and adequate evidence to obtain a conviction as a felony, required convincing the jury beyond a reasonable doubt, and were subsequently declined for prosecution.

PAT Maintains a “No Drop” Policy Despite the Increased Workload

- PAT maintains “no drop” policies for domestic violence incidents and cases despite increased workload

The current PAT policy does not allow a domestic violence case⁶ to be dropped although the victim is not available or refuses to testify. The “no drop” policy prohibits the dismissal of charges and assumes there are no evidentiary or ethical prohibitions against prosecuting the matter. According to PAT staff, if the prosecutor receives a referral and the victim doesn’t want to prosecute the charge, the PAT deputy prosecuting attorney will not drop or decline the case and will charge the defendant anyway.

Under this policy, the office accepted all domestic violence related cases and pursued prosecution if enough evidence existed to substantiate the charge with or without the victim’s cooperation. As a result, the PAT domestic violence workload will continue above the per attorney caseload of 57 cases per year desired by PAT staff and as effected by the 2014 law that increased the per attorney felony case workload by 35%.

The National District Attorneys Association reports the “no drop” policies have not resolved the rate of recidivism. In the experiment cited, NDAA reported nearly 30% of all defendants battered their victims again within 6 months following the case settlement.

Although the HRS amendment increased the HPD and PAT workload, the Department of the Prosecuting Attorney will continue to maintain its “no drop” policy. HPD states the policy is needed to protect the safety of the public and to serve as a deterrent to worse incidents such as homicides and physical assaults.

Vertical Prosecutions Are Difficult to Sustain

Vertical prosecution. To prosecute domestic violence felonies, PAT uses “vertical prosecution” which is the recommended practice of using one prosecutor to handle a case from filing to final disposition. The practice is endorsed by the National District Attorneys Association and involves using the same prosecutor at all stages of the domestic violence process from arraignment through post-sentencing motions. The use of vertical prosecution eliminates the need for numerous prosecutors; the need for victims to repeat the facts and history of their case; and minimizes the number of personnel with whom the victim must interact. The practice is not formalized in PAT administrative policies or procedures.

⁶ According to PAT, only domestic violence cases that can be proven beyond a reasonable doubt are not dropped.

Despite this practice, PAT turnover in the Domestic Violence divisions continued to occur, particularly in the Domestic Violence – Misdemeanor division. More specifically, between December 2014 and November 2016, we counted 7 personnel changes (for a 6 attorney staff) in the felony domestic violence division and 16 personnel changes (for a 6-8 attorney staff) in the misdemeanor domestic violence division. According to PAT managers, the personnel are initially assigned to the misdemeanor domestic violence division and rotated to the felony domestic violence division as part of their professional development. Other changes occurred due to retirements, departures for better employment opportunities, and transfers to other PAT divisions.

Recommendations

1. We recommend that the Managing Director, HPD, PAT, and the City Council should continue to lobby the state legislature to amend HRS §709-906 to reduce the domestic violence case, physical abuse in the presence of any family or household member who is less than 14 years of age from a Class C felony to a misdemeanor with incarceration of 90 days.
2. PAT should consider temporarily suspending its “no drop” policy until its workload can be stabilized or the HRS amended.
3. PAT should establish a formal, written administrative policy to use vertical prosecution whenever possible and to minimize personnel rotations for domestic violence cases.

Chapter 3

Prosecution of Domestic Violence Cases Is Complex and Can Result in Different Outcomes

Highlights

- Most domestic violence incidents are classified as felonies (more severe) or misdemeanors (less severe).
- The overall judicial system is very complex. These complexities can result in unexpected outcomes for prosecutors.

Background

Most domestic violence incidents are classified as felonies or misdemeanors.¹ The prosecution of these case is complicated by the nature of the case lifecycle. The judicial system provides additional complications. For example, the Honolulu Police Department (HPD), the Department of the Prosecuting Attorney (PAT), and the Hawai'i State Judiciary have different procedures for handling felonies and misdemeanors². The complex processes can result in changes throughout the lifecycle of the incident that are different from the expected results for the original domestic violence incident and compound the difficulties of successfully prosecuting domestic violence cases. (The flowcharts in Appendices C to E illustrate the complex and varying work flows for each entity.)

¹ Under HRS §709-906, criminal domestic abuse involves physical abuse and/or refused compliance with a police officer. Civil domestic abuse under HRS §586-1 includes physical harm, the threat of physical injury, property damage, or psychological abuse between family or household members. HRS §604-10.5 addresses civil abuse for harassment.

² A misdemeanor is a crime with a punishment of no more than a year in jail. A felony is a serious crime punishable by more than a year in jail.

HPD Domestic Violence Processes

(The HPD Domestic Violence Processes are shown in Exhibit 1.1 and Appendix C)

When a domestic violence call is received by HPD, a patrol officer is sent to the scene to investigate.

- If the patrol officer determines a misdemeanor occurred and the suspect is on the scene, the officer may arrest the defendant or issue a warning. If the defendant is arrested, the arrest is a misdemeanor if the violation did not involve assault. The arrest is a felony if the violation involved assault.
- If the patrol officer determines a misdemeanor occurred and the suspect is not at the scene, the police district will prepare an arrest packet and look for the suspect for 7 days. If the suspect is located, the defendant may be arrested or issued a warning. Like above, the arrest is a misdemeanor if no assault occurred. The arrest is a felony if the violation involved assault.
- If the patrol officer determines a misdemeanor occurred and the suspect is not on the scene and not located in 7 days, the arrest packet is sent to the HPD CID. A HPD CID officer will continue the search for and arrest the suspect when found.³
- If the patrol officer determines a felony occurred and the suspect is not on the scene, the felony case is forwarded to HPD CID for investigation and follow-up.
- If the patrol officer determines a felony occurred and the suspect is on the scene, the patrol officer may arrest the suspect or issue a warning. The case is forwarded to HPD CID for follow-up and further investigation.
- If no arrest occurs, the victim is referred to the PAT Victim Witness Kokua Services (VWKS).

After HPD CID receives the domestic violence case, HPD CID will assign an investigator to investigate and follow-up on the incident.

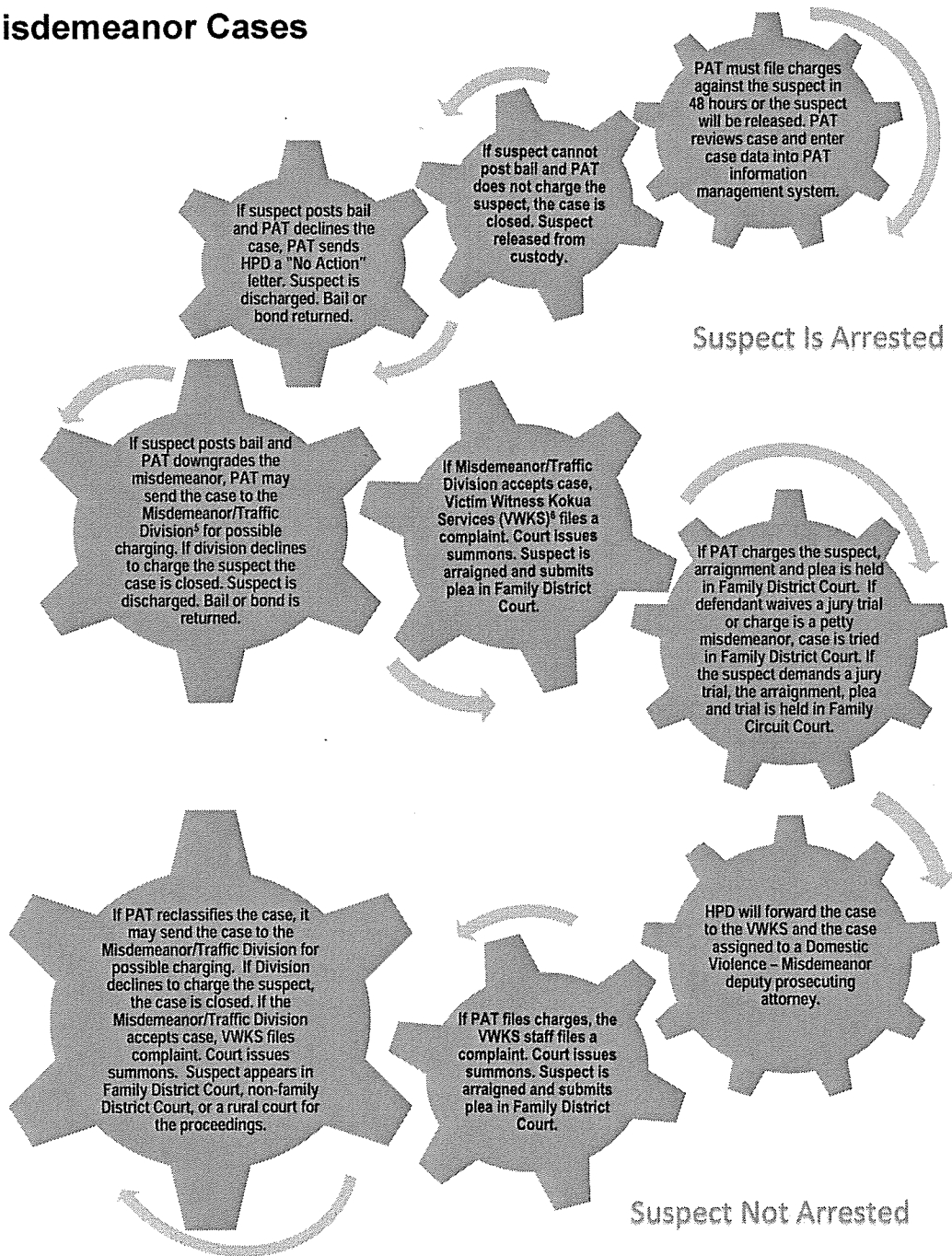
The CID investigator may downgrade the felony to a misdemeanor, charge the suspect, decline to investigate the case, or release the suspect pending further investigation.

³ HPD policy states that a police officer may arrest a person if there is probable cause to believe that a person is physically abusing a family or household member. If the suspect is no longer at the scene, CID may be tasked to locate and arrest the individual committing the misdemeanor.

PAT Domestic Violence Processes

HPD CID refers both misdemeanor and felony domestic violence cases to PAT. PAT will then assign misdemeanor cases to the Domestic Violence – Misdemeanor Division and felony domestic violence cases to the Domestic Violence - Felony Division. The Misdemeanor and Felony Divisions determine the appropriate course of action for the case which is shown in the following Misdemeanor and Felony illustrations.

Misdemeanor Cases

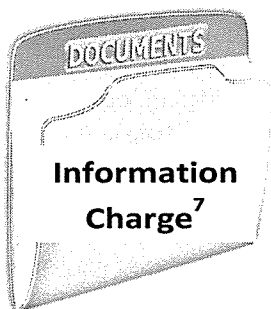


⁴ If a judge finds probable cause, a felony defendant may be held longer than 48 hours (e.g. over weekends).

⁵ *Misdemeanor/Traffic Division*. This PAT division handles thousands of cases each month. Typical cases include traffic matters such as driving under the influence of alcohol or drugs, criminal violations, and petty misdemeanors committed on the island of O'ahu.

⁶ *Victim Witness Kokua Services (VWKS)* is a division within PAT that is responsible for providing victims with information on the status of a case against the defendant and provides referrals to other support and advocacy services.

Felony Cases



If the judge finds no probable cause⁸ that the defendant committed the offense, the prosecution ends.

If the judge finds probable cause to charge the defendant. Warrant issued. Defendant is arrested.

The defendant is arraigned, and enters a plea in Family Circuit Court.

If the defendant is already in custody the defendant remains arrested.



If the judge finds no probable cause to detain the defendant, the prosecution ends.

If the judge agrees probable cause exists, a warrant is issued. Defendant is arrested.

The defendant may post bail and appear in Family District Court for a preliminary hearing.

If the judge finds probable cause to charge the defendant, the case is committed to Family Circuit Court for arraignment and a plea by the defendant.

If the defendant is already in custody the defendant remains arrested.

If defendant is unable to post bail or a bond, the defendant is transported to Family District Court for an initial appearance and the preliminary hearing.



If the grand jury finds no probable cause to charge the defendant, the prosecution ends.

If the grand jury finds probable cause exists to charge the defendant. Warrant is issued. Defendant is arrested.

The defendant is arraigned and a plea is entered in Family Circuit Court.

If the defendant is already in custody the defendant remains arrested.

⁷ *Information Charge* is an accusation or criminal charge brought by the prosecutor that states the alleged crimes in writing and is used to convince a judge the defendant must face trial. If the judge is not convinced, the case against the defendant is dismissed.

⁸ *Probable cause* is a legal standard that, based on the evidence presented, a reasonable person would conclude the person charged with the offense probably committed the offense.

Hawai'i State Judiciary Processes for Domestic Violence Cases

Most domestic violence cases are tried in Family District Courts and Family Circuit Courts.

- Felony domestic violence cases are usually tried in Family Circuit Courts and require jury trials.
- Misdemeanor domestic violence cases are tried in Family District Courts and are tried by a judge.

Family District and Circuit Court Processes

The Hawai'i criminal justice system for domestic violence cases is just as complex as the HPD and PAT processes. Hawai'i's judicial branch is a unified state court system that consists of the Supreme Court, Intermediate Court of Appeals, Land Court, Tax Appeal Court, Circuit Courts, Family Courts, District Courts, Environmental Courts, and an Administrative Director.

If a misdemeanor defendant requests a jury trial, the domestic violence misdemeanor case is tried in the Family Circuit Court. The Family Courts preside over all HRS §709-906 misdemeanor and physical abuse cases. The Family Courts also preside over misdemeanor and petty misdemeanor cases; abuse cases involving spouses, other family members, and household members; and felonies, misdemeanor and petty misdemeanor offenses committed by a parent or legal guardian upon his/her minor child. Family court judges may be appointed to hear a felony case involving family or household members, but they are sitting as Circuit Court judges in this capacity.

After a domestic violence defendant is arrested for a felony offense, the individual may have a preliminary hearing. During the proceeding, the judge determines whether there is probable cause to believe the defendant committed the crime. If probable cause exists that the defendant actually committed the crime, the defendant is brought to court for arraignment and plea.

During the arraignment and plea, the defendant is formally notified of the charges against him/her and the defendant provides answers to the charges filed against him. The answers are usually, "guilty", "not guilty", or "no contest".

For pleas of "guilty" or "no contest", the judge may sentence the defendant to jail, probation, community service, deferred acceptance, or some other penalty allowed by the statutes.

If the plea is "not guilty", a trial date is set. Jury trials are set for felonies and for misdemeanor domestic violence defendants who request a jury trial. The trials may result in acquittal of the charges, sentencing if found guilty, or some other outcome such as a "hung jury" that cannot come to agreement on the verdict. If the jury finds the defendant guilty, the judge may sentence the defendant to jail, probation, community service, deferred acceptance, or some other penalty allowed by the statutes. Defendants may appeal the trial results and jury verdicts.

Examples of Impact of Complicated Domestic Violence Lifecycle

The complex processes throughout the life cycle of a domestic violence case may result in changes in the case classification, category, and status.

Example 1

For example, after a call is received, the patrol officer may classify the call as a felony domestic violence incident, but the reviewing and approving supervisor or responding HPD team may reclassify the incident as a misdemeanor.

After the report is filed and reviewed by the PAT attorney, the PAT attorney will determine if the incident is a misdemeanor or a felony. As described previously, the misdemeanor case would be sent to the HPD CID only if the defendant is not located after 7 days. The HPD CID role is to continue searching for the defendant in the misdemeanor domestic violence case.

If the domestic violence incident is classified as a felony, HPD CID will assign an investigator to investigate and follow-up on the incident. The CID detective may downgrade the felony to a misdemeanor, charge the suspect, decline to investigate the case, or release the suspect pending further investigation. The CID detective will confer with PAT attorneys and determine if the case can be referred to PAT.

If the HPD CID refers a domestic violence incident to PAT, the PAT attorney will review the case and determine whether the case should be classified as a felony or misdemeanor. The classification may change or the case may be declined based on the evidence provided. PAT may also return the case to CID for further investigation.

PAT attorneys in the domestic violence divisions will develop the case for trial and prosecute the domestic violence case. Before or during the trial, a plea bargain may occur and the negotiated settlement may result in a defendant accepting a misdemeanor instead of a felony charge.

Example 2

As another example, a person may be initially charged with a HRS §709-906 abuse of family member violation, and the case later classified as a different charge, such as assault in the third degree or harassment. This may occur because police are required to show that “probable cause” exists for the arrest.

Prosecutors, however, are required to prove each element of the charge beyond a reasonable doubt. Prosecutors may therefore reclassify a case after applying the PAT considerations to the facts of the individual case. For instance, PAT may reclassify a HRS §709-906 felony charge to a misdemeanor or petty misdemeanor charges if the change will result in a higher conviction or guilty plea rate; or hold the abuser accountable.

The courts, however, still have the discretion to order any appropriate jail term authorized by the statute.⁹

Judicial System Creates Additional Complexities

As previously discussed, per HRS §709-906, abuse of a family or household member is a misdemeanor or felony and the person is sentenced as follows: for the first offense, the person serves a minimum jail sentence of 48 hours. For the second offense within one year of the first conviction, the person is termed a “repeat offender” and serves a minimum jail sentence of 30 days. For a third or subsequent offense that occurs within two years of a second or subsequent conviction, the offense is a Class C felony.

Domestic violence misdemeanors involving a family or household member usually are tried in Family District Court. The defendant appears, is arraigned, and submits a plea (e.g. guilty, not guilty, no contest). If a trial is requested, the judge will hear the case; render judgment; and issue a sentence (e.g. probation, fine, incarceration, anger management, etc.). If a trial by jury is requested, the case is tried in Family Circuit Court.

Domestic violence felony cases involving a family or household member are tried in Family Circuit Court. Like misdemeanor cases, the defendant appears, is arraigned, and submits a plea (e.g. guilty, not guilty, no contest). The trial is by jury and the judge will issue a sentence (e.g. probation, fine, incarceration, anger management, etc.). The felony case is tried in Family Circuit Court.

Rule 48 of the Hawai‘i Rules of Penal Procedure allows the defendant to request dismissal of a domestic violence case if the trial is not started within six months from the date of an arrest, re-arrest, re-filing of a charge, or mistrial. That is, if the case does not commence within 180 days, the case may be dismissed. Rule 48 is also known as Hawai‘i’s Speedy Trial rule.

⁹ Domestic Violence & the Criminal Justice System in Hawai‘i, Attorney General, State of Hawai‘i, December 1999.

Jury Trials Are Used to Delay Misdemeanor Prosecutions

- Public defenders or defendants may ask for a jury trial. The requests for a jury trial allow the defendants to forestall the court deliberations, avoid being prosecuted, or to have more time to prepare their defense.

For CY 2012 through CY 2016, the HPD CID reported 2,124 misdemeanor cases were referred to PAT. The misdemeanor domestic violence cases¹⁰ composed 51.8% of the 4,096 domestic violence cases that occurred. The attorneys in the PAT Domestic Violence – Misdemeanor Division prosecute and handle all misdemeanor cases. According to PAT representatives, the judicial processes are not conducive to successfully prosecuting misdemeanor domestic violence cases.

- There are only three court rooms and 3 judges that hear the hundreds of domestic violence misdemeanor cases.
- The number of misdemeanor cases creates competition for court time and the availability of a judge to hear the cases, and results in congestion in the court calendar.
- Public defenders or defendants may ask for a jury trial. The requests for a jury trial allow the defendants to forestall the court deliberations, avoid being prosecuted, or to have more time to prepare their defense.
- The tactic also increased the probability for dismissal under the Rule 48 deadline.

Many Domestic Violence Cases Were Dismissed

The latest PAT data¹¹ on trial outcomes for misdemeanor domestic violence cases show that over 461 misdemeanor domestic violence cases were dismissed in CY 2012. Of the 461, over 40% (186) were dismissed due to Rule 48 and over 59% (275 cases) were dismissed for other reasons. The number of cases dismissed with prejudice, which means the cases could not be refiled, totaled over 71% (328 cases). Exhibit 3.1 provides more details.

¹⁰ Misdemeanor cases can come from several sources: patrol officers and their supervisors; HPD response teams (such as the HPD sexual assault or homicide teams); CID investigators; the Professional Standards Office for domestic violence incidents involving HPD employees, and PAT attorneys who classify a domestic violence incident as a misdemeanor. Neither HPD nor PAT have a total count of all domestic violence misdemeanor cases. The most recent data available and provided to us was for CY 2012.

¹¹ PAT provided additional CY 2016 data after our audit period; however, it was not in a format where we were able to easily and quickly analyze it.

**Exhibit 3.1
Domestic Violence – Misdemeanor Trials and Cases
Dismissed (CY2012)**

Analysis Highlights

- ◊ In CY 2013 District Courtroom 8B and 8C had a total of 275 (59.65%) Domestic Violence—Misdemeanor Trials and Cases Dismissed.
- ◊ In CY 2013 District Courtroom 8B and 8C had a total of 186 (40.34%) Domestic Violence—Misdemeanor Trials and Cases Dismissed with Prejudice under Rule 48.

	District Courtroom 8B	District Courtroom 8C	Total	%
Dismissed with Prejudice	115	70	185	40.13%
Dismissed without Prejudice	32	38	70	15.18%
Dismissed	13	7	20	4.33%
Subtotal Dismissed			275	59.65%
Rule 48 Dismissed with Prejudice	77	66	143	31.02%
Rule 48 Dismissed Without Prejudice	21	22	43	9.32%
Subtotal Rule 48 Dismissed			186	40.34%
Courtroom Totals	258	203	461	

Source: OCA analysis of PAT Domestic Violence Misdemeanor Trial Results

PAT Initiatives to Improve the Judicial System Were Unsuccessful

In February 2014, the Honolulu Prosecuting Attorney sent letters to the state legislature advocating for the hiring of two judges for the Family Circuit Court to conduct jury trials for misdemeanor domestic violence cases. "...Given the backlog of domestic violence cases that end up getting dismissed simply because there are not enough Family Court judges to preside over the cases pending trial....Since 2012, the Department has seen no noticeable lessening of the backlog of domestic violence misdemeanor cases, nor any noticeable decrease in the number of cases that get dismissed while awaiting trial..."

PAT staff stated that, despite supporting funding in 2012 and 2014 for an additional judge to handle domestic violence trials, additional funds added to the 2014 budget were used to fund a family court judge to handle temporary restraining orders and not trials.¹² As a result, there are only three judges and three courtrooms available for domestic violence misdemeanor cases.

¹² A state judiciary administrator stated the funding was originally requested to fill a vacant TRO position.

The limited resources resulted in overcrowded court calendars and trial dates are often set after the majority of the 180 day rule has elapsed. According to PAT attorneys, the shortage of courtrooms and judges prevents victims of domestic violence from having their day in court.

For defendants who request a jury trial, the public defender as well as the PAT attorney can request a case continuance to delay starting the trial. Upon requesting a continuance, a new trial date is scheduled for about 4 weeks later and increases the probability for a Rule 48 violation. For example, with one or two continuances that usually involve a four week delay, the Rule 48 time period may expire and may result in the judge dismissing cases with or without prejudice¹³ upon motion by the defendant's attorney.

When the continuance date arrives, the Family Circuit Court judge may select from the list of misdemeanor cases (new, old and continued cases) for the jury trial a case that is closest to the Rule 48 expiration date. The PAT attorney must be ready to proceed to trial for the case selected by the judge. This entails having the victim(s), expert witnesses, and evidence ready for trial the next day. If the PAT attorney is not ready for trial or the victim and witnesses do not show up and the case cannot proceed to trial, the judge may dismiss the case based on the defendant attorney's motion to dismiss the case.

According to PAT attorneys, it is more common that a judge will dismiss a case after two PAT continuances regardless of the time remaining under the Rule 48 time. For example, if the PAT attorney is prepared for trial and the victim has come to court, the defense may ask to continue the case, presumably in hopes the victim will not come to the next court date or the PAT attorney may not be able to proceed.

Felony domestic violence cases. For CY 2012 through CY 2016, HPD CID reported at least 1,529 felony cases, including at least 405 felony domestic violence cases in CY 2016 and at least 515 felony domestic violence cases in CY 2015. PAT had five attorneys in its Domestic Violence – Felony Division to try these cases. All felony trials require a jury trial and are tried in Family Circuit Court. PAT attorneys state the felony case problems are not as egregious as the misdemeanor caseload.

¹³ A judge may dismiss a case with prejudice which prevents the lawsuit from being refiled, or without prejudice which allows the lawsuit to be refiled.

State judicial administrators state more courtrooms and resources are needed to improve the judicial process.

Recommendations

4. The City Council and PAT should continue to lobby the state legislature and the state judiciary to provide more judicial resources related to domestic violence cases.

Chapter 4

HPD and PAT Can Improve Administration of Domestic Violence Incidents

Highlights

- HPD and PAT suffer from data overload on domestic violence.
- Communication is difficult because they lack common terms and processes for domestic violence.
- PAT should formalize its processes and pursue a non-statutory memorandum of understanding with HPD for sharing information and databases.

Background

HPD and PAT have a plethora of data and information systems that allow them to track, monitor, and manage domestic violence cases. The entities, however, lack common definitions, terms, processes, procedures, and reports that would facilitate data sharing and streamlined monitoring and processing of domestic violence cases. PAT can improve its operations by developing formal PAT administrative processes and procedures for tracking, monitoring, and managing domestic violence cases; for the use of its informal guides; and developing non-statutory memorandums of agreement between HPD and PAT for sharing information and databases.

Shared Data Collection, Data Sharing, and Consistent Definitions and Terms Are Needed

In the December 31, 2015, the city Domestic Violence Response Task Force identified several major challenges. The report to the city council pointed out that several agencies have different methods of data collection and different types of data storage, management, analysis, and dissemination. The task force stated it was difficult to ascertain who has what types of data and how the data could be more uniform, streamlined, and made accessible to service providers and entities for reporting, evaluation, grants, and fund development. The task force recommended a need for comprehensive data collection and data sharing.

HPD Data Systems

According to HPD, it has several data collection systems which collect domestic violence incident data. The HPD systems include the Automated Field Reporting System (AFR), the Document Imaging system (DI), and the Legal Record Management System (LRMS). In November 2016, HPD expanded domestic violence data collection by activating the Case/Crime Reporting System (CRS), the Records Management System (RMS) and a Paper Management System (PM). The collected data is reported annually to the Federal Bureau of Investigation (FBI) using the FBI Uniform Crime Reporting requirements for the Summary Reporting System (SRS) and the National Incident Based Reporting System (NIBRS).

- The Crime Reporting System replaced the Legal Record Management System as HPD's primary system of record.

HPD stated the CRS is their current master information system and replaced the LRMS in November 2016. For example, after the responding HPD police officer from a police district classifies the incident as a misdemeanor, the district supervisor approved domestic violence misdemeanor information is forwarded to the HPD Central Records Division, entered into the CRS system, and a report number is assigned.

The HPD CID uses extracts and downloads from the CRS/LRMS domestic violence data to prepare domestic violence incident reports for the eight police districts and to prepare CID *Hotsheets* which quantify the CID workload statistics. The unofficial CID *Hotsheets* exclude most of the misdemeanor incidents reported by the eight patrol districts. Exhibit 4.1 illustrates the CID *Hotsheet* statistics versus the patrol district domestic violence related incidents.

**Exhibit 4.1
Comparison of HPD Patrol District and HPD CID Domestic Violence Data**

Fiscal Year	Patrol District Domestic Violence Related Incidents	Calendar Year	CID HotSheet Domestic Violence Data
2012	7,456	2012	6
2013	6,614	2013	468
2014	5,502	2014	2,436
2015	5,562	2015	2,476
2016	6,486	2016	1,643
Total	31,620	Total	7,029

Source: OCA Analysis of HPD Data

PAT Data Systems

- PROSECUTORbyKARPEL is PAT's primary case management system

In contrast to the multiple HPD information systems, PAT has a Case Reporting System (CRS) (PROSECUTORbyKARPEL / PbK), to manage cases. PbK replaced Hoku and is used for felony domestic violence cases.

Although the PAT information duplicates the HPD data and may be useful to HPD, the information is not normally shared. For example, CID investigators who are developing a case do not have access to PAT data and may subsequently refer a case to PAT that may be declined or returned for further investigation. HPD managers who are following up on a case also do not have access to PAT information. PAT does not normally share domestic violence case information with HPD because the prosecution information may be sensitive or privileged.

According to PAT staff, the PAT systems are not integrated or interactive with the HPD information systems, and they do not have the staff, budget, or resources to configure the systems so that the PAT and HPD systems are compatible. PAT also states they do not share their databases with HPD due to concerns the discovery process could compromise their cases.

Recommendations

We are recommending that HPD and PAT issue periodic and regular reports on domestic violence incidents that use consistent and regular categories, such as HRS §709-906 related incidents,

that will allow city managers, the City Council, and the public to monitor and track the number and types of domestic violence cases occurring in the city.

We also are recommending that HPD and PAT eliminate some of the redundancy in their data collection systems by developing a non-statutory memorandum of understanding that allows both HPD and PAT to access their information systems, share information, and use database or system administrators to wall off and protect sensitive data within the departments.

Domestic Violence Classifications Vary

Consistent and uniform definitions facilitate domestic violence reporting, communications, and allow reliable, complete, and accurate data to be provided decision makers. According to HPD spokespersons, the HPD domestic violence categories included items not listed in HRS §709-906 (such as attempted murder, kidnapping, and robbery), because criminal charges for domestic abuse could be brought under a different criminal statute.

Without a standardized definition and consistent categories, we were unable to obtain consistent data related to the number of domestic incidents handled by the HPD and PAT. We found the overlapping categories confusing and were unable to determine the actual number of domestic violence felony and misdemeanor cases from the HPD data provided us. For example, we tried to quantify the HRS §709-906 misdemeanor and felony domestic violence cases and found the results confusing because HRS §709-906 incidents were not segregated from other HRS incidents, and HPD does not issue regular, periodic, formal reports that could be used to quantify domestic violence related data.

Common Definitions and Terms Would Reduce Confusion

The HPD and PAT staff used jargon and terms with different definitions. For example, the term “confers” has different meanings for HPD and PAT. When HPD “confers” a case to PAT, HPD is referring the case to the Prosecuting Attorney. When PAT “confers” a case, PAT is filing charges against the defendant. In its database, HPD CID enters multiple codes for cases conferred to PAT. PAT staff state a more appropriate term is *charged cases* because *conferrals* include all cases reclassified, declined, pending further review, or returned to CID for further investigation.

To reduce confusion, this report uses *referred* in lieu of *conferred*. However, PAT and HPD still need a common definition for the terms *conferred* and *charged*. Other terms also need common definitions between HPD and PAT.

HPD and PAT also do not have a uniform definition for what categories of incidents should be classified as domestic violence incidents.

HPD Is Better Organized than PAT

Well-run organizations have formal policies, procedures, and processes; written rules and regulations, and functioning information systems that provide useful information for managing, tracking, and accounting for cases assigned to the unit. Well-run organizations also have performance metrics and data that allow organizations to benchmark their performance, evaluate their performance, and determine how goals are being achieved.

HPD Administration. Our comparisons between HPD and PAT indicate HPD is better organized. More specifically, HPD has formal, written policies and procedures for domestic violence related incidents. HPD has, for instance, formal and written procedures for writing and filing police reports, misdemeanor screening; completing police and felony case intake sheets; crime scene investigation; employee involved domestic violence; victim assistance; CID prosecutor conferrals, and many other domestic violence related issues. HPD also has a formal, written domestic violence action plan, and HPD criminal investigation and administrative investigation sections have defined roles and responsibilities.

In addition, HPD has a formal definition for domestic violence. According to HPD, *domestic violence is any act that constitutes an offense under Section 709-906 or under Parts V and VI of HRS Chapter 707 that is committed against a minor family or household member by an adult family or household member. This includes (but not limited to) physical harm, bodily injury, assault, or threat of imminent harm, bodily injury, or assault; extreme psychological abuse or malicious property damage between a family or household member.*¹

¹ The HPD domestic violence definition is an abstract from HRS §709-906. HPD and PAT do not have a uniform definition for what categories of incidents should be classified as domestic violence incidents.

PAT Administration. PAT lacks formal, written policies and procedures for administering, managing, monitoring, tracking, or accounting for domestic violence cases assigned to PAT. PAT also lacks formal guides, but uses unofficial work guides to help its trial attorneys prepare cases for trial and to prosecute and try domestic violence cases in court. According to PAT attorneys, the work guides are basically compilations of case law ordered by subject and contain some guidance on the conferral process, and outdated information on the judiciary processes.²

PAT Workload

PAT reports a need for additional prosecutors. Based on the felony case data supplied by PAT, we calculated the PAT felony caseload per domestic violence –felony attorney increased from 54 to 94.2 felony cases (over 74%) after the 2014 HRS amendment classified abuse in the presence of a child less than 14 years old as a Class C felony. Exhibit 4.2 quantifies our calculations on workload per PAT attorney working on domestic violence felony cases. The total number of cases referred by HPD CID to PAT is listed under “total”.

² A detailed list of the unofficial work guides is not provided at the request of PAT.

**Exhibit 4.2
PAT DV Division Caseload (CY2012 - CY2016)**

Analysis Highlights

- PAT felony caseload per domestic violence felony attorney increased from 54 to 94.2 felony cases per year (over 74%) after the 2014 HRS amendment classified abuse in the presence of a child less than 14 years old as a Class C felony.⁵

Domestic Violence (DV) Cases (Felony) conferred from HPD	2012	2013	2014	2015	2016	Total	Average
Charged	164	154	147	158	161	784	156.8
Reclassification	59	72	133	208	172	644	128.8
Declined	56	37	44	146	138	421	84.2
Total	279	263	324	512	471	1,849	369.8
Number of Domestic Violence Attorneys (Felony)	4	6	6	7	5	28	5.6
Average Caseload (Charged)	41.00	25.67	24.50	22.57	32.2	145.94	29.2
Average Caseload Per DV Attorney (Reclassification)	14.75	12.00	22.17	29.71	34.4	113.03	22.6
Average Caseload Per DV Attorney (Declined)	14.00	6.17	7.33	20.86	27.6	75.96	15.2
Average Caseload Per Domestic Violence Attorney (Total - Felony)	69.75	43.83	54.00	73.14	94.2	334.92	66.9
Domestic Violence Attorneys (Misdemeanor)	6	6	6	6	5	29	5.8
Domestic Violence Attorneys (Both Felony and Misdemeanor)	10	12	12	13	10	57	11.4

Source: PAT and OCA calculations

Temporary Restraining Orders (TROs) are not centrally managed

TROs require proof of service and are entered into the HPD LRMS/CRS information system. According to HPD staff, TRO report numbers are in LRMS/CRS and can be accessed by each of the eight police districts.

TRO administration is decentralized. After a TRO is issued, it is assigned to one of the many substations within one of the eight patrol districts. Each substation develops its own method for administering, monitoring, and tracking TROs. For example, in one substation, TRO's were entered into a handwritten log. Other patrol districts may use paper, spreadsheets, or some other method to track TROs.

As a result, HPD staff and officers responding to a domestic violence incident in another patrol district may not be aware of the existing TROs unless the victim or someone else informed the responding police officer. That is, crucial data related to victim protection cannot be readily used to evaluate and ensure efficient and effective enforcement of the TROs.

HPD Employees Involved in Domestic Violence Incidents

For 2016, HPD reported to the legislature that 5 out of 41 (12%) misconduct incidents involved domestic violence, compared to 7 out of 58 (12%) incidents in 2015. There was one domestic violence incident out of 47 (2%) incidents of misconduct in 2014.

The Professional Standards Office (PSO) conducts internal: 1) criminal investigations and 2) administrative investigations of domestic violence incidents involving police officers. The Criminal Investigation Section (CIS) is responsible for completing criminal investigations of domestic violence incidents. The CIS performs criminal investigations similar to HPD's Criminal Investigation Division (CID).

The Administrative Investigative Section (AIS) investigations are related to violations of the HPD Standards of Conduct, violations of civil service rules, professional behavior, responsibilities, and disciplinary actions for all police officers on- and off-duty, and all civilian employees who are on-duty. Committing criminal acts and/or committing domestic violence are grounds for dismissal.

CIS and AIS investigations are conducted independently of, and physically separate from the other. No information is shared between the sections as specified in the State of Hawai'i Organization of Police Officers (SHOPO) collective bargaining agreement.

The PSO AIS results are submitted to an Administrative Review Board (ARB), comprised of Assistant and Deputy Chiefs, which reviews the report and makes its recommendations to the Chief of Police. If the complaint is sustained, the ARB may recommend counseling, training, a written reprimand, suspension for a specific number of days, demotion, or separation from police service. The separation may be voluntary, resignation, dismissal, or termination of initial probationary appointment. The Chief of Police ultimately decides what disciplinary action to take.

According to the PSO commander, the policy defines domestic violence as offenses under Section 709-906 HRS. HPD's policy states, *When acts of violence occur, quick and decisive action will be taken to protect the victim, arrest the accused employee, and hold the employee accountable for his/her actions through an effective course of criminal prosecution and/or administrative action.*

- All officers are subject to the Standards of Conduct, and all directives, orders and procedures of the HPD at all times, whether on or off duty, including leaves of absence.

- Committing domestic violence violates the HPD Standards of Conduct, and three or more domestic violence violations within a span of twelve months are considered grounds for dismissal.
- The PSO assigns a tracking number to all internal and external complaints.

(See Appendix C, Exhibit C.3 for more details.)

Sampling Results

HPD Sample Results

From the 4,096 HPD CID cases, we selected 100 cases and asked HPD CID to explain why the investigations in our sample took 267 to 779 days to complete. HPD CID could provide information regarding the 100 domestic violence incidents in our sample and could explain why the investigations took so long for 88 of the cases. For each incident, we asked HPD to trace the history of the case from the date of occurrence through the CID investigation to the PAT conferral. The HPD used the assigned report number or the court case numbers to trace the domestic violence cases through the HPD life cycle.

Exhibit 4.3

Domestic Violence Database Used to Select the 100 HPD Cases Sampled (CY2013- CY2016) (HRS §709-906 Data)

Category	No. of Cases (HPD CID)
ABUSE - <14 YEARS	1,006
ABUSE – CHILD	376
ABUSE – MISDEMEANOR	2,124
ABUSE – STRANGLE	525
ABUSE –REPEAT	45
ABUSE - 24 HOURS	20
TOTAL	4,096

Source: HPD CID workload database

PAT Sample Results

We sampled 31 of the domestic violence incidents referred by HPD CID to PAT for prosecution. We asked PAT to provide the status, negotiated settlement results, or trial results of each of the 31 domestic violence cases. PAT staff provided the status, negotiated settlement results, or the trial outcomes of 28 of the 31 domestic violence cases conferred by CID.

Based on our sampling results, we concluded that HPD and PAT were able to track, monitor, manage, or account for the individual domestic violence cases under their purview.

Recommendations

5. HPD and PAT should eliminate some of the redundancy in their data collection systems by developing a non-statutory memorandum of understanding that allows both HPD and PAT to access their information systems, share information, and use database or system administrators to wall off and protect sensitive data within the departments.
6. Under the non-statutory memorandum of understanding, if possible, HPD and PAT should establish one, common data collection system that allows access to data needed for each department's operations and limit access to sensitive or confidential information through a table of authorizations, read vs write access, or database administrators or system administrators,
7. HPD and PAT should develop a memorandum of understanding that defines domestic violence terms; itemizes the categories to be reported under domestic violence; and provides consistent and uniform definitions, terms, and jargon that facilitate domestic violence reporting and communications.
8. The HPD and PAT memorandum of understanding should require HPD and PAT to issue periodic, formal, and regular reports on domestic violence incidents that use consistent and regular categories (such as HRS §709-906 related incidents) that will allow city managers, the City Council, and the public to monitor and track the number and types of domestic violence cases occurring in the city. The reports should provide reliable, complete, accurate, and consistent domestic violence data to decision makers and segregate the categories covered under HRS §709-906 from the categories that fall under other sections of the HRS (such as attempted murder, kidnapping, and robbery).

9. Like HPD, PAT should develop formal, written policies, procedures, and processes for administering domestic violence cases; and written rules and regulations that provide useful information for managing, tracking, and accounting for domestic violence cases assigned to the unit.
10. PAT should update and develop formal guides its trial attorneys can use to prepare cases for trial and to prosecute and try domestic violence cases in court.
11. HPD and PAT should develop domestic violence performance metrics and data that allow organizations to benchmark and evaluate their performance; determine how well goals are being achieved; can be used to manage their workload; and justify the need for resources.
12. HPD should centralize the administration of Temporary Restraining Orders (TROs) to include serving TROs, handling TRO violations, and making data available to all police districts and authorized HPD divisions.

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Chapter 5

Conclusions and Recommendations

Domestic violence affects people of all socioeconomic backgrounds and education levels. It can occur in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating. The City Council's Domestic Violence Response Task Force report in December 2015 itemized several challenges and recommendations related to domestic violence in Honolulu. The challenges included the need to develop a single data collection system; prosecution barriers, and the need to systemically address the problem.

Although intended to deter domestic abuse cases, the 2014 amendment to HRS §709-906 increased the HPD and PAT workload and resulted in HPD investigating many felony domestic violence incidents (particularly physical abuse in the presence of a child under 14 years old) that PAT declined to prosecute. According to HPD and PAT representatives, the HRS amendment is difficult to enforce because victims are unwilling to testify or are reluctant to appear in court. After the 2014 amendment was passed, our calculations show the PAT domestic violence – felony workload per attorney increased from 54 to 94.2 cases per domestic violence attorney. Despite the 74% increase in workload, PAT maintained a “no-drop” policy for domestic violence cases.

The HPD domestic violence data indicate over 31,600 domestic violence related incidents occurred between FY 2012-2016, most of these were misdemeanors. The HPD CID investigates primarily felonies and referred about 4,100 cases to the Department of the Prosecuting Attorney. Most misdemeanor incidents reported by the eight HPD patrol districts and other HPD entities are not included in the unofficial CID data. HPD CID uses 10 categories of misdemeanors and felonies to track domestic violence cases instead of focusing on HRS §709-906 domestic violence cases. Although HPD data collection is centralized, data generated are not consistent or reconcilable.

The domestic violence workflow can result in multiple changes related to domestic violence classifications, categories, status, and decisions related to prosecuting the case. Domestic Violence case tracking, monitoring, and management could be improved by HPD and PAT developing common definitions, terms, and sharing data. PAT lacks formal, written policies and procedures related

to administering, managing, monitoring, and tracking domestic violence cases and uses informal work guides to help its trial attorneys prepare for and try domestic violence cases.

According to PAT staff, the existing court system is an obstacle to effectively and efficiently prosecuting domestic violence cases. For example, when a defendant requests a jury trial for a misdemeanor domestic violence incident, the judge will pick one, and the PAT attorney must be ready to select a jury and proceed to trial on the selected case. If a victim fails to show up, if the prosecutor is not ready to proceed, or Rule 48 which mandates a speedy trial in 180 days is ready to expire, the judge may dismiss the domestic violence case. The inability of PAT to resolve these problems and to reform the system has resulted in many domestic violence cases being dismissed, or not tried.

Recommendations

1. We recommend that the Managing Director, HPD, PAT, and the City Council should continue to lobby the state legislature to amend HRS §709-906 to reduce the domestic violence case, physical abuse in the presence of any family or household member who is less than 14 years of age from a class C felony to a misdemeanor with incarceration of 90 days.
2. PAT should consider temporarily suspending its “no drop” policy until its workload can be stabilized or the HRS amended.
3. PAT should establish a formal, written administrative policy to use vertical prosecution whenever possible and to minimize personnel rotations for domestic violence cases.
4. The City Council and PAT should continue to lobby the state legislature and the state judiciary to provide more judicial resources related to domestic violence cases.
5. HPD and PAT should eliminate some of the redundancy in their data collection systems by developing a non-statutory memorandum of understanding that allows both HPD and PAT to access their information systems, share information, and use database or system administrators to wall off and protect sensitive data within the departments.
6. Under the non-statutory memorandum of understanding, if possible, HPD and PAT should establish one, common data collection system that allows access to data needed for each department’s operations and limit access to sensitive or

confidential information through a table of authorizations, read vs write access, or database administrators or system administrators.

7. HPD and PAT should develop a memorandum of understanding that defines domestic violence terms; itemizes the categories to be reported under domestic violence; and provides consistent and uniform definitions, terms, and jargon that facilitate domestic violence reporting and communications.
8. The HPD and PAT memorandum of understanding should require HPD and PAT to issue periodic, formal, and regular reports on domestic violence incidents that use consistent and regular categories (such as HRS §709-906 related incidents) that will allow city managers, the City Council, and the public to monitor and track the number and types of domestic violence cases occurring in the city. The reports should provide reliable, complete, accurate, and consistent domestic violence data to decision makers and segregate the categories covered under HRS §709-906 from the categories that fall under other sections of the HRS (such as attempted murder, kidnapping, and robbery).
9. Like HPD, PAT should develop formal, written policies, procedures, and processes for administering domestic violence cases; and written rules and regulations that provide useful information for managing, tracking, and accounting for domestic violence cases assigned to the unit.
10. PAT should update and develop formal guides its trial attorneys can use to prepare cases for trial and to prosecute and try domestic violence cases in court.
11. HPD and PAT should develop domestic violence performance metrics and data that allow organizations to benchmark and evaluate their performance; determine how well goals are being achieved; can be used to manage their workload; and justify the need for resources.
12. HPD should centralize Temporary Restraining Orders (TROs) data and allow all police districts and authorized HPD divisions to access the TRO information.

Management Response

The Managing Director and the Department of the Prosecuting Attorney generally agreed with the audit recommendations and indicated that HPD and PAT have implemented, or are in the process of implementing, the recommendations. Management suggested corrections, clarifications, and amendments to the audit draft. We generally agreed with the suggestions and amended the report accordingly. Some changes and corrections recommended by HPD were not made because these contradicted information received from other HPD departments and the Department of the Prosecuting Attorney, or reaffirmed the findings that common definitions, terms, and processes were needed. We made other technical, non-substantive changes to the draft report for purposes of accuracy, clarity, and style.

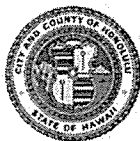
While acknowledging the increase in workload related to the law change, the Department of the Prosecuting Attorney expressed concerns that the audit recommendations may increase the number of cases dismissed or may not be feasible, and that protecting victims of domestic violence outweigh the reduction of cases. PAT indicated past lobbying efforts for additional judges and resources did not produce the expected results and was not optimistic that new lobbying efforts would expedite the processing of domestic violence cases. Based on our discussions with the state judiciary, we believe the need for renewed communications and continuous dialogue may improve the lobbying results and facilitate changes needed to successfully process domestic violence cases.

We thank the Managing Director, the Department of the Prosecuting Attorney, the Honolulu Police Department, and the many others who assisted us during this review. A copy of the management responses can be found on page 47.

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ROY K. AMEMIYA, JR.
MANAGING DIRECTOR
GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

June 1, 2017

Mr. Edwin S. W. Young
City Auditor
Office of the City Auditor
1001 Kamokila Boulevard, Suite 216
Kapolei, Hawaii 96707

Dear Mr. Young:

Thank you for your letter of May 19, 2017, and the draft report, *Audit of How Domestic Violence Cases are Handled, Processed, and Resolved*.

As one of the primary governmental agencies involved with handling domestic violence cases, the Honolulu Police Department (HPD) has reviewed the draft audit report and has provided their response to the recommendations as follows:

1. We recommend that the Managing Director, HPD, PAT, and the City Council should continue to lobby the State legislature to amend HRS 709-906 to reduce the domestic violence case, physical abuse in the presence of any family or household member who is less than 14 years of age from a class C felony to a misdemeanor with incarceration of 90 days.

HPD Response:

The HPD continually reviews all proposed legislative changes to the Hawaii Revised Statutes (HRS), including those related to domestic violence. The department is committed to working with all community partners and stakeholders to develop legislation that supports victims and their families.

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June 1, 2017
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5. HPD and PAT should eliminate some of the redundancy in their data collection systems by developing a non-statutory memorandum of understanding that allows both HPD and PAT to access their information systems, share information, and use database or system administrators to wall off and protect sensitive data within the departments.

HPD Response:

The HPD recently transitioned to the new Crime Reporting System (CRS), the records management system for the HPD. The CRS records and stores data from all police reports and has the capability to retrieve statistical information that was not available in the old system.

Both the HPD and the PAT have access to the CRS. The HPD is currently working with the PAT to develop an electronic conferral process. Reports generated in the CRS will ultimately be sent electronically and uploaded directly into the PAT's case tracking system. This should result in improved tracking of information and reports between the two agencies.

6. Under the non-statutory memorandum of understanding, if possible, HPD and PAT should establish one, common data collection system that allows access to data needed for each department's operations and limit access to sensitive or confidential information through a table of authorizations, read vs write access, or database administrators or system administrators.

HPD Response:

The HPD supports this recommendation provided that the appropriate security measures are in place and the funding across departments is available. The HPD and the PAT already share access to police reports via the CRS. A seamless system with the Judiciary would further improve the tracking of domestic violence cases.

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June 1, 2017
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7. HPD and PAT should develop a memorandum of understanding that defines domestic violence terms, itemizes the categories to be reported under domestic violence, and provides consistent and uniform definitions, terms, and jargon that facilitate domestic violence reporting and communications.

HPD Response:

The HPD's policy is based on state law and uses the definition of "family or household member" as stated in the HRS to determine which incidents are considered as "domestic violence". It is unclear how a memorandum of understanding would improve services to the public.

8. The HPD and PAT memorandum of understanding should require HPD and PAT to issue periodic, formal, and regular reports on domestic violence incidents that use consistent and regular categories, such as HRS §709.906 related incidents, that will allow city managers, the City Council, and the public to monitor and track the number and types of domestic violence cases occurring in the city. The reports should provide reliable, complete, accurate, and consistent domestic violence data to decision makers and segregate the categories covered under HRS §709-906 from the categories that fall under other sections of the HRS (such as attempted murder, kidnapping, and robbery).

HPD Response:

The HPD supports this recommendation.

11. HPD and PAT should develop domestic violence performance metrics and data that allow organizations to benchmark and evaluate their performance; determine how well goals are being achieved; can be used to manage their workload; and justify the need for resources.

HPD Response:

The HPD continually strives to improve on the services it provides to the community, and we can look for areas to improve by evaluating our performance. The HPD uses the budget process to address shortfalls in resources, as well as utilizing grant funding to assist the HPD in addressing the issue of domestic violence. Officer performance and workloads are reviewed to ensure that the detectives are properly investigating their assigned cases in a timely manner.

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12. HPD should centralize Temporary Restraining Orders (TROs) data and allow all police districts and authorized HPD divisions to access the TRO information.

HPD Response:

TROs have been centralized in the CRS. All officers and authorized civilian employees have access to the TRO information.

The HPD noted factual errors contained in the draft report regarding arrest, booking, conferral, and charging procedures, as well as reporting and tracking processes. These discrepancies were made known to the audit team and presented in a separate communication.

All of the city's entities involved with handling of domestic violence incidents are committed to improving the process to bring justice to the victims. We look forward to positive working relationships with our domestic violence partners.

Warm Regards,



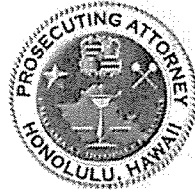
Roy K. Amemiya, Jr.
Managing Director

cc: Cary Okimoto, Acting Chief of Police
Honolulu Police Department

Department of the Prosecuting Attorney
City and County of Honolulu

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



CHRISTOPHER D.W. YOUNG
FIRST DEPUTY
PROSECUTING ATTORNEY

May 31, 2017

Edwin S.W. Young
City Auditor
Office of the City Auditor
1001 Kamokila Blvd., Suite 216
Kapolei, HI 96707

Dear Mr. Young:

Thank you for the opportunity to respond to the report, *Audit of How Domestic Violence Cases Are Handled, Processed, and Resolved* which was conducted pursuant to the City Council Resolution 16-1, CD1. The Department of the Prosecuting Attorney's (PAT) mission statement is, "To promote and ensure public safety and order through effective, efficient and just prosecution." We welcome recommendations aimed at enhancing efficacy and efficiency in criminal prosecutions.

PAT respectfully provides the following management responses to the twelve (12) Auditor's recommendations:

Recommendation 1: Managing Director, HPD, PAT and the City Council should continue to lobby the State legislature to amend HRS 709-906 to reduce the domestic violence case, physical abuse in the presence of any family or household member who is less than 14 years of age from a class C felony to a misdemeanor with incarceration of 90 days.

The physical abuse in the presence of a family member who is less than 14 years of age is currently a felony. The legislature set that policy when it created the law because it felt that it was a serious offense. It did increase the workload but that should not be a reason to change the law. Although reducing a felony offense to a misdemeanor would reduce the number of felony abuse cases, the reclassification would only shift the workload to an already overloaded family district court. A misdemeanor offense would still entitle defendants to a trial by jury, which would increase the number of cases dismissed due to lack of court resources.

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Recommendation 2: PAT should consider temporarily suspending its “no drop” policy until its workload can be stabilized or the HRS amended.

The “no drop” policy was instituted by PAT to protect victims from being threatened or harmed if they did not “withdraw their complaints.” Prior to the policy being implemented, victims could request that charges be withdrawn and it was granted even though there was sufficient evidence to prove abuse. Once a report by the victim is made and a statement is given detailing the abuse, the case can still be prosecuted with a rule of evidence that allows for admission of the statement even though the victim may recant at trial. PAT concurs that allowing withdrawals of complaints would reduce the number of felony and misdemeanor abuse cases but it is our view that protection of the victims outweigh the reduction of cases.

Recommendation 3: PAT should establish a formal, written administrative policy to use vertical prosecution whenever possible and to minimize personnel rotations for domestic violence cases.

Vertical prosecution is already employed in both felony and misdemeanor cases. However, rotation is frequent only in misdemeanor cases because those cases are handled by attorneys who seek experience in other types of cases and want to advance in doing felony cases.

Recommendation 4: The City Council and PAT should continue to lobby the State legislature and the State Judiciary to provide more judicial resources related to domestic violence cases.

Lobbying the Legislature to fund the Judiciary with additional resources would be fruitless with no control over how the resources would be used. In 2012 and 2014, the Prosecuting Attorney submitted a bill to the State Legislature to request funding for two (2) judges to try domestic violence cases. Despite the Judiciary’s opposition to the funding request, the Legislature agreed with the Prosecuting Attorney and provided funding for one judge position in the Family Court to try domestic violence cases. After acquiring that position, the Family Court used that judge position to handle temporary restraining orders and not trials.

Abuse of Family or Household Member is the usual charge in a domestic violence case. That charge is a misdemeanor which may require a jury trial if the defendant requests one. The Family Court located in Honolulu District Court has only two (2) courtrooms to try misdemeanor jury demand trials. The third courtroom is used to try misdemeanor jury-waived trials. Every week, there are approximately 25 cases set for jury trials in each of the two (2) courtrooms. That is a total of about 50 cases per week. At most only two (2) or three (3) cases will be tried before a jury in any given week. The rest of the case are continued or dismissed if the victims do not appear in court.

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May 31, 2017
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In addition, the State must try a case within six (6) months of the time of filing charges or arrest. When cases are continued due to court congestion, the elapsed time of the continuance is counted against the State and towards the six (6) month trial limit. As a result, due to the Court's inability to resolve the cases, a lot of cases are dismissed for the violation of the six (6) month rule. The delays have also caused many victims to become frustrated and then refuse to cooperate with the prosecution.

Recommendation 5: HPD and PAT should eliminate some of the redundancy in their data collection systems by developing a non-statutory memorandum of understanding that allows both HPD and PAT to access their information systems, share information, and use database or system administrators to wall off and protect sensitive data within the departments.

PAT concurs with the recommendation. In fact, PAT has been working with the HPD to import information from the police to the prosecutor's system.

Recommendation 6. Under the non-statutory memorandum of understanding, if possible, HPD and PAT should establish one, common data collection system that allows access to data needed for each department's operation and limit access to sensitive or confidential information through a table of authorizations, read vs write access, or database administrators or system administrators.

PAT concurs with the recommendation. PAT has been trying to import information from the police and the prosecutor's system so that it can be shared and viewed by the affected personnel.

Recommendation 7: HPD and PAT should develop a memorandum of understanding that defines domestic violence terms, itemizes the categories to be reported under domestic violence, and provides consistent and uniform definitions, terms, and jargon that facilitate domestic violence reporting and communications.

PAT concurs with the recommendation. PAT will discuss with HPD uniform categories and definitions that facilitate reporting and communication while still adequately addressing our individual reporting needs for grants and outside agencies.

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May 31, 2017
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Recommendation 8: The HPD and PAT memorandum of understanding should require HPD and PAT to issue periodic, formal, and regular reports on domestic violence incidents that use consistent and regular categories, such as HRS 709-906 related incidents, that will allow city managers, the City Council, and the public to monitor and track the number and types of domestic violence cases occurring in the city. The reports should provide reliable, complete, accurate, and consistent domestic violence data to decision makers and segregate the categories covered under HRS 709-906 from the categories that fall under other sections of the HRS (such as attempted murder, kidnapping, and robbery).

PAT concurs with the recommendation. When information is imported directly from HPD to PAT through our case management systems, data will become more consistent and as a result reliable for reporting purposes. PAT and HPD have been working on, and will continue to work on importing information directly into our case management systems.

Recommendation 9: Like HPD, PAT should develop formal, written policies, procedures, and processes for administering domestic violence cases; written rules and regulations that provide useful information for managing, tracking, and accounting for domestic violence cases assigned to the unit.

PAT concurs with the recommendation. Domestic violence cases are currently subject to office-wide data entry and tracking standards. PAT will update its guides to outline court and administrative processes which will enable new deputies to more readily understand case workflow and monitor various stages of prosecution.

Recommendation 10: PAT should update and develop formal guides its trial attorneys can use to prepare cases for trial and to prosecute and try domestic violence cases in court.

PAT concurs with the recommendation in part. PAT seeks to provide up-to-date summaries of the laws and procedures governing trial. However, attorneys must exercise their individual discretion in applying these tools to their cases in order to meet their legal and ethical obligations based on the facts presented. Statutes, rules, ordinances, case law, and ethical obligations are the formal guides with which attorneys are expected to follow.

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May 31, 2017
Page 5

Recommendation 11: HPD and PAT should develop domestic violence performance metrics and data that allow organizations to benchmark and evaluate their performance; determine how well goals are being achieved; can be used to manage their workload; and justify the need for resources.

PAT concurs with the recommendation. PAT will develop bench marks that can be incorporated into yearly evaluations. PAT will then be able to track the progression of its attorneys and determine if current practices should be changed.

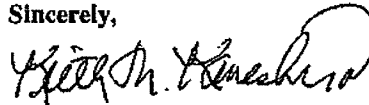
12. HPD should centralize Temporary Restraining Orders (TROs) data and allow all police districts and authorized HPD divisions to access the TRO information.

N/A

The Department of the Prosecuting Attorney would like to express its appreciation to the Office of the City Auditor, Mr. Edwin Young and his staff, for their consideration, patience, and assistance during this audit.

PAT looks forward to working with HPD and the City Council to address and implement the recommendations made by your office. Improving and enhancing our processes will lead to more effective and efficient prosecution of domestic violence cases. If you have any questions feel free to contact me at (808) 768-6407.

Sincerely,



KEITH M. KANESHIRO
Prosecuting Attorney

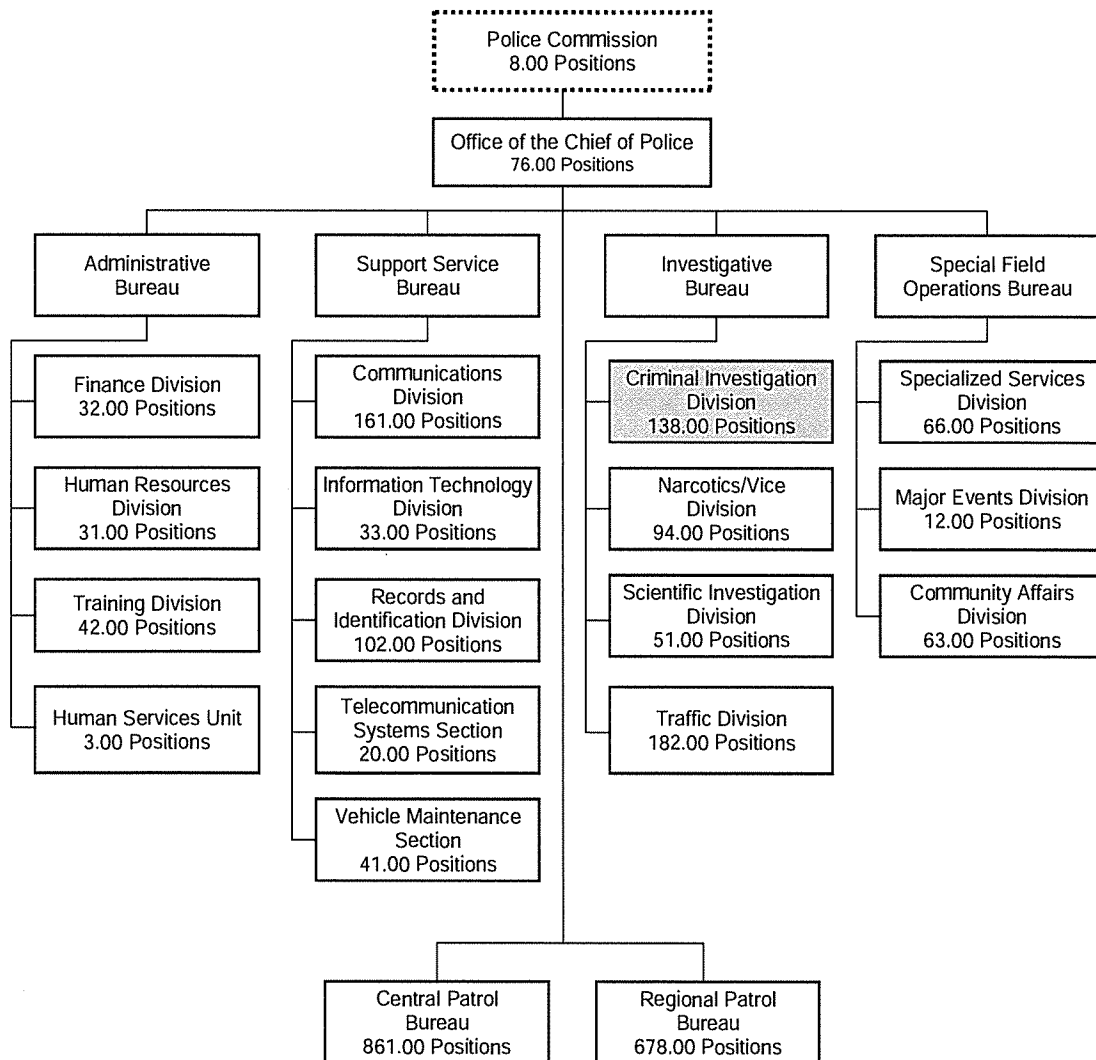
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Appendix A

Honolulu Police Department (HPD) Organizational Chart

HONOLULU POLICE DEPARTMENT (HPD) ORGANIZATION CHART

This chart reflects the number of full-time equivalent positions appropriated in Fiscal Year 2015.



Source: FY16 Operating Program and Budget

HPD is responsible for the preservation of the public peace, prevention of crime, detection and apprehension of law offenders, protection of the rights of persons and property, and enforcement of federal and state laws and city ordinances and regulations.

The *Criminal Investigations Division (CID)* investigates cases involving murder, robbery, sexual assault, assault, domestic violence and child abuse, financial fraud and forgery, auto theft, and white collar crimes. The division increases community involvement through programs such as Crime Stoppers and the Business Police Academy, and fosters partnerships with other law enforcement agencies.

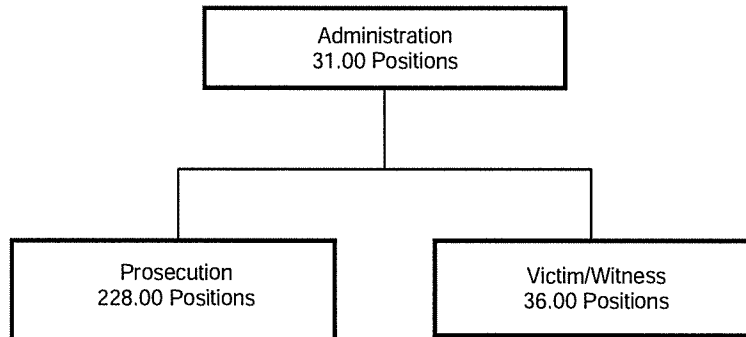
One of HPD's specific strategies involve "Better Community Partnerships." Under this program, HPD will improve Family and Domestic violence awareness by having the CID Child and Family Violence Detail improve training and increase partnerships with various domestic violence advocacy, nonprofit, and government working groups and improve domestic violence education, response, support, and adjudication systems.

Appendix B

Department of the Prosecuting Attorney (PAT) Organization

DEPARTMENT OF THE PROSECUTING ATTORNEY (PAT) ORGANIZATION CHART

This chart reflects the number of full-time equivalent positions appropriated in Fiscal Year 2015.



Source: FY16 Operating Program and Budget

PAT represents the people in criminal proceedings in district, circuit, and family courts; handles appeals and other matters heard by the Hawaii Intermediate Court of Appeals and Hawaii Supreme Court; and presents cases to the Oahu grand jury. It aims to promote and ensure public safety and order through effective, efficient, and just prosecution.

- *Administration Division* – directs all criminal prosecution and operations of the department, establishes policies and priority programs aimed at enhancing public safety, champions victims’ rights, and engages and informs the community about initiatives.

- *Prosecution Division* – investigates and prosecutes violations of statutes, ordinances, and regulations within the City and County of Honolulu for which there are criminal sanctions.
- *Victim/Witness Assistance Division* – provides support services for crime victims and witnesses, with emphasis on victims of violent crimes. Counselors assist victims and witnesses in obtaining help from social service agencies, help guide them through the criminal justice system, and serve as liaisons with deputy prosecutors.

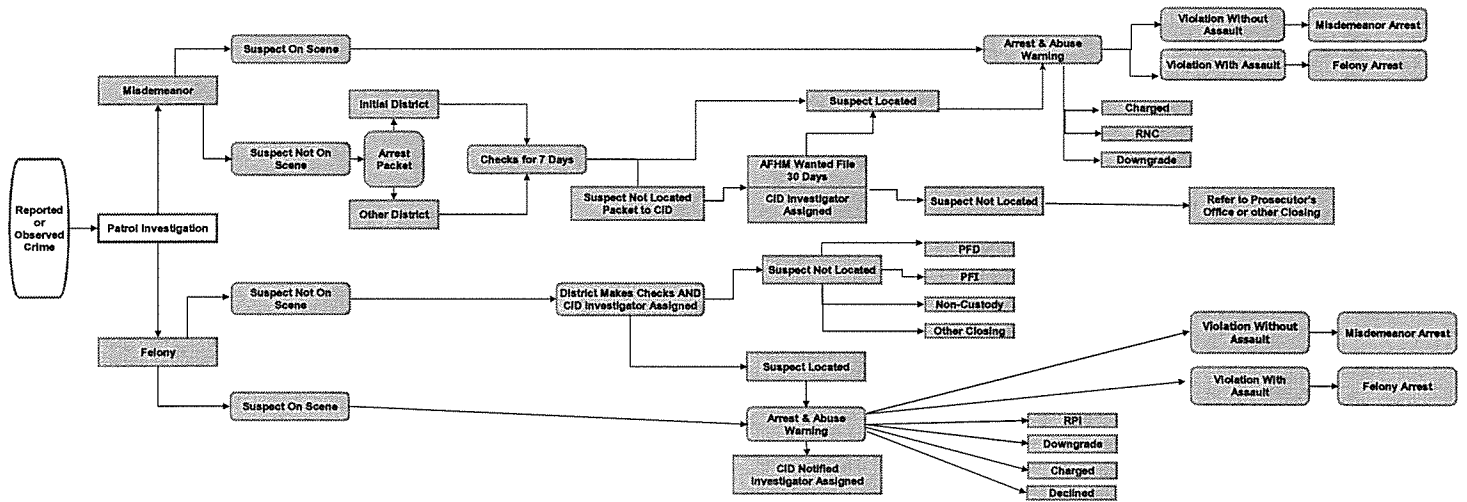
Regarding domestic violence, separate units prosecute felony cases such as sex assault and spousal abuse, and misdemeanor crimes such as abuse, complaints, or violations of restraining orders.

Regarding screening and intake, Deputies meet with police during and after criminal investigations to determine if charges are to be filed, what charges are appropriate, or whether prosecution should be declined.

Appendix C

Honolulu Police Department (HPD) Processes

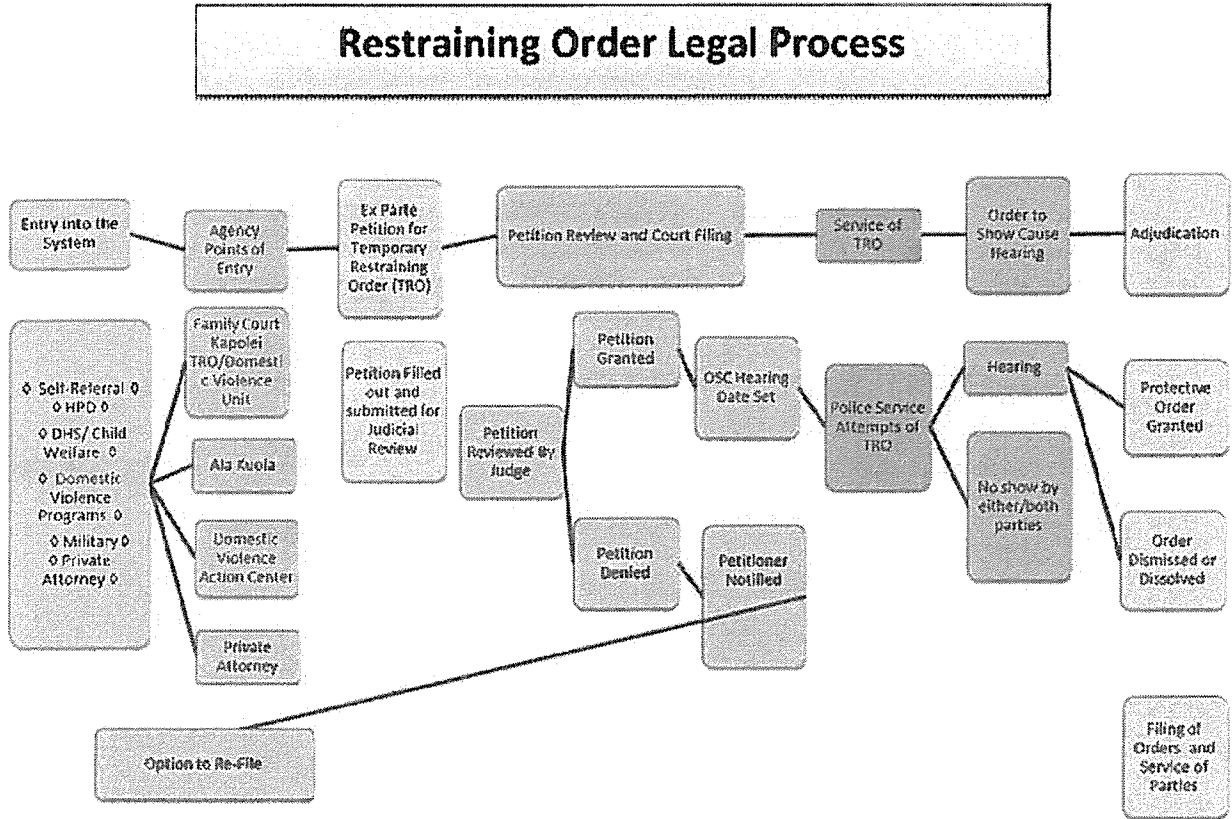
Exhibit C.1
HPD Domestic Violence Flowchart and Processes



Source: Honolulu Police Department Criminal Investigation Division

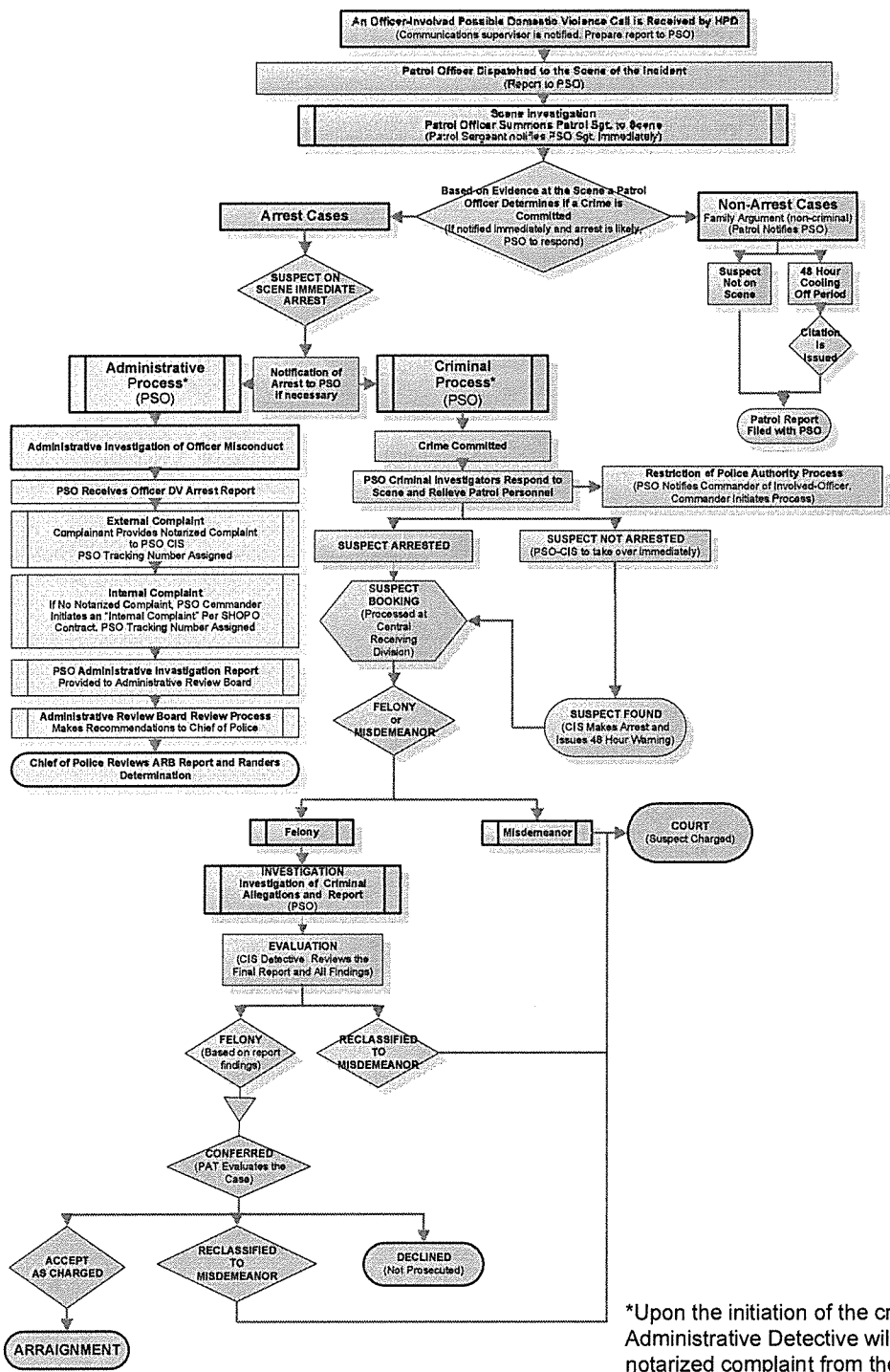
Appendix C: Honolulu Police Department (HPD) Processes

**Exhibit C.2
HPD Temporary Restraining Order (TRO) Process**



Source: Honolulu Police Department

Exhibit C.3 HPD Employee Involved Domestic Violence Incident Flowchart



*Upon the initiation of the criminal case, an Administrative Detective will attempt to obtain a notarized complaint from the victim. If the victim declines, the PSO Major will initiate an internal complaint to start the administrative process.

Source: Office of the City Auditor and Honolulu Police Department

Summary of the Process for HPD Officer-Involved Domestic Violence Incidents

Overview

Domestic violence incidents involving HPD officers for criminal allegations are processed similar to domestic violence incidents involving the public. However, the department also has an internal review process that examines police misconduct. The Professional Standards Office (PSO), under the Chief of Police, is responsible for investigating officer-involved domestic violence allegations and administrative investigations of police misconduct. The PSO adds a complaint tracking number for all internal and external complaints, in addition to the HPD records management case number.

In recent months and years, the media has reported officer misconduct including domestic violence. For 2016, HPD reported to the legislature that 5 out of 41 (12%) misconduct incidents involved domestic violence, compared to 7 out of 58 (12%) incidents in 2015. There was one domestic violence incident out of 47 (2%) incidents of misconduct in 2014.

Process for Officer-Involved Domestic Violence Incidents

The PSO conducts internal: 1) criminal investigations and 2) administrative investigations of domestic violence incidents involving police officers. The respective criminal and administrative misconduct investigations are conducted independent of, and physically separate from the other. No information is shared between PSO's criminal and administrative investigations pursuant to the SHOPO collective bargaining agreement.

The Criminal Investigation Section (CIS) is responsible for completing criminal investigations of domestic violence incidents. The CIS performs criminal investigations similar to HPD's Criminal Investigation Division (CID).

The Administrative Investigation Section (AIS) performs investigations related to violations of the HPD Standards of Conduct and violations of civil service rules. The standards and civil service rules establish guidelines of professional behavior, responsibilities, and disciplinary actions for all police officers on- and off-duty. Committing criminal acts and/or committing domestic violence are grounds for dismissal. The PSO submits its administrative investigation report to HPD's Administrative Review Board (ARB). The ARB, comprised of Assistant Chiefs and Deputy Chiefs, reviews the report and makes its

recommendations for the Chief of Police: *Complaint unfounded, Complaint not sustained, Employee exonerated, or Complaint sustained.* When the complaint is sustained, the ARB's findings will recommend: a) Counseling, b) Training, c) Written reprimand, d) Suspension for a specific number of days, e) Demotion, f) Separation from police service (voluntary, resignation, dismissal, or termination of initial probationary appointment. The Chief of Police decides what disciplinary action to take.

HPD Policies for the Processing, Handling and Resolution of Officer-Involved Domestic Violence Incidents

The PSO Commander identified the following HPD policies, among others, primarily used for PSO investigations of officer-involved domestic violence incidents:

Abuse of Family or Household Members (Policy 4.18):

This policy provides general procedures governing cases involving abuse of a family or household member. These procedures shall be followed in all cases of domestic violence.

Employees Involved in Domestic Violence (Policy 3.26):

This policy defines domestic violence as offenses under Section 709-906 HRS. These requirements supplement the general procedures when an employee is a suspect. HPD's policy states, *When acts of violence occur, quick and decisive action will be taken to protect the victim, arrest the accused employee, and hold the employee accountable for his/her actions through an effective course of criminal prosecution and/or administrative action.*

Standards of Conduct (Policy 2.21),

The standards of conduct includes roles, authority, standards, responsibilities, guidance, and procedures among others for the administration of the Honolulu Police Department. All officers are subject to the Standards of Conduct, all directives, orders and procedures of the HPD at all times, whether on or off duty, including leaves of absence.

According to the PSO Commander, committing domestic violence violates the HPD Standards of Conduct, and three or more DV violations within a span of twelve months are considered grounds for dismissal. For administrative investigations of officer-involved

domestic violence, the PSO would reference Article VII of the Standards of Conduct:

- *Responsibilities*, 1) Knowledge of Laws and Regulations; 2) Obedience to Laws and Regulations; 9) Extended Action – Repetitious violations of any Standards of Conduct shall be considered grounds for dismissal; 10) Performance – Officers and civilian employees shall perform their duties as required or directed by law, the Standards of Conduct, other standards, policies or by order of a supervisor; 19) Commission of any Criminal Act – Officers and civilian employees shall not commit any criminal act; and 21) Domestic Violence – Officers and civilian employees shall not commit the offense of abuse of a family or household member as defined in the HRS.

Complaints and Internal Investigation (Policy 5.01)

Establishes the processing, tracking, review and disposition of complaints (criminal law offenses and misconduct) against departmental personnel. Misconduct means the violation of any section of the Standards of Conduct or civil service rules. The PSO is responsible for assigning a tracking number to all internal and external complaints.

State of Hawai'i Police Officer's Contract

The police officers' collective bargaining agreement, State of Hawai'i Organization of Police Officers (SHOPO) includes police officer's protection in administrative investigations and interrogations. When conducting internal investigations, the employer is required to inform the employee in writing of the employee's *Garrity Rights*, which limits the use of an officer's statements to internal investigations and those statements cannot be used for official criminal investigations.¹

¹ It is my understanding that this statement is made for administrative, internal Police Department purposes only and will not be used as part of an official criminal investigation. This statement is made by me after being ordered to do so by lawful supervisory officers. It is my understanding that refusing to obey an order to make this statement that I can be disciplined for insubordination and that the punishment for insubordination can be up to and including termination of employment. This statement is made only pursuant to such orders and the potential punishment/discipline that can result for failure to obey that order. *Garrity v. New Jersey*, 385 U.S. 493. 87 S. Ct. 616, 17 L.Ed2d 562 (1967). State of Hawai'i Organization of Police Officers, Bargaining Unit 12. July 1, 2011 to June 30, 2017. Article 12.B.2.o. Garrity Rights.

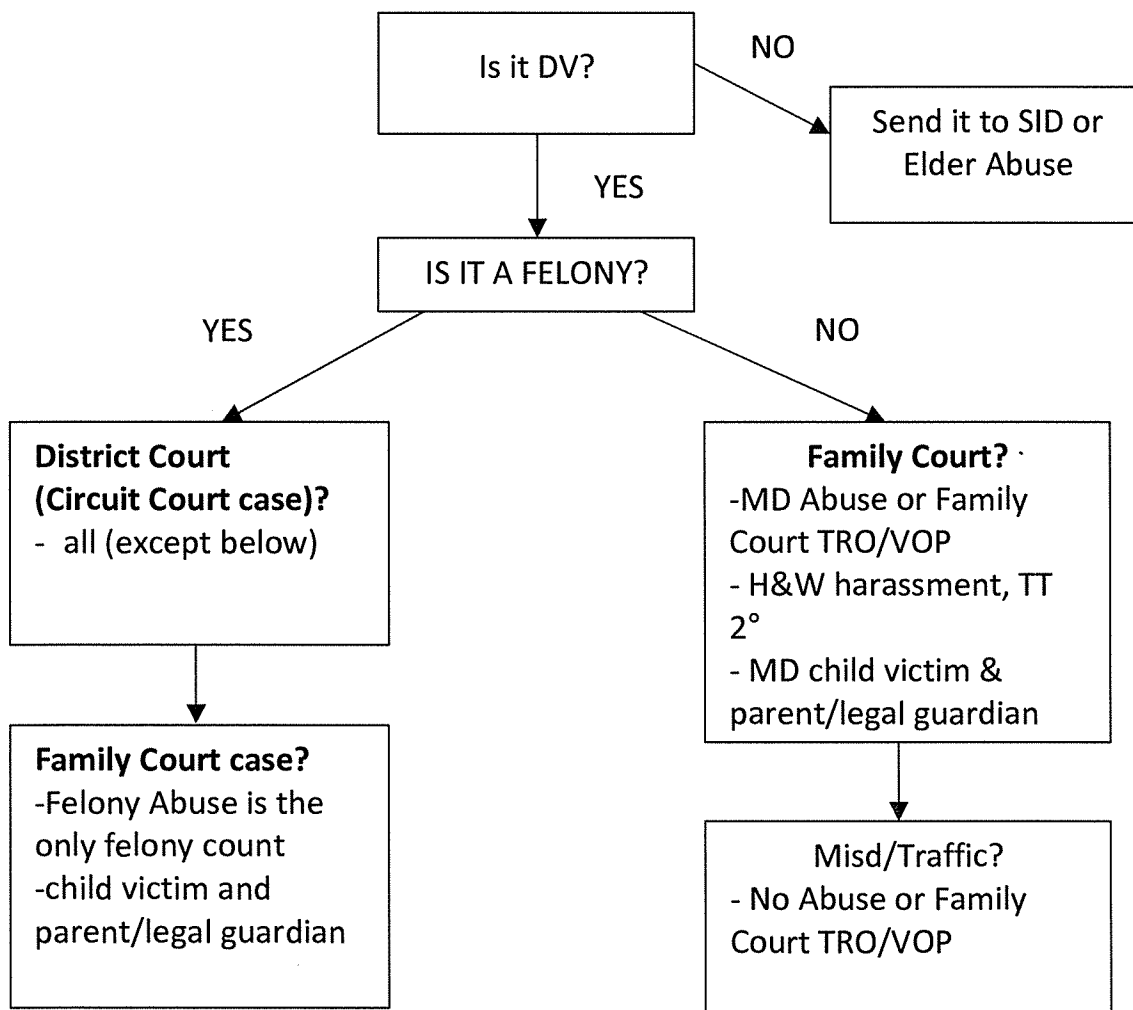
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Appendix D

Prosecuting Attorney (PAT) Flowcharts

Exhibit D.1
PAT Conferral Flowchart

CONFERRAL JURISDICTION FLOWCHART



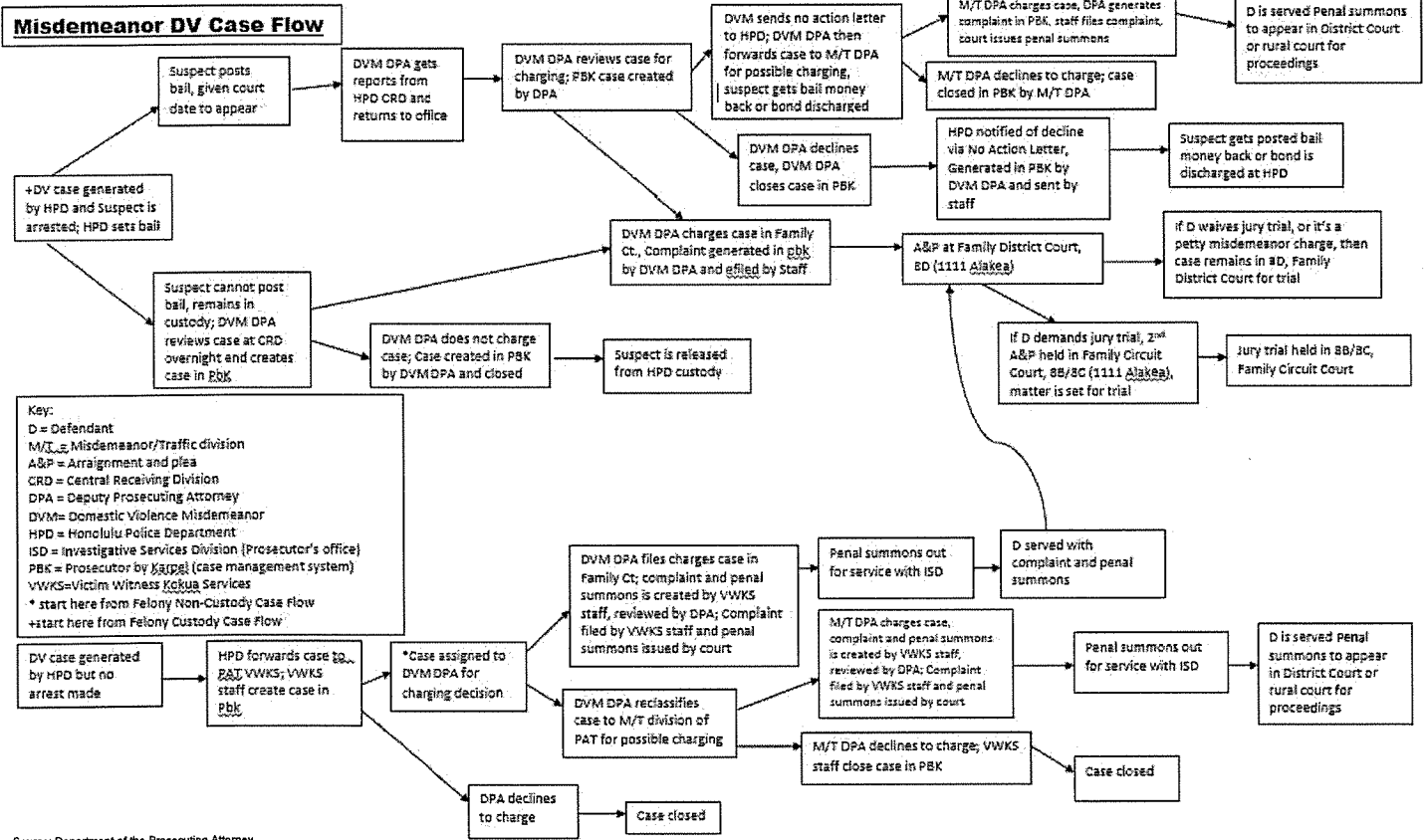
Note: DV = Domestic Violence; SID = Screening and Intake Division; MD = Misdemeanor; TRO = Temporary Restraining Order; VOP = Violation of Protective Order; H&W = Husband and Wife; TT = Terroristic Threatening - Second Degree

Source: Department of the Prosecuting Attorney

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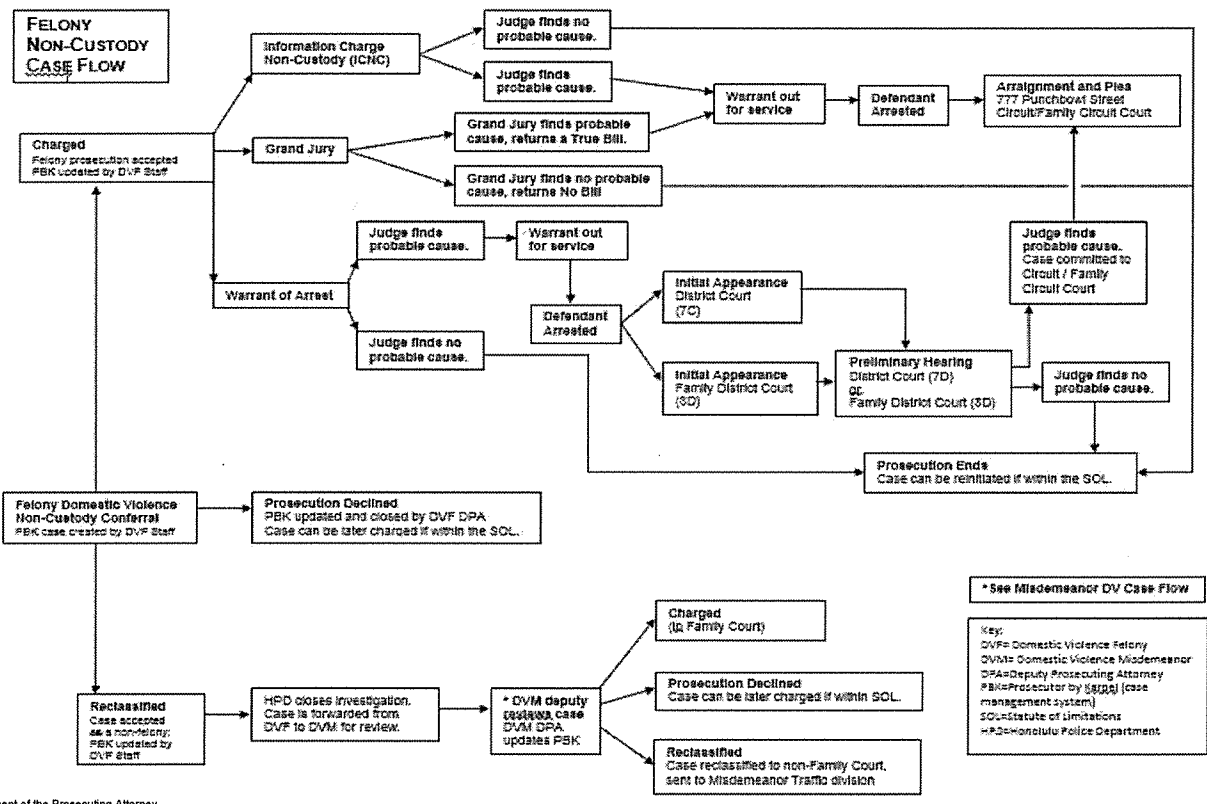
Exhibit D.2
PAT Domestic Violence Misdemeanor Flowchart

Appendix D: Prosecuting Attorney (PAT) Flowchart



Source: Department of the Prosecuting Attorney

Exhibit D.3
 PAT Domestic Violence Felony Flowchart - Non-Custody



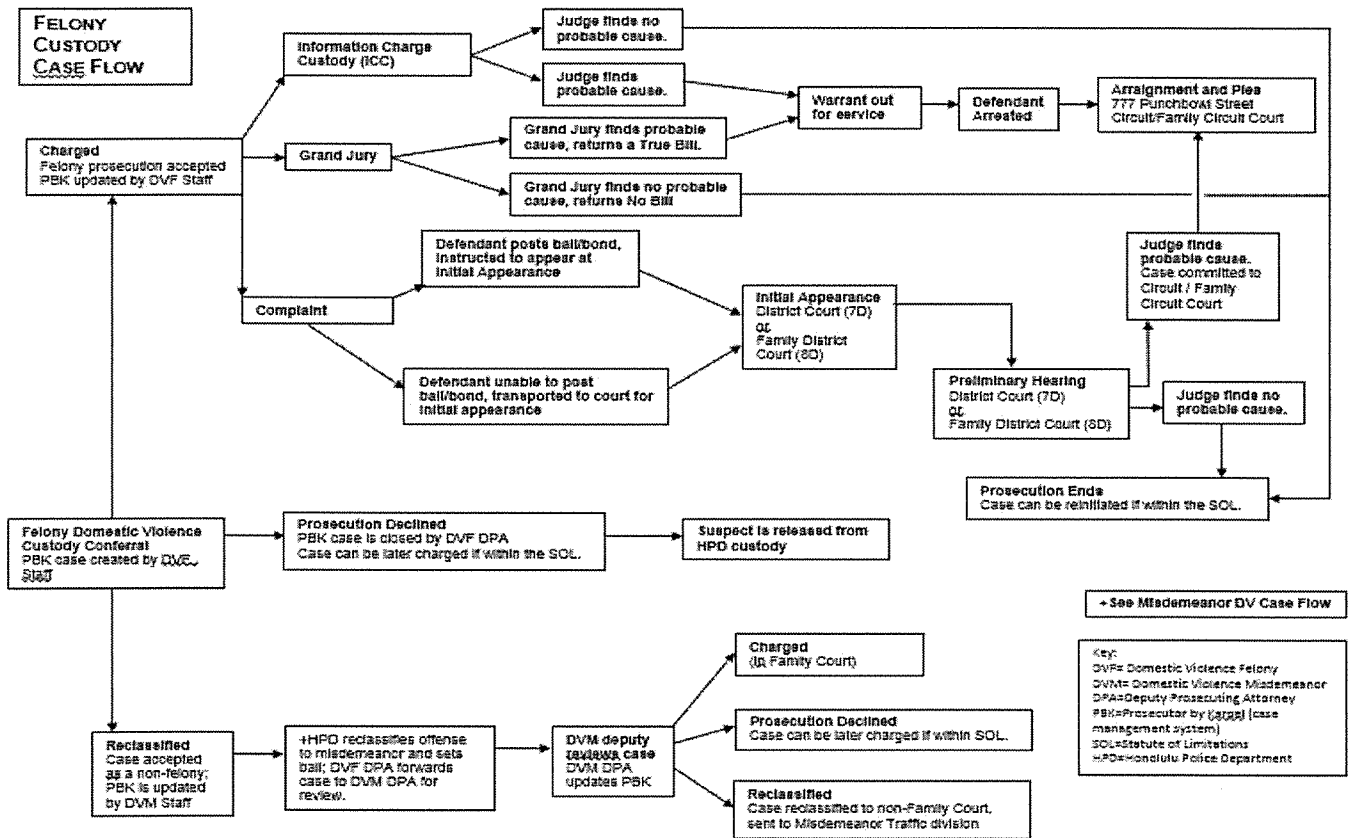
* See Misdemeanor DV Case Flow

Key:
 DVF= Domestic Violence Felony
 DVM= Domestic Violence Misdemeanor
 DPA= Deputy Prosecuting Attorney
 PBK= Prosecutor by [§87(2)(b)] (case management system)
 SOL= statute of limitations
 HPD= Honolulu Police Department

Source: Department of the Prosecuting Attorney

Exhibit D.4
PAT Domestic Violence Felony Flowchart - Custody

Appendix D: Prosecuting Attorney (PAT) Flowchart



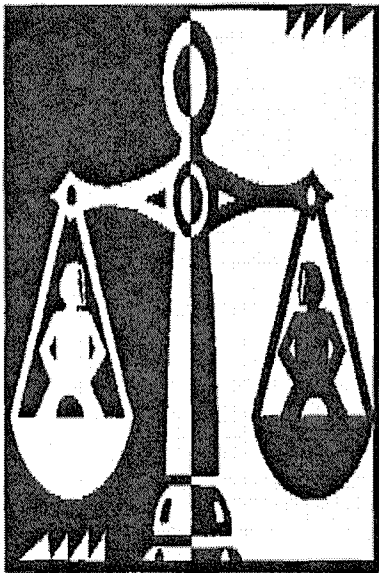
Source: Department of the Prosecuting Attorney

Appendix D: Prosecuting Attorney (PAT) Flowcharts

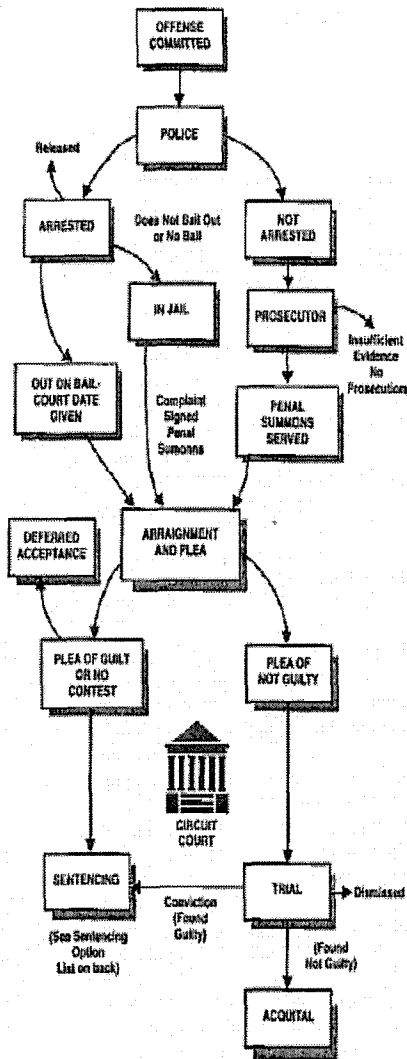
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Criminal Justice Flow Chart

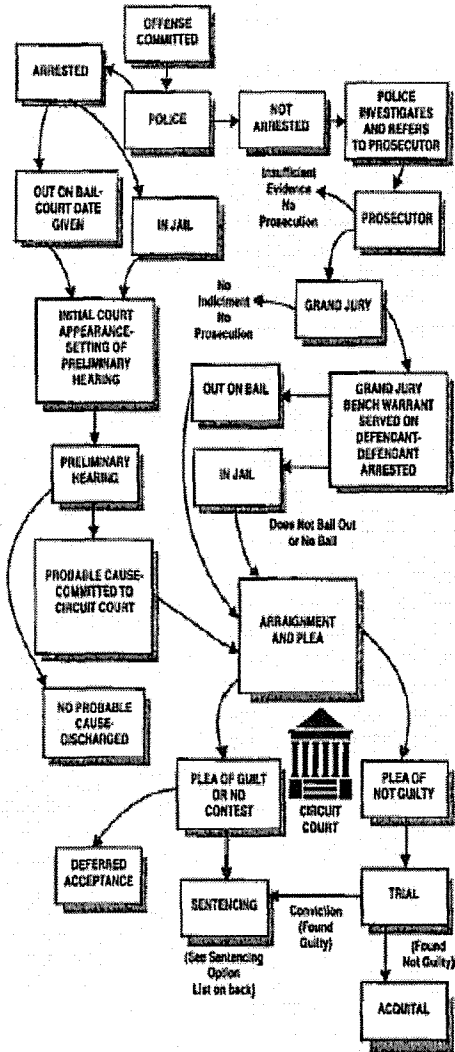
Adult Misdemeanor and Felony Cases



Adult Misdemeanor Cases



Adult Felony Cases



Appendix E

Hawaii State Judicial System Flowchart for Misdemeanor and Felony Processes

Definitions

Acquittal - A discharge or release which takes place when the judge or jury, upon trial finds a verdict of not guilty.

Arraignment - A hearing at which the defendant is formally notified of the charges against him and at which time a plea of not guilty, guilty, or no contest is entered. If a guilty plea is entered, the case is given a trial date.

Bail - An amount of money set by the police or court which must be posted or pledged before an accused may be released from jail, to assure the person's presence in court.

Bench Warrant - A written court order directing the police or the sheriff to arrest a person who has failed to appear at court, failed to follow a court order, or has been indicted by the Grand Jury for a crime.

Contempt - Willful disobedience to or open disrespect for a court or judge.

Defendant - A person arrested and charged with committing a crime.

Deferred Acceptance or Deferred Acceptance of Guilty Plea (DAG) or Deferred Acceptance of No Contest Plea (DANC) - A pretrial procedure under which acceptance of a plea of guilty or no contest may be postponed and the defendant eventually discharged without a judgement of guilty, upon successful completion of terms and conditions set by the court.

Dismissed - The court can dismiss the charges (the person was not actually found to be "not guilty.")

Felony - A serious crime, as opposed to a *misdemeanor*, the distinction is often made in terms of the applicable punishment, felonies being punishable by more than a year in jail.

Grand Jury - A jury of men and women made up of sixteen people who determine if there is probable cause to believe that the defendant committed the crime.

Indict - To formally accuse in writing.

Misdemeanor - A crime with a punishment of no more than one year in jail.

No Contest of "Nolo Contendere" - A Latin phrase meaning "I will not contest it"; a plea which has a similar legal effect as pleading guilty. A defendant may plead nolo contendere only with consent of the court. The principal difference between a plea of not guilty and a plea of nolo contendere is that the latter may be not used against the defendant in a civil action based on the same acts.

Penal Summons - An official complaint with court date set.

Definitions Continued

Plea - A defendant's answer to a charge filed against him (guilty, not guilty, no contest).

Preliminary Hearing - A proceeding in which the judge determines as to whether there is probable cause to believe that the defendant committed the crime.

Probable Cause - A reasonable belief which supports that a defendant did actually commit the crime.

Prosecutor - A lawyer who represents the State in criminal proceedings responsible for bringing the accused to justice.

Released - After arrest, the defendant may be released with no charge, or released pending investigation.

Sentencing - After a defendant pleads guilty to a crime, or is found guilty of a crime after a trial, sentencing is the time when the court decides what punishment to give the defendant.

Trial - A proceeding at which evidence is presented to a judge or jury who then decides whether the defendant committed the crimes charge.

Verdict - The formal decision or finding made by a judge or jury.

Note:
Misdemeanor Domestic Violence Cases - These cases are generally heard in Family Court.

Sentencing Options

- Combination of incarceration and probation
- Probation
- Probation with special conditions:
 - Jail
 - Pay a fine
 - Drug testing/drug treatment (residential & outpatient)
 - Electronic monitoring
 - Community service
 - Sex offender treatment
 - Counseling Programs (anger management, etc.)
 - Restitution
 - Drug Court for probation violators
- Deportation - Federal INS procedure
- Pay a Fine
- Driver's license suspension
- Driver education (for DUI)

Sentencing Options Continued

- Jail - Confinement up to 1 year
- Prison - Confinement in excess of 1 year
- Parole - Supervision after serving a time in prison. No parole supervision if a maximum prison term is served by offender.
- Drug Court - Alternative disposition to trial

This project was supported by Award No. 98-VA-GX-0015, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, through the State of Hawaii Department of the Attorney General and the Honolulu Department of the Prosecuting Attorney, Victim Witness Kokua Services. For additional information please contact the Victim Witness Assistance Program in your county.

<i>Honolulu (Oah'u)</i>	<i>768-7401</i>
<i>Maul</i>	<i>270-7695</i>
<i>Kauai</i>	<i>241-1888</i>
<i>Kona</i>	<i>322-2552</i>
<i>Hilo</i>	<i>961-0466</i>

These criminal justice flow charts were produced to give the general public a better understanding of the criminal justice system. These are basic models and portray the most common sequence of events in response to serious criminal behavior. It is not representative of any individual case.

In accordance with the Americans with Disabilities Act, P.L. 101-336, this material is available in an altered format, upon request. If you require an altered format, please call Victim Witness Kokua Services at (808) 768-7401.

Source: Department of the Prosecuting Attorney

Appendix F

Resolution 16-1, CD1



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-1, CD1

RESOLUTION

REQUESTING THE CITY AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF HOW DOMESTIC VIOLENCE CASES ARE HANDLED, PROCESSED, AND RESOLVED BY THE CITY, INCLUDING THE ENFORCEMENT OF TEMPORARY RESTRAINING ORDERS.

WHEREAS, domestic violence is a widespread community problem that compromises the safety of thousands of families in the City and can have tragic, destructive, and sometimes fatal consequences; and

WHEREAS, according to statistics provided by the Hawaii Department of the Attorney General, from 2008 to 2012, 38.7 percent of murders committed in the state were domestic violence-related; and

WHEREAS, while domestic violence makes up a significant portion of violent crime, many victims do not report violence to authorities, family or friends, resulting in a possible underestimation of the number of domestic violence incidents; and

WHEREAS, recent high-profile incidents have raised concerns about the way the police and prosecutors handle domestic violence cases that are reported; and

WHEREAS, the handling of domestic violence cases by the Honolulu Police Department, the Department of the Prosecuting Attorney (Prosecutor), and other government agencies affects public confidence in the ability of the City to deal with these kinds of crimes effectively and may influence whether victims decide to come forward with complaints; and

WHEREAS, the Council established a Domestic Violence Response Task Force in Resolution 15-25, FD1, to make recommendations for improving training on, reporting of, and monitoring of domestic violence cases; and

WHEREAS, on December 31, 2015, the Domestic Violence Task Force issued its Final Report and Recommendations, which identified a need for comprehensive aggregate data collection, including arrest rates, prosecution rates, victim engagement with advocates, conditions of sentences, probation periods, etc.; and

WHEREAS, in order to effectively evaluate the City's response to domestic violence, the Council requires information on prosecution rates, volume of complaints, and turnaround times from patrol to investigation, investigation to submittal to the Prosecutor, and receipt of the complaint to filing of charges; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-1, CD1

RESOLUTION

WHEREAS, the Council recognizes that temporary restraining orders are crucial to victim protection and should be evaluated to ensure efficient and effective enforcement; and

WHEREAS, to further improve the City's policies for responding to domestic violence, the Council finds that a performance audit of City agencies involved in domestic violence response is warranted; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it requests the City Auditor to conduct a performance audit of how domestic violence cases are handled, processed, and resolved by the City and its agencies, including the enforcement of temporary restraining orders; and

BE IT FURTHER RESOLVED that the audit: 1) determine whether domestic violence cases in Honolulu are handled, processed, and investigated in an economical, efficient, and effective manner; and 2) make recommendations for improving how domestic violence cases in Honolulu are handled, processed, and resolved; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-1, CD1

RESOLUTION

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Office of the City Auditor, the Honolulu Police Department, the Department of the Prosecuting Attorney and the Mayor.

INTRODUCED BY:

Kymberly Pine

Carol Fukunaga

Ann Kobayashi

DATE OF INTRODUCTION:

January 4, 2016
Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 16-1, CD1

Introduced: 01/04/16

By: KYMBERLY PINE


Committee: PUBLIC HEALTH, SAFETY
AND WELFARE

Title: RESOLUTION REQUESTING THE CITY AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF HOW DOMESTIC VIOLENCE CASES ARE HANDLED, PROCESSED, AND RESOLVED BY THE CITY, INCLUDING THE ENFORCEMENT OF TEMPORARY RESTRAINING ORDERS.

Voting Legend: * = Aye w/Reservations

01/12/16	PUBLIC HEALTH, SAFETY AND WELFARE	CR-4 -- RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
01/27/16	COUNCIL	CR-4 AND RESOLUTION 16-1, CD1 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

HRS 709-906 Statistics 2009-2014
As reported by Hawaii Criminal Justice Data Center in 2015

Table 1 Number of 709-906, HRS Charges at Arrest

	Hawaii	Kauai	Maui	Honolulu	total
2009	760	254	582	1488	3084
2010	713	240	549	1404	2906
2011	676	275	667	1660	3278
2012	598	329	709	1506	3142
2013	633	366	804	1542	3345
2014	716	364	890	1747	3717
Total	4096	1828	4201	9347	19,472

Table 2 Number of Charges Referred to Prosecutors

	Hawaii	Kauai	Maui	Honolulu	total
2009	706	238	549	1381	2874
2010	627	234	517	1301	2679
2011	599	269	611	1533	3012
2012	516	327	678	1380	2901
2013	535	361	693	1365	2954
2014	589	355	825	1453	3222
Total	3572 87%	1784 98%	3873 92%	8413 90%	17,642 91%

Table 3 Number of Charges/Cases Dropped by HPD

	Hawaii	Kauai	Maui	Honolulu	total
2009	54	16	33	107	210
2010	86	6	32	103	227
2011	77	6	56	127	266
2012	82	2	31	126	241
2013	98	5	111	177	391
2014	127	9	65	294	495
Total	524 13%	44 2%	328 8%	934 11%	1,830 10%

Table 4 Number of Charges Amended by Prosecutors

	Hawaii	Kauai	Maui	Honolulu	total
2009	41	6	75	17	139
2010	34	4	47	34	119
2011	39	2	44	18	103
2012	35	3	54	6	98
2013	43	7	61	2	113
2014	25	7	62	4	98
Total	217 6%	29 2%	343 9%	81 1%	670 4%

Table 5 Number of Charges Charged as is by Prosecutors

	Hawaii	Kauai	Maui	Honolulu	total
2009	653	193	363	1165	2374
2010	583	184	371	1083	2221
2011	545	237	382	1371	2535
2012	469	260	451	1155	2335
2013	464	286	372	1137	2259
2014	545	287	470	1397	2699
Total	3259 91%	1447 81%	2409 62%	7308 78%	14,423 82%

Table 6 Number of 709-906, HRS Charges Resulting in a Non-Conviction* at Court

	Hawaii	Kauai	Maui	Honolulu	total
2009	162	67	150	625	1004
2010	122	65	122	481	790
2011	94	81	120	635	930
2012	93	75	172	602	942
2013	84	73	144	714	1015
2014	57	72	181	471	781
Total	612 19%	433 30%	889 37%	3528 48%	5,462 38%

Table 7 Number of 709-906, HRS Charges Dismissed by Prosecutors at Court (i.e. Nolle Prosequi)

	Hawaii	Kauai	Maui	Honolulu	total
2009	79	0	0	53	132
2010	98	0	0	52	150
2011	79	1	0	35	115
2012	103	0	0	20	123
2013	85	0	0	20	105
2014	115	0	1	20	136
Total	559 17%	1 0%	1 0%	200 2%	761 5%

Table 8 Number of 709-906, HRS Charges Resulting in a Conviction at Court

	Hawaii	Kauai	Maui	Honolulu	total
2009	349	71	163	378	961
2010	311	82	215	379	987
2011	290	91	185	451	1017
2012	217	78	170	445	910
2013	199	83	188	257	727
2014	189	65	196	367	817
Total	1555 48%	470 32%	1117 46%	2277 24%	5,419 38%

Table 9 Number of 709-906, HRS Charges with an Other Type of Disposition in Court**

	Hawaii	Kauai	Maui	Honolulu	total
2009	53	13	9	17	92
2010	44	7	9	19	79
2011	47	5	13	56	121
2012	23	14	13	4	54
2013	16	13	15	5	49
2014	13	3	16	9	41
Total	196	55	75	110	436
	6%	4%	3%	1%	3%

*** Non-Conviction Dispositions include:**

ACQUITTAL BY REASON OF
 ACQUITTED
 DISMISSED
 DSM/NPQ WITHOUT PREJUDICE
 NOT GUILTY

**** Other Type of Dispositions include:**

BAIL FORFEITURE
 COMMITTED
 DAG/DNC CLOSED W/O DISMISSAL
 DISCHARGED
 DISPO UNAVAILABLE
 INACTIVE; NO DSM FILED
 MOOT
 NO ACTION
 STRICKEN
 TAKEN TO GRAND JURY

HRS 709-906 DAG & DNC Statistics 2014-2016

As reported by Hawaii Criminal Justice Data Center in 2017

Circuit		First	Second	Third	Fifth
DAG					
	2014	4	0	0	0
	2015	12	0	0	0
	2016	2	0	3	0
DNC					
	2014	0	0	0	0
	2015	1	0	2	0
	2016	7	1	0	0

Domestic Violence Cases Filed under HRS 709-906 – Updated 1/9/2017

Circuit and Family Court

During the 7-year period from January 1, 2010, through December 31, 2016, there were 13,765 cases involving HRS 709-906 charges filed in Circuit and Family Courts throughout the State, or about 2,000 per year. About 90% of these charges are filed in Family Court.

Domestic Violence Cases Initiated by Year, Circuit Court

	First Circuit	Second Circuit	Third Circuit	Fifth Circuit	All Circuits
2010	694	290	509	158	1,651
2011	1,101	305	453	203	2,062
2012	1,026	376	413	196	2,011
2013	981	346	404	208	1,939
2014	1,191	422	453	226	2,292
2015	868	433	398	217	1,916
2016	831	453	391	219	1,894
All Years	6,692	2,625	3,021	1,427	13,765

A total of 13,991 counts were filed in these 13,765 cases. About 42% of all counts filed under HRS 709-906 were disposed with a finding of guilt, or a guilty/no contest plea. A small number (under 5%) are disposed with a deferred plea of guilt or no contest. (Note that cases that have been filed more recently are less like to have been disposed, so the following table will understate the final numbers for 2015 and 2016).

Dispositions for all Counts initiated under HRS 709-906 by Year Initiated
Circuit and Family Courts

	Guilty Verdict	Guilty/Nolo Contendere	Deferred	Not Guilty	Dismissed*	Nolle Prosequi	Transferred	All Dispositions
2010	30	873	17	48	701	147		1,816
2011	33	1,005	35	98	1,005	145	4	2,325
2012	26	968	17	82	971	128		2,192
2013	20	728	38	36	1,109	112		2,043
2014	12	878	114	61	922	189		2,176
2015	10	763	136	30	912	198	12	2,061
2016	11	486	97	23	600	145	16	1,378
All Counts	142	5,701	454	378	6,220	1,064	32	13,991

*Dismissed includes the dismissal of counts that had previously had a deferred plea accepted.

Note that not all cases filed in 2015 and 2016 have reached a disposition as of the date of this report 1/9/2017.

District Court

Between January 1, 2010, and December 31, 2016, 949 cases involving charges under HRS 709-906 were filed in District Court, an average of about 135 cases a year.

Domestic Violence Cases initiated by Year, District Court

	First Circuit	Second Circuit	Third Circuit	Fifth Circuit	All Circuits
2010	14	14	85	20	133
2011	26	15	61	19	121
2012	22	21	57	29	129
2013	18	17	62	25	122
2014	26	22	71	22	141
2015	29	33	68	16	146
2016	40	37	66	14	157
All Years	175	159	470	145	949

A total of 1,253 counts were filed in these 949 cases. The most likely disposition for these counts in District Court is transfer to Circuit or Family Court (53.8%). About 32% of HRS 709-906 cases in District Court are dismissed, and a small number (7.7%) result in a guilty/no contest plea, or a finding of guilt.

Dispositions for all Counts Initiated under HRS 709-906 by Year Initiated
District Courts

	Guilty Verdict	Guilty/Nolo Contendere	Deferred	Not Guilty	Dismissed*	Nolle Prosequi	Transferred	All Dispositions
2010	7	10	2	1	51	3	72	146
2011	1	10			47	12	93	163
2012		22			49	11	86	168
2013	2	10			49	8	85	154
2014		11	1		58	14	115	199
2015		15	3		78	16	107	219
2016		8			65	15	116	204
All Counts	10	86	6	1	397	79	674	1,253

*Dismissed includes the dismissal of counts that had previously had a deferred plea accepted.

Note that not all cases filed in 2015 and 2016 have reached a disposition as of the date of this report 1/9/2017.

Audit of How Domestic Violence Cases Are Handled, Processed, and Resolved

Office of the City Auditor, City and County of Honolulu
Report to the Mayor and the City Council of Honolulu
Report No. 17-02, June 2017

http://www.honolulu.gov/rep/site/oaca/oaca_docs/DV_Final_Report_060817.pdf

Exhibit 4.1 (page 33)

Comparison of HPD Patrol District and HPD CID Domestic Violence Data

Fiscal Year	Patrol District Domestic Violence Related Incidents	Calendar Year	CID <i>HotSheet</i> Domestic Violence Data
2012	7,456	2012	6
2013	6,614	2013	468
2014	5,502	2014	2,436
2015	5,562	2015	2,476
2016	6,486	2016	1,643
Total	31,620	Total	7,029

Source: OCA Analysis of HPD Data

Survivor Survey for Public Policy Reform 2017

SUMMARY OF ANSWERS

Blue are from handwritten surveys, green from the online surveys. Most of the surveys were from Oahu, the online survivor survey did not ask which island.

Police and Courts

Did the police ever respond to a domestic violence incident that you were involved in YES ___32___ NO ___2___

Was your abuser ever arrested for abuse? YES ___8___ NO ___26___

Were you ever arrested for abuse? YES ___4___ NO ___23___

Was your abuser ever arrested for a restraining order violation? YES ___6___ NO ___28___

Notes: Not arrested even after violating over 10 times

When the police responded to the domestic violence incident, were they helpful YES ___22___ NO ___12___
why not _____?

- 1.They believed the abuser nothing was wrong.
- 2.They were helpful. They pulled him off of me and pepper sprayed him.
- 3.Police officers are not trained enough to handle these types of situations. If a child is abused there is all kind of assistance available before the abuse even faces court. Yet if a female is abused there are not enough resources or support available to her quickly enough. Often the victim is so beat down, so addicted to the situation that if it's bad enough that the police make it there in time there should be a tighter course of action then just they get warned to take a 72 hr break from one another.

Did you feel supported by the police YES ___21___ NO ___13___

Were you satisfied with the police response? What did they do well? What could have been improved?

Notes: Nothing is ever done other than taking a statement. 2) They showed up, talked to him, told me to think about how CPS would get involved if I pressed charges. They left, I got beat badly. 3)Police were helpful, escorted me to apt and stayed with me until I left.4) Helpful: they advised me what I need to do. 5) They always tried to save the problem and never took him when I felt unsafe in my home with him present. 6) Helpful: they took care of the incident asap when I first filed report. 7) Racist. 8. They favored my husband because he has friends at HPD. 9. Police responded to calls in Virginia. 10. Military police treated my husband as a victim, not me. 11. They were very helpful, and understanding. They explained what would be happening next. 12. They did not ask much questions. 13. They were nice, I didn't want to press charges. I had no wounds on me, it was an argument. 14. There has been previous calls that I made before regarding my husband but was told there was nothing they could do. 15. Not wait until there are various calls on my husband to finally take me seriously. 16. Police were cordial to both abuser and victim. They should've arrested abuser. 17. They arrested me even though my abuser punched himself to make it look like I hit him. They didn't listen to my

Survivor Survey for Public Policy Reform 2017

side of the story. 18. They saw/listened to my circumstances and had my ex boyfriend arrested. 19. They made me feel safe and comfortable.

1. They could have asked more questions.
2. They took pictures of my injuries which at the time was very demoralizing but I'm so glad it was documented for the restraining order. They also made sure that my neighbors took me to fill out a restraining order and followed up with me and my neighbors too.
3. Listened to me. Could tell he was not being truthful
4. Yes, they explained my rights and were very compassionate and calm
5. Listened to both sides not just him since my abuser was an officer also
6. On one incident, the police did a follow up call 2 days later and I appreciated that. I wish they would've provided more resources.
7. No. They showed up I guess. Stop taking sides I was the white female he was the local brother with 3-5 male cops. How do you think it went discrimination is how it went even though I was the wife of 14 yrs.
8. yes, made sure i could get away from home. allowed me time to pack my things and my children and made sure i wasn't followed

Did you have incidents with an abusive partner and did not call the police YES 29 NO 6

If you did not call, why not?

Notes: 1) The second time I was afraid, to do so. 2) They came too late need to be more responsive and open. 3) Because I feel the state is a waste of time. And court takes too long and need too much proof to prove that abuser is an abuser. 4) I thought they were not serious at the time. 5) I was not able to. 6) To many times I allowed him back (past). 7) Last time was useless and I got beat worse so it seemed pointless and hopeless to call them. 8) I was considering he is my children's father. 9. I always call but HPD does not support me. 10. They could be better trained to see defense wounds. I got arrested defending myself from my ex boyfriend. 11. I was scared to. 12. I was afraid. 13. I was afraid because I thought I would get deported. 14. I was too scared. 15. Police do not take verbal/psychological abuse seriously. 16. Didn't think anything would be done by HPD. 17. I didn't feel like making the situation any bigger than it was. 18. Too scared of what might happen.

1. Afraid and they never do anything but tell me to leave with my children
2. I never called. It was my neighbors that called the police when they saw the abuse in the parking lot. I never called because I had gotten used to the behavior and told myself that it wasn't so bad and that it was just a moment and would pass.
3. I was unconscious
4. I was afraid he would use his position in the community to ruin my reputation and turn the situation against me, or that he would hurt me even worse if he got arrested after he got out.
5. Scared
6. Scared it would've made it worse and worried about my kids.
7. It was constant, I had little to no self worth, the police weren't a resource it was just what had to be done for some sort of legal track work that meant nothing in the end.

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Did you participate in a trial for domestic violence crime? YES__8__ NO____18____

Did you have to return to court more than once before the case was settled? YES__10__ NO__7____

Were you satisfied with the way the Prosecutor's office handled your case? What did they do well? What could have been improved?

1. Yes, helped me fight for my right. 2. Never went to trial. He ratted out drug dealers so he got out of my charges. 3. I wasn't ready at the time. Had I been, he would have been prosecuted and went to jail. 4. Yes, very satisfied. The prosecutors office they handled my case really good. And all the outcome that I wanted to happen it happen. 5. I feel that witnesses should be able to be in the courtroom also not just the defendant. You don't really know what is going on in there and the prosecutor coming out and telling you the outcome.6. Yes they helped me get what I needed done. 7. Yes, very respectful and helpful. 8. I haven't heard from the prosecutors yet about the violation arrest. 9. I shouldn't have to show up for every hearing in a case that I didn't commit. 10. So many continuances that it was later dissolved. 11. Yes they were flexible with me and my time and reminded me of court dates. 12. Yes they stayed in close contact with me. 13. They let me be on call for the case instead of me having to take off work.

1. Gina really helped me a lot. A survivor must have an advocate. There is no way you can think clearly after going through trauma and to have to stand in front of everyone and talk about it is almost impossible. It's so much easier to do nothing. I never would have pressed charges but luckily the state did so it wasn't up to me. I did receive a 20 year restraining order to protect myself and my children.
2. No Used all available evidence to support my case
3. Not at all
4. No... the criminals have all the rights not the victims nor do the criminal ever have to stand a mental evaluation so the cycle continues to something worse and in my case, him going on to abusing our child... and even that is still tied up in court 3 yrs later. I've spent 1/2 of my lifetime trying to get away from a monster that still runs free, except now with a much longer list of titles other than domestic abuser, like Pedophile, child molester, drug addiction, weapons, narcissist...

Restraining Orders

Have you gone to court to get a restraining order YES____33__ NO__5__

Was your restraining order granted by the Court YES__30__ NO__4__

Did your partner get a restraining order against you YES__14__ NO__21__

Did you feel safe at the court house? YES__24__ NO__9__

Were you able to ask for what you needed in the petition for your (and your children's) protection YES__28__ NO__8__

Were you granted what you asked for in the petition? YES__17__ NO__8__

Did you have an advocate helping you at court YES__25__ NO__4__

Survivor Survey for Public Policy Reform 2017

Were you represented by an attorney in your restraining order hearing YES__12____ NO__17____

Did you feel capable of handling the court hearing on your own YES__10____ NO__17____

Would it have been helpful to have an attorney YES__25____ NO__4____

Did the Court officer provide sufficient assistance as you were submitting the petition for the TRO?

YES__22____ NO__6____ (3 noted they had DVAC advocates)

Were you satisfied with the way the Courts handled your case? What did they do well? What could have been improved? YES__20____ NO__5____

Online survey included question: What did the court officials do well? What could have been improved?

1. Without Gina I couldn't have done anything. It's like asking someone that was just in a horrible car accident to turn around and fix the car. You can barely function at that point and the court makes you stand there in front of your abuser and state your case to convince them that you need help. It's hard enough to ask for help let alone try to clearly calmly and coherently convince someone who is judging everything you do and say. At that moment being in the same room as him nothing clear, nothing feels coherent and you are about the farthest from calm as you can possibly be. Every cell in your body is screaming RUN! And it's at this moment that you have to deliver a speech to a judge who is judging you and holds your safety in his hands. If you break down then you look crazy, unreliable, over emotional and therefore over exaggerating the truth. What can be improved is don't put the survivors in the same room as their abusers ever for any reason! It should be easy enough to do video call from a safe place surrounded by supportive people so the survivors can think clearly.
2. Too much emphasis on protecting defendant's rights, not the victim.
3. Many things
4. Show me some respect, treated me like an equal. Took into account the track record of the length of abuse
5. Judge pressured me to agree to my husband's 30 year OFP on me even though I was not emotionally stable.

Did you feel heard by the Judge? YES__20____ NO__6____

Do you think the Judge understood the danger and the fear you were experiencing?

YES__18____ NO__11____

Did you receive help from Adult Client Services Branch staff at Family Court? YES__7____ NO__20____

Were they helpful? YES__7____ NO__11____

At any time did you feel pressured to accept or agree to conditions that you were uncomfortable with?

YES__16____ NO__10____

What did you feel overall about the system response to your situation? What went well? What could have been improved?

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1. I don't like how for every case you need to go to court once or twice a month for a whole year until you get a trial date. That's just too long and unnecessary wasted time. 2. It went well, they were very attentive and showed that they did care. 3. It's pretty good in my case my and situation is went well. 4. I felt like they do their job. I have never felt pressured and intimidated on what to say so he would be put away. At the time though I wasn't ready like I am now. I believe it's up to the woman when they have had enough then they are ready but they need to know when enough is enough. Confidence and worthiness is important for DV woman to know when to change. 5. I never felt safe there, he caught me in the parking lot before and after court. Judge granted him visitation even though he abused me in front of them, was on drugs, drives with no license. 2 months later he abused the kids which is why I wanted no visitation. 6. I felt the judge didn't take the emotional and mental abuse seriously. 7. I am fine with it. 8. For TRO yes, it went well. The judge listened to our sides and had sound abuse happened by my ex boyfriend. 9. I feel supported by the court system. My husband didn't show up to our TRO hearing although he was served. I was granted everything I asked for my safety. 10. Still on going. 11. I felt that the courts and my private defense attorney (not DV trained) for me TRO pressured me into my agreement. The judge wanted to get it over with, and my attorney really didn't listen to me or my advocate. We have another hearing where I hope to retain a DVAC attorney. 12. Not sure if they are making the effort to look and arrest him. 13. Everyone was professional. 14. After my TRO was granted I asked the judge for a HPD escort to my husband's house for a total of 2 hours. The female officer that I had to escort me was rude saying "Do I really have to be here?" she said she couldn't believe judge appointed 2 hours. Officer rushed me and only stayed for 20 minutes. 15. I'm upset that I was framed not once but twice. My voice and side of the story could have been heard therefore I wouldn't have to attend all of these case hearings. 16. I was okay with how the court handled my TRO process however law enforcement has never taken me seriously and in return only verbally told my abuser to "cool down" instead of taking any further action. 17. I felt cheated. My husband's allegations were completely false. Every time the judge asked me to speak, my husband would interrupt and the judge or bailiff did not stop him!! My voice was never heard, and in the end now I have an OFP on me that my husband is trying to trap me into violating. 18. Everyone was helpful in explaining the TRO/paternity process, helping me to make good and clear decisions for the safety of my child and I. 19. I was glad to have an attorney representing me. HPD arrested me even though my husband falsely accused me of violating the TRO. HPD did not listen to my reasoning.

1. My abuser had an attorney and they would not agree to the restraining order unless I agreed to it being mutual. So for the first time in my life I have something on my record. I haven't even had one traffic violation on my record now I have a restraining order against me on my record. Think how this makes me look to future employers or the school when they pull my record so I can chaperone my children's school trips. I was 8 months pregnant at the time and still half his size. I don't know how the judge could agree to this. My abuser didn't even state any alleged abuse on my part, he just stated that he would not consent to the restraining order unless it was mutual. So I consented to it being mutual because I saw it as the only way my children and I were ever going to be protect. Not that it even mattered. My X has broken the restraining order many times and he still has not been arrested for it or received any type of incentive to stay away from me.

2. Overall poor. I had to fight for myself to the point of writing letters to Chief Kaneshiro to be heard. Victim advocate was terrific. Communication with prosecutors need improvement

3The fact of when it comes to getting a restraining order for your abused 9 yr old daughter that she must be present to face the abuser so that I may request a PO even with all the CPS FILED, child and family services records as well as her prosecuting attorney files was none the less then CRAZY!

Survivor Survey for Public Policy Reform 2017

Other Comments

1. Having been granted a ten year order for protection, my husband has violated this over 10 times. Each time I reported this to the police, a statement was taken and then it was sent to the prosecutors. Each time, no other action was taken. Because of this, my husband has been able to consistently terrorize both myself and son over the course of the last 11 months.
 2. I do not have trust in the state. I choose not to call the cops reason being I've been let down too many times.
-

1. Victims need more rights in Hawaii. Too much emphasis is paid on giving defendants what they need. Multiple continuances to defendants are commonplace without even having defendant's attorney prove the requests validity. This causes extra burden on court system, prosecutor caseload, apathy, and added anxiety to the victim.
 2. It's a big enough struggle to have swallowed all We did but when my child's attorney has to tell me to move to the mainland because your ex will Never get the time he deserves behind bars any time soon if ever. While it was devastating to leave our home, our family, my career it was necessary to take matters into my own hands and find a way to give her a chance at something more. Lastly it sure would have been helpful to have the courts assist us in really cutting ties and helped us start a new by changing our last name yet at 700+ Each I don't know that it will be in the near future.
-

SUMMARY

Survey for Domestic Violence Programs, Service Providers, and Advocates

What island were you on as you're involved with the system? 7 Oahu 2 Maui

Police Response

1. Do your clients regularly call the police for help? If not, why not? 4 yes 5 no

1. Due to bad experiences.
2. Clients tell me the Police "Don't do anything" and feel the perpetrators should be arrested.
3. In instances of abuse, we've noticed that our women feel the police are not responsive to their situation and often times are blamed for being abused
4. They don't feel the police care or understand their situation. They are afraid of their abuser.
5. Some do and some don't

2. Is there a consistent police response when victims call for help? 2 yes 7 no

1. Response time is delayed.
2. Clients feel the Police consistently don't do anything when they are called in DV cases.
3. When they are called they do respond however as stated before, victims are often mistreated
4. Unsure
5. The police don't seem to take DV calls very seriously.
6. Do police consistently respond to the scene of a 911 call.

3. What are the most reported issues clients describe about their experiences with police?

1. No pictures taken, abusers not arrested
2. No arrests, nothing is done
3. Clients call the Police when they sense eminent harm. When the perpetrator is not removed clients continue to fear for their safety.
4. No report was made, no photo taken, police take the abuser's word, they victim blame, no help was given at all, not knowledgeable of outside services or help for victims
5. some officers are helpful and compassionate as others are not
6. No report is made, police take the abuser's word, the police are abusive themselves (blaming the victim, belittling the victim).
7. Report is lost, police took hours to show up, police took abusers word, no report was made
8. fix this one

4. Do police use interpreters when the client does not speak English? 2 yes 7 no

1. I've had a couple of victims who advised the police did not provide an interpreter.
2. Don't know
3. Clients have not brought this up.
4. I do remember instances where interpreters were used to translate
5. This has reported as being inconsistent in practice
6. Not consistently

5. Do police use children as interpreters? 4 yes 5 no

1. Clients have not brought this up.
2. Although I'm not certain, training for officers includes not using children as interpreters
3. Yes, but that is very harmful to the children and it should NOT be done.

6. Would more police training in domestic violence benefit your organization/your clients? 9 yes

1. Ongoing training should be mandatory.
2. In addition, perhaps the public needs to be educated about what the Police CAN do in DV situations.
3. We don't think the police don't care...we believe they are under trained and don't understand the nature of DV.

7. Are police arresting both parties? 5 yes 4 no

1. Victims are being arrested.
2. sometimes just the victims, sometimes just offenders
3. Occasionally if they take the abuser's word.
4. Police are not arresting abusers.

8. Are victims being arrested for abuse and restraining order violations? 8 yes 1 no

1. Too often

9. Do your clients report that police take stalking seriously? 9 no

1. Not in all situations.
2. One victim commented she was told a husband cannot stalk
3. Clients report that they are told by Police that they cannot do anything until "Something happens".
4. Hard to prove so they don't even try.

10. Are police making arrests for protective order violations? 5 yes 4 no

1. Police have a hard time understanding the protective order.
2. This is inconsistent

11. Are victims provided a police report number? 4 yes 5 no

1. Most of the time
2. Most times yes, but sometimes no
3. If they ask for it.

12. What is your overall assessment of the assistance provided by the police to clients?

1. Police are not consistent
2. Many survivors report they get no assistance
3. Clients expect more from the Police in DV situations and perhaps the Police need to initiate a mass media campaign to educate the public about what laws allow them to do.
4. While the police do respond when called to these incidents, they still lack the training in the dynamics of DV.
5. With the implementation of the LAP project it has gotten better but still not consistent
6. They don't understand the nature of DV.
7. Fair
8. Not helpful
9. Unsympathetic about their circumstances. don't take dv seriously.

Criminal Justice Response

1. Are criminal cases being dropped? 5 yes 4 no
 1. A client told me her case was dropped because she did not accurately describe a situation. Her infant son did not run out into a road to escape his Father, he ran into a parking lot.
 2. 4 advocates answered that they do not know

2. Are felony cases being pled down? 8 yes 1 no
 1. I've heard of this happening way too many time

3. Clients report too many continuances are granted in their case? 8 yes 1 no
 1. Continuances prolong the trauma and add to their fear about their safety.
 2. They are terrified and anxious every time it is continued.

4. Do victims feel like they are getting justice? 1 yes 8 no
 1. Abusers get away with a lot!
 2. Much of it from HPD
 3. 50-50
 4. Many times, no.

5. Are criminal court interpreter provided consistently? 7 yes 2 no

6. Are victims arrested and prosecuted too often? 3 yes 6 no
 1. I've heard of this happening.
 2. Client's report that they are often released within 24 hours once the Police determine who was the aggressor.

7. Is it your impression that prosecution of domestic violence cases is effective? 1 yes 8 no
 1. The penalties aren't enough
 2. No accountability for offenders
 3. Clients state that in the minimum they feel good about their perpetrator being convicted.
 4. The process itself takes too long with little time served to the abusers

8. Is victim intimidation occurring in your courtrooms? If yes, please describe? 7 yes 2 no
 1. By the defense attorneys
 2. Clients frequently report that their perpetrators give them "That look" during court.

9. What is your overall assessment of the criminal justice response to domestic violence?
 1. They are not doing enough to protect victims. It seems the offenders have more rights than the victims
 2. Needs to hold offenders accountable with sentencing and revocations
 3. I feel that when the Police enter a DV situation they should assess that the person who is fearful will most likely be the victim. The aggressor will not be fearful.
 4. It isn't a damaged system but it does need more support and better laws
 5. not very helpful to victims
 6. They are not properly trained or understand the nature of DV.
 7. That it needs work and it needs to have consistency.
 8. Bad
 9. Ineffective

Court Response

1. Do clients report challenges in obtaining a TRO? If yes, what are the challenges? 7 yes 2 no

1. Challenge is with the courts service center and long wait.
2. This is mostly due to the length of time it takes for the court to approve or deny the request

2. Do petitioners feel satisfied with the civil protective order process? If not, why not? 1 yes 8 no

1. Civil TRO's are a waste of time; respondents don't get arrested if they violate the order.
2. Sometimes they are very disappointing when their orders are denied
3. Sometimes

3. What are barriers for clients in trying to obtain restraining orders?

1. Time that it takes to have it filed, transportation, and work.
2. Time, lack support from friends or family, challenges getting legal assistance
3. Intimidation and barriers to attending court session
4. No transportation, fear of abuser, don't speak English
5. Fear to report, lack of evidence that convinces they need a TRO, bias of the courts
6. Travel, costs
7. Finding an attorney. not sure what the legal vocabulary is. not sure what to ask for, what will be allowed

4. What kinds of things would make the process safer for your clients?

1. Safety planning
2. TRO process seems adequate, maybe addressing some financial if victim has no resources
3. If they don't need to face their perp. in court.
4. Having more sheriffs to help watch busy court hallways
5. Assistance, timely response from court,
6. Easier access to resources who can give assistance
7. Advocates always present.
8. Trained personnel
9. Better trained court personnel. better trained judges. recognition of intimidation occurring in courtrooms

5. What kinds of things would make the process easier to navigate?

1. Transportation, employers must give employees time off without repercussions.
2. Minimize the continuances.
3. Assistance from experienced workers; interpreters
4. Having resources in the court house
5. Advocates

6. Do your clients feel the courts are minimizing the seriousness of their circumstances? 8 yes 1 no

1. Per Diem Judges need DV training.
2. 50-50
3. Not always, but often enough to hear several reports.

7. Are courts granting mutual restraining orders? 9 yes

1. It's happened once in the last 2 months
2. I've seen a couple of cases.

8. Are courts granting temporary joint custody which impacts visitation?
7yes 2 no

9. Are courts taking the need for safety into consideration when making visitation orders?
2 yes 7 no

1. Not consistently.

10. Are courts providing interpreters to clients who need them consistently? 5 yes 4 no

11. Do you feel court personnel are sufficiently trained in domestic violence? 2 yes 5 no

1. Definitely not!
2. Some are, so are not.

12. What is your overall assessment of the courts response to restraining orders?

1. They are judgmental and sometimes inconsiderate
2. It definitely needs help, more staff training, better judges and added security
3. Fear of CWS; intimidation; lack of training and understanding of judges
4. They are not sufficiently trained
5. Its mixed. I'd give it a grade of B.
6. Bad
7. Trying. More dialogue with the community about survivors needs and experiences would be instructive for them

Some of the findings from the surveys and the survivors who shared on the video conference include:

- 1) Restraining orders look different making it difficult for police to interpret and enforce.
- 2) When restraining orders are unenforceable there is no feedback loop to allow the police or prosecutors to say to the courts that their forms are unclear and make it difficult to arrest and prosecute violations.
- 3) Abusers use the systems to abuse victims (by having victim arrested for abuse or by getting restraining orders against them).
- 4) Mutual orders for protection are no longer allowed in the state (law changed last year) but many jurisdictions are not aware of that change.
- 5) Victims overwhelmingly do not call the police every time something happens because they lose faith in the system, have poor responses, feel victimized by the system, feel unbelievably and unheard, and are afraid to call. This is especially true with enforcing restraining order violations.
- 6) Advocates are extremely helpful to victims in both the criminal justice system and the TRO process.
- 7) Police officers and other people in the systems allow their own experiences and biases to interfere with their interpretation of the laws.
- 8) Criminal justice process takes so long and multiple continuances benefit the defendant and take a significant toll on victims who repeatedly need to show up when called for no reason. Re-traumatization, loss of work time, need for childcare, transportation, etc.
- 9) Petitioners are pressured into agreements at their OSC hearings by court staff, attorneys and judges.
- 10) Many examples and statements of the need for more training for all parts of the systems.
- 11) Continued need to stress the importance of interpreters for victims in all systems.
- 12) Victims feel that the defendant has all the rights.