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

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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 HAWAI`I

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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.

Audit Results

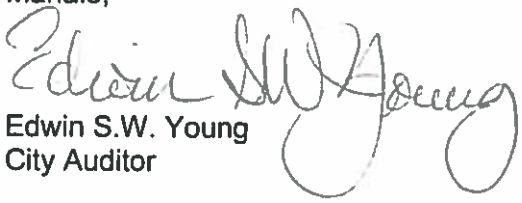
Domestic Violence is a generic term that includes a multitude of potential felonies and misdemeanors. The process of investigating and prosecuting such cases is complex, and the final charges may change over the lifecycle of developing a case and bringing the defendant to trial.

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

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Chapter 1
Introduction and Background

Domestic violence is a designation given to certain crimes where the victim and

relationship of:

- Current or prior spouse/
- 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 refers[2] 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]

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[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 W

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]

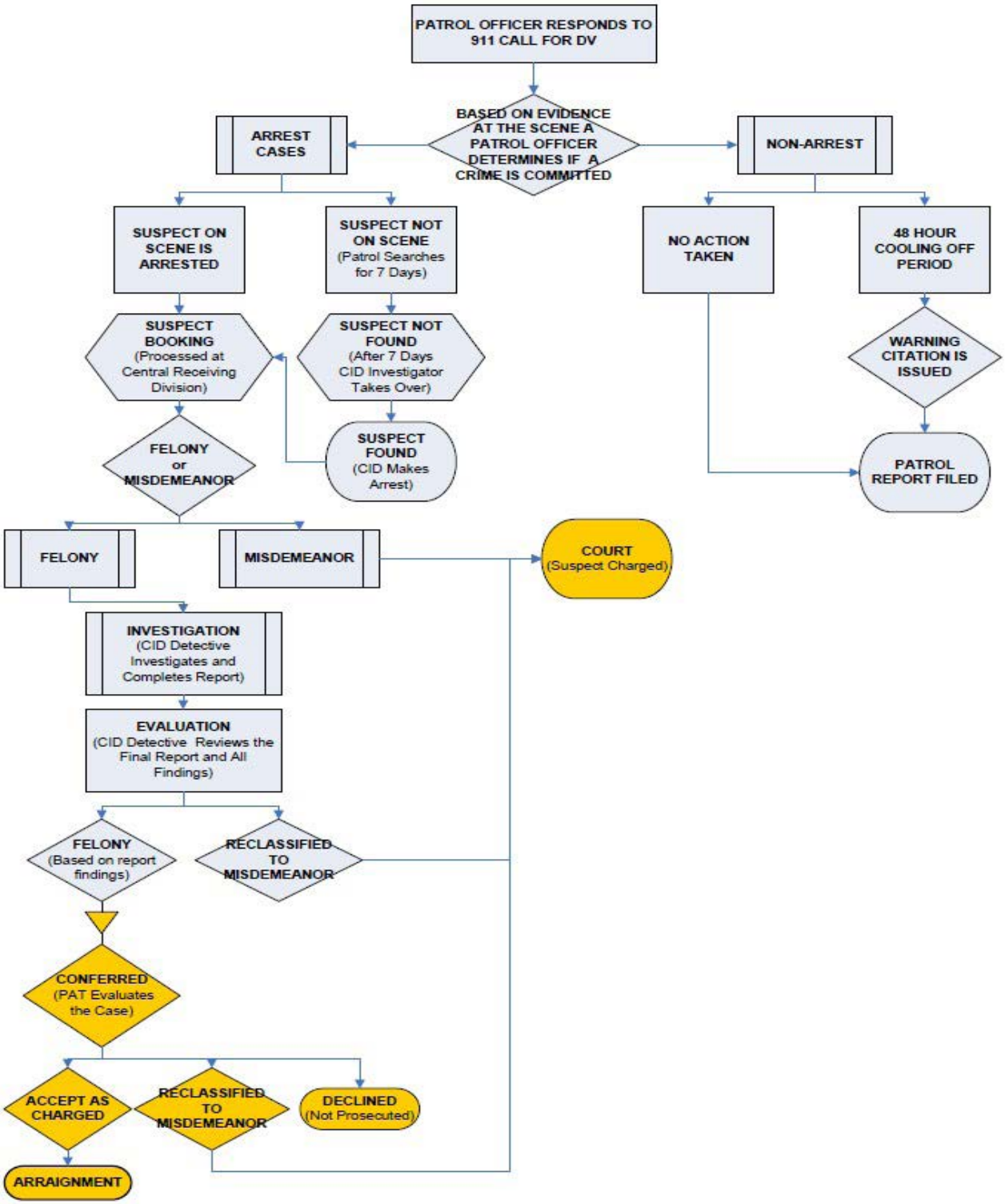
A HPD CID detective is assigned to investigate the felony. The investigating detective will determine if the case classification is substantiated or if it should be changed from a felony to a misdemeanor, the incident category changed, or if sufficient evidence exists to refer the case to the Department 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 W



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.

- 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 felony[1]. 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 lest 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]

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[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*.

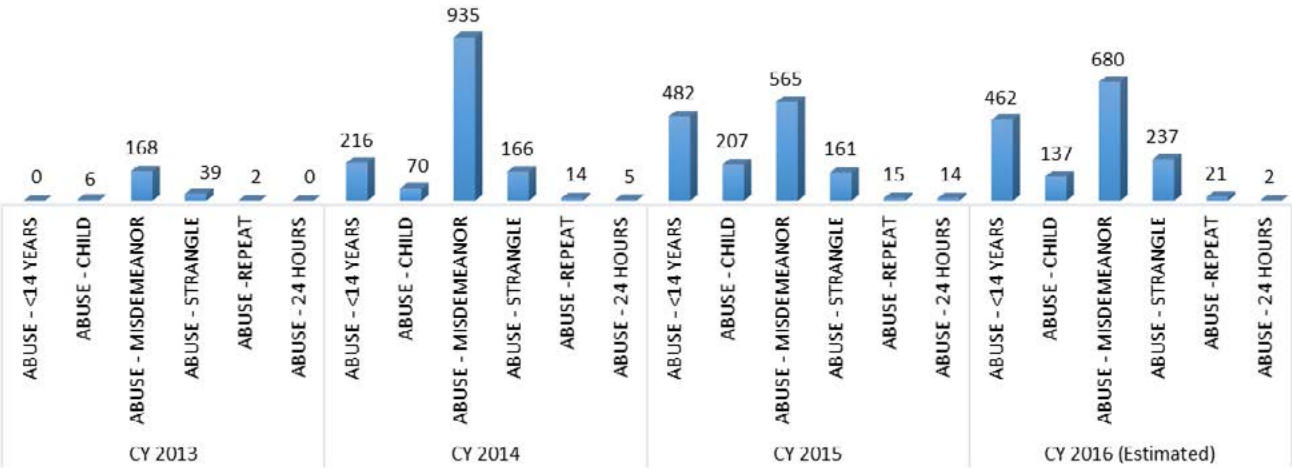
[3] Misdemeanor domestic violence cases depend on the relationship of the parties involved. For example, the Family District Court presides over misdemeanor cases such as assault in the third degree that involves spouses. The same crime between a boyfriend and a girlfriend would be tried in the non-family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

	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.

Source: OCA analysis of HPD CID data

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.

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.

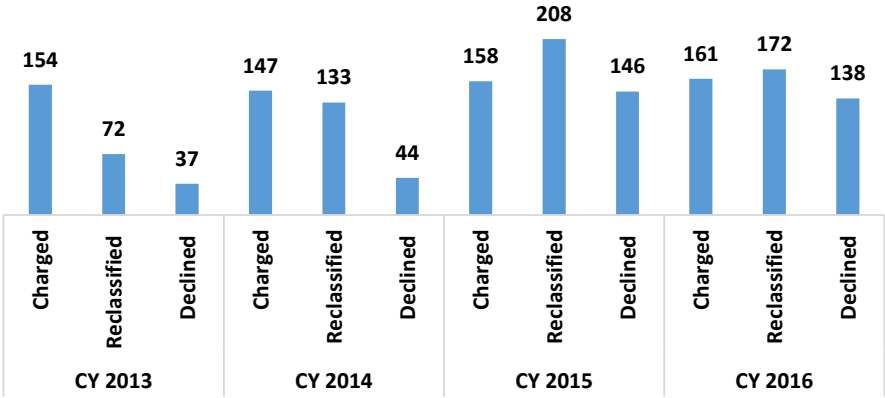
Between CY 2013 – 2016, the PAT workload increased 79% from 263 cases (CY2013) to 471 cases (CY2016). During the same period, HPD CID referred to PAT about 672 of the 1,160 domestic violence cases (abuse in the presence of a child less than 14 years old). The PAT workload increases are illustrated in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

The current PAT policy does not allow a domestic violence case[6] 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.

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

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 polices 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

  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 misdemeanors[2]. 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

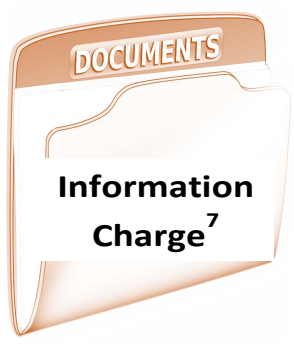
HPD CID refers both misdemeanor and felony domestic violence cases to PAT. PAT will then assign misdemeanor cases to the Domestic Violence – Misdemeanor Division and felony domestic violence cases to the Domestic Violence - Felony Division. The Misdemeanor and Felony Divisions determine the appropriate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

[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 cause[8] that the defendant committed the offense, the prosecution ends.

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

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

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

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.

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

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

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 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 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.

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

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

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[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

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.

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.

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.

Family District and Circuit Court Processes

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 re-classify 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, refiling 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

For CY 2012 through CY 2016, the HPD CID reported 2,124 misdemeanor cases were referred to PAT. The misdemeanor domestic violence cases[10] 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.

• 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.

- 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 data[11] 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.

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.

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

	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 prejudice[13] 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.
- 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 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)

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

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

abuse in the presence of a child less than 14 years old as a Class C felony.[5]

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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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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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.

Mr. Edwin Young
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 wells 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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May 31, 2017
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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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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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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.

Edwin S.W. Young
May 31, 2017
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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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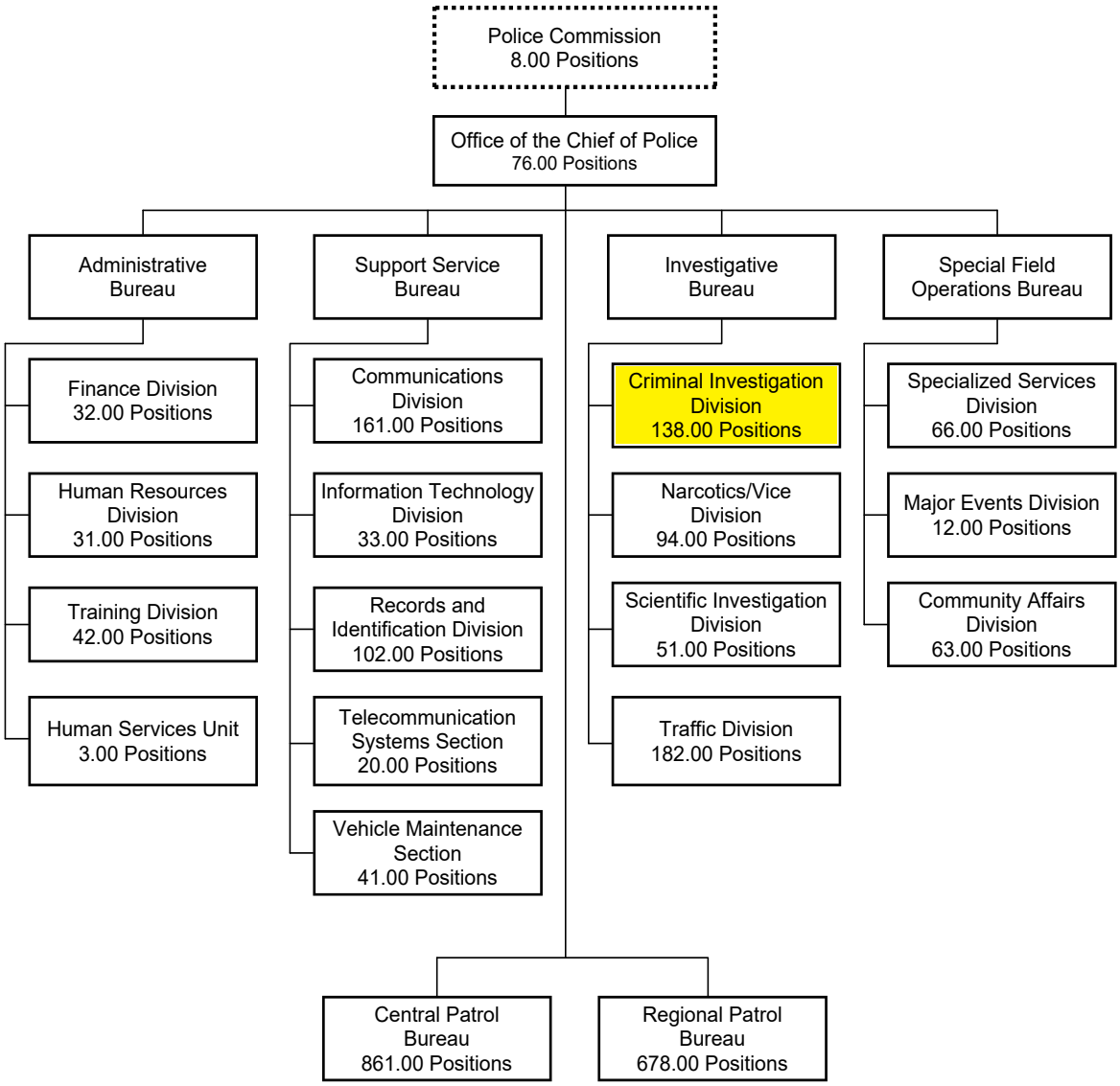
Appendix A
Honolulu Police Department (HPD) Organizational Chart

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.

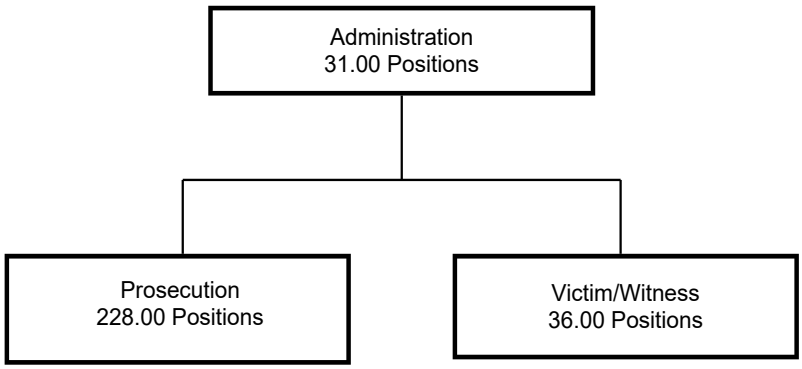
The *Criminal Investigations Division (CID)* investigates cases involving murder, robbery, sexual assault, assault, domestic violence and child abuse, financial fraud and forgery, auto theft, and white collar crimes. The division increases community involvement through programs such as Crime Stoppers 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 and 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.

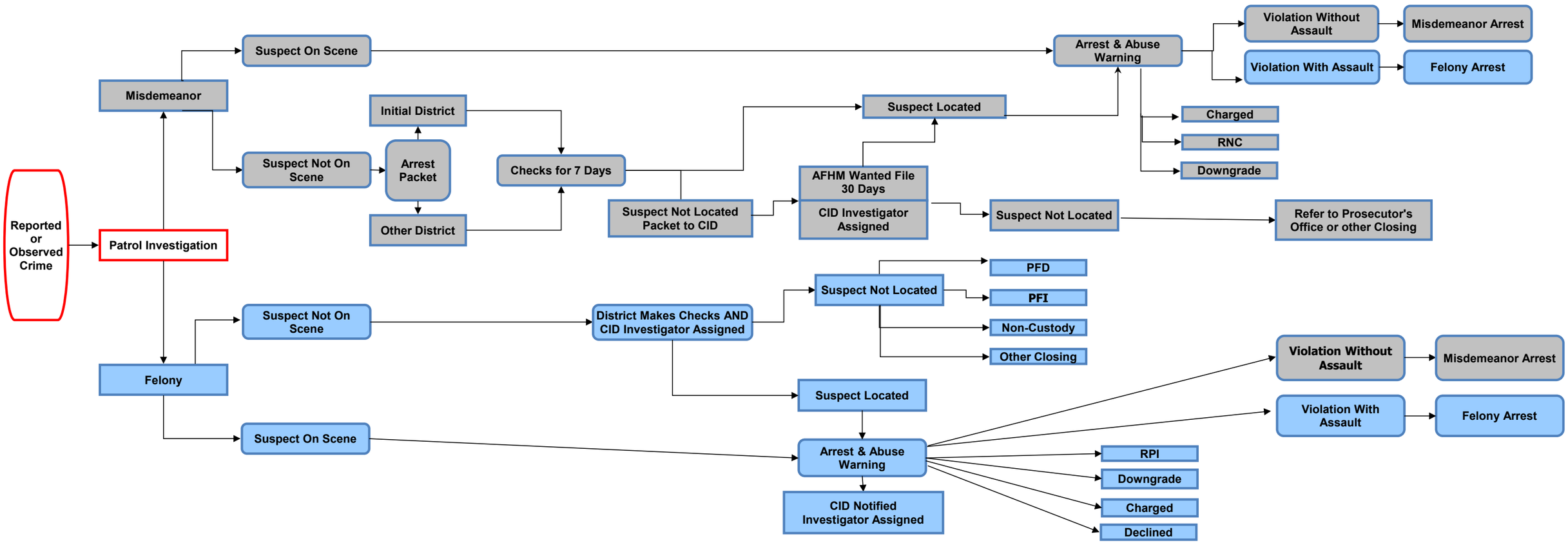
- *Victim/Witness Assistance Division* – provides support services for crime victims and witnesses, with emphasis on victims of violent crimes. Counselors assist victims and witnesses in obtaining help from social service agencies, help guide them through the criminal justice system, and serve as liaisons 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.

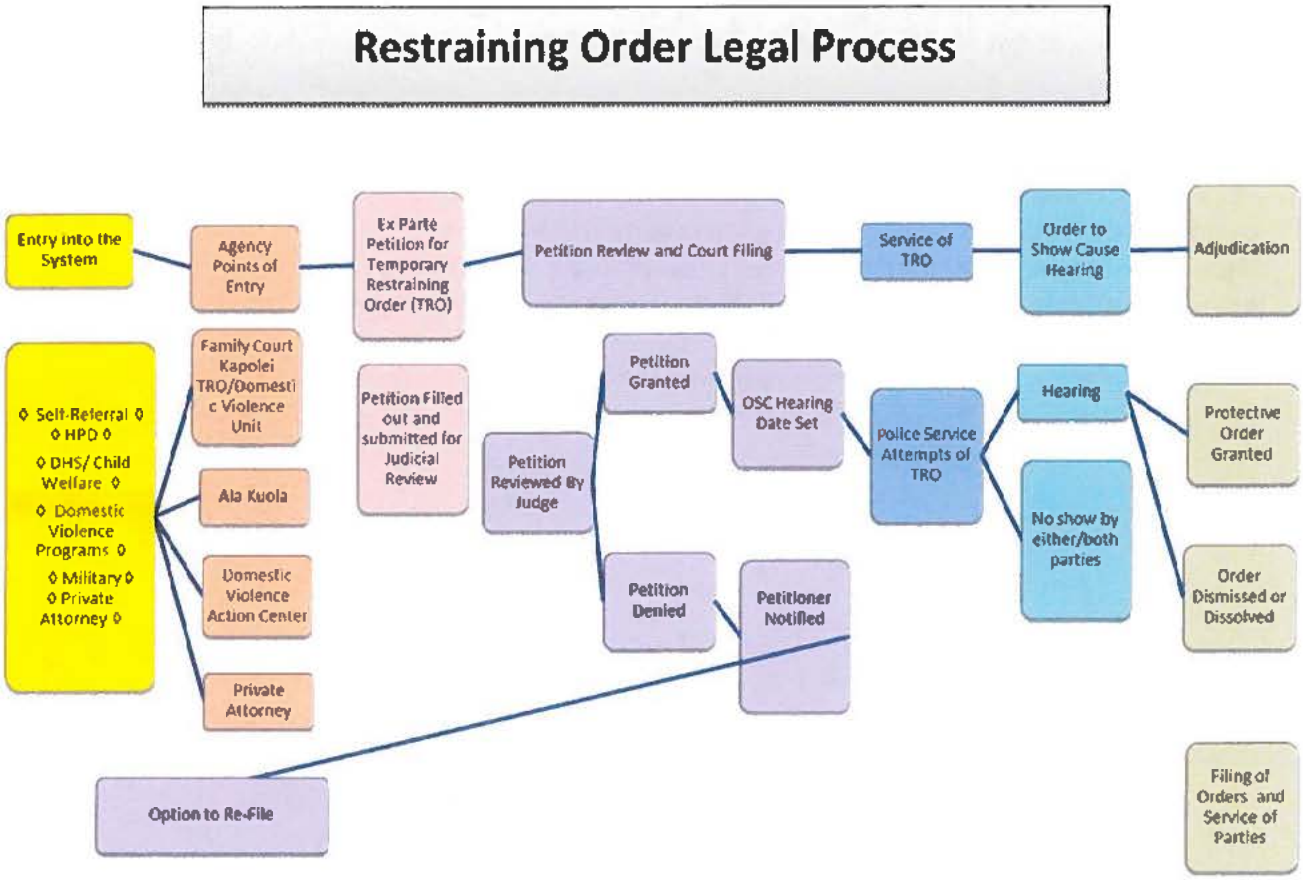
Appendix C
Honolulu Police Department (HPD) Processes

Exhibit C.1
HPD Domestic Violence Flowchart and Processes



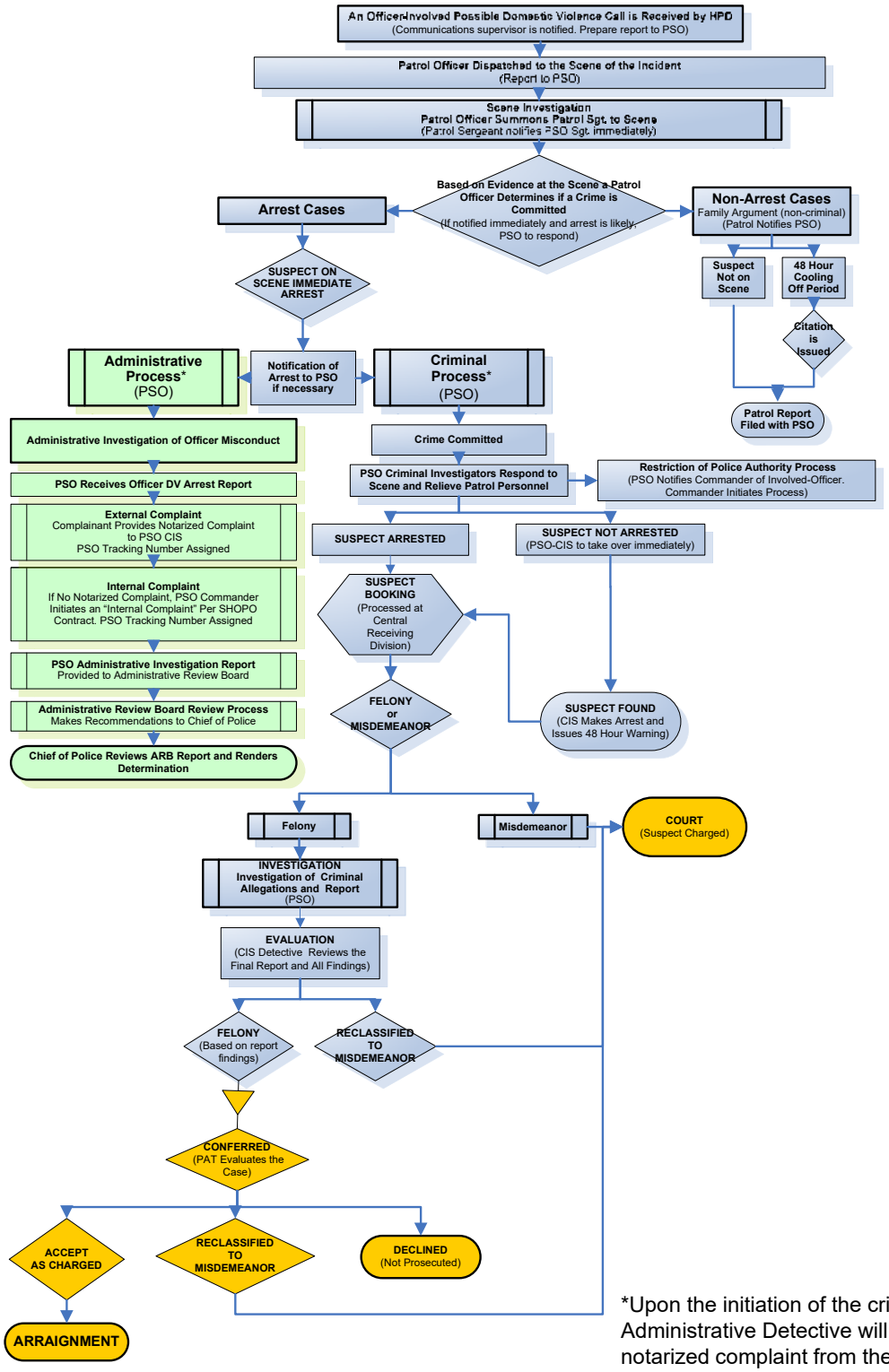
Source: Honolulu Police Department Criminal Investigation Division

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.

Auditor and Honolulu Police Department

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 iolence 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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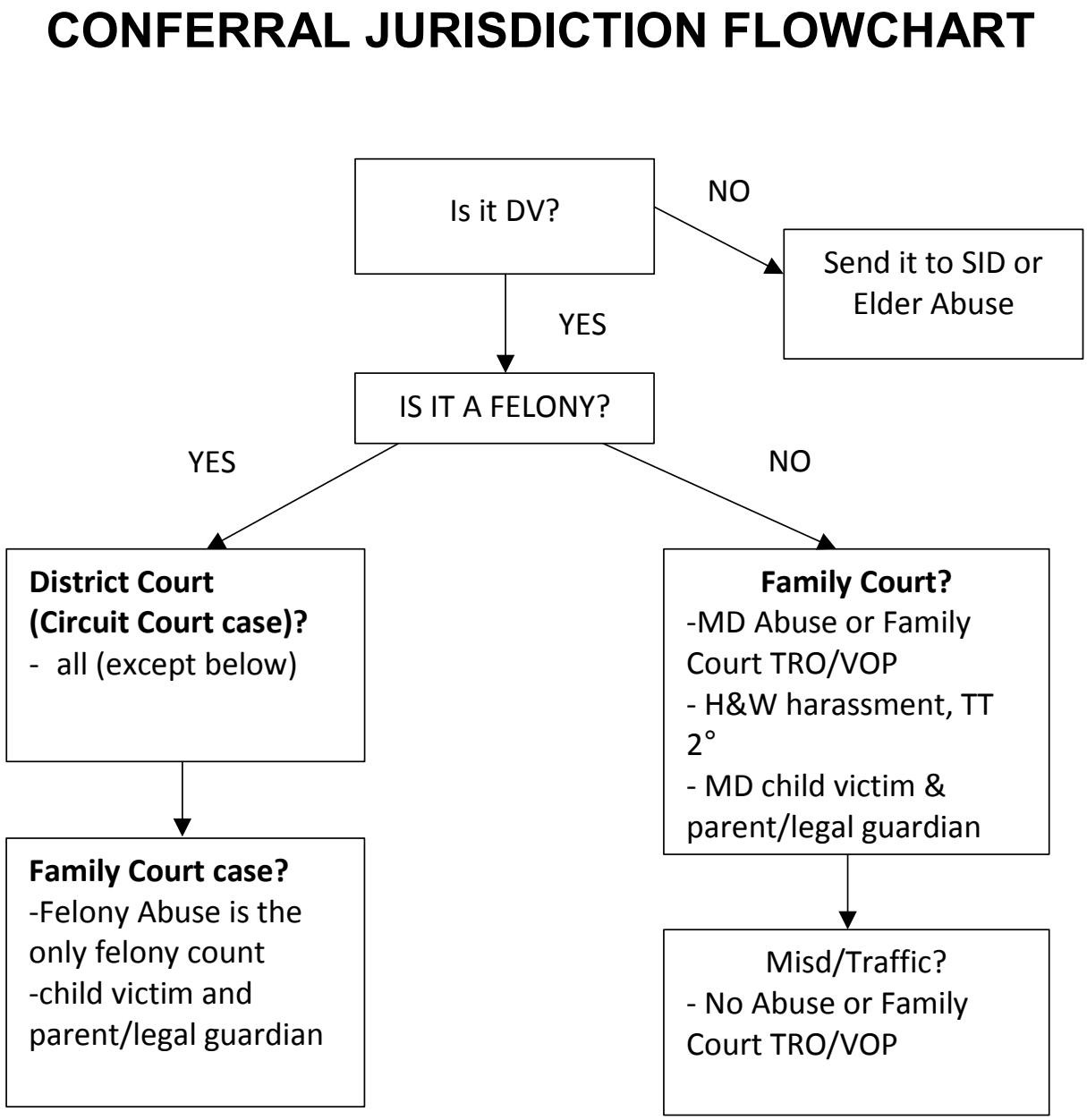
Appendix D
Prosecuting Attorney (PAT) Flowcharts

Exhibit D.1
PAT Conferral Flowchart



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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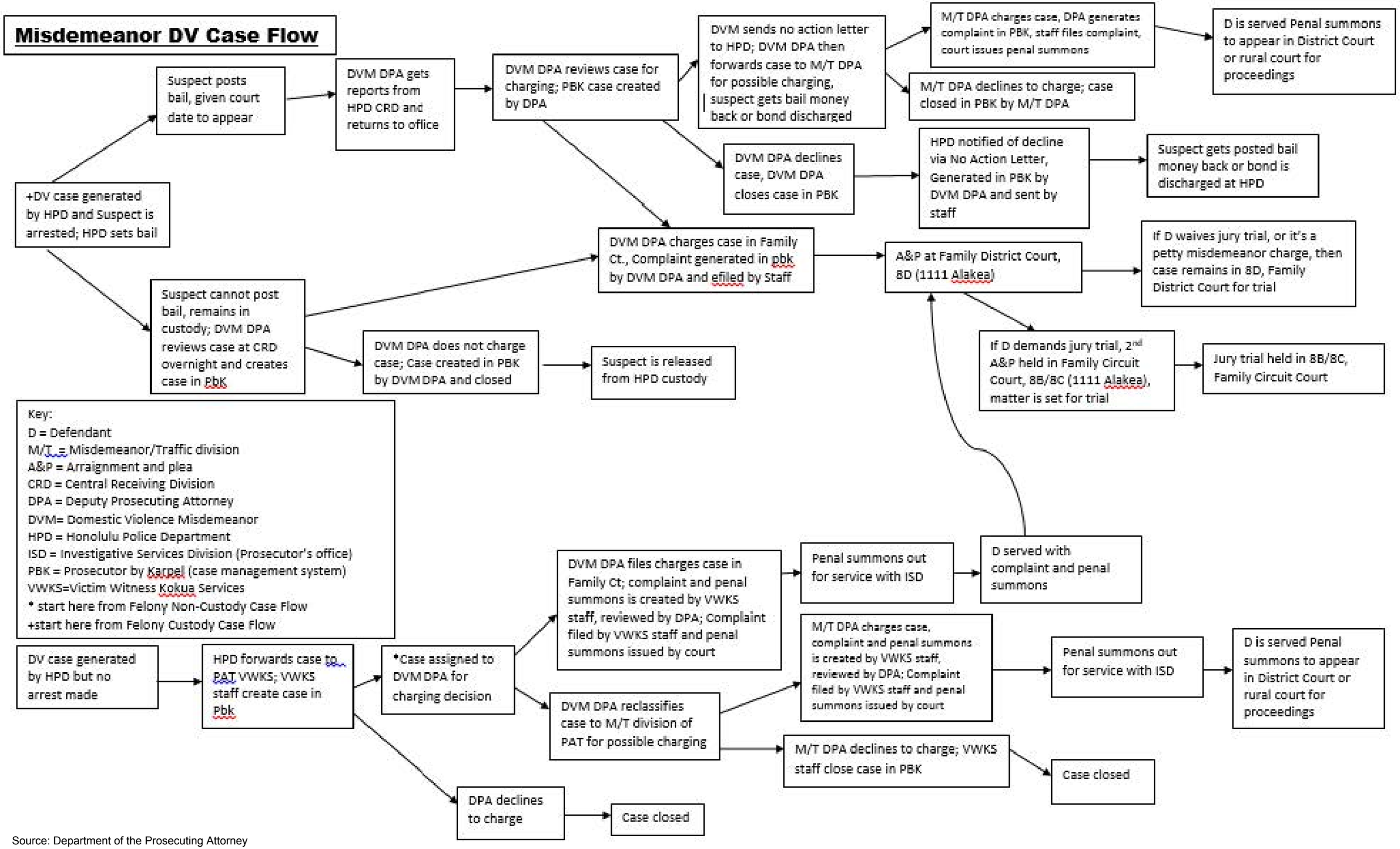
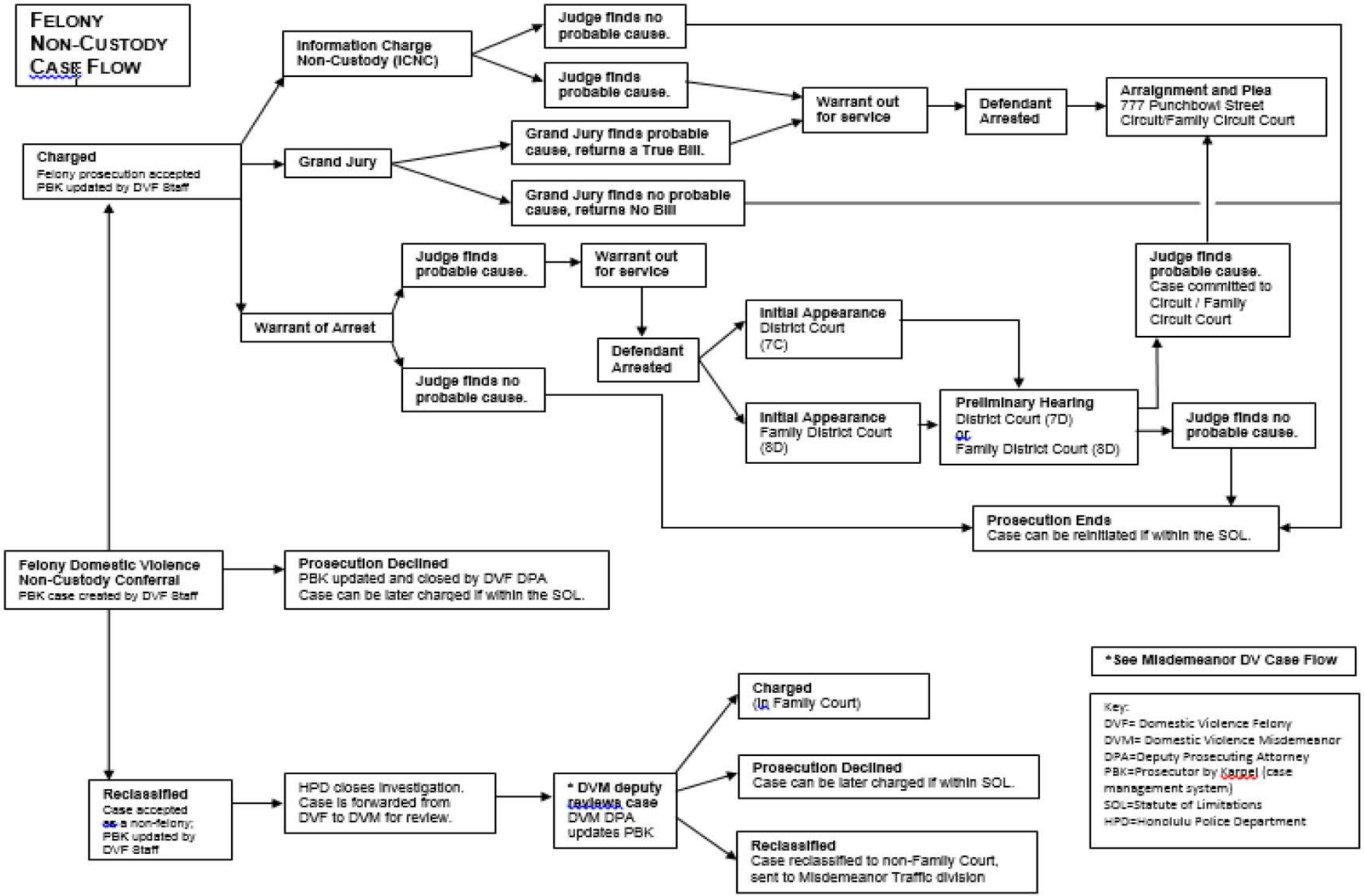
Exhibit D.2
PAT Domestic Violence Misdemeanor Flowchart



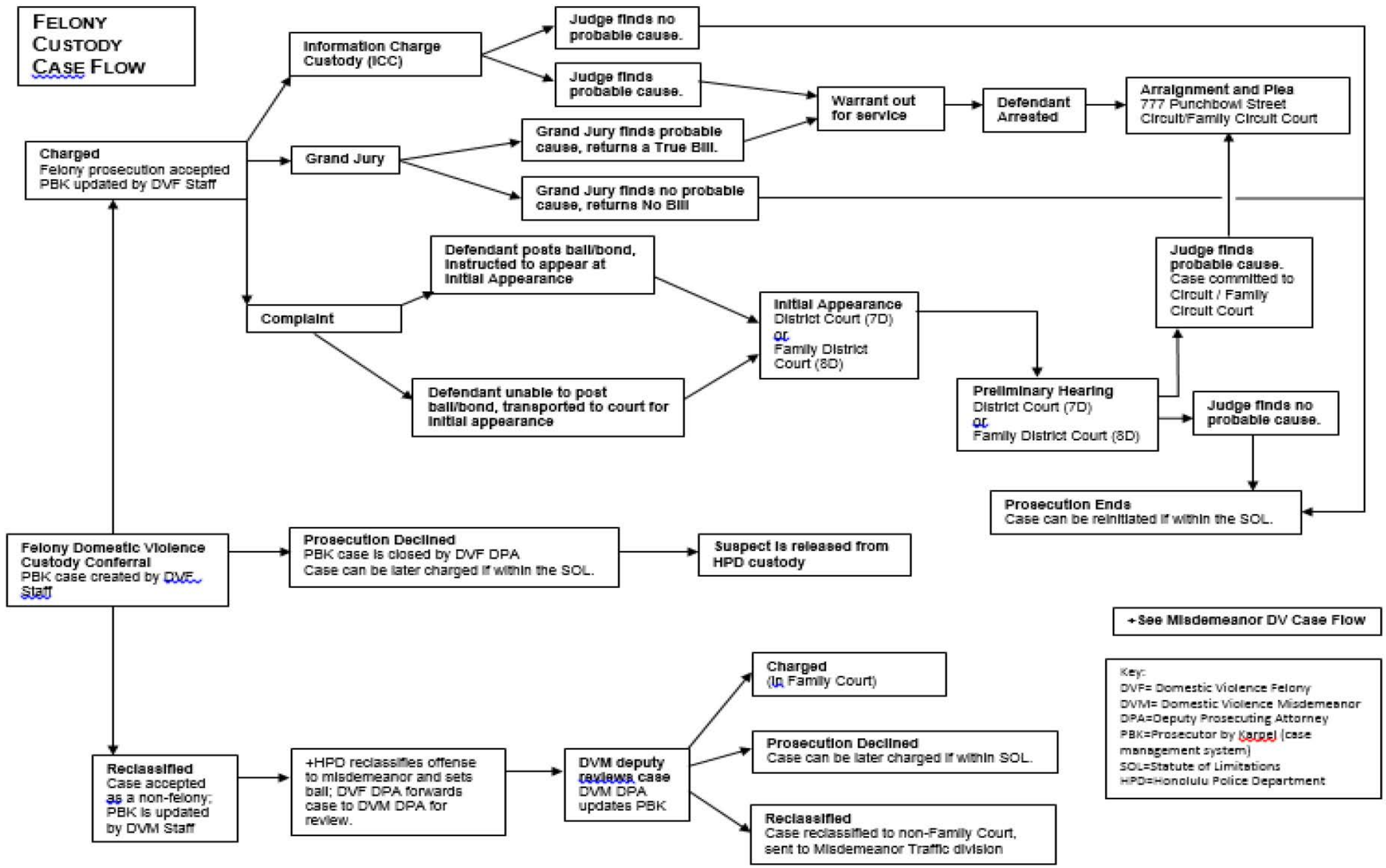
Source: Department of the Prosecuting Attorney

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



Source: Department of the Prosecuting Attorney

Exhibit D.4
PAT Domestic Violence Felony Flowchart - Custody



Source: Department of the Prosecuting Attorney

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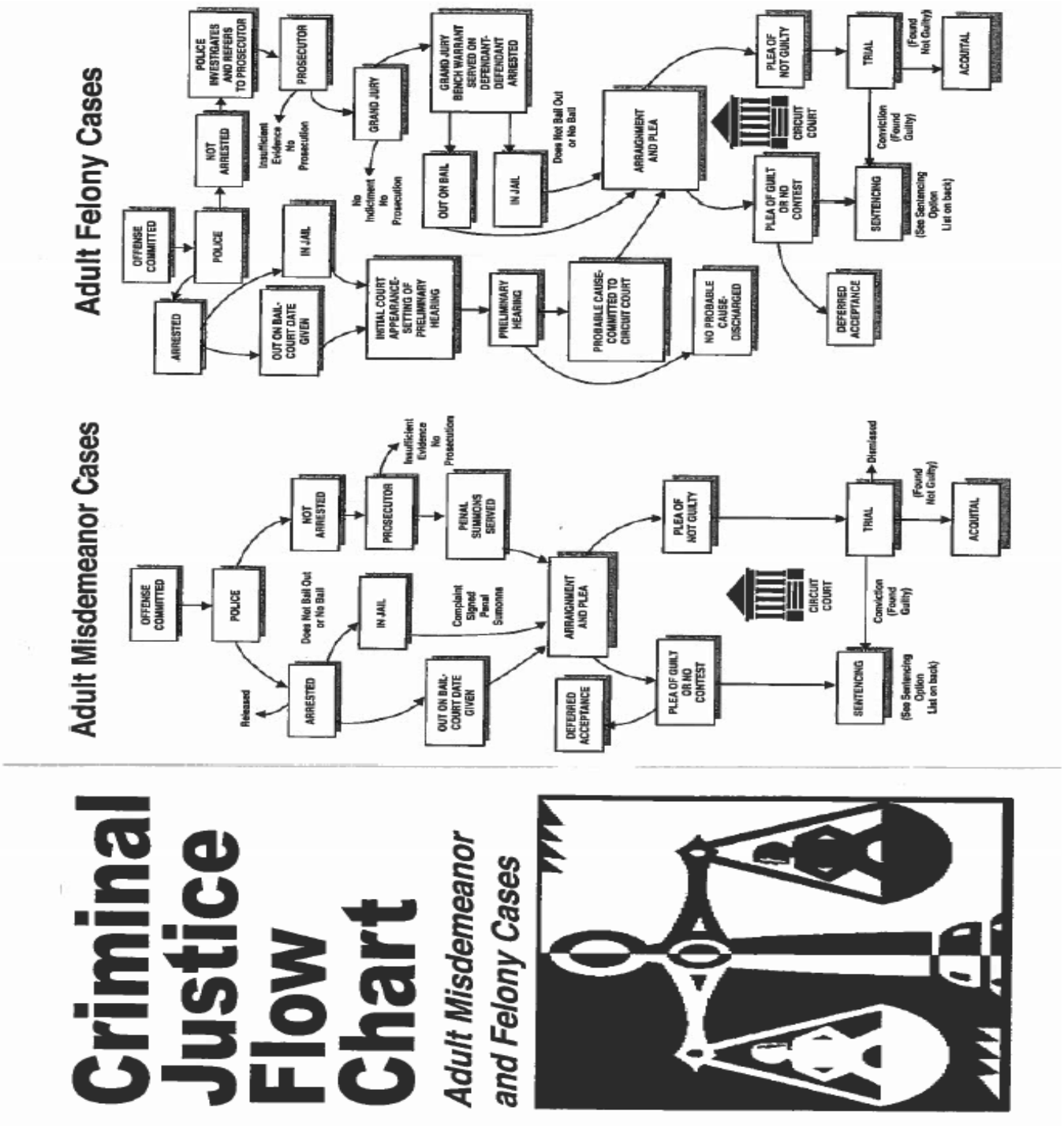
Appendix E

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 - 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 dispostion 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.*

Honolulu (Oah'u)	*768-7401*
Maui	*270-7695*
Kauai	*241-1888*
Kona	*322-2552*
Hilo	*961-0466*

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.

Printed 1/09

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