

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2008, H.D. 2, S.D. 1, RELATING TO PUBLIC EMPLOYMENT.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, April 1, 2016 **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Russell A. Suzuki, First Deputy Attorney General or  
Nelson Y. Nabeta, Deputy Attorney General or  
Daniel Y. Hanagami, Chief Special Agent

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Chair Tokuda and Members of the Committee:

The Department of the Attorney General (the "Department") continues to oppose this bill, but we have fewer concerns with the Senate Draft 1 (SD 1) than we have with the Proposed Senate Draft 2 (SD 2), which is also being heard today. If the committee chooses to pass out one of these measures, we respectfully recommend that the SD 1 be passed, rather than the Proposed SD 2.

The Department recognizes and appreciates the concerns expressed by the Legislature with respect to the use of 89-day hires and has been working with the Department of Public Safety (PSD) and the Department of Human Resources Development (DHRD) to address the issue in a collaborative way. More information will be provided on those efforts below, but we first wanted to explain our particular concerns with the SD 1.

We appreciate the change made in the SD 1 that eliminated the prohibition of someone by hired as an 89-day for more than two terms in their lifetime. We also appreciate that the SD 1 has temporarily blanked out how many 89-day terms will be permitted to allow further discussion on this topic. While we understand that the Legislature intends to place a limit on the number of times someone can be retained, we respectfully recommend that a total renewal period of 2-3 years would be reasonable.

As noted above, the Department recognizes the concerns with respect to the use of 89-day hires. As explained below, we believe that employees retained as 89-day hires have been used effectively in the past as part of our Investigations Division, but we also want to proactively

address the Legislature's apprehensions about this practice. To that end, the Department is currently working with PSD and DHRD on developing a state law enforcement career path that may reduce or eliminate the practice of employing 89-day hires. Discussions between the Department, PSD, and DHRD are ongoing.

The Investigations Division of the Department is comprised of fifty sworn law enforcement investigators and three civilian support personnel. Continuous recruitment efforts through DHRD have not proven successful in filling the vacancies.<sup>1</sup> For a more complete explanation of this issue, please see the attached Action Plan for ATG Investigations Division dated January 26, 2016, pp. 3-8. As such, eighty-five percent of the investigation force are 89-day hires.

Since 1998, the Department has found that the Investigations Division can be operated successfully by employing retired law enforcement personnel through the use of 89-day hires. These individuals are qualified to discharge all of the duties of an investigator and bring with them substantial expertise and experience in investigative work. For more detailed comments concerning the value of hiring retired law enforcement personnel, please see the attached Action Plan for ATG Investigations Division dated January 26, 2016, p. 4.

The ability to employ retired law enforcement personnel enables the Department to conduct criminal investigations, administrative investigations concerning issues arising in the workplace, investigations to prepare the defenses that the State will assert in civil litigation, as well as provide security personnel necessary to protect the public and public officials. For a detailed explanation of the types of investigative work done by the Department, please see the attached 2015 Annual Report, pp. 10-21.

These investigations were conducted on behalf of a wide range of state agencies: Department of Transportation, Department of Health, Department of Education, Department of Human Services, Department of Agriculture, Department of Public Safety, the Judiciary, the Legislature, the State Ethics Commission, and the Campaign Spending Commission. For a complete description of the investigative services rendered to these agencies, please see the attached 2015 Annual Report, pp. 22-27.

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<sup>1</sup> In 2014 to 2016, DHRD had referred fifty-nine eligible applicants to fill the vacancies for the investigators. Most of the applicants later declined to be interviewed. Twenty-five applicants were interviewed. Two applicants were found qualified and selected to fill the vacancies.

Finally, the Investigations Division either conducts or assists in hundreds of investigations at the request of the police departments of the various counties. Many of these cases involve complex financial transactions and fraudulent schemes that are difficult to prove, as well as old and unsolved homicide investigations. Other county agencies also ask for investigative assistance in a number of governmental fraud cases. In addition to such work, federal agencies such as the FBI, U.S. Marshals Service, and the U.S. Attorney's Office for the District of Hawaii have asked for support in federal undercover operations, surveillance of suspected criminal activities, and in serving arrest warrants.

Thank you for the opportunity to testify on this matter.

# ACTION PLAN FOR ATG INVESTIGATIONS DIVISION

January 26, 2016

## I. INTRODUCTION

### Assignment

Identify the issues, comprehensively explore, and implement the best workable solution to eliminate the practice of sustained use of 89-day emergency hires ("Contract Hires") to fill vacant civil service positions.

The goal of this report is to prepare a reasonable and feasible draft plan and time line to reduce the 89-day hiring of Special Agents in the Investigations Division of the Department of the Attorney General (ATG) without jeopardizing operations.

### Public Concerns

The ATG Investigations Division has a long history spanning back at least to the 1990s of utilizing 89-day emergency appointments, primarily through the hire of police ERS retirees to sustain operations. Over many years, the public and legislators have, from time to time, questioned the practice of sustained employment of these Contract Hires. Investigative news reporting has adversely publicized the 89-day hiring practice at ATG. The media has reported that the Contract Hires were supposed to be temporary, yet some have been employed for years and the practice appears to circumvent the intent of the law.

### Money Savings

Strictly in terms of savings, the practice of 89 day hires for special agents saves the State of Hawai'i approximately \$968,963.00 annually.

## II. STRUCTURING OF THE INVESTIGATIONS DIVISION

### Personnel Composition

As of January 26, 2016, the ATG Investigations Division is comprised of fifty (50) sworn law enforcement investigators (Special Agents) and three (3) civilian support personnel (two clerical and one secretary).

Out of the 50 sworn law enforcement Special Agents, seven (7) are civil service exempt permanent employees, and forty-three (43) are Contract Hires. This reflects that 15% of the law enforcement Special Agents are permanent hires, and 85% of the law enforcement Special Agents are Contract Hires.

### Funding Sources Influencing Operability

The ATG Investigations Division is dependent upon various types of funding sources needed in its daily operation. These are:

- 1) **General Funded** (State monies);
  - a) Five (5) permanent civil service Special Agents are generally funded;
  - b) Twenty and a half (20.5) 89 day hire Special Agents are generally funded;
- 2) **Special Funded** (Funds coming from the Tobacco Agreement Settlement);

- a) Two (2) permanent civil service Special Agents are specially funded;
  - b) Five (5) 89 day hire Special Agents are specially funded;
- 3) **Memorandum of Understanding (MOU) Funded.** Memorandum of Understanding (MOU) are position funded by other State or federal agencies (mainly the U.S. Marshall Service) in which the Investigations Division agrees to provide investigative support for their agencies;
- a) There are no permanent civil service Special Agents who are MOU funded;
  - b) Fourteen (14) 89 day hire Special Agents are funded by MOUs;
- 4) **Grant Funded.** These receive funding from agencies, such as the Bureau of Justice Administration, to fund Special Agents involve in Sex Offender Registration; DNA Buccal Swabbing; and the Internet Crimes Against Children Unit (ICAC); and the Evidence Custodian;
- a) There are no permanent civil service Special Agents funded by a grant;
  - b) Three and a half (3.5) 89 day hire Special Agents are funded by grants.

### **III. THE ADMINISTRATIVE RULE GOVERNING EIGHTY-NINE DAY HIRING**

The 89 day hire rule is from Hawai'i Administrative Rules, Title 14; Department of Human Resources Development, Subtitle 1; State of Hawai'i Human Resources Rules; Chapter 1; General Civil Service Provisions, Section 14-3.05-2:

#### **Non-civil service appointment:**

- (a) The appointing authority may make a non-civil service appointment of not more than eighty nine consecutive calendar days or of less than 20 hours a week for thirty-seven consecutive weeks in order to meet the immediate operational needs, provided:
  - (1) The appointing authority certifies that the employee will perform duties, characteristic of the class; and
  - (2) There are no interested and available eligibles on the appropriate eligible list to fill the vacancy, or the appointing authority is unable to make a selection of appropriate eligible list.
- (b) A non-civil service appointment made under subsection (a) may be extended for specific period without a break in service under the following conditions:
  - (1) The director or the director's authorized designee determines that the period of extension makes it impracticable to fill the position by civil service recruitment procedures and allow for completion of an initial probation; and
  - (2) There are no interested and available eligibles on an appropriate eligible list to fill the vacancy or the appointing authority is unable to make a selection from an appropriate eligible list.
- (c) When the director or the director's authorized designee determines that a position can be filled by civil service recruitment procedures, an employee serving a non-civil service appointment in the position may be extended without a break in service until the void date of the first certificate of eligibles for the position, unless this period is extended by the director or director's authorized designee.

- (d) When there is an anticipated need for temporary services beyond eighty-nine calendar days or less than 20 hours a week for 37 weeks, the appointing authority may make a non-civil service appointment for the specific period necessary to complete the work under the following conditions:
- (1) The director or the director's authorized designee determines that it is impracticable to fill the position by civil service recruitment procedures and allow for completion of an initial probation period;
  - (2) There are no interested and available eligibles on an appropriate eligible list to fill the vacancy or the appointing authority is unable to make a selection from an appropriate eligible lists;
  - (3) The employee has not received a non-civil service appointment in the same class of work and department within the last three months, unless this restriction is waived by the director or the director's authorized designee; and
  - (4) The appointing authority certifies that the employee will perform duties, characteristic of the class.
- (e) A non-civil service appointment may be made without regard to the minimum qualification requirements of the position, except that the employee must meet the public employment requirements under section 78-1, Hawaii Revised Statutes, and possess the necessary occupational license, certification, or registration required by statute or regulation.
- (f) Service acquired in a non-civil service appointment shall not be credited towards meeting the requirement of an initial probation period.

#### **IV. HISTORY OF THE EIGHTY-NINE DAY HIRING**

In 1998, the late Donald K.L. Wong, former Chief Investigator of the ATG Investigations Division, projected that State investigators would take on greater roles in addressing criminal investigations. This was a result of county police departments proposing to the State of Hawai'i that crimes committed on State facilities and property or by State personnel should be addressed by the State through its ATG Investigations Division.

With this proposal from the County police departments, Wong envisioned the need for growth in his Investigations Division to fulfill his mission of addressing the increase in criminal and administrative investigations. If his division was to take on greater responsibilities, Wong believed he would need to increase his investigative personnel and they would have to be versed in conducting criminal investigations.

In Wong's pursuit of addressing increased investigative demands, he realized that the State could not attract the quality of personnel needed to fulfill the vacant civil service positions of criminal investigators, mainly because ATG was not being competitive enough in matching the salaries and fringe benefits to that of a county police investigator.

Prior to 1998, the State of Hawai'i was able to attract and laterally transfer police investigators from the various county police departments in Hawai'i to investigative positions within the State of Hawaii (to include ATG). The lateral transfers were successful because a State investigator position was about equal in pay, if not higher, to that of a detective in a county police department. But as the years went by, the State of Hawai'i Police Officers Union (SHOPO) prevailed in getting its police membership

better benefits and salaries than what the Hawai'i Government Employees Association (HGEA) could get for its State investigators. From that time through today, the disparity in salary and benefits grew to a substantial difference between a State investigator and a county police detective. Based on this disparity, few or no quality personnel with criminal investigative background are attracted into becoming investigators with ATG.

With the State of Hawaii not being competitive enough to offer equal salaries and benefits to its investigators, as compared to the county police departments, it became impossible to attract or retain experienced and qualified candidates to be civil service status Special Agents with the Investigations Division.

From 1998 through today, the practice in filling the void of civil service status Special Agents was to employ retired law enforcement officers as Contract Hires. By employing Contract Hires as Special Agents, the hiring process has been viewed by some as a "win-win" situation because:

1. The State of Hawaii would not have to pay employee benefits to Contract Hires;
2. The Contract Hires join ATG with valuable law enforcement training and criminal investigative experience and maturity;
3. The Contract Hires are immediately "up and running" when assigned investigations. This is because the criminal investigative requirements and procedures at ATG are about the same as the county police departments from which many Contract Hires come, and that these Special Agents from county police departments require little training in criminal investigation, processing of legal instruments (writing search warrants), the laws of arrests, search and seizure, and civil rights of the accused in the State of Hawai'i;
4. If a Contract Hire did not dedicate the time required to complete assigned investigations per their contractual agreement, his or her contract would not be renewed, preventing any discipline or grievance issues, in comparison to that of a civil service member Special Agent who has greater due process requirements for disciplinary action;
5. Many positions in the Investigations Division are based upon Memorandums of Understanding (MOUs) and grants, which make these investigative positions short termed, in that, if the MOU was to terminate, that position would be eliminated. The purpose of a civil service system is to maintain its employees from the time those employees begin their employment until the time the employees retire. Permanent civil service employee, in pursuit of careers, would not want to take a position with the understanding that if the MOU, grant funding, or special funding for that position was to terminate, then his or her stay with the Department of the Attorney General's Investigations Division would also be terminated. When young career seekers apply for a position which they have been trained for academically, they would want a long term career. This uncertainty of continued funding for MOUs, grant positions, and special funded positions, somewhat justify Contract Hires.

**V. AWARENESS OF THE DIFFICULTY IN FILLING CIVIL SERVICE POSITIONS**

**Attorney General Earl Anzai's Term (1998-2002)**

On September 22, 2002, then Attorney General Earl I. Anzai received a memo from then Chief Investigator Donald K.W. Wong, requesting that a law enforcement exemption be considered for Hawai'i Administrative rules, Title 14, Department of Human Resources Development, section 14-3.05-2, Non-civil service appointment. Wong provided justification in that there was a substantial increase in investigative caseloads, yet he was unable to recruit qualified investigators through the civil service process.

The failure in recruiting qualified civil service applicants was due to applicants not having the required experience and skills required to adequately perform investigative tasks under civil service guidelines. Due to this failure in recruiting civil service applicants, Wong proposed the continued hiring of Contract Hires, utilizing retired police investigators to fill the void of civil service status investigators.

#### **Attorney General Mark Bennett's Term (2002-2010)**

In a letter dated January 10, 2003, then Attorney General Mark J. Bennett, requested from then Governor, Linda Lingle, for an exemption on non-civil service appointments for the Investigator V positions at ATG. Attorney General Bennett requested that the Contract Hires continue until the Department of Human Resources Development (DHRD) was able to provide enough qualified applicants for consideration. Attorney General Bennett cited that while he has not been successful in obtaining qualified investigators through the civil service process, he has been fortunate in obtaining retired Honolulu Police Department investigators, many with 25 to 30 years of experience, who were willing to fill the gap of the non-civil service appointment (89 day emergency hires) until they could obtain qualified applicants.

Attorney General Bennett informed then Governor Linda Lingle that ATG simply could not compete for qualified investigators as civil service employees, and, even if ATG was able to compete (which it was not able to do), the only way ATG would be able to get qualified investigators would be by taking resources away from the County law enforcement agencies. "Luring" highly skilled retired investigators to the State allowed ATG to function successfully. The immediate use of these retired, highly skilled investigators had produced much success in fulfilling the demands of his Investigations Division. Attorney General Bennett further indicated that without Governor Lingle's approval, his Investigations Division would not be able to adequately function.

Based on Attorney General Bennett's opinion, on February 10, 2003, then Governor Lingle approved Attorney General Bennett's request.

#### **Attorney General David Louie's Term (2010-2014)**

The practice of Contract Hires continued during this time.

### **VI. RECRUITMENT CHALLENGES FOR SKILLED CIVIL SERVICE SPECIAL AGENTS**

Potential reasons why Special Agent candidates do not apply for vacant positions at the ATG Investigations Division:

#### **A. Compensation and Benefits**

##### **1. Salary**



One of the major problem in filling the vacant permanent civil service Special Agents positions within the ATG Investigations Division is the low pay, as compared to the salary of the Detective class in the State of Hawaii Organization of Police Officers (SHOPO) agreement.

The Special Agents in the Investigations Divisions are in the "excluded class." Those Special Agents who are civil service employees have the option of paying union membership dues with HGEA's collective Bargaining Unit 13, should they desire.

In comparing the Bargaining Unit 13 contract from July 1, 2013 to June 30, 2017 with the July 1, 2013 to June 30, 2017 SHOPO contract, the annual base wages for a Special Agent with a SR-24 rating (Investigator V) is \$55,236.00. The annual base wages for a Detective (PO-11), is \$69,564.00. This is a difference of \$14,328.00 per year, in which the greater amount favors the SHOPO contract.

If we go to the end of the pay scale for both positions, the SHOPO contract allows the PO-11 position to draw an income of \$97,176 (L5) a year, as compared to a Bargaining Unit 13, SR-24 position a maximum amount of \$81,756.00 (Step M) a year. This is a difference of \$15,420.00, again in favor of the SHOPO contract.

## **2. Special Duty Income**

An attractive fringe benefit that detectives in the Honolulu Police Department have is an opportunity to supplement income by working off-hour Special Duty at a premium rate of \$44.00 per hour.

## **3. Salary of Supervisory Special Agents**

In comparing the Unit 13 contract from July 1, 2013 to June 30, 2017 with the July 1, 2013 to June 30, 2017 SHOPO contract, the base salary for a Supervisory Special Agent with a SR-26 rating (Investigator VI) is \$59,736.00. The base salary for a Lieutenant (the rank that directly supervises detectives, PO-13), is \$75,504.00. This is a difference of \$15,768.00 per year, the greater amount in favor of the SHOPO contract.

If we go to the end of the pay scale for both positions, the SHOPO contract allows the PO-11 position to draw an income of \$108,612.00 (L5) a year as compared to a Unit 13, SR-26 position a maximum amount of \$88,404.00 (Step M) a year. This is a difference of \$20,208.00 per year, the greater amount in favor of the SHOPO contract.

## **4. Special Duty Income for Supervisors**

An attractive fringe benefit that Lieutenants in the Honolulu Police Department have is an opportunity to supplement their income by working off-hour Special Duty at a premium rate of \$46.00 per hour.

## **5. Fringe benefits**

The SHOPO contract also offers police Detectives and Lieutenants fringe benefits as:

1. **Firearms Maintenance Allowance.** Officers are armed with firearms twenty-four hours a day and receive a \$420.00 per fiscal year as an allowance to maintain their firearms. ATG Special Agents are not compensated in this manner.

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2. Automobile Allowance. The SHOPO contract allows for a monthly motor allowance of \$562.00 per month for their Detectives. ATG Special Agents do not receive such benefits.
3. Gasoline. Police officers are allowed to draw one gallon of gas for every 10 miles they drive. ATG Special Agents are reimbursed for gas at a rate of .56 cents per mile and this payment is to cover the cost of the car insurance. If the Special Agent does not drive a substantial amount of miles, then it would not cover the cost of his vehicle insurance.
4. Vehicle Insurance. The Police Departments pays the public liability and property damage and no-fault insurance of their officers' subsidized vehicle. The officer pay the comprehensive and collision insurance portion of the insurance. ATG Special Agents pay their entire policy.

During prior recruitments, the Investigations Division has been able to attract viable candidates. But when these candidates are told what the pay will be after being interviewed, they move on to other agencies or return back to the private sector from where they came. The offer is declined.

A final issue is the RAM. If a potential candidate's salary is negotiated and becomes greater than the pay of 10 year veterans in the divisions, this would cause a morale issue that would bring up questions as to why a new higher who has not proven himself in the division is being paid more than an experienced investigator.

### B. Career Path

A disadvantage in attracting viable Special Agent candidates for the Investigations Division is its limited career opportunities for advancement. In the Investigations Division, if entering at the Investigator IV position, the Special Agent can advance to an Investigator V position should there be a vacancy. An Investigator V can advance to one of five supervisor Investigator VI position should the position becomes available. Currently after those advancements, there are no positions available towards advancement except the Chief Special Agent position.

In comparison, at the Honolulu Police Department, with a sworn police officer force of 2,100 (as compared to the Investigations Division's staff of 50), vacancies tend to open frequently, on an annual basis, for the following positions:

1. Motor Patrol Officer;
2. PO-9;
3. Sergeant/Detective (approximate years in service 7 yrs. to attain this rank);
4. Lieutenant (approximately 12 yrs. to attain this rank);
5. Captain (approximately 18 years to attain this rank);
6. Major (approximately 23 years to attain this rank);

The following positions does not follow attrition as the aforementioned ranks:

7. Assistant Chief (approximately 25 years to attain this rank);
8. Deputy Chief (selected by the Chief of Police-Usually 20 years+ veteran);
9. Chief of Police (Appointed by the Police Commission-Usually 20 years+ veteran).

Each progression in rank at the Honolulu Police Department carries a substantial increase in salary. The rank of Captain can carry a salary amount double that of an Investigator VI with 20 years of service.

Even if the State offered a comparable salary and benefits, a candidate interested in an investigative position with the State would instead choose to enter the recruit training program of the county police department. He or she would then put in seven years in the lower level position, acquire enough time to take the promotional exam (after three years of service), take the sergeant/detective promotional exam, and from there, accumulate seniority to gain the higher rate of pay.

### C. **The Recruitment Reality**

In practice, if a failed applicant to any of Hawaii's four (4) county police departments applied for a State law enforcement position applicant, it was because that applicant could not pass the stringent Police Department's:

1. Initial entrance examination;
2. Oral interview;
3. Physical examination;
4. Psychological testing;
5. Physical Agility testing;
6. Drug testing;
7. Polygraph examination;
8. Recruit class training.

The potentially negative recruitment situation is that the State gets the county police department's "washouts" and interviews a lower quality of applicants when the State's mission is to attract high quality personnel with integrity that can serve the citizens of Hawai'i.

## VII. **OPTIONS TO ATTRACT SKILLED INVESTIGATORS TO CURRENT CIVIL SERVICE POSITIONS**

For the ATG Investigations Division to attract experienced investigators for its civil service Special Agents position, the State must be competitive and offer competitive salaries and fringe benefits as that of the county Police Departments.

### A. **OPTION - Establish a Recruit Training Facility**

The State of Hawai'i maintains criminal, administrative and civil investigative agencies but does not have a training facility to specifically develop investigators for these agencies. Instead, when a vacancy arises, an advertisement is made for the vacant position. The advertisement is posted and sets the minimum requirements needed to compete for the vacant positions. In most instances, the position requires prior investigative experience (i.e. the State of Hawai'i depends upon other agencies training its potential investigators).

County police agencies (Honolulu Policed Department), federal law enforcement agencies (FBI) and mainland state (other than Hawai'i) law enforcement agencies train their own recruits then later allow them to become investigators for that specific agency.

An example is the State of Illinois which has a training standard for all law enforcement entities in its State. The State of Illinois believes that a "Trained officer is an effective officer." The State of Illinois established an Illinois Law Enforcement Training and Standards Board which is the state agency mandated to promote and maintain a high level of professional standards for law enforcement and correctional officers. Its purpose is to promote and protect citizen health, safety and welfare by encouraging municipalities, counties, park districts, State-controlled universities, colleges, public community colleges, and other local governmental agencies of this State and participating State agencies in their efforts to upgrade and maintain a high level of training and standards for law enforcement personnel.

United States law enforcement agencies, that are deemed professional agencies, are certified by a nationally recognized CALEA (Commission on Accreditation for Law Enforcement Agencies) standard. Most police agencies throughout the nation that are CALEA certified have recruit training programs and facilities to conduct training of their recruits. The recruits they train become law enforcement officers for that law enforcement agency.

In regards to CALEA's high training standards set for police agencies, certified police agencies are required to comply with the following comprehensive list of the titles of all 158 Standards that constitute the CALEA Public Safety Training Academy Accreditation Program:

1.1.1 Credentialing

1.1.1 Credentialing Program Documentation

1.1.2 Instructors Certification

1.1.3 Timely Filing of Information

1.1.4 Criminal History Records Check

**2 Organization**

2.1 Organizational Structure

2.1.1 Organizational Structure

2.1.2 Organizational Chart

2.1.3 Direct Authority, Component

2.1.4 Supervisory Accountability

2.1.5 Responsibility Commensurate with Authority

2.1.6 Position Management System

2.2 General Management and Administration

2.2.1 Training Academy/Client Agency Relationship

2.2.2 Risk Management Program

2.2.3 Equipment Use Expectations

2.2.4 Administrative Reporting Program

2.2.5 Accreditation Maintenance

2.2.6 Public Information Procedures

2.2.7 Public Health Authority

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2.3.1 Complaint Investigation

2.3.2 Complaint Notification Process

2.3.3 Notification of Allegations/Rights

2.3.4 Relieved from Duty

2.3.5 Records, Maintenance and Security

2.3.6 Administrative Review of Complaints

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3.1 Role, Value, and Authority

3.1.1 Documents to Establish Academy

3.1.2 CEO Authority and Responsibility

3.1.3 Mission Statement

3.1.4 Code/Cannon of Ethics

3.1.5 Executive Protocol

3.1.6 Written Directive System

3.1.7 Dissemination and Storage

3.2 Fiscal Management and Academy Property

3.2.1 CEO Authority and Responsibility

3.2.2 Budget Process and Responsibility Described

3.2.3 Requisition and Purchasing Procedures

3.2.4 Accounting System

3.2.5 Revenue Fund/Accounts Maintenance

3.2.6 Audit of Fiscal Activities

3.2.7 Inventory and Control

3.2.8 Property Issue Procedures

3.3 Academy Performance Measurement

3.3.1 Performance Measurement Program

**4 Human Resources**

4.1 Classification and Delineation of Duties and Responsibilities

4.1.1 Classification Plan

4.1.2 Job Description Maintenance and Availability

4.2 Compensation

4.2.1 Salary Program

4.2.2 Leave Program

4.2.3 Benefits Program

4.2.4 Employee Assistance Program

4.2.5 Fitness for Duty Testing

4.2.6 Outside Employment

4.3 Collective Bargaining and Contract Management

4.3.1 Academy Role in Collective Bargaining Process

4.3.2 Ratification Responsibilities

4.4 Performance Evaluation

4.4.1 Performance Evaluation System

4.4.2 Annual Evaluation

4.4.3 Employee Discussion

4.4.4 Unsatisfactory Performance

4.4.5 Performance Evaluation Report

4.4.6 Performance Evaluation Report Comments

4.4.7 Evaluation of Probationary Academy Employees

4.4.8 Recognizing/Rewarding Good Performance

4.4.9 Early Intervention System

4.5 Grievance Procedures

4.5.1 Grievance Procedures

4.5.2 Coordination/Control of Records

4.5.3 Analysis of Grievances

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### 4.6 Disciplinary Procedures

4.6.1 Code of Conduct

4.6.2 Sexual/Unlawful Harassment

4.6.3 Disciplinary System

4.6.4 Role and Authority of Supervisors

4.6.5 Appeal Procedures

4.6.6 Dismissal Procedures

4.6.7 Maintenance/Security of Records

### 4.7 Professional Development

4.7.1 Continued Training

4.7.2 Specialized Training Assignments

4.7.3 Attendance Requirements and Reimbursement Information

4.7.4 Accreditation Process Information

4.7.5 Accreditation Manager Training

### 4.8 Contracted Services

4.8.1 Written Agreement with Contract Personnel

4.8.2 Written Agreement with Client Agencies

## **5 Recruitment, Selection, Employment, and Promotion**

### 5.1 Recruitment

5.1.1 Recruitment Plan

5.1.2 Equal Employment Opportunity Policy

5.1.3 Job/Recruitment Announcements

5.1.4 Maintaining Applicant Contact

### 5.2 Selection

5.2.1 Selection Process Described

5.2.2 Applicant Information

5.2.3 Notification of Ineligibility

5.2.4 Disposition of Records

5.2.5 Selection Material Security

5.2.6 Background Investigation

5.2.7 Background Information Retention

5.2.8 Medical Examination

### 5.3 Employment

5.3.1 New Hire Information

5.3.2 Probationary Period

### 5.4 Promotion

5.4.1 Academy Role in Promotion Process

5.4.2 Promotion Process Described

5.4.3 Job Relatedness

5.4.4 Promotion Process Announcements

5.4.5 Eligibility Lists

5.4.6 Promotional Probation Period

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6.1.1 Instructional System Described

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- 6.2.2 Needs Assessment
- 6.3 Instructional Design
  - 6.3.1 Training Course Procedures
- 6.4 Development of Content and Materials
  - 6.4.1 Training Course Lesson Plans
  - 6.4.2 Training Course Review Schedule
  - 6.4.3 Practical Exercises/Scenario Based Training
- 6.5 Training Delivery
  - 6.5.1 Instructor Training Materials
  - 6.5.2 Regulation of Instructor Training Aids
  - 6.5.3 Pilot Test
  - 6.5.4 Adult Learning Techniques
- 6.6 Training Evaluation
  - 6.6.1 Training Course Evaluations
  - 6.6.2 Measurement of Student Learning/Skill
  - 6.6.3 Measuring Changes
  - 6.6.4 Measuring Effectiveness
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### **7 Training Administration**

- 7.1 Administration
  - 7.1.1 Surveys
  - 7.1.2 Training Data Collection/Submission
  - 7.1.3 Training Course/Training Event Lists
  - 7.1.4 Access Policy
  - 7.1.5 Training Committee
  - 7.1.6 Dissemination of Information
  - 7.1.7 Copyright/Plagiarism
  - 7.1.8 Relationship with Accredited University/College
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## **Costs**

If there is consideration in building a training academy for State agency investigators, it will come with high costs, especially when it is developed from infancy. During the 1980's, the Honolulu Police Department decided to build its own recruit training facility. Prior to this date, the Honolulu Police Department's Training Academy was at the Hawaii National Guard site in Kahala. The Honolulu Police Department already had a Training Division staff that comprised of approximately ten to fifteen sworn officers. Training instructors would come from other divisions within the Department, Prosecutor's Office, FBI, U.S. Attorney's Department, etc.

The new recruit training facility built in Waipahu came with an approximate cost of \$11 million dollars during the 1980's. The training facility was built on City property. The new recruit training facility processed about two recruit classes a year, each class lasting six months of classroom training and another six months of field training. A recruit class may comprise of about 40 police recruits that replaced an annual attrition rate of approximately 100 sworn police officers annually, and that the sworn law enforcement officers in the Honolulu Police Department were approximately 1,900 during this time period of the 1980's.



During 2013, the Honolulu Police Department renovated its recruit training center. The estimated cost was \$43 million dollars.

Implementing a recruit training facility for ATG Special Agents might not be a viable option. The Investigations Division has a staff of 50 sworn Special Agents. During the last 7 years, there has not been any attrition from the civil service Special Agents. One civil service Special Agent will retire on February 20, 2016. For the Contract Hires, 16 Special Agents have either retired or decided not to renew their contracts.

If ATG were to build a full service recruit training facility for Special Agents, in compliance with CALEA standards, which would include classrooms, physical training room, firing range, mock crime scene training area, vehicle tactical driving course, administrative offices, library, and computer training room, the minimum expenditure would be at least \$10 million for structure, and another \$2 million for staffing and maintenance. This would not be a viable alternative to replace an average of one Special Agent per year. However, a State training facility may be viable to train all State investigators for the various State agencies in the same manner as Illinois.

**B. OPTION – Train Special Investigators In-House**

The Investigations Division has employed Special Agents with no prior law enforcement background. Currently, there are only 3 Special Agents who did not have any law enforcement background who were retained when the division began conducting full scale criminal investigations. They are successful in doing their assigned duties, but their training amounted to on-the-job training, nurtured by the 89-day hired Special Agents, who all had prior law enforcement training. Even today, these 3 Special Agents continue to advance their career knowledge based upon interaction with these 89 day hire Special Agents. If the CALEA standard, or the Illinois standard were to gauge their efficiency as trained law enforcement officers, they would not qualify, mainly because the Investigations Division had no approved curriculum, or documented training, defining what they were trained in. There is no competency examination given to them validating their qualification to that of an acceptable law enforcement standards.

The Investigations Division could begin doing in-house training with potential candidates with no credible law enforcement experience, but a team of permanent trainers will need to be trained and maintained in order for the training program to be recognized as having certified professional law enforcement curriculum. The planning of a structured curriculum, and the maintenance of that curriculum will be a task to be accomplished with no identified budget.

If an in-house training facility is implemented, it must be established in a “sterile environment” in which these “recruits” can fully concentrate on what they are taught by these instructors. Special Agents must be dedicated to the training of these recruits and should not be conducting investigations, splitting their time participating in training and conducting investigations, mainly because investigations have issues if they are not addressed in a diligent manner. The recruits may be subjected to training time when the Special Agent is available.

New positions may be needed for the recruit training position.

However, looking deeper as to what type of candidates ATG would be attracting for an in-house training program, based upon other law enforcement markets inside and outside of Hawai‘i, the State

does not offer much in pay and career advancement. If the State seeks "cream of the crop" college graduates to be recruited, that may not happen. Instead the State may attract:

1. Applicants who could not qualify, or who were washed out of federal law enforcement positions;
2. Applicants who could not qualify, or who were washed out from County police departments;
3. Applicants who will stay until they qualify for a better paying job with financial future;

Only a very small percentage may possess the attitude of being mission driven as to what the Investigations Division stands for, and would want to be a part of this division to make Hawai'i a better place to live.

**C. OPTION – Work with HGEA for Better Benefits**

The State, through DHRD and ATG can work with the Hawaii Government Employees Association or other collective bargaining units alleging that Contract Hires hinder prospective union members, so that these union obtain a greater role as SHOPO did in attaining better benefits and pay for these civil service Special Agents. This would attract qualified civil service applicants to fill the vacant positions held by Contract Hires.

**D. OPTION – Discontinue Investigations Operations and Contract with Private Entities**

The State or ATG might consider contracting out with private detective agencies and grant law enforcement powers to these private citizens. This option requires legislation due to Hawaii's law that prohibits private investigators to conduct criminal investigations when hired by clients. By entering into a contractual relationship with a private entity, this will save the State in employee payment benefits, since the private detective agency would bear the burden of those costs.

Issues to consider include:

1. Elimination of civil service positions;
2. Subjecting the selection process to State procurement laws, due to the dollar value and length of the contract services;
3. Costs exceeding that of Contract Hires or civil services employees depending if the investigative contract is flat rate or hourly based. If there is a restriction on the dollar amount paid for the prospective investigation, the investigation may not be completed if funds run out during the course of the investigation;
4. Unknown factors involving whether the private detective agency can actually complete the investigation, and this is only determined after the investigation is underway if that private investigative agency has the qualification and competency to complete the investigation;
5. The Attorney General might not be in complete control in the delivery of the final investigative product.

**E. OPTION – Establish MOU with Counties to Take Over State Investigations**

The State or ATG may consider establishing an MOU with each county police agency to investigate criminal matters of State interest. However, the county police departments will not investigate administrative or civil complaints, something that existing ATG Special Agents are required to investigate. The reduced cost from the Contract Hires will increase substantially because county police detectives have a higher pay scale than the State's civil service Special Agent.

**F. OPTION – Train PSD Sheriffs Division to Conduct Complex Criminal Investigations**

Since the Department of Public Safety's Sheriff Division already has a recruit training facility, its training facility could be improved so that Sheriffs are trained to conduct complex criminal investigations and take over the State's wide criminal, civil and administrative investigations, since they are assigned to all islands. A transition period could be established so that all 89 day Special Agents will be replaced by Sheriffs at a pre-designated time period.

The Deputy Sheriff would have to qualify as an investigator by passing a written examination testing him on advance investigative technique and knowledge.

When they qualify as investigators and become versed in handling these complex investigations, they would confer their cases with ATG in the same manner a county police detective would confer his or her case with a county deputy prosecuting attorney.

Costs would be increased to the State due to the elimination of lower paid Contract Hires and replacement of civil service status Sheriff employees. The Sheriff's standards of training should, if necessary, be brought to comparable standards as a County police department.

**VIII. CONCLUSION**

Existing Contract Hires in the ATG Investigations Division are:

1. Highly trained retired criminal investigators with twenty-five (25) or more years of experience who are dedicated in advancing the reputation of the Department of the Attorney General;
2. Trained and qualified to possess firearms;
3. Experienced in working with the general public and citizens with behavioral problems;
4. Agreeable to termination if they are non-productive;
5. Experienced in law enforcement with prior contacts and the ability to maximize existing relationships with federal, state and county law enforcement agencies;
6. Paid less than premium hourly wages for high-quality investigations. A 2011 analysis determined that Contract Hires save the State over \$800,000.00 a year in wages and benefits;
7. Flexible when offered diverse working schedules and conditions;

Today, the majority of Contract Hires have verbally emphasized that they want to continue with a meaningful law enforcement activity and serve their community. At the same time, the appropriateness of continuing to employ Contract Hires has been questioned. Numerous recruitment challenges exist if the ATG Investigations Division immediately converts to a 100% civil servant operation – primarily related to unequal salaries, benefits, training and advancement opportunities at the State – but several options may allow a practice of employing Contract Hires, in place for nearly 20 years, to eventually change this highly significant entity to the State of Hawai'i.

# **Investigations Division**

## **Annual Report**

### **Calendar Year 2015**

**Daniel Y. Hanagami**  
**Chief Special Agent**

**Investigations Division**  
**Department of the**  
**Attorney General**  
**State of Hawaii**



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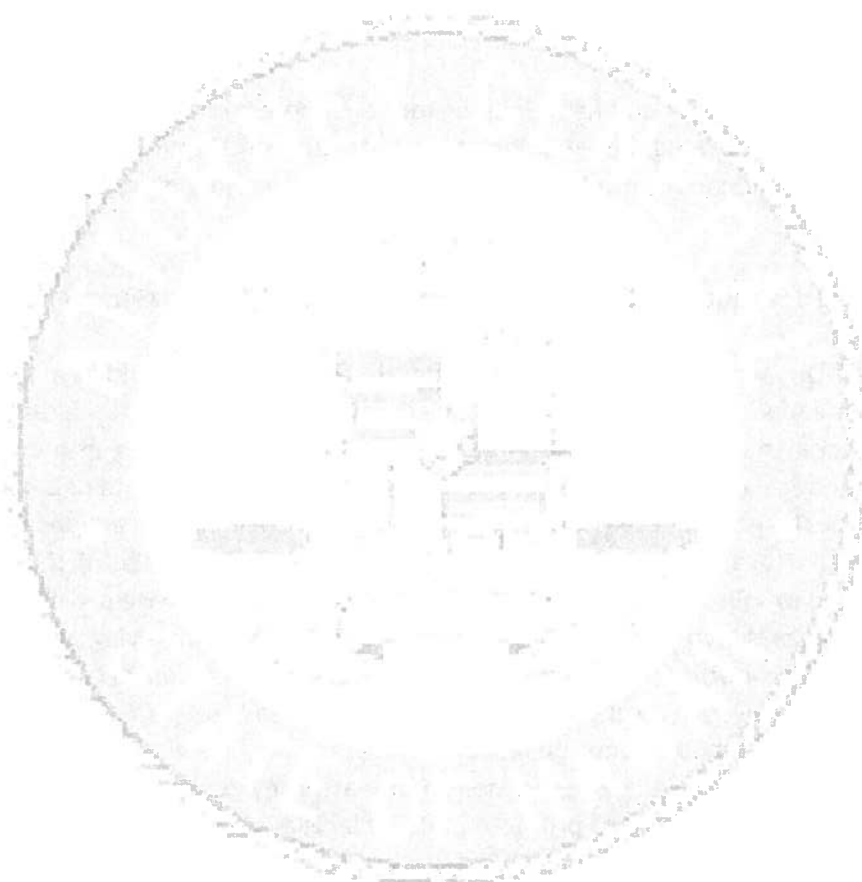
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## **Introduction**

The Investigations Division exists within the Department of the Attorney General and is established under the authority of the Attorney General.

The Attorney General is the chief legal and law enforcement officer in the State of Hawaii. This office and the Department of the Attorney General were established in 1959 by the Hawaii State Government Reorganization Act of 1959 (Act 1, Second Special Session Laws of Hawaii 1959).

The office of the Attorney General has a long history of service to Hawaii. The first Attorney General was appointed by King Kamehameha III in 1844, and since that time Attorneys General served the Hawaiian monarchs, the Republic of Hawaii, the Territory of Hawaii, and now the State of Hawaii.

The Hawaii Revised Statutes establish the Department of the Attorney General:

§26-7 Department of the attorney general. The department of the attorney general shall be headed by a single executive to be known as the attorney general.

The department shall administer and render state legal services, including furnishing of written legal opinions to the governor, legislature, and such state departments and officers as the governor may direct; represent the State in all civil actions in which the State is a party; approve as to legality and form all documents relating to the acquisition of any land or interest in lands by the State; and, unless otherwise provided by law, prosecute cases involving violations of state laws and cases involving agreements, uniform laws, or other matters which are enforceable in the courts of the State. The attorney general shall be charged with such other duties and have such authority as heretofore provided by common law or statute.

There shall be within the department of the attorney general a commission to be known as the commission to promote uniform legislation which shall sit in an advisory capacity to the attorney general and to the legislature on matters relating to the promotion of uniform legislation. The composition of the commission shall be as heretofore provided for the commission to promote uniform legislation existing immediately prior to November 25, 1959. The members of the commission shall be nominated, and by and with the advice and consent of the senate, appointed by the governor for terms of four years each, provided that each member shall hold office until the member's successor is appointed and qualified; and provided also that the provisions of section 26-34, limiting the appointment of members of boards and

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commissions to two terms and the duration of membership to not more than eight consecutive years shall not be applicable.

The functions and authority heretofore exercised by the attorney general, high sheriff, and the commission to promote uniform legislation as heretofore constituted are transferred to the department of the attorney general established by this chapter. [L Sp 1959 2d, c 1, §13; am L 1965, c 127, §1; Supp, §14A-12; HRS §26-7; am L 1969, c 123, §1 and c 175, §12; am L 1975, c 20, §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

The Department of the Attorney General is charged with a wide range of responsibilities and is organized into divisions to efficiently and effectively carry out these responsibilities. One of these is the Investigations Division.

The Attorney General is the chief law enforcement officer in the State of Hawaii. §28-11 of the Hawaii Revised Statutes confers on the Attorney General the authority to appoint and commission investigators as law enforcement officers “as the exigencies of the public service may require”.

The Investigations Division of the Department of the Attorney General and Investigators appointed under the authority of the Attorney General conduct investigations in support of the department’s civil, criminal, and administrative responsibilities. Investigations include crimes of corruption in public office, crimes against the interests of the State of Hawaii and the people of Hawaii, serious crimes for which the Department of the Attorney General has primary responsibility, and serious crimes deferred to the Attorney General by other law enforcement agencies.

This report summarizes the activities of the Investigations Division in 2015, highlighting the focus and direction of the division, performance metrics, program areas, and progress in accomplishing the strategic plan.

## **Investigations Division**

The Investigations Division is the preeminent law enforcement investigative agency in the State of Hawaii, with statewide authority and the highest level of expertise. The division conducts investigations in criminal, administrative, civil and certain regulatory matters.



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The primary clients of the Investigations Division from an organizational standpoint are the Attorney General and the Deputies Attorney General. Ultimately, the principal clients of the Investigations Division are the people of Hawaii and the State of Hawaii.

The Investigations Division protects the rights and safety of the people of Hawaii under the Constitution and laws of the State of Hawaii. The division conducts investigations to protect the safety of Hawaii's people, to protect them against crime and criminals, to promote criminal justice, to promote freedom from crime and protect against the fear of crime, with respect to the rights and dignity of all.

Under the direction of the Attorney General, the division conducts investigations into a wide range of matters, including government corruption, complex white collar crimes, career criminal suppression, public safety and homeland security, sex offenders and sex offender registration violations, child sexual exploitation, Internet crimes against children, high technology computer crimes, identity thefts and other crimes against property rights, drug nuisances that degrade the safety and quality of life in our neighborhoods, environmental crimes, tobacco tax enforcement, cold case homicides, crimes within correctional facilities, and other crimes that significantly affect the safety and well-being of our community.

As provided in the Hawaii Revised Statutes **§28-11 Investigators; appointment and powers**, investigators are appointed by the Attorney General and have all of the powers and authority of police officers and deputy sheriffs. Investigators are selected for their skills and abilities, and many were previously police officers in the county police departments. As a group, the investigators are highly capable, experienced law enforcement professionals who effectively combine authority, ability and experience with full police powers to enforce laws and conduct investigations throughout the State of Hawaii as needed and as directed by the Attorney General. Personnel are sworn, armed law enforcement officers with the authority to investigate all crimes, arrest criminal suspects and execute search warrants and warrants of arrest. Investigators work closely with federal investigators, the Department of Public Safety and other state agencies, the Honolulu Police Department and the other county law enforcement agencies, and prosecutors.

The investigators are Special Agents at the Investigator V level, under the supervision of Supervisory Special Agents at the Investigator VI level.

Due to the challenges of finding highly qualified personnel who can perform the work at the necessary level of ability, many of the Special Agents are hired as emergency hires on an 89-day contract basis. These contracted Special Agents perform at the highest professional level, and are required to maintain the current expertise through continuing education provided through the Department of Justice, National White Collar Crime Center (NW3C), Federal Bureau of Investigation (FBI) and other qualified sources. Contracted Special Agents must meet all of the

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requirements of the law enforcement profession, maintain current firearms certification, and are subjected to ongoing criminal history background investigations to insure compliance with the Lautenberg Amendment.

Contract Special Agents serve at the lowest possible pay scale, with no salary steps or other fringe benefits that would accrue to civil service employees. The contracts provide no sick leave or vacation leave. As a result, the State derives the benefit of having the most experienced and capable investigators at roughly half the cost of non-contract personnel.

Many limited-term contract Special Agents are hired to fulfill contracts with other State departments. The Department of the Attorney General engages in Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU) partnerships with the Department of Public Safety, the Department of Transportation, the Department of Agriculture and other departments to provide investigative services on a contract basis. MOA and MOU partnerships are not necessarily permanent, and could not practically be serviced with permanent civil service positions.

Limited term contract Special Agents are hired with full knowledge, experience and expertise in their fields. This overcomes the limitations imposed by the present absence of a State training center for criminal investigations, and the need for investigator training programs at the state level. The county-level police departments in Hawaii rank with the finest in the United States, and contract Special Agents are drawn from their ranks who are fully trained, experienced, and conversant with Hawaii laws and the Hawaii Criminal Justice System.

The Investigations Division provides public safety services during emergency mobilization in response to hurricanes, tsunamis and other critical events. The division provides essential law enforcement services to protect the community, prevent crime and bring criminals to justice, provide a deterrent to child predators and other serious criminal elements, effectively discharging the division's responsibilities in program areas and focused efforts that reflect the dynamic, evolving needs of our community and the evolution of crime trends in our state.

The Investigations Division was reorganized at the close of 2015. The structure of the organization was changed and positions were reconfigured to balance limited funding and resources while at the same time addressing new responsibilities that were added. The reorganization improves and enhances operational efficiency, improves the overall effectiveness of the division, establishes more efficient lines of supervision and chain of command, provides optimal supervisory span of control, improves the accomplishment of objectives and assignments, establishes greater accountability, assigns specific areas of focus to specific positions, supports the optimal utilization of personnel and resources, enhances transparency and provides the framework for the most cost-effective accomplishment of the division's responsibilities.

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The Investigations Division makes the most of the personnel, resources and funding that have been made available. Additional staffing is needed to address increased demands placed on the division such as the increased demand for services by other departments for administrative and criminal investigations. In the interests of the state and the community, the Investigations Division has also increased its involvement in program areas where county-level resources are insufficient to cope with the scale of the problem, including complex financial frauds and political corruption cases.

**Performance Metrics**

The performance metrics represent the productivity of the Investigations Division as a whole.

**Enforcement** and **Caseload** are key performance metrics.

**Enforcement** represents a measure of effectiveness by highlighting enforcement actions. The enforcement benchmarks represent contacts with impact.

**Caseload** reflects the core investigative activity of the division. Investigations reveal crimes – criminal acts that are violations of specific criminal statutes. An investigation may reveal multiple criminal acts committed by one or more suspects. A case is generated for each distinct crime. Cases also document administrative investigations and regulatory actions.

**Enforcement**

ENFORCEMENT METRICS	2014	2015
Arrests	284	288
Arrest Warrants	137	180
Penal Summons Served	112	118
Search Warrants Executed	69	51
Subpoenas Served	1,568	1,553
Prosecution Via Complaint	42	43
Extraditions	15	14
Nuisance Abatement (Narcotics)	68	72

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Tobacco Enforcement Actions	1,258	1,303
Felon DNA Buccal Swabbing Actions	11,847	11,905
Sex Offender Registration Actions	2,183	2,177

**Caseload**

CASE METRICS	2014	2015
Cases	4,186	4,801
Closed – Conferred For Prosecution	210	282
Closed – Pending Further Developments	173	144
Closed – Records	3,474	
Closed – Other Venues	111	96
Open Cases	218	192
Closing Rate	94.7%	96%

*The **Caseload** summary includes cases of all types – criminal, civil, administrative and regulatory.*

*The **Closing Rate** is determined by dividing the number of cases closed by the number of cases assigned during the same period. Some investigations are lengthy, and cases opened are carried forward into the following year. As a result, some cases, will be closed after these metrics are compiled. The final numbers of closed cases may change as a result. The closing rate is less than 100% because some cases remain open at the end of each year. The open cases carried forward continue to be investigated.*

***Closed – Conferred For Prosecution** refers to the number of cases, not investigations, that were conferred and forwarded to the Criminal Justice Division or, in some instances other agencies for prosecution such as the county or federal prosecutor. A single investigation and prosecution may involve multiple cases per defendant, or may involve multiple defendants in a single case.*

***Closed – Pending Further Developments** refers to cases closed when there is insufficient evidence to positively identify and prosecute a suspect or suspects, all leads for further investigation are exhausted.*



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*Closed – Records* refers to cases in which the investigation is complete and there is no prosecution. These include regulatory cases (including cases made to document tobacco licensee compliance inspections), administrative investigations (since these involve no criminal prosecution and are closed upon completion) and criminal cases when the complaint is withdrawn by the complainant.

*Closed – Other Venues* refers to all other types of disposition.

*Dispositions* are subject to change. Cases that are closed with no further leads are reopened if new evidence or avenues of investigation develop.

**Investigations**

CRIMES INVESTIGATED		2015
Murder 2 (Attempt)	707-701.5	2
Assault 2	707-711	8
Assault 3	707-712	1
Kidnapping	707-720	2
Sexual Assault 1	707-730	4
Sexual Assault 2	707-731	2
Sexual Assault 3	707-732	2
Burglary 1	708-810	7
Burglary 2	708-811	2
Trespassing 1	708-813	2
Trespassing 2	708-814	3
Criminal Property Damage 2	708-821	3
Criminal Property Damage 3	708-822	2
Criminal Property Damage 4	708-823	1
Theft 1	708-830.5	7
Theft 2	708-831	137
Theft 3	708-832	1
Theft 4	708-833	2
Unauthorized Control Propelled Vehicle (UCPV)	708-836	12
Unauthorized Possession of Confidential Personal Information (UPCPI)	708-839.55	8
Robbery 1	708-840	4

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Robbery 2	708-841	1
Forgery 1	708-851	31
Forgery 2	708-852	5
Unauthorized Computer Access	708-895.5	
Money Laundering	708A-3	2
Racketeering Offenses	Chapter 842	2
Firearms Offenses	Chapter 134 HRS	5

This table includes representative crimes against persons and property rights investigated by the division and does not reflect all report classifications.

**Program Areas**

The Investigations Division is organized into units to effectively balance supervision, workload, and provide focus for investigations and activities related to the program areas. Due to limited staffing and budget reduction, there is an overlap in the types of cases assigned to the units.

Staffing and budget constraints require services to be prioritized – to make the best use of the resources available – and to distribute the work in the program areas among the work units on the basis of available personnel, not necessarily unit function. The Division continually adapts to changes in the requirements for investigations and services needed, within cost constraints.

The increase in caseload and productivity of the Investigations Division was the result of a combination of factors. The Division was reorganized to focus on key objectives, more efficiently organize investigators, and provide more effective supervision and streamlining to better manage personnel and complex operations and investigations. Investigations of white collar crimes and political corruption often reveal multiple crimes arising from the same scheme, accounting in part for the increase in cases. There have been increases in crimes reported and investigations across the board, including cases arising from Memoranda of Understanding with other state agencies such follow up investigations for felonies initiated by the Department of Public Safety, Agriculture, and Workplace Violence in various departments, and increased numbers of investigations in ongoing focus areas including tobacco enforcement and noncompliant sex offenders.

Overall, the division is working more efficiently and effectively as a result of improvements in organization, management, and supervision, streamlined internal work processes, and the division’s continued ability to attract and employ first-rate investigators capable of meeting the challenges of increased need for investigative services.

## **Program Area – Criminal Investigations**

The core mission of the Investigations Division is to investigate crime. The crimes investigated are within the parameters set by the Attorney General and the Chief Special Agent.

Criminal investigations have a substantial impact on personnel time and resources. The investigation process includes gathering and analyzing evidence, conducting interviews and interrogations, filing Judicial Determinations for Probable Cause, preparing and serving subpoenas, preparing and serving search warrants and arrest warrants, identifying and arresting criminal suspects, preparing cases for review and prosecution by the Criminal Justice Division, and testifying in court.

The Investigations Division investigates a full scope of crime types. The program areas generally define the types of investigations conducted. The full range of crimes under the Hawaii Revised Statutes are within the authority of the division.

The Division concentrates resources in program areas that (1) support the objectives and direction of the Attorney General, (2) meet the requirements of the interests of the State, (3) provide services to the community that do not duplicate the focus of other law enforcement agencies, and (4) are within the expertise and capabilities of the division.

The Division provides investigative support for a full range of felony crimes to the Department of Public Safety Sheriff's Airport Section (SAS) and Corrections, and the Department of Transportation Harbor Police. Investigations arising from these partnerships include felony property crimes (such as thefts and auto thefts), crimes against person (felony assaults), arrests of fugitives from justice from other jurisdictions (extraditions), and escapes (from correctional facilities).

## **Program Area - White Collar Crime**

Since his appointment as Chief of the Investigations Division on August 14, 2013, Chief Special Agent Daniel Hanagami has used his expertise in white collar crime investigations to combat corruption and embezzlement of state funds.

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White collar crime investigation is a specialized discipline of criminal investigation, requiring knowledge and expertise in financial investigations. Financial crime investigations are complex and can require sifting through thousands of transactions, multiple accounts and multiple financial institutions. The culprits in public corruption and fraud schemes devote considerable effort to conceal their crimes. They have the advantage of working on the inside and often being viewed by their employers as trustworthy, giving them latitude to commit thefts and conceal their actions. Uncovering these crimes requires thorough, meticulous examination of financial transaction records and other documents to reveal the modus operandi, uncover convoluted pathways diverting funds, and attempt to recover the fruits of the crime.

Chief Special Agent Hanagami is directing these investigations and developing financial crimes expertise among the Special Agents assigned to the division. To develop these skills in others, he is directing and coaching active investigations, teaching financial crimes investigations, developing forensic capabilities, acquiring audit support, and providing formal training and certification opportunities for the Special Agents.

Chief Special Agent Hanagami is strengthening the law enforcement community overall by leveraging his long-term relationship with the NW3C (National White Collar Crime Center) to bring training classes to Hawaii and make training available to the county police departments and other state agencies in addition to Investigations Division staff.

A number of investigators have experience in white collar crime investigations. The majority of investigators in the division have 20 or more years of investigative experience, including homicide, sex crime, robbery, burglary, theft, organized crime, narcotics, gambling, and other areas of investigation. This background provides a strong foundation for the Special Agents to develop white collar crime investigation skills. The Division is growing in its capabilities.

A White Collar Crime Unit has been established as part of the reorganization. The unit concentrates on public corruption and white collar crime. Special Agents investigate theft, fraud, identity theft, forgery, securities fraud, money laundering, racketeering, organized crime, procurement violations, and related offenses.

### **Program Area - Tobacco Enforcement**

The Tobacco Enforcement Section enforces the Tobacco Master Settlement Agreement, the Tobacco Liability Act, and the Cigarette Tax and Tobacco Tax Law. Enforcement ensures compliance with the legal requirements for payments under Chapter 675 of the Hawaii Revised Statutes.



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The Tobacco Enforcement Unit is charged with the responsibility to enforce Hawaii's laws, conduct inspections of tobacco retailers, and ensure this source of revenue to the state.

Cigarette tax revenues amounted to \$121,629,882 on fiscal year 2014-1015, representing a significant source of revenue for the state and underscoring the importance of continued enforcement to maintain compliance.

Inspections are conducted statewide of wholesalers and distributors, retail establishments, and cigarette vending machines for compliance. There are 1,544 retailers that hold retail tobacco permits. The Tobacco Enforcement Unit also engages in specialized, complex felony investigations, including unlicensed import and sale of foreign cigarettes, United States Customs seizures, and counterfeit tax stamp cases. These investigations counter lucrative smuggling and counterfeiting operations that would defraud the people of Hawaii of cigarette tax revenues.

### **Tobacco – Gray Market**

Gray Market cigarettes are American-made or foreign-made cigarettes – usually major American brands – sold by the manufacturers specifically for sale outside of the United States. Gray Market cigarettes cut into the market share of legitimate manufacturers and underprice domestic products. Gray Market cigarettes include cigarettes imported illegally into the United States in violation of federal law, fail to meet federally mandated labeling requirements, or bear an unauthorized brand or trademark and are considered contraband. Foreign-made Gray Market cigarettes are manufactured overseas in such places as China, Colombia, the Philippines, Southeast Asia, and Switzerland, representing a multitude of brands and cigarette manufacturers. These cigarettes are often smuggled into Hawaii from Asia, the Philippines, Southeast Asia, and the South Pacific, and have been found in small grocery and liquor stores. Some mainland distributors attempt to mask or relabel “tax exempt” cigarettes to avoid prosecution for the sale of Gray Market cigarettes.

Historically, to address the Gray Market and other contraband cigarette problems, the Department of the Attorney General and the Investigations Division have established relationships with the taxing and regulatory authorities of Alaska, Arizona, California, Florida, Michigan, Oregon, Utah, Vermont, Washington, and Canada. Enforcement efforts have been coordinated with the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Customs and Border Protection, the United States Postal Service, and the Royal Canadian Mounted Police.

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The Investigations Division works with United States Customs and Border Protection in joint investigations of persons smuggling contraband cigarettes to Hawaii from foreign countries. This cooperative effort has resulted in more than thirty investigations of individuals attempting to bring undeclared or under-declared cigarettes to Hawaii in the past year. Gray Market and other contraband cigarettes have been seized at airports in these joint interdiction efforts.

**Tobacco – Counterfeit Tax Stamps**

Counterfeit tax stamps cost as little as \$0.03 to \$0.50 per stamp and enable sellers using counterfeits to sell at a considerable price discount to lawfully taxed cigarettes. The Tobacco Enforcement Unit searches for counterfeit Hawaii tax stamps to prevent their circulation.

**Tobacco – Half-Stamping**

Some vendors attempt to evade the cigarette tax by placing a half-stamp on the bottom of a package of cigarettes, thus stamping two packs for the price of one. Investigations have resulted in arrests for selling half-stamped or partially stamped packs. In order to maintain the revenue stream of cigarette taxes and reduce the availability of underpriced cigarette products, the unit ensures tax stamps conform to the stamping requirements set forth by rules adopted by the Department of Taxation. Title 18 of the Hawaii Administrative Rules, section 18-245-3 provides that stamps or stamping indicia shall be securely affixed to the bottom of each cigarette package in such a manner that the stamps or stamping indicia are clearly visible, legible, and complete.

**Tobacco – Internet and Mail Sales**

Efforts continue in Hawaii and across the nation to address the problem of Internet sales of cigarettes. Significant federal regulation in the form of the Prevent All Cigarette Trafficking Act of 2009 (PACT ACT) was passed in 2010. The Tobacco Enforcement Unit initiates investigations into Craigslist and other offerings for the sale of tobacco products without a tobacco retail permit within the State of Hawaii. Interdiction of Internet and mail sales arriving in Hawaii is done in conjunction with United States Customs and the United States Postal Service. Parcels of cigarettes and loose tobacco are seized as prohibited mailed items and treated as contraband.

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**Program Area - DNA Buccal Swabbing**

The Investigations Division Section is the statewide lead for implementing Chapter 844D Hawaii Revised Statutes and ensuring that all convicted felons in the state comply with its provisions which require felons to provide a DNA specimen.

The unit obtains DNA samples via buccal swabbing from felons, and coordinates the efforts of other law enforcement agencies. The unit conducts investigations to locate and DNA obtain samples from felons, sends correspondence to felons to seek voluntary compliance, seeks prosecution of noncompliant felons, and coordinates the distribution of DNA Buccal Swabbing kits to other agencies.

In 2007, when the Buccal Swabbing Unit was established, there were 28,824 known unsupervised felons that were pending recovery of DNA samples. Bringing convicted felons into compliance has been an uphill effort. The felon population changes with new felons added through conviction or migration into the state, and many felons actively evade notification and compliance. In 2014, there were over 20,000 unsupervised felons were pending recovery of DNA samples.

DNA samples from felons and DNA evidence from criminal investigations are submitted to CODIS. The Federal Bureau of Investigation (FBI) manages CODIS (Combined DNA Index System) which is both the FBI's program of support for criminal justice DNA databases and the software used to run these databases. The National DNA Index System or NDIS is part of CODIS. DNA profiles of felons and from criminal investigations are submitted to CODIS by Hawaii law enforcement and participating forensic laboratories.

DNA Buccal swabbing and CODIS are essential to criminal investigations. CODIS and its data enable investigators to solve crimes at a faster rate, strengthen the supportive evidence in many cases, and identify suspects in crimes in which they might never be identified except by CODIS data.

Each person has a unique DNA profile, and felons and other criminals who are required by Hawaii law to provide DNA samples are compelled to provide samples that are analyzed and their DNA profile is entered in CODIS. In a process analogous to fingerprint evidence, biological evidence at crime scenes can be checked against the CODIS database to identify if there is a match. Suspects in crimes can be identified who might otherwise be unknown. CODIS is a nationwide effort to obtain and maintain DNA profiles, and can be used to identify suspects in crimes whose profile data was obtained in any participating jurisdiction.

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**Hawaii CODIS – FBI Data - October 2015**

31,843	Offender Profiles
0	Arrestees – no data available
861	Forensic Profiles
1	Participating Forensic Laboratories (NDIS)
405	Investigations Aided

As of October 2015, the National DNA Index (NDIS) contained over 12,010,904 offender profiles, 2,157,394 arrestee profiles and 663,191 forensic profiles.

Hawaii CODIS data was provided by FBI CODIS, and represents cumulative totals – inception to date.

- Forensic Profiles - evidence from criminal investigations entered in CODIS, pending comparison and identification.
- Investigations Aided – forensic profiles that have been compared and the results aided in investigations
- The NDIS participating forensic laboratory in Hawaii is the Honolulu Police Department's Scientific Investigation Section Crime Lab. The Honolulu Police Department is the primary reporting agency for NDIS data.
- The most up-to-date statistical data for CODIS Hawaii can be found at the Federal Bureau of Investigation website <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-statistics/#Hawaii>
- More information about CODIS can be referenced at the Federal Bureau of Investigation website <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet>
- As of July 2014, the Honolulu Police Department has committed to forward more precise statistical data on suspects identified with DNA analysis.

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**Program Area - Sex Offender Registration and Compliance**

The Investigations Division is the primary law enforcement agency responsible for sex offender registration enforcement in Hawaii, and the only law enforcement agency engaged in the investigation of violations of Chapter 846E in the State of Hawaii. Chapter 846E addresses the registration of sex offenders and other covered offenders. Statutes define several felony crimes for failure to comply with covered offender registration requirements.

The Investigations Division vigorously carries out its mission to register covered offenders and investigate unregistered and noncompliant offenders, working closely with federal investigators, other state agencies, the Honolulu Police Department and other county law enforcement agencies, Adult Probation and the Paroling Authority. Routine re-registrations of compliant sex offenders have been shifted to clerical civilian staff as a cost-savings.

Sex offender registration is a critically important component of the overall strategy to protect future victims from sexual predation. Noncompliant sex offenders pose a high risk of committing new sex crimes. To reduce the risk to the community, noncompliant offenders are investigated by special agents to bring them into compliance or criminally prosecute them for their refusal into being compliant.

Since the transfer of routine re-registrations of compliant sex offenders to clerical staff, investigators focus on investigations, complex registrations such as engagement with the population of homeless sex offenders, and increased compliance inspections. Investigators conduct residential inspections and frequent validation checks to verify information supplied by sex offenders to ensure compliance with residence and other reporting requirements.

The Investigations Division provides training to the Department of Public Safety and the Honolulu Police Department to enable them to participate in sex offender registration compliance.

The Investigations Division works closely with the United States Marshal's Service and participates in the Adam Walsh Task Force field operations in an effort to discourage sex offenders from committing new crimes.

The purpose of the sex offender registration program is to manage the population of convicted sex offenders to reduce the risk of new sex offenses being committed by a population of offenders that, as a group, pose a significant risk of recidivism with future sex crimes. These crimes tend to be committed against vulnerable members of the community, primarily women and children. The Division is committed to this responsibility and to preventing sex offenses.



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**Program Area - High Tech Crimes and ICAC**

In 2015, the High Tech Crimes Unit included the Hawaii Internet Crimes Against Children (ICAC) and concentrated efforts on Internet crimes involving sexual predators who use the Internet to prey on children or exploit children in child pornography.

In 2016, the ICAC responsibilities are being relocated to the Criminal Justice Division. The Hawaii ICAC activities relate to 2015. The transfer of the Hawaii ICAC from the High Tech Crimes Unit was originally planned to take place on January 1, 2016. However, as of February 2016, the actual date of the transfer has not yet been determined. Until then, the Hawaii ICAC Task Force continues to be maintained within the High Tech Crimes Unit, and its primary full-time personnel are Special Agents of the Investigations Division.

The High Tech Crimes Unit and Hawaii ICAC provide forensic and investigative technical assistance to law enforcement agencies, and educational information to parents, educators, prosecutors, law enforcement, and others concerned with child victimization. The primary focus of the unit has been enforcement, concentrating on crimes involving child pornography, electronic enticement and minor produced sexual images.

The Hawaii ICAC exists within the framework of a national strategic initiative to protect children from sexual exploitation. The ICAC Program is a national network of 61 coordinated task forces representing more than 3,000 federal, state, local, and tribal law enforcement and prosecutorial agencies. The Hawaii ICAC is one of these task forces and serves the region consisting of Hawaii, Guam, and the Marshall Islands.

In the past, the Hawaii ICAC Task Force included a substantial number of personnel on assignment from other law enforcement agencies. However, due to financial and staffing constraints in other departments, participation by other agencies has declined and the High Tech Crimes Unit provides the core staffing for the Hawaii ICAC Task Force for investigation and support services at both the state and county level.

The High Tech Crimes Unit and the Hawaii ICAC are the primary law enforcement agency in the State of Hawaii handling cases of electronic enticement of children, child sexual exploitation and attempts made via the Internet, and other offenses related to the manufacturing and distribution of child pornography. There are only 4 investigators in the Hawaii ICAC: 2 paid with ICAC (grant) funds and 2 paid with state General Funds. The Homeland Security

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Investigations/ICE and the Air Force Office of Special Investigations are presently the only other agencies who have assigned an agent to work on undercover proactive investigations. There is a high rate of turnover with the military task force members and there is a constant need to train new military investigators. The county-level law enforcement agencies and other state law enforcement agencies do not provide staffing to support the ICAC.

The goals of the Hawaii Internet Crimes Against Children Task Force have been (1) to increase the effectiveness and efficiency of investigations and prosecutions of Internet Crimes Against Children (ICAC) offenses, and (2) to increase public awareness and prevention of ICAC offenses.

The unit has continued its efforts to increase the investigative capabilities of law enforcement officers in the detection, investigation, and apprehension of ICAC offenses. Progress has been made by providing training to law enforcement to increase their investigative capabilities, maintaining and administering a computer forensics laboratory for examination and extraction of digital evidence recovered in computer related investigations, and making this computer forensics laboratory available to trained law enforcement personnel and task force members.

The computer forensics section processes digital evidence and provides technical support. Software and hardware for the laboratory has been updated. Two Information Technology personnel are on assignment to the Investigations Division and are extensively certified in various disciplines of digital forensics in support of ICAC and other criminal investigations.

Training programs are funded to bring training to Hawaii because it is more economical to bring training to Hawaii than send people to the continental United States. Training involving high tech investigations and digital forensics were hosted and open to all law enforcement agencies in Hawaii. Training in 2015 included cell phone forensics and high tech crimes investigations, and was open to county, state and federal law enforcement.

Investigations have been focused on proactive and reactive peer to peer investigations. Peer to peer cases often involve sophisticated technologies and strategies used by suspects to avoid detection and penetration by law enforcement. These cases require a significant commitment of personnel time.

Enticement investigations were conducted involving suspects who intend to meet and engage in sexual activity with minors. Enticement investigations are time-consuming to develop and the offenders are often savvy. Hawaii law requires an actual meeting between the suspect and the victim. Sexual predators are wary of getting caught and are alert to any miscues by undercover agents posing as minors. These are difficult and time-consuming investigations, but are worthwhile when suspects are diverted away from rapes of actual minors.

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The task force has continued to promote public awareness and prevention programs. This included outreach education, awareness, and prevention programs for children, parents, educators, and community groups. An informational website is maintained at [www.ag.hawaii.gov/hicac](http://www.ag.hawaii.gov/hicac). Public awareness and education have proven to be effective ways to increase the number of computer related cases being investigated in the state.

HAWAII ICAC	2014	2015
Traveler	0	1
Child Enticement	5	7
Obscenity Directed To Minors	61	10
Child Prostitution	1	2
Manufacturing Child Pornography	2	1
Distributing Child Pornography	384	257
Possession of Child Pornography	1,566	1,699
ICAC Arrests	4	10
Cybertips Received	198	256
Subpoenas or Court Orders	194	119
Search Warrants	31	12
Technical Support	149	172
Forensic Examinations	77	74
Training Sessions Provided	9	14
Law Enforcement Trained	32	109
Presentations	40	63
Attendees at Presentations	1,741	11,834
Public Events	7	9
Attendees at Public Events	3,410	2,425
Public Awareness	1,126	3,178

The relocation of the Hawaii ICAC to the Criminal Justice Division in 2016 will not diminish the commitment to enforcement. The Department of the Attorney General remains committed to protecting Hawaii's children from sexual exploitation and identifying criminals engaged in the sexual exploitation of children, and retains its leadership role as the primary agency in Hawaii investigating crimes involving child pornography, electronic enticement and minor produced sexual images.

When the relocation occurs, it is planned that the High Tech Unit of the Investigations Division will refocus on other complex crimes involving digital technology and the recovery of digital evidence. The two Information Technology Specialists who have been certified as



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digital/computer forensic examiners will continue to work with the Investigations Division as well as support the Hawaii ICAC.



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**Program Area – Memoranda of Agreement and  
Understanding for Investigative Services**

The Investigations Division provides investigative support for a number of other departments under Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU), including:

Department of Public Safety – Criminal  
Department of Transportation – Airports Division – Criminal  
Department of Transportation – Airports Division – Administrative  
Department of Transportation – Highways Division – Administrative  
Department of Transportation – Harbors Division – Criminal  
Department of Agriculture – Criminal and Administrative  
Hawaii State Hospital – Criminal and Administrative  
Office of Youth Services – Administrative  
Hawaii Health Systems Corporation – Criminal and Administrative

Investigators assigned to these functions develop communications and working relationships with personnel in these departments. They become familiar with the unique aspects of these agencies, and provide expertise and capabilities that meet their requirements.

The investigator positions that service these MOUs and MOAs are ideally suited for 1-year or 89-day contracts. The MOUs and MOAs are subject to cancellation and exist only as long as the requesting department or agency requires investigative services. There are no funded permanent positions within the Department of the Attorney General to staff the MOU or MOA positions, and the positions are funded by the requesting agencies. If an MOU or MOA was terminated, then the position(s) of the investigator(s) would no longer be funded. The practical solution to limited term contract funding is limited term contract personnel. This solution also provides high quality, low cost investigators to service the agreements.

The Investigations Division is committed to providing the best possible service to fulfill the MOAs and MOUs. Each Special Agent is dedicated to their assignment and seeks to provide the best possible professional, expert service to meet the requirements of the requesting department.

The Investigations Division provides organizational support and infrastructure for the Special Agents, as well as supervision, ongoing training, certifications, and a professional support network to ensure the highest quality of service is provided. The Special Agents are selected based on their experience and ability. All have many years of investigative experience in the State of Hawaii with the Honolulu Police Department or other county-level departments. As

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contract employees paid at the lowest possible pay rate, and with no fringe benefits, no paid sick leave and no paid vacation, they are highly cost-effective.

**Department of Public Safety – Felony Crimes MOA**

The MOA with the Department of Public Safety provides for two Special Agents to conduct investigations involving felony crimes within the Department of Public Safety jurisdiction, work in coordination and in conjunction with other law enforcement personnel, and enforce applicable laws, ordinances, rules and regulations. Felony cases generated throughout Oahu by Deputy Sheriffs are investigated. An investigator is available at all times, 24 hours a day, to provide support and respond to crime scenes and conduct follow up investigations in felony arrest cases.

Case reports handled in service of the Department of Public Safety MOA are listed below:

DEPARTMENT OF PUBLIC SAFETY – MOA	2014	2015
Murder 2 (Attempted)		2
Assault 1		3
Assault 2	18	28
Criminal Property Damage	2	3
Escape 2	24	37
Extortion	1	1
Extradition	2	
Kidnapping		1
Forgery 2	1	1
Fraudulent Use Credit Card		1
Intimidating Correctional Worker	1	1
OVUII-Habitual	2	
Promoting a Dangerous Drug 3	1	
Promoting Prison Contraband 2	1	2
Robbery 1	1	3
Robbery 2	1	2
Sexual Assault 1	1	
Sexual Assault 2	2	1
Terroristic Threatening 1	9	7
Theft 1		11
Theft 3	1	1
UCPV – Unauthorized Control Propelled	4	4

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Vehicle		
UEMV – Unauthorized Entry Motor Vehicle	3	3
UPCPI - Unauthorized Possession of Confidential Personal Information		2
Other reports not listed above	47	35
Totals	122	149

**Department of Transportation – Airports Division – Criminal MOU**

The MOU between the Department of the Attorney General and the Department of Transportation – Airports Division provides for three Special Agents. These Special Agents are responsible for investigating all felony crimes that occur at the DOT Airport properties on the Island of Oahu. The investigators support the Sheriff’s Airport Section (SAS), the Department of Public Safety element stationed at the Honolulu International Airport. These investigators conduct investigations in conjunction with the SAS comparable to the investigative support provided island-wide by the agreement with the Department of Public Safety. An investigator is available at all times, 24 hours a day, to provide support and respond to crime scenes and conduct follow up investigations in felony arrest cases.

**Department of Transportation – Airports Division – Administrative MOU**

Two Special Agents are responsible for conducting administrative investigations involving employee misconduct, workplace violence, and other noncriminal infractions involving DOT Airports throughout the State of Hawaii. These can be complex investigations involving multiple persons, extensive interviews, and an understanding of the policies, procedures and guidelines of the Department of Transportation and the Airports Division. The scope of their investigative responsibilities is the statewide. The Special Agents provide weekly status updates for their investigations to appropriate DOT personnel authorities.

**Department of Transportation – Highways Division – Administrative MOU**

The MOU provides funding for two Special Agent positions in the Investigations Division. The Special Agents are responsible for conducting administrative investigations within the scope of the MOU that occur in the DOT Highways Division jurisdiction in the State of Hawaii. These can be complex investigations involving multiple persons, extensive interviews, and an

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understanding of the policies, procedures and guidelines of the Department of Transportation and the Highways Division. The scope of their investigative responsibilities is the statewide and involves investigations on Oahu and other islands.

**Department of Transportation – Harbors Division – Criminal and Administrative MOU**

The MOU provides funding for one Special Agent who is responsible for investigating felony crimes and conducting administrative investigations within the scope of the MOU that occur in DOT Harbors Division jurisdiction on the island of Oahu. A second Special Agent is assigned as needed to conduct administrative investigations into allegations of Workplace Violence and other administrative matters.

DEPARTMENT OF TRANSPORTATION	2014	2015
Department of Transportation – Airports Division – Criminal Cases	250	209
Department of Transportation – Airports Division – Administrative Cases	39	29
Department of Transportation – Highways Division – Administrative Cases	39	40
Department of Transportation – Harbors Division – Criminal, Administrative Cases	52	53

**Department of Agriculture – Criminal and Administrative**

This agreement provides funding for one Special Agent who is responsible for investigating both criminal and administrative matters on behalf of the Department of Agriculture. Criminal investigations include matters involving import or possession of prohibited plants and animals, the execution of search warrants and arrests, mislabeling of agricultural products, and other offenses. Administrative investigations include allegations of Workplace Violence and other

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administrative matters. The agreement was initiated in April 2015, and there were 59 cases in 2015 following the inception of the agreement.

**Hawaii State Hospital – Criminal and Administrative**

This agreement provides funding for one Special Agent to conduct criminal and administrative investigations on behalf of the Hawaii State Hospital. In 2015, there were 79 cases. The Hawaii State Hospital is a unique environment for investigations, and investigators must be certified to work in this facility. This includes specialized training in Conflict Prevention Management Resolution (CPMR), developing the necessary skill set to interact with hospital residents, understanding supervision status, understanding of fire and life safety protocols, infection control, access restrictions, patient rights, and confidentiality considerations.

**Office of Youth Services – Administrative**

This agreement provides funding for one Special Agent to conduct background investigations for prospective employees of the Office of Youth Services. These are particularly sensitive positions because of their role with at-risk youth. In 2015, a total of 39 background investigations were conducted.

**Hawaii Health Systems Corporation – Criminal and Administrative**

This agreement provides funding for one Special Agent who is responsible for investigating both criminal and administrative matters on behalf of the Hawaii Health Systems Corporation. The agreement was initiated in July 2015, and there have been six investigations initiated, five administrative and one criminal.

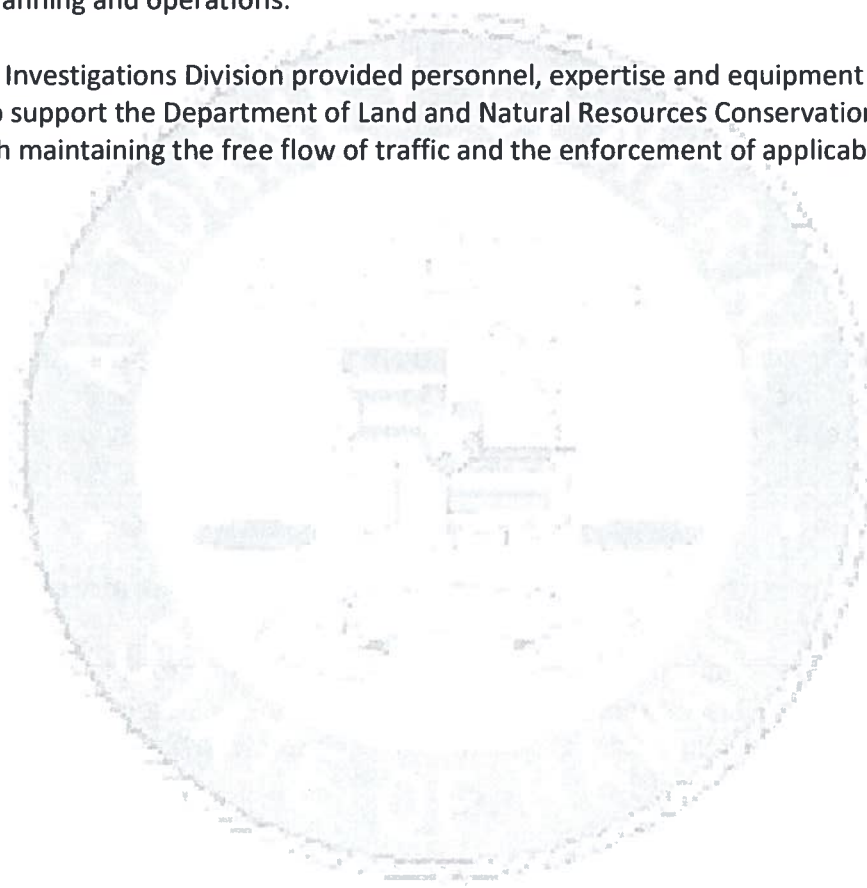


## **Special Operations**

The Investigations Division is tasked with special operations, major events, and support for the Emergency Support Function – Law Enforcement when mobilized during times of emergency.

The Investigations Division is a member of SLEC (State Law Enforcement Coalition) along with other state-level law enforcement agencies, and works closely with partners to share resources, expertise, planning and operations.

In 2015, the Investigations Division provided personnel, expertise and equipment when mobilized to support the Department of Land and Natural Resources Conservation Officers charged with maintaining the free flow of traffic and the enforcement of applicable laws on Mauna Kea.





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**Staffing**

<b>Staffed Positions – Summary of Position Classifications</b>		
<b>No.</b>	<b>SR</b>	<b>Classification</b>
1	EM-07	Chief Special Agent
2	SR-26	Deputy Chief Special Agents – Investigator VI
1	SR-16	Secretary III
2	SR-10	Office Assistant IV
6	SR-26	Supervisory Special Agents
37	SR-24	Special Agents – Investigator V
2	SR-22	Special Agents – Investigator IV
<b>51</b>		<b>Total Positions All Classifications</b>

*EM* – Excluded Management

*SR* – Salary Range

**Organization**

The Investigations Division has a command staff supported by clerical personnel. All investigators in the division conduct investigations. This includes the Chief Special Agent, Deputy Chief Special Agents, and supervisors. Everyone in the division is dedicated to investigations. The clerical staff provides support services for the investigations. This is a working Investigations Division.

The division is organized into units that carry out the program areas and mission of the division.

The Investigations Division is in an ongoing process of reorganization in response to changing assignments, service needs and efficient utilization of personnel and resources. A proposed reorganization is in the process of review by the Attorney General. The proposal reflects actual operations and practice.

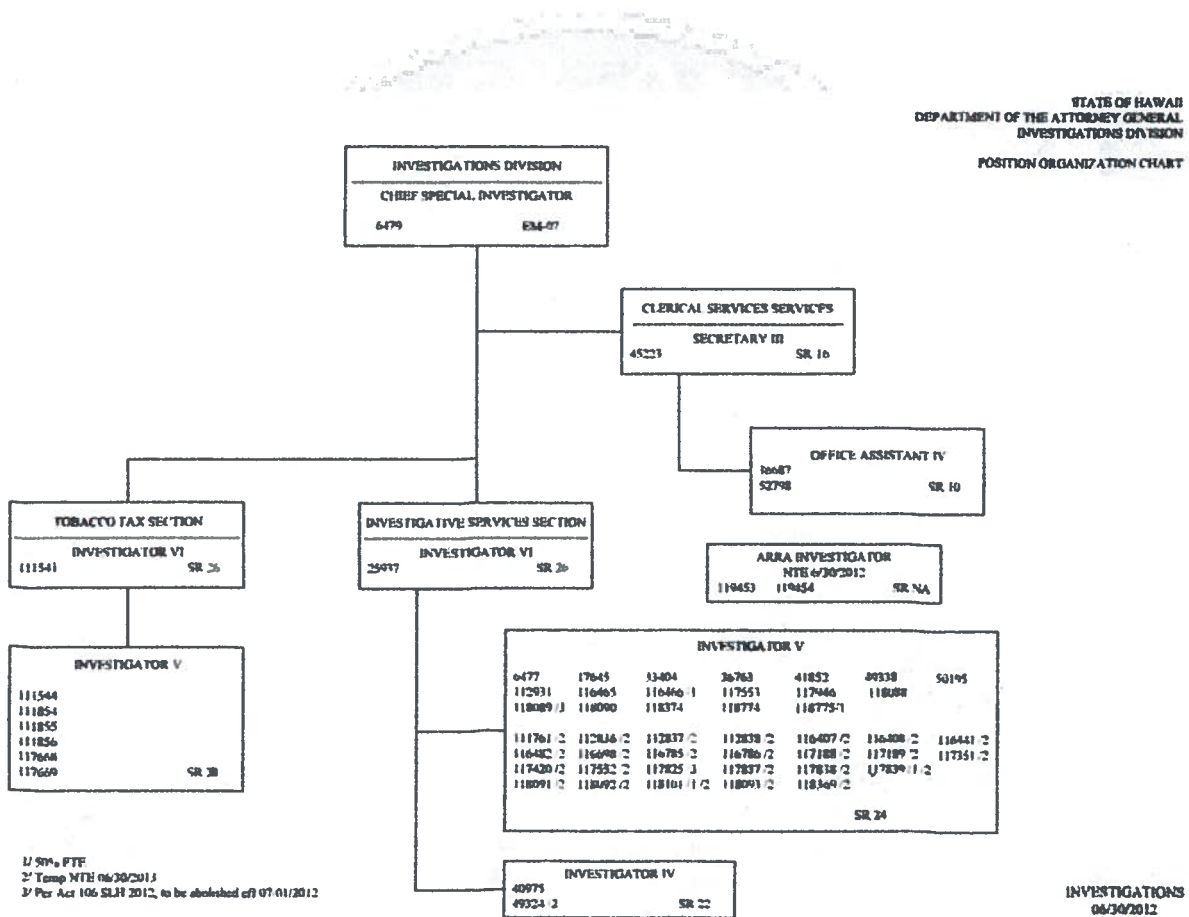
The organization established in 2012 does not provide the flexibility and span of control to support the demands placed on the division.

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In 2014-2015, a transitional operational organization was developed to improve internal communications and functional capabilities.

In late 2015, a new organization plan was developed that reflects a balance between fiscal constraints and increasing demands in the complexity of investigations.

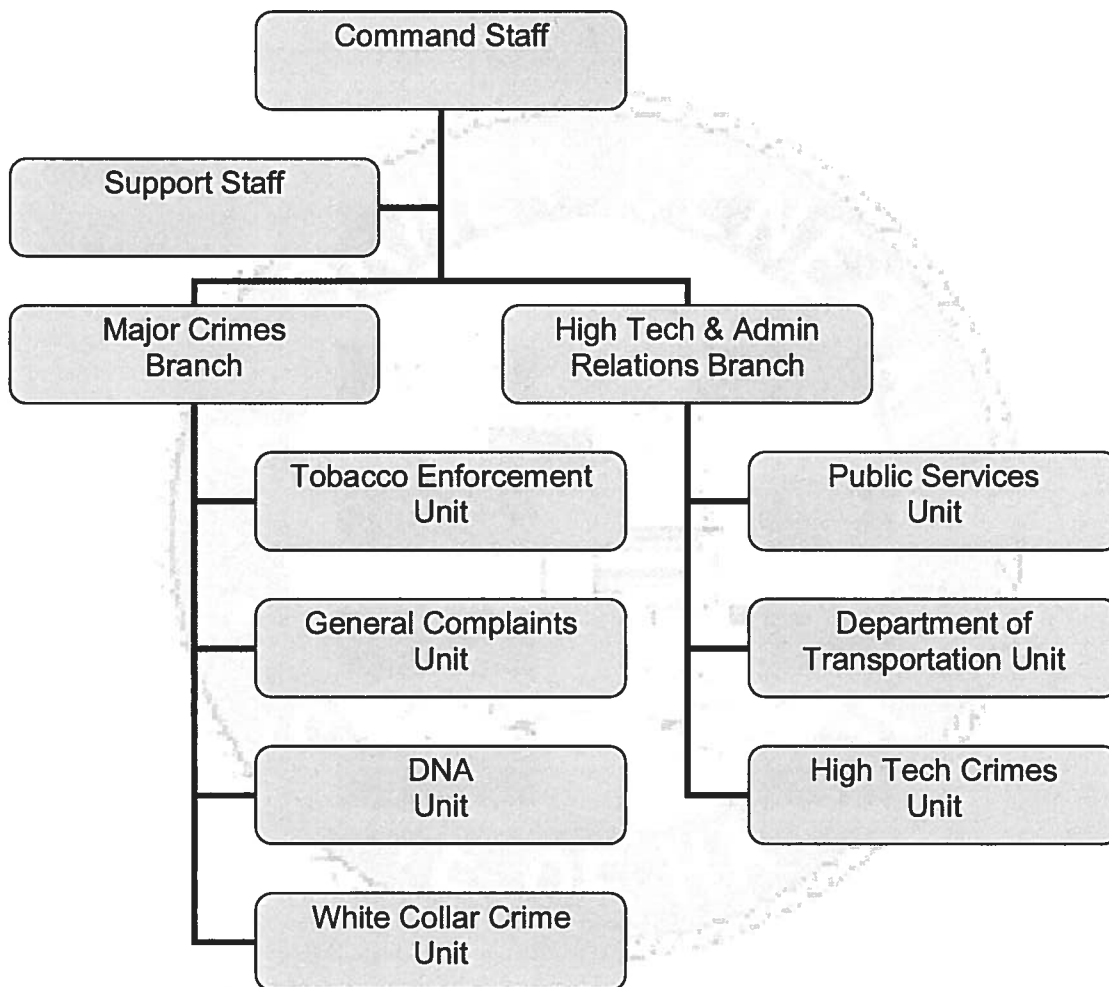
**2012-2013 Organization**



This organizational structure is no longer adequate to support the investigative functions of the division.

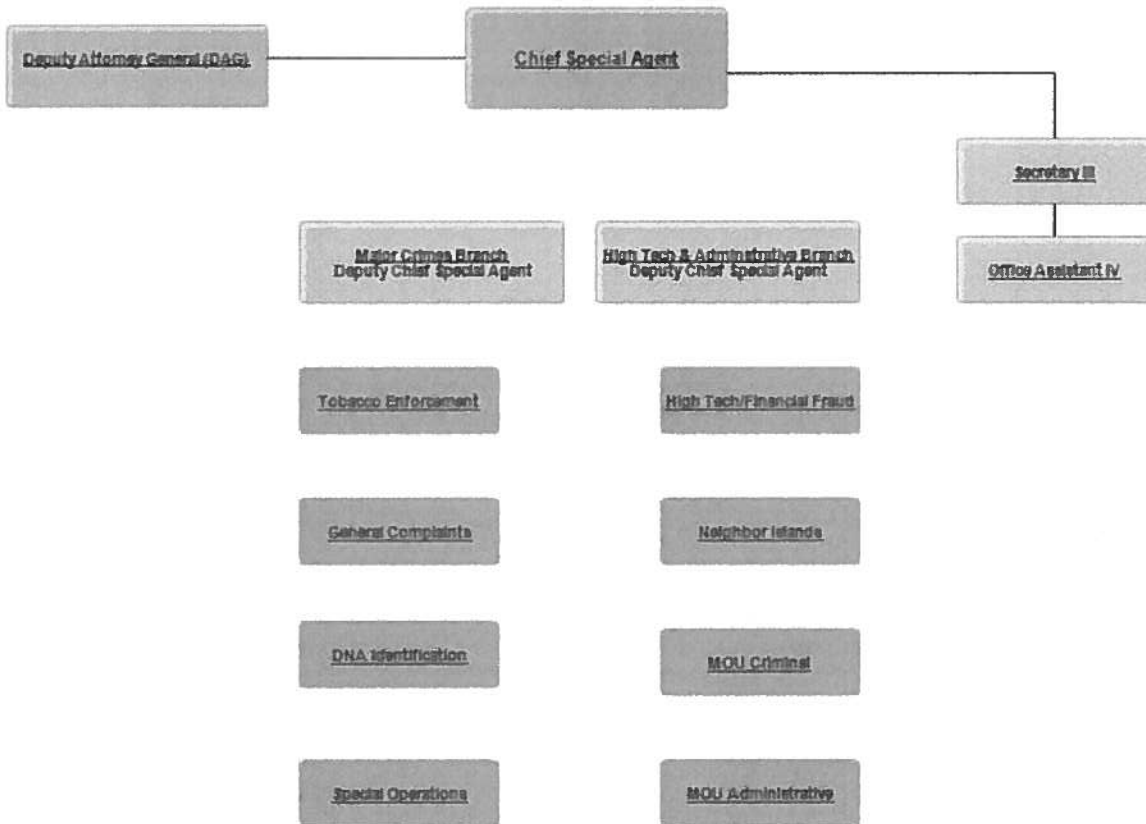
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**2015 Transitional Operational Organization**



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**2016 New Organization Plan**



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**Cost Savings – 89-Day Contract Positions**

The Investigations Division utilizes personnel on 89-day contracts to optimize its workforce with skilled and experienced investigators at relatively low salary rates. Each contract position represents a substantial savings in personnel costs because the contract positions are priced at the lowest salary range with no step movements regardless of longevity, and fringe benefits that are not paid. Filling civil service positions would require salary rates above minimum to attract qualified, capable personnel.

The personnel hired on an 89-day contract basis are highly skilled, well-trained, experienced law enforcement professionals, typically with a minimum of 25 years of experience in a county police department in Hawaii. These contract hires are proven investigators with a wealth of experience and understanding of the Hawaii Revised Statutes, our Judiciary, police departments and their operations, our Criminal Justice System, and our community.

There is a shortage of skilled, experienced investigators to serve as Special Agents in the Investigations Division, as well as in other investigator positions in state government. The county police departments have training solutions and career development for investigators, and there is no equivalent at the state level. The pay rate for county level investigators is significantly higher than for equivalent state level investigator positions, making it difficult to attract experienced investigators to state positions. The use of 89-day contracts attracts skilled, experienced investigators that do not require investigative training.

Contract Special Agents serve at the lowest possible pay scale, with no salary steps that would accrue to civil service employees. The contracts provided no sick leave or vacation leave. For example, if a contract employee becomes ill, the contract employee must take leave without pay and there is no loss of productivity or cost to the employer. As a result, the State derives the benefit of having the most experienced and capable investigators at a significant savings compared with non-contract personnel.

**Annualized Cost Savings Based On Fringe Benefits**

There are presently **44** personnel on 89-day contracts. This number varies due to continuous recruitment efforts to fill permanent, civil service positions. This results in an annualized savings of at least **\$968,963.01** at present compensation rates.

The 89-day contract positions are (6) Supervisory Special Agents – Investigator VI SR26C, (36) Special Agents – Investigator V SR24C, and (2) Special Agents – Investigator IV SR22C.

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The cost comparisons between 89-day contract and permanent positions in the tables blow are based on the following:

Fringe rate for 89-day contract employees is based on  
 Workers Compensation (1.16%)  
 Unemployment Compensation (.25%)  
 Medicare (1.45%).

Fringe rate for permanent employees is based on the Department of Budget and Fiscal Services Finance Memorandum (MEMO NO. 14-13) which provides the revised inte4rim fringe benefit rate for FY 15

Pension Accumulation (16.5%)  
 Pension Administration (0%)  
 Retiree Health Insurance (10.12%)  
 Employee's Health Fund (6.81%)  
 Workers Compensation (1.16%)  
 Unemployment Compensation (.25%)  
 Social Security (6.2%)  
 Medicare (0%)

Annualized costs and savings do not take into account step increases received by Civil Service Employees. There are no step increases provided for contract employees.

**Table 1 – Supervisory Special Agents (SR26)**

SUPERVISORY SPECIAL AGENT SR26C	89-DAY CONTRACT	PERMANENT EMPLOYEE
Fringe Rate	2.86%	42.49%
Monthly Salary @ Step C	\$4,978.00	\$4,978.00
Monthly Fringe Cost	\$142.37	\$2,115.15
Number of Months	12	12
Annualized Fringe Cost Per Employee	\$1,708.45	\$25,381.83
Number of Positions	6	6
Annualized Fringe Cost	\$10,250.70	\$152,290.96
<b>ANNUALIZED COST SAVINGS</b>	<b>\$142,040.26</b>	

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**Table 2 – Special Agents (SR24)**

SPECIAL AGENT SR24C	89-DAY CONTRACT	PERMANENT EMPLOYEE
Fringe Rate	2.86%	42.49%
Monthly Salary @ Step C	\$4,603.00	\$4,603.00
Monthly Fringe Cost	\$131.65	\$1,955.81
Number of Months	12	12
Annualized Fringe Cost Per Employee	\$1,579.75	\$23,469.78
Number of Positions	36	36
Annualized Fringe Cost	\$56,870.99	\$844,911.95
<b>ANNUALIZED COST SAVINGS</b>	<b>\$788,040.96</b>	

**Table 3 – Special Agents (SR22)**

SPECIAL AGENT SR22C	89-DAY CONTRACT	PERMANENT EMPLOYEE
Fringe Rate	2.86%	42.49%
Monthly Salary @ Step C	\$4,088.00	\$4,088.00
Monthly Fringe Cost	\$116.92	\$1,736.99
Number of Months	12	12
Annualized Fringe Cost Per Employee	\$1,403.00	\$20,843.89
Number of Positions	2	2
Annualized Fringe Cost	\$2,806.00	\$41,687.79
<b>ANNUALIZED COST SAVINGS</b>	<b>\$38,881.79</b>	

**Table 4 – Total Savings 89-Day Contract Positions**

	89-DAY CONTRACT	PERMANENT EMPLOYEE
Supervisory Special Agents (SR26)	\$142,040.26	
Special Agents (SR24)	\$788,040.96	
Special Agents (SR22)	\$38,881.79	
<b>ANNUALIZED COST SAVINGS</b>	<b>\$968,963.01</b>	



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The actual annual cost savings are greater. Permanent employees accrue salary increases based on longevity and salary steps. Contract employees receive no salary increases for longevity. Since fringe benefits are based on percentages of income. Permanent employees who receive salary increases based on salary steps also accrue higher dollar amounts of fringe costs. The illustrative tables presume the lowest pay rate for permanent employees. There is no loss of productivity or leave cost associated with contract workers. Permanent employees are compensated for sick leave and vacation leave. Contract employees are only paid for work days, and receive no compensation for days not worked due to sick leave and must take leave without pay in lieu of vacation.

### **Strategic Initiatives**

**Strategic Direction** – The Investigations Division established its Vision Statement, Mission Statement and Core Values.

**Strategic Plan** – A Strategic Plan was developed for the Investigations Division and significant progress has been made in its implementation.

**Investigations** – The division has been successful in managing caseload, engaging in enforcement, and fulfilling its investigative responsibilities. Investigations have included a number of high profile cases and complex financial crimes, including investigations of charter schools, political corruption, and ethics violations.

**Hawaii ICAC Position** – The Legislature authorized funding for another position for the Hawaii Internet Crimes Against Children (ICAC) Task Force.

**Sex Offender Investigator Positions** – Two positions for sex offender investigators were authorized, increasing the staffing available to address noncompliant and unregistered sex offenders.

**Cost Savings – 89-Day Contract Positions** – The division utilizes personnel on 89-day contracts to optimize its workforce with skilled and experienced investigators at relatively low salary rates. Each contract position represents a substantial savings in personnel costs. Contract positions are priced at a low salary with no step movements regardless of longevity, and fringe benefits that are not provided. Filling civil service positions with qualified candidates has proven to be problematic, and the 89-Day contract personnel have provided a high-quality, cost-effective solution. The State of Hawaii, as a provider of law enforcement services, cannot compete with county law enforcement agencies when it comes to offering its civil service law enforcement personnel with salaries, career advancements, training, equipment, and benefits.

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The counties have the funding to offer greater opportunities in these areas. This is why people interested in law enforcement careers will either go to the county law enforcement agencies or federal law enforcement agencies.

**LinX (Law Enforcement Information eXchange)** – The division was accepted for participation in LinX and Investigations Division personnel were certified as instructors, auditors, and to create accounts. LinX is a national law enforcement information system. This training was provided as part of the implementation of the Investigations Division becoming a member agency of this system and provides access to information concerning cases, arrests and other law enforcement contacts across the United States. LinX provides access to records management system information of police and sheriff's departments across the United States and serves as a portal for access to the N-DEx – the National Data Exchange managed by the Federal Bureau of Investigation. This information access is very important for investigators tracking suspects who flee to or have come from the mainland to Hawaii or who move between islands, such as noncompliant sex offenders or fraud suspects who flee the jurisdiction.

**Radio Communications Equipment Grant** – The division was awarded grant funding from the Department of Homeland Security for radio communications equipment. Funding in the amount of \$96,530 was secured for the purchase of P25 compliant radio equipment for investigators, providing for radio communications and public safety response capabilities for investigators in field operations.

**Appraisers** – Two Special Agents were trained as appraisers. This provided an essential capability for the investigation and prosecution of property crimes.

**Case Accountability and Reporting** – A comprehensive monthly case accountability report was implemented that provides case management capabilities, accountability and detailed performance metrics.

**Financial Crimes Training** – An in-house training program in financial crimes investigation was developed and implemented. This has been augmented with training from the National White Collar Crime Center (NW3C). The emphasis on training has resulted in increased effectiveness in the investigation of financial crimes.

**Cash Flow Analysis** – Two licenses for I2 Analyst Notebook were deployed and have been used to conduct complex link analysis and cash flow analysis.

**Policies and Procedure Committee** – A Policies and Procedure Committee was formulated and is engaged in an ongoing process of review and updating written directives and procedures for the division.

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**Law Enforcement Identification Cards** – A process and mechanism were established for issuing retired law enforcement identification cards to retired Investigations Division Special Agents.

**Reorganization** – The Division is in the process of reorganization, evolving to adapt to changing crime trends and responsibilities. Reorganization is needed to effectively balance supervision, workload, and provide focus for investigations and activities related to the program areas.

**White Collar Crime Unit** – A White Collar Crime Unit has been established to concentrate on public corruption and complex financial crimes.

**SLEC** – The division is a member and active participant with the SLEC (State Law Enforcement Coalition) to advance coordination among state law enforcement agencies and effectively respond to emergencies and other areas of mutual support.

**Adam Walsh Task Force** – The division is actively participating in this task force in partnership with the United States Marshals Service to investigate and arrest noncompliant sex offenders. Two members of the division have been cross-deputized as United States Marshals.

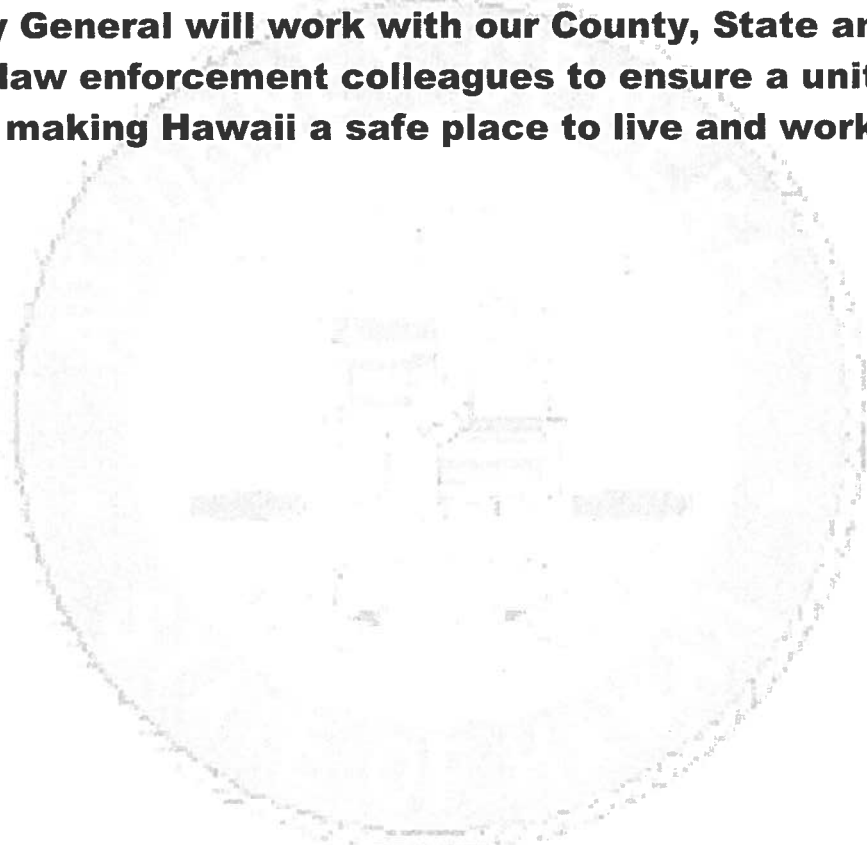
**Statewide Forensics Strategic Plan** – The division is participating with forensic laboratory directors and staff from county and state agencies to develop and implement the Statewide Forensics Strategic Plan for Hawaii.

**Hawaii Integrated Justice Information System (HIJIS)** – The division actively participates in this ongoing project coordinated by the Hawaii Criminal Justice Data Center.

**Case Management System** – The Investigations Division is seeking to establish a case management technology system. Due to the high cost of these systems, the division is working with in-house information technology talent and existing software provided by the state for office productivity to develop an in-house solution.

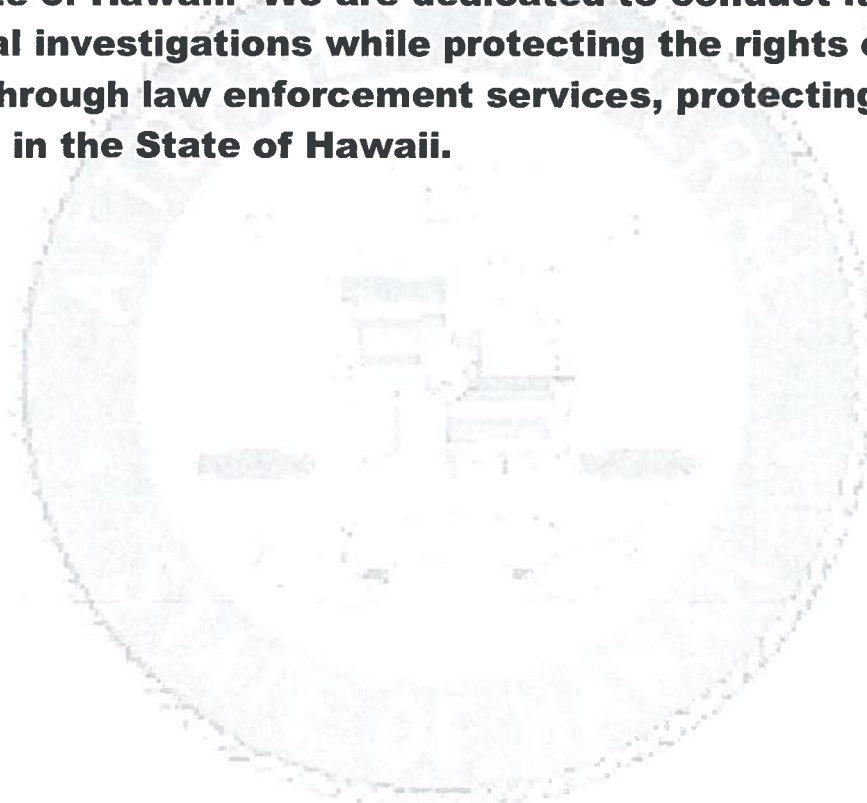
**Vision Statement**

**The Investigations Division of the Department of the Attorney General will work with our County, State and Federal law enforcement colleagues to ensure a united effort in making Hawaii a safe place to live and work.**



**Mission**

**The Investigations Division of the Department of the Attorney General is committed to protecting all citizens of the State of Hawaii. We are dedicated to conduct fair and impartial investigations while protecting the rights of the public through law enforcement services, protecting all citizens in the State of Hawaii.**



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**Core Values**

**In order to protect all citizens in the State of Hawaii, the Investigations Division has declared its core values:**

**Integrity - We have integrity as an agency, and as individuals sworn to the honorable calling of law enforcement. We abide by the Constitution of the United States of America, and the State of Hawaii. We respect and cherish the uniqueness of Hawaii and its people, and treat everyone fairly and with aloha.**

**Ethics - Our personnel are guided by honesty and integrity in our professional and private lives.**

**Attitude - As professionals, we strive to provide our best efforts to serve our community.**

**Respect - We respect the people we serve and empathize with the victims. We treat all those accused of violations with dignity and respect.**

**Teamwork - We recognize that government resources are limited, and that the law enforcement efforts are most effective when communities, as well as state, county, and federal agencies work together towards the common goal of protecting our people and communities.**

**Partnerships - We pride ourselves in working with all our community members to reduce crimes and administrative violations.**

**Technology - We embrace technology and will identify and evaluate technologies that will improve our efficiency and enhance our investigative capabilities.**

## **Acknowledgements**

This report was prepared with the assistance and information contributed by the staff of the Investigations Division of the Department of the Attorney General of the State of Hawaii. The personnel of the division are acknowledged for the excellence of their work which is reflected in the content of this report. Each member merits recognition for their service to the people of Hawaii, and for their professionalism and devotion to the core values of the division.







# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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SENATE COMMITTEE ON WAYS AND MEANS

The Honorable Jill N. Tokuda, Chair

The Honorable Donovan M. Dela Cruz, Vice Chair

## **H.B. No. 2008 HD2, SD1 Relating to Public Employment**

Hearing: Friday, April 1, 2016, 1:30 p.m.

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The Hawaii State Ethics Commission **opposes** H.B. No. 2008 HD2, SD1, Relating to Public Employment, to the limited extent that it prohibits the Investigations Division of the Department of the Attorney General from hiring qualified investigators for more than one term of 89-days or less. The Commission takes no position on the bill as it applies to employees working in other state agencies.

The Commission has worked with the Investigations Division on a number of investigations involving violations of the State Ethics Code, some of which also resulted in criminal prosecution. In addition, when the Attorney General has declined to prosecute an employee, the department and the Investigations Division occasionally have forwarded information, including parts of an investigation, for the Commission's consideration and, where appropriate, administrative action. The Investigation Division's assistance and collaboration have been a tremendous benefit to the Commission.

The Commission understands that the Investigations Division currently employs 50 investigators, 43 of whom are hired through 89-day contracts. The Commission also understands that, if passed, this bill will likely prohibit the Investigations Division from continuing to employ most, perhaps all, of the 43 investigators who are currently hired through 89-day contracts. Should that happen, the Investigations Division's ability to work with and assist the Commission on certain investigations will be seriously compromised. As a practical matter, the Commission expects that the Investigations Division will not be able to provide any assistance to the Commission; the Investigations Division simply will not have a sufficient number of qualified investigators.

The Commission suggests that preserving public trust in state government should be, now and always, a legislative priority. Like the Commission, the Investigations Division's underlying mission, i.e., its "foundation," is to protect the public interest and, through its work, to foster public confidence in state government. The Commission urges the Committee to consider the substantial impact - negative impact -

that the bill will have on the Investigations Division's ability to continue performing its duties, including working and collaborating with the Commission and other agencies. The Commission suggests that such a result is harmful to the public interest and, more generally, to government's ability to build public trust.

The Commission suggests that the Committee amend the bill to exempt the Investigations Division in its employment of qualified investigators from the bill.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on H.B. No. 2008 HD2.

**DAVID Y. IGE**  
Governor

**SHAN S. TSUTSUI**  
Lt. Governor



**SCOTT E. ENRIGHT**  
Chairperson, Board of Agriculture

**PHYLLIS SHIMABUKURO-GEISER**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS**

April 1, 2016  
1:30 P.M.  
CONFERENCE ROOM 211

**HOUSE BILL NO. 2008 H.D.2, S.D.1  
RELATING TO PUBLIC EMPLOYMENT**

Chairpersons Tokuda and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2008 H.D.2, S.D.1. This bill House Bill No. 2008, H.D.2, S.D. 1 prohibits the State from hiring persons pursuant to Section 76-77(8), H.R.S., for more than an unspecified number of terms of ninety consecutive days or less in a fully general funded position. It provides for limited exceptions. The Department of Agriculture respectfully opposes this bill.

The Department has concerns that this bill will restrict our ability to provide continuity of operations and critical services while we actively work to fill our vacant positions. The Department recognizes and appreciates that 89-day Non-Civil Service appointments serve as expeditious staffing solutions to fulfill relatively short-term operational needs. We use this 89-day Non-Civil Service Appointment option for this purpose. As such, this bill proposes to impose restrictions that will severely limit the Department's flexibility to use temporary hires for interim, knowledge transfer, internship and temporary services that may be required for multiple 89-day terms.

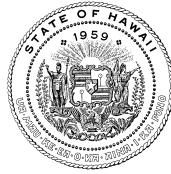
The proposal to restrict the number of 89-day terms will further limit the applicant pools comprised of qualified candidates available and willing to accept provisional employment with very few benefits.

We believe that statutorily limiting the number of 89-day appointments for an individuals' lifetime will minimize the effectiveness and efficiency of this immediate, short-term staffing solution and have a hinder our Department's ability to restore adequate levels of service when vacancies exist.

Thank you for the opportunity to submit our testimony.



DAVID Y. IGE  
GOVERNOR



WESLEY K. MACHIDA  
DIRECTOR

RODERICK K. BECKER  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

TESTIMONY BY WESLEY K. MACHIDA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
HOUSE BILL NO. 2008, H.D. 2, S.D. 1

April 1, 2016  
1:30 p.m.

RELATING TO PUBLIC EMPLOYMENT

House Bill No. 2008, H.D. 2, S.D. 1, prohibits the State from hiring persons pursuant to Section 76-77(8), Hawaii Revised Statutes, for more than an unspecified number of terms of 90 consecutive days or less in a fully general-funded position (with limited exceptions).

The Department of Budget and Finance supports the general intent of the measure since the Employees' Retirement System (ERS) does not receive pension contributions for 89-day term employees. It is estimated that the ERS loses out on between \$3-4 million per year in contributions based on the three hundred (300) 89-day term employees hired instead of permanent or temporary employees.

It should be noted that limiting the number of 89-day term appointments will directly impact the operations of various departments and we defer to the Department of Human Resources Development and other departments/agencies for details on their operational concerns with this measure.

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

March 30, 2016

**TESTIMONY TO THE  
SENATE COMMITTEE ON WAYS AND MEANS**

For Hearing on Friday, April 1, 2016  
1:30 p.m., Conference Room 211

BY

JAMES K. NISHIMOTO  
DIRECTOR

**House Bill No. 2008, H.D. 2, S.D. 1  
Relating to Public Employment**

TO: CHAIRPERSON TOKUDA, VICE CHAIRPERSON DELA CRUZ AND MEMBERS  
OF THE SENATE COMMITTEE ON WAYS AND MEANS:

H.B. 2008, H.D. 2, S.D. 1 prohibits the State from hiring persons pursuant to section 76-77(8), HRS, for more than an unspecified number of terms of ninety consecutive days or less in a fully general-funded position (with limited exceptions).

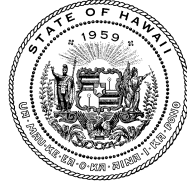
The Department of Human Resources Development (DHRD) **has concerns** regarding this measure because it may impede the ability of many departments to provide critical services to the public. The use of 89-day appointments allows departments to provide services to the public pending the filling of an authorized position on a permanent basis. The ability to use 89-day hires is a "bridge" that enables departments to provide services while recruiting to fill positions on a permanent basis.

DHRD also notes that the reference to section 76-77(8), HRS, in H.B. 2008, H.D. 2, S.D. 1 is erroneous because that section applies only to the counties of Hawaii, Maui and Kauai.

Thank you for the opportunity to offer comments on this measure.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: April 1, 2016  
Time: 1:30 P.M.  
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 2008, H.D. 2, S.D. 1, Relating to Public Employment.

The Department of Taxation (Department) has concerns about H.B. 2008, H.D. 2, S.D. 1 and provides the following comments for your consideration.

H.B. 2008, H.D. 2, S.D. 1 prohibits the State from temporarily hiring any person for more than an unspecified number of terms of 90 consecutive days or less ("89-day hire") for a position that is wholly funded by general funds, subject to limited circumstances. The bill has a defective effective date of January 7, 2059.

The Department appreciates the exception created for its seasonal hires, which was added by the House Committee on Labor & Public Employment. The Department currently employs 108 89-day hires to serve in positions needed for the busy tax season. The 108 seasonal hires, which make up a large number of the Department's employees (the Department currently employs 428 permanent employees), are necessary to address the large volume of filings and inquiries from taxpayers during tax season. A majority of the seasonal employees retain regular employment outside the Department, but return each tax season to assist the Department with the increased workload and often work the evening and weekend shifts. By hiring these seasonal employees, who have valuable knowledge and experience from previously serving in their positions, the Department is able to conserve time and resources that would otherwise be spent interviewing and training new personnel.

The Department requests, however, that an additional exception is created to allow the Department to use 89-day hires to temporarily fill limited-term appointments and vacant entry level civil service positions that are critical to the Department's daily operations. In many cases, prospective employees are unwilling to apply for positions that are limited-term appointments because of the temporary nature of the position. Many times, there are no qualified applicants applying for these temporary positions; therefore, the Department has had to rely on use of 89-day hires in order to maintain current operations. The Department notes that in the current FY16-17 operating budget, the Department has requested that these temporary positions be

converted to permanent positions in order to make it easier to recruit full-time employees.

Additionally, the Department currently has 8 vacant entry level positions, of which 6 are currently filled with 89-day hires. Although the Department continues to actively recruit for these vacant entry level positions, it has been difficult to find and retain qualified permanent staff. By reappointing 89-day hires into these positions while the Department continues its recruitment efforts, the Department is able to perform its daily operations with minimal interruption. Accordingly, the Department requests that an exception is created to allow the Department to use 89-day hires to fill limited-term appointments and vacant entry level civil service positions.

Thank you for the opportunity to provide comments.





## HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Eighth Legislature, State of Hawaii  
The Senate  
Committee on Ways and Means

Testimony by  
Hawaii Government Employees Association

April 1, 2016

H.B. 2008, H.D. 2, S.D. 1 - RELATING TO  
PUBLIC EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2008, H.D. 2, S.D. 1, which prohibits the State of Hawaii from hiring persons for successive 89-day terms for a fully or partially general-funded position during that person's lifetime. The bill provides limited exceptions to the proposed restriction that are reasonable.

Several state departments have used 89-day term hires to fill positions inappropriately by extending the terms multiple times. These employees are denied collective bargaining rights and any benefits. This practice is a direct circumvention of the civil service system and it must stop. Therefore, we believe the restrictions contained in H.B. 2008, H.D. 2, S.D. 1 are long overdue.

Thank you for the opportunity to testify in support of H.B. 2008, H.D. 2, S.D. 1.

Respectfully submitted,

Randy Perreira  
Executive Director

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [tabraham08@gmail.com](mailto:tabraham08@gmail.com)  
**Subject:** \*Submitted testimony for HB2008 on Apr 1, 2016 13:30PM\*  
**Date:** Tuesday, March 29, 2016 5:30:13 PM

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**HB2008**

Submitted on: 3/29/2016

Testimony for WAM on Apr 1, 2016 13:30PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)