

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 1278, RELATING TO GOVERNMENT SERVICES RELATING TO THE LAW.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 6, 2019 **TIME:** 2:10 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
David Moore, Administrative Services Manager

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) supports H.B. No. 1278 and provides the following comments.

The bill establishes the operating budget for state executive branch programs, specifically the Department, for the fiscal biennium beginning July 1, 2019, and ending June 30, 2021. The bill's appropriations for the ATG 100 and ATG 231 programs are essential to the operations of the Department. We have attached for the Committee's reference: (1) a detailed accounting of the appropriations in Attachment A, entitled "Department of the Attorney General: Base Budget," and (2) detailed descriptions of both programs in Attachment B, entitled "Department of the Attorney General: ATG 100 and ATG 231."

Thank you for the opportunity to testify. We respectfully request that the Committee pass this bill and incorporate Attachment A into the bill.

Department of the Attorney General

Base Budget

ATTACHMENT "A"

REPORT # 08BB11R1
DEPARTMENT FILE

STATE OF HAWAII
ACT 053, SLH 2018

RUN DATE 06/29/18

DEPARTMENT OF ATTORNEY GENERAL
PROGRAM ID: ATG100

OPERATING COSTS

-----IN DOLLARS-----
 PRECEDING 2-YR PERIOD BUDGET PERIOD
 FY2015-16 FY2016-17 FY2017-18 FY2018-19
 -----IN THOUSANDS-----
 PLANNING PERIOD
 FY2019-20 FY2020-21 FY2021-22 FY2022-23

PERSONAL SERVICES

GENERAL FUND	\$	15,660,893	16,995,804	17,527,492	18,305,826
	P	243,31	243,31	240,81	252,92
SPECIAL FUND	\$	1,817,585	2,470,622	2,763,053	2,763,053
	P	24,60	24,60	24,60	24,60
FEDERAL FUNDS	\$	815	528,111	822,751	634,365
	P	5,20	5,20	5,20	5,20
OTHER FEDERAL FUNDS	\$	684,927	1,279,938	1,639,014	2,085,214
	P	12,66	12,66	12,66	18,60
TRUST FUNDS	\$	9,389,724	25,508	25,508	25,508
INTERDEPT. TRANSFER	\$	100,11	12,633,920	14,783,019	14,530,883
	P	435,739	107,11	112,61	110,56
REVOLVING FUND	\$	4,90	450,181	493,197	493,197
	P	4,90	4,90	4,90	4,90
TOTAL		27,989,683	34,384,084	38,054,034	38,838,046
		395,78	397,78	400,78	416,78

OTHER CURRENT EXPENSES

GENERAL FUND	\$	6,724,098	7,898,633	12,016,719	8,981,256
	P	627,792	940,343	1,029,093	1,096,343
SPECIAL FUND	\$	10,244	10,994,025	10,994,025	10,994,025
OTHER FEDERAL FUNDS	\$	567,815	1,757,743	1,813,993	2,001,118
TRUST FUNDS	\$	1,555,230	3,918,000	3,918,000	3,918,000
INTERDEPT. TRANSFER	\$	403,148	2,698,203	2,556,599	2,556,599
	P	403,148	2,768,268	2,768,268	2,768,268
TOTAL		10,569,781	30,975,215	35,096,697	32,315,609

EQUIPMENT

GENERAL FUND	\$	1,868		45,000	361,524
	P	86,000	5,000	140,000	5,000
SPECIAL FUND	\$	5,000		10,500	35,000
OTHER FEDERAL FUNDS	\$				
INTERDEPT. TRANSFER	\$				
TOTAL		102,868	5,000	195,500	401,524

MEANS OF FINANCE

GENERAL FUND	\$	22,386,859	24,894,437	29,544,211	27,648,606
	P	2,531,377	3,410,965	3,837,146	3,859,386
SPECIAL FUND	\$	11,059	11,522,136	11,816,776	11,628,390
OTHER FEDERAL FUNDS	\$	1,371,381	3,042,681	3,593,007	4,091,332
TRUST FUNDS	\$	567,815	3,943,508	3,943,508	3,943,508
INTERDEPT. TRANSFER	\$	10,954,954	15,332,123	17,350,118	17,122,482
	P	838,887	3,218,449	3,261,465	3,261,465
REVOLVING FUND	\$				
TOTAL		38,662,332	65,364,299	73,346,231	71,555,179

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AA	ORGANIZATION	LEGAL SERVICES

	POSITION IN PROGRAM STRUCTURE
11	LEVEL-I GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II GENERAL SERVICES
110301	LEVEL-III LEGAL SERVICES

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
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 123-456 7890 12
 ATG 100 AA BJ

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-100/AA
 TABLE BJ
 RUN DATE 06/29/18
 CURRENT PROGRAM

T R LN 1 11 6 45	M O F (O1)	*PRECEDING 2-YR PERIOD*		*** BUDGET PERIOD ***		***** PLANNING PERIOD ***** (IN THOUSANDS OF DOLLARS)			
		FY 2015-16 (O2)	FY 2016-17 (O3)	FY 2017-18 (O4)	FY 2018-19 (O5)	FY19-20 (O6)	FY20-21 (O7)	FY21-22 (O8)	FY22-23 (O9)
MEANS OF FINANCING DESCRIPTION									
GENERAL FUND	\$ 01 A	13300976	14725689	15227377	15610735	15611	15611	15611	15611
	P 02 *	225.23	220.23	217.73	223.84	223.8	223.8	223.8	223.8
SPECIAL FUND	\$ 03 B	532088	1141370	1461977	1461977	1462	1462	1462	1462
	P 04 *	8.60	8.60	8.60	8.60	8.6	8.6	8.6	8.6
INTERDEPT. TRANSFER	\$ 05 U	7341760	10524880	12673979	12421843	12422	12422	12422	12422
	P 06 *	89.11	96.11	101.61	99.56	99.6	99.6	99.6	99.6
REVOLVING FUND	\$ 07 W	435739	450181	493197	493197	493	493	493	493
	P 08 *	4.90	4.90	4.90	4.90	4.9	4.9	4.9	4.9
TOTAL PERSONNEL COST	\$	21610563	26842120	29856530	29987752	29988	29988	29988	29988
TOTAL NO. OF PERSONNEL POSITIONS	P	327.84	329.84	332.84	336.90	336.9	336.9	336.9	336.9

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	21610563	26842120	29856530	29987752	29988	29988	29988	29988
OTHER CURRENT EXPENSES	10	5458194	10592575	14364057	11772294	11622	11622	11622	11622
EQUIPMENT	11	96000		10500	276500				
MOTOR VEHICLE	12								
TOTAL OPERATING COSTS		27164757	37434695	44231087	42036546	41610	41610	41610	41610

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	13 A	18174882	19598642	23943416	21976511	21586	21586	21586	21586
SPECIAL FUND	14 B	788593	1454170	1844777	1844777	1844	1844	1844	1844
INTERDEPT. TRANSFER	15 U	7362395	13163434	15181429	14953793	14919	14919	14919	14919
REVOLVING FUND	16 W	838887	3218449	3261465	3261465	3261	3261	3261	3261
	17								
TOTAL OPERATING COSTS		27164757	37434695	44231087	42036546	41610	41610	41610	41610

ATG-100/AA
 TABLE BJ

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AB	ORGANIZATION	MEDICAID FRAUD UNIT

	POSITION IN PROGRAM STRUCTURE
11	LEVEL-I GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II GENERAL SERVICES
110301	LEVEL-III LEGAL SERVICES

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
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 123-456 7890 12
 ATG 100 AB BJ

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-100/AB
 TABLE BU
 RUN DATE 06/29/18
 CURRENT PROGRAM

***** PLANNING PERIOD *****
 (IN THOUSANDS OF DOLLARS)
 FY19-20 FY20-21 FY21-22 FY22-23
 (06) (07) (08) (09)

PERIOD ***
 FY 2018-19
 (05)

BUDGET
 FY 2017-18
 (04)

PERIOD*
 FY 2016-17
 (03)

*PRECEDING 2-YR
 FY 2015-16
 (02)

M O
 FY 2015-16
 (01)

T R LN
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MEANS OF FINANCING
 DESCRIPTION

SPECIAL FUND	\$	01	B	357191	355930	364190	364190	364	364	364	364
	P	02	*	4.00	4.00	4.00	4.00	4.0	4.0	4.0	4.0
OTHER FEDERAL FUNDS	\$	03	P	684927	851118	1129426	1129426	1130	1130	1130	1130
	P	04	*	12.00	12.00	12.00	12.00	12.0	12.0	12.0	12.0
	\$	05									
	P	06	*								
	\$	07									
	P	08	*								

TOTAL PERSONNEL COST	\$	1042118	1207048	1493616	1493616	1494	1494	1494	1494	1494	1494
TOTAL NO. OF PERSONNEL POSITIONS	P	16.00	16.00	16.00	16.00	16.0	16.0	16.0	16.0	16.0	16.0

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	1042118	1207048	1493616	1493616	1494	1494	1494	1494	1494
OTHER CURRENT EXPENSES	10	329133	753422	828422	813422	813	813	813	813	813
EQUIPMENT	11	5000	5000	185000	5000	5	5	5	5	5
MOTOR VEHICLE	12									
TOTAL OPERATING COSTS		1376251	1965470	2507038	2312038	2312	2312	2312	2312	2312

PART II - OPERATING COSTS BY MEANS OF FINANCING

SPECIAL FUND	B	493707	604155	676165	627415	627	627	627	627	627
OTHER FEDERAL FUNDS	P	882544	1361315	1830873	1684623	1685	1685	1685	1685	1685
TOTAL OPERATING COSTS		1376251	1965470	2507038	2312038	2312	2312	2312	2312	2312

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AC	ORGANIZATION	JUSTICE ASSISTANCE
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
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 123-456 7890 12
 ATG 100 AC BU

PROG-ID/ORG ATG-100/AC
 TABLE BU
 RUN DATE 06/29/18
 CURRENT PROGRAM

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

***** PLANNING PERIOD *****
 (IN THOUSANDS OF DOLLARS)
 FY19-20 FY20-21 FY21-22 FY22-23
 (06) (07) (08) (09)

M *PRECEDING 2-YR PERIOD* *** BUDGET PERIOD ***
 O 1 11 F FY 2015-16 FY 2016-17 FY 2017-18 FY 2018-19
 6 45 (01) (02) (03) (04) (05)

GENERAL FUND	T R LN 1 11 6 45 (01)	M O F (01)	*PRECEDING 2-YR FY 2015-16 (02)	PERIOD* FY 2016-17 (03)	*** BUDGET FY 2017-18 (04)	PERIOD *** FY 2018-19 (05)	***** FY19-20 (06)	***** FY20-21 (07)	***** FY21-22 (08)	***** FY22-23 (09)
	\$ 01	A	417592	389399	389399	389399	389	389	389	389
	P 02	*	2.00	2.00	2.00	2.00	2.0	2.0	2.0	2.0
FEDERAL FUNDS	\$ 03	N	815	360111	718121	718121	718	718	718	718
	P 04	*								
OTHER FEDERAL FUNDS	\$ 05	P			3177	3177	3	3	3	3
	P 06	*								
	\$ 07									
	P 08	*								

TOTAL PERSONNEL COST \$ 418407 749510 1110697 1110697 1110 1110 1110 1110
 TOTAL NO. OF PERSONNEL POSITIONS P 2.00 2.00 2.00 2.00 2.0 2.0 2.0 2.0

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	418407	749510	1110697	1110697	1110	1110	1110	1110	1110
OTHER CURRENT EXPENSES	10	1812939	14795692	15035692	14595692	14596	14596	14596	14596	14596
EQUIPMENT	11									
MOTOR VEHICLE	12									
TOTAL OPERATING COSTS		2231346	15545202	16146389	15706389	15706	15706	15706	15706	15706

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	13	A	1804645	2997092	3237092	2797092	2797	2797	2797	2797
FEDERAL FUNDS	14	N	7730	11354136	11712146	11712146	11712	11712	11712	11712
OTHER FEDERAL FUNDS	15	P	418971	1193974	1197151	1197151	1197	1197	1197	1197
	16									
	17									
TOTAL OPERATING COSTS			2231346	15545202	16146389	15706389	15706	15706	15706	15706

ATG-100/AC
 TABLE BU

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AD	ORGANIZATION	JUVENILE JUSTICE INFORMATION SYSTEM
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # OB8B04R1
 PROGRAM ORG T
 ID CODE B
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 123-456 7890 12
 ATG 100 AD BU

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-100/AD
 RUN DATE 06/29/18
 CURRENT PROGRAM

***** PLANNING PERIOD *****
 (IN THOUSANDS OF DOLLARS)
 FY 19-20 FY20-21 FY21-22 FY22-23
 (06) (07) (08) (09)

*** BUDGET PERIOD ***
 FY 2015-16 FY 2016-17 FY 2017-18 FY 2018-19
 (02) (03) (04) (05)

T R LN
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 6 45 (01)
 \$___01 A 464720 445146 480146 480 480 480
 P___02 * 6.00 6.00 6.00 6.00 6.00 6.00
 \$___03
 P___04 *
 \$___05
 P___06 *
 \$___07
 P___08 *

GENERAL FUND	FY 2015-16 (02)	FY 2016-17 (03)	FY 2017-18 (04)	FY 2018-19 (05)	FY 19-20 (06)	FY 20-21 (07)	FY 21-22 (08)	FY 22-23 (09)
\$___01 A	464720	445146	445146	480146	480	480	480	480
P___02 *	6.00	6.00	6.00	6.00	6.0	6.0	6.0	6.0
\$___03								
P___04 *								
\$___05								
P___06 *								
\$___07								
P___08 *								

TOTAL PERSONNEL COST \$ 464720 445146 445146 480146 480 480 480 480
 TOTAL NO. OF PERSONNEL POSITIONS P 6.00 6.00 6.00 6.00 6.0 6.0 6.0 6.0

PART I - OPERATING COSTS BY COST ELEMENT

	FY 2015-16 (02)	FY 2016-17 (03)	FY 2017-18 (04)	FY 2018-19 (05)	FY 19-20 (06)	FY 20-21 (07)	FY 21-22 (08)	FY 22-23 (09)
PERSONAL SERVICES ___09	464720	445146	445146	480146	480	480	480	480
OTHER CURRENT EXPENSES ___10	281113	240014	275014	240014	240	240	240	240
EQUIPMENT ___11								
MOTOR VEHICLE ___12								
TOTAL OPERATING COSTS	745833	685160	720160	720160	720	720	720	720

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	FY 2015-16 (02)	FY 2016-17 (03)	FY 2017-18 (04)	FY 2018-19 (05)	FY 19-20 (06)	FY 20-21 (07)	FY 21-22 (08)	FY 22-23 (09)
___13 A	745833	685160	720160	720160	720	720	720	720
___14								
___15								
___16								
___17								
TOTAL OPERATING COSTS	745833	685160	720160	720160	720	720	720	720

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AE	ORGANIZATION	TOBACCO TAX UNIT
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # OBBO4R1
 PROGRAM ORG I
 ID CODE B
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 123-456 7890 12
 ATG 100 AE BU

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-100/AE
 TABLE BJ
 RUN DATE 06/29/18
 CURRENT PROGRAM

T R LN	M O	F Y	*PRECEDING 2-YR PERIOD*		*** BUDGET		PERIOD ***	PLANNING PERIOD ***** (IN THOUSANDS OF DOLLARS)
			FY 2015-16 (02)	FY 2016-17 (03)	FY 2017-18 (04)	FY 2018-19 (05)		
\$ 01	B		928306	936886	936886	936886	936886	937 937 937
P 02	*		12.00	12.00	12.00	12.00	12.00	12.0 12.0 12.0
\$ 03								
P 04	*							
\$ 05								
P 06	*							
\$ 07								
P 08	*							
TOTAL PERSONNEL COST			928306	936886	936886	936886	936886	937 937 937
TOTAL NO. OF PERSONNEL POSITIONS			12.00	12.00	12.00	12.00	12.00	12.0 12.0 12.0

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	928306	936886	936886	936886	936886	937 937 937
OTHER CURRENT EXPENSES	10	320771	379318	379318	435318	435 435 435	435 435 435
EQUIPMENT	11						
MOTOR VEHICLE	12						
TOTAL OPERATING COSTS		1249077	1316204	1316204	1372204	1372 1372 1372	1372 1372 1372

PART II - OPERATING COSTS BY MEANS OF FINANCING

SPECIAL FUND	13	1249077	1316204	1316204	1372204	1372 1372 1372	1372 1372 1372
	14						
	15						
	16						
	17						
TOTAL OPERATING COSTS		1249077	1316204	1316204	1372204	1372 1372 1372	1372 1372 1372

ATG-100/AE
 TABLE BJ

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AI	ORGANIZATION	INVESTIGATIONS
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
 O O 1 11
 123-456 7890 12
 ATG 100 AI BJ

PROG-ID/ORG ATG-100/AI
 RUN DATE 06/29/18
 CURRENT PROGRAM

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

MEANS OF FINANCING DESCRIPTION	T R LN 1 11 6 45	M O F (O1)	*PRECEDING 2-YR PERIOD*			*** BUDGET PERIOD ***			***** PLANNING PERIOD ***** (IN THOUSANDS OF DOLLARS)			
			FY 2015-16 (O2)	FY 2016-17 (O3)	FY 2017-18 (O4)	FY 2018-19 (O5)	FY 2019-20 (O6)	FY 2020-21 (O7)	FY 2021-22 (O8)	FY 2022-23 (O9)		
GENERAL FUND	\$	01	A	692636	693751	693751	1053727	1054	1054	1054	1054	1054
	P	02	*	10.08	10.08	10.08	16.08	16.1	16.1	16.1	16.1	16.1
FEDERAL FUNDS	\$	03	N			63370-	251756-	252-	252-	252-	252-	252-
	P	04	*	5.20	5.20	5.20	5.20	5.2	5.2	5.2	5.2	5.2
OTHER FEDERAL FUNDS	\$	05	P		162336	198870	198870	199	199	199	199	199
	P	06	*									
TRUST FUNDS	\$	07	T		25508	25508	25508	25	25	25	25	25
	P	08	*									
TOTAL PERSONNEL COST	\$			692636	881595	854759	1026349	1026	1026	1026	1026	1026
TOTAL NO. OF PERSONNEL POSITIONS	P			15.28	15.28	15.28	21.28	21.3	21.3	21.3	21.3	21.3

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09			692636	881595	854759	1026349	1026	1026	1026	1026	1026
OTHER CURRENT EXPENSES	10			687812	3997702	3997702	4206088	4206	4206	4206	4206	4206
EQUIPMENT	11			1868			120024	120	120	120	120	120
MOTOR VEHICLE	12											
TOTAL OPERATING COSTS				1382316	4879297	4852461	5352461	5352	5352	5352	5352	5352

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	13	A		766206	765453	765453	1265453	1265	1265	1265	1265	1265
FEDERAL FUNDS	14	N		3329		63370-	251756-	252-	252-	252-	252-	252-
OTHER FEDERAL FUNDS	15	P		44966	170336	206870	395256	395	395	395	395	395
TRUST FUNDS	16	T		567815	3943508	3943508	3943508	3944	3944	3944	3944	3944
	17											
TOTAL OPERATING COSTS				1382316	4879297	4852461	5352461	5352	5352	5352	5352	5352

ATG-100/AI
 TABLE BJ

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
AJ	ORGANIZATION	LEGAL SERVICES (ATG100AA MOF - B,N,P)
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
 O 1 1 1
 123-456 7890 12
 ATG 100 AJ BJ

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-100/AJ
 TABLE BJ
 RUN DATE 06/29/18
 CURRENT PROGRAM

***** PLANNING PERIOD *****
 (IN THOUSANDS OF DOLLARS)
 FY19-20 FY20-21 FY21-22 FY22-23
 (06) (07) (08) (09)

PERIOD ***
 FY 2018-19
 (05)

BUDGET
 FY 2017-18
 (04)

PERIOD*
 FY 2016-17
 (03)

*PRECEDING 2-YR
 FY 2015-16
 (02)

M O F
 (01)

T R LN
 6 45

MEANS OF FINANCING
 DESCRIPTION

MEANS OF FINANCING DESCRIPTION	T R LN	M O F (01)	*PRECEDING 2-YR FY 2015-16 (02)	PERIOD* FY 2016-17 (03)	BUDGET FY 2017-18 (04)	PERIOD *** FY 2018-19 (05)	(06)	(07)	(08)	(09)
SPECIAL FUND	\$	01	B	36436						
	P	02	*							
FEDERAL FUNDS	\$	03	N	168000	168000	168000	168	168	168	168
	P	04	*							
OTHER FEDERAL FUNDS	\$	05	P	266484	307541	753741	754	754	754	754
	P	06	*	.66	.66	6.60	6.6	6.6	6.6	6.6
	\$	07								
	P	08	*							
TOTAL PERSONNEL COST	\$			470920	475541	921741	922	922	922	922
TOTAL NO. OF PERSONNEL POSITIONS	P			.66	.66	6.60	6.6	6.6	6.6	6.6
<u>PART I - OPERATING COSTS BY COST ELEMENT</u>										
PERSONAL SERVICES				470920	475541	921741	922	922	922	922
OTHER CURRENT EXPENSES						9989	10	10	10	10
EQUIPMENT										
MOTOR VEHICLE										
TOTAL OPERATING COSTS				470920	475541	931730	932	932	932	932
<u>PART II - OPERATING COSTS BY MEANS OF FINANCING</u>										
SPECIAL FUND				36436						
FEDERAL FUNDS				168000	168000	168000	168	168	168	168
OTHER FEDERAL FUNDS				266484	307541	763730	764	764	764	764
TOTAL OPERATING COSTS				470920	475541	931730	932	932	932	932

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
CJ	ORGANIZATION	RESEARCH & PREVENTION
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # OB8B04R1
 PROGRAM ORG T
 ID CODE B
 O 1 11
 123-456 7890 12
 ATG 100 CJ BJ

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING ACT 053, SLH 2018

PROG-ID/ORG ATG-100/CJ
 TABLE BJ
 RUN DATE 06/29/18
 CURRENT PROGRAM

***** PLANNING PERIOD *****
 (IN THOUSANDS OF DOLLARS)
 FY19-20 FY20-21 FY21-22 FY22-23
 (06) (07) (08) (09)

MEANS OF FINANCING
 DESCRIPTION
 GENERAL FUND

T R LN	M O	*PRECEDING 2-YR FY 2015-16 (02)	PERIOD* FY 2016-17 (03)	BUDGET FY 2017-18 (04)	PERIOD *** FY 2018-19 (05)	459	459	459	459
6 45	A	445985	428781	458781	458781	459	459	459	459
P 02	*								
\$ 03									
P 04	*								
\$ 05									
P 06	*								
\$ 07									
P 08	*								

TOTAL PERSONNEL COST \$ 445985 428781 458781 458781 459 459 459 459
 TOTAL NO. OF PERSONNEL POSITIONS P 445985 428781 458781 458781 459 459 459 459

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	445985	428781	458781	458781	459	459	459	459
OTHER CURRENT EXPENSES	10	81442	103061	103061	103061	103	103	103	103
EQUIPMENT	11								
MOTOR VEHICLE	12								
TOTAL OPERATING COSTS		527427	531842	561842	561842	562	562	562	562

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	13	502527	481270	511270	511270	511	511	511	511
OTHER FEDERAL FUNDS	14	24900	50572	50572	50572	51	51	51	51
	15								
	16								
	17								
TOTAL OPERATING COSTS		527427	531842	561842	561842	562	562	562	562

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
CU	ORGANIZATION	COLLECTIONS UNIT
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG100	PROGRAM TITLE	LEGAL SERVICES
EA	ORGANIZATION	COMMISSION ON UNIFORM LEGISLATION
11	LEVEL-I	GOVERNMENT-WIDE SUPPORT
1103	LEVEL-II	GENERAL SERVICES
110301	LEVEL-III	LEGAL SERVICES

POSITION IN PROGRAM STRUCTURE

REPORT # 0BB11R1
DEPARTMENT FILE

STATE OF HAWAII
ACT 053, SLH 2018

RUN DATE 06/29/18

DEPARTMENT OF ATTORNEY GENERAL
PROGRAM ID: ATG231

OPERATING COSTS

-----IN DOLLARS-----
PRECEDING 2-YR PERIOD BUDGET PERIOD IN THOUSANDS
FY2015-16 FY2016-17 FY2017-18 FY2018-19 FY2019-20 FY2020-21 FY2021-22 FY2022-23

PERSONAL SERVICES

\$ 1,261,800
P 25.50
\$ 215,985
P 1.00
\$ 1,267,125
P 22.50

1,321,635
25.50
212,123
1,558,373
23.50

1,323,646
25.50
255,459
1,419,549
23.50

1,323,646
25.50
207,459
1,419,549
23.50

TOTAL

2,744,910
49.00

2,998,654
49.00

2,950,654
49.00

OTHER CURRENT EXPENSES

\$ 386,791
\$ 36,466
\$ 1,138,229

489,662
263,900
1,074,274

481,096
1,204,841
2,027,255

576,096
1,204,841
2,027,255

TOTAL

1,561,486

3,713,192

3,808,192

MEANS OF FINANCE

\$ 1,648,591
\$ 252,451
\$ 2,405,354

1,811,297
476,023
2,632,647

1,804,742
1,460,300
3,446,804

1,899,742
1,412,300
3,446,804

TOTAL

4,306,396

6,711,846

6,758,846

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG231	PROGRAM TITLE	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION
BA	ORGANIZATION	CRIMINAL IDENTIFICATION
		POSITION IN PROGRAM STRUCTURE

09	LEVEL-I	PUBLIC SAFETY
0901	LEVEL-II	SAFETY FROM CRIMINAL ACTIONS
090105	LEVEL-III	GENERAL SUPPORT - CRIMINAL ACTION
09010502	LEVEL-IV	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
 O 1 11
 123-456 7890 12
 ATG 231 BA BU

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-231/BA
 TABLE BU
 RUN DATE 06/29/18
 CURRENT PROGRAM

MEANS OF FINANCING DESCRIPTION	T R LN	M O	*PRECEDING 2-YR PERIOD*			*** BUDGET PERIOD ***			***** PLANNING PERIOD ***** (IN THOUSANDS OF DOLLARS)		
			FY 2015-16 (O2)	FY 2016-17 (O3)	FY 2017-18 (O4)	FY 2018-19 (O5)	FY 19-20 (O6)	FY 20-21 (O7)	FY 21-22 (O8)	FY 22-23 (O9)	
GENERAL FUND	6 45	(O1)	A	228849	161128	146599	146599	147	147	147	147
	P	02	*	4.00	4.00	4.00	4.00	4.0	4.0	4.0	4.0
REVOLVING FUND	6 45	(O1)	W	127913	133575	177211	177211	177	177	177	177
	P	04	*	3.00	3.00	3.00	3.00	3.0	3.0	3.0	3.0
	\$	05									
	P	06	*								
	\$	07									
	P	08	*								

TOTAL PERSONNEL COST \$ 294703 294703 323810 323810 324 324 324 324
 TOTAL NO. OF PERSONNEL POSITIONS P 7.00 7.00 7.00 7.00 7.0 7.0 7.0 7.0

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	356762	294703	323810	323810	324	324	324	324	324	324
OTHER CURRENT EXPENSES	10	7.00	7.00	7.00	7.00	7.0	7.0	7.0	7.0	7.0	7.0
EQUIPMENT	11	464854	382168	414666	414666	414	814	814	814	814	814
MOTOR VEHICLE	12										
TOTAL OPERATING COSTS		821616	676871	738476	738476	738	1138	1138	1138	1138	1138

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	13	A	425776	334180	415265	415	815	815	815	815	815
REVOLVING FUND	14	W	395840	342691	323211	323	323	323	323	323	323
	15										
	16										
	17										
TOTAL OPERATING COSTS			821616	676871	738476	738	1138	1138	1138	1138	1138

ATG	DEPARTMENT	DEPARTMENT OF ATTORNEY GENERAL
ATG231	PROGRAM TITLE	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION
BC	ORGANIZATION	HAWAII CRIMINAL JUSTICE DATA CENTER
		POSITION IN PROGRAM STRUCTURE

09	LEVEL-I	PUBLIC SAFETY
0901	LEVEL-II	SAFETY FROM CRIMINAL ACTIONS
090105	LEVEL-III	GENERAL SUPPORT - CRIMINAL ACTION
09010502	LEVEL-IV	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION

REPORT # OBBO4R1
 PROGRAM ORG T
 ID CODE B
 O 1 11
 123-456 7890 12
 ATG 231 BC BU

STATE OF HAWAII
 BUDGET WORKSHEET
 PERSONNEL REQUIREMENTS & OPERATING COST SUMMARY
 TYPE OF COST: OPERATING
 ACT 053, SLH 2018

PROG-ID/ORG ATG-231/BC
 TABLE BJ
 RUN DATE 06/29/18
 CURRENT PROGRAM

MEANS OF FINANCING DESCRIPTION	T R LN 1 11 6 45 (O1)	M C F (O1)	*PRECEDING 2-YR PERIOD*			*** BUDGET PERIOD ***			***** PLANNING PERIOD ***** (IN THOUSANDS OF DOLLARS)			
			FY 2015-16 (O2)	FY 2016-17 (O3)	FY 2017-18 (O4)	FY 2018-19 (O5)	FY 2019-20 (O6)	FY 2020-21 (O7)	FY 2021-22 (O8)	FY 2022-23 (O9)		
GENERAL FUND	\$	01	A	1032951	1160507	1177047	1177047	1177	1177	1177	1177	1177
	P	02	*	21.50	21.50	21.50	21.50	21.5	21.5	21.5	21.5	21.5
FEDERAL FUNDS	\$	03	N									
	P	04	*									
OTHER FEDERAL FUNDS	\$	05	P	215985	212123	255459	207459	207	207	207	207	207
	P	06	*									
REVOLVING FUND	\$	07	W	1139212	1424798	1242338	1242338	1242	1242	1242	1242	1242
	P	08	*	19.50	20.50	20.50	20.50	20.5	20.5	20.5	20.5	20.5
TOTAL PERSONNEL COST	\$			2388148	2797428	2674844	2626844	2626	2626	2626	2626	2626
TOTAL NO. OF PERSONNEL POSITIONS	P			41.00	42.00	42.00	42.00	42.0	42.0	42.0	42.0	42.0

PART I - OPERATING COSTS BY COST ELEMENT

PERSONAL SERVICES	09	2388148	2797428	2674844	2626844	2626	2626	2626	2626	2626	2626	2626
OTHER CURRENT EXPENSES	10	1096632	1445668	3298526	3393526	3394	3394	3394	3394	3394	3394	3394
EQUIPMENT	11											
MOTOR VEHICLE	12											
TOTAL OPERATING COSTS		3484780	4243096	5973370	6020370	6020	6020	6020	6020	6020	6020	6020

PART II - OPERATING COSTS BY MEANS OF FINANCING

GENERAL FUND	13	A	1222815	1477117	1389477	1484477	1484	1484	1484	1484	1484	1484
FEDERAL FUNDS	14	N										
OTHER FEDERAL FUNDS	15	P	252451	476023	1460300	1412300	1412	1412	1412	1412	1412	1412
REVOLVING FUND	16	W	2009514	2289956	3123593	3123593	3124	3124	3124	3124	3124	3124
	17											
TOTAL OPERATING COSTS			3484780	4243096	5973370	6020370	6020	6020	6020	6020	6020	6020



Department of the Attorney General
ATG 100
ATG 231

ATTACHMENT "B"

ATG 100

The Attorney General is the chief legal officer of the State of Hawai'i. By law, the Attorney General and his or her deputies represent the State and its agencies and officers, for all three branches of government. This representation includes litigation in both state and federal court, in both civil and criminal matters. It also includes transactional work and assisting the State's many agencies with the performance of their duties. The Department of the Attorney General reviews bills and testifies on legislation, drafts and reviews regulations, advises boards and commissions, and prepares legal documents in many forms. The office provides a constant stream of informal and often daily advice to our client agencies. Experience counts at this job.

The AG's office has 207 deputy attorneys general. These professionals range from new hires to career deputies who have been with the Department more than 30 years. Experienced deputies are critical to the successful transition between administrations. Deputies' work is an integral component of every project of any importance in which any State agency is involved. In doing so, they serve a vital, irreplaceable function in State government, one that only an experienced, licensed professional can perform.

About a quarter of the Department's attorneys—more than 45 individuals—have worked here for at least 15 years. These individuals are committed public servants, and the experience they have is vital for the smooth operations of State government. Experienced deputies serve as the institutional memory bridging one administration to the next. Our collective experience allows us to successfully advise incoming Governors and Department heads, maintaining the functionality of government as administrations change. Experienced deputies also assist new Attorneys General as they learn about the Department and the unique challenges of serving as the State's chief legal counsel.

The collective years the Department's attorneys have in practice is greater still. But it is the years *representing the State* that best typifies what experienced deputies bring to the table in performing our work. At our office, experienced deputies must be familiar with a wide range of topics that most private-practice attorneys do not regularly address, including constitutional law, legislative drafting, regulatory drafting, agency jurisdiction, and the complex law governing immunity for the State and its officials. These issues are central to representing the State.

The total workload performed by the Department of the Attorney General is substantial and covers a wide array of government functions.

For the Legislature:

- Deputies review approximately 2,500 bills every session of the Legislature. We are the only department, besides Budget & Finance, that reviews every bill. Deputies do this task in addition to their regular work, which does not diminish because the Legislature is in session. For the divisions with heavier legislative loads, it is not unusual for one deputy to be solely responsible for more than 150 bills.
- Deputies submit written testimony hundreds of times during each legislative session.
- Deputies submit confidential reports to the Governor on about 250-300 bills every year.
- Deputies testify in person hundreds of times every session. Legislative session, particularly before first cross-over, is a busy time at the Department every year. Many deputies work long, difficult hours to meet the demands of legislative drafting, hearings, meetings, and inquiries from legislators.
- Deputies review over a hundred legislative proposals a year from the Executive branch. This process begins every year in the fall, in preparation for the next year's session.
- Deputies are critically involved with all major bills, often taking a central role in drafting the final product that becomes law. This includes legislation covering such recent subjects as: marijuana dispensaries, the privatization of state hospitals, the marriage equality act, the OHA settlement, and campaign finance reform.
- Deputies represent legislators when they are sued and promptly assert legislative immunity as appropriate. The AGs has also successfully represented the House of Representatives to preserve its authority to determine the qualifications of its own members.
- Deputies respond to numerous questions from individual legislators. Frequently these questions raise significant legal or constitutional issues regarding bills or statutes.

For assisting the Governor and State agencies:

- Experienced deputies advise incoming Governors, Department heads, and Attorneys General, to allow the State to successfully transition from one administration to the next.
- Deputies advise the Governor's office about matters of critical public importance, often under great time pressure and public scrutiny. The issues change over time, but whatever the major issues are of the day, the Department is available for advice and counsel.
- Deputies are assigned to work with particular agencies, and often do so for years (even decades) at a time, building an unparalleled level of institutional knowledge.
- Deputies deliver legal advice in an on-going conversation between attorney and client. This is delivered via in-person meetings, letters, e-mails, and telephone conversations.

- Deputies review and comment on draft contracts entered into by client agencies.
- Deputies review and comment on draft regulations for State boards and commissions, and advise on compliance with State and federal law.

For cases in civil litigation:

- Deputies represent the State and its agencies, officers, and employees, in hundreds of trial court proceedings pending at any one time. This includes cases in state and federal court. This representation includes the Judiciary as well as the executive branch agencies.
- Deputies appear regularly before the State and federal appellate courts.
- Deputies negotiate favorable settlements, saving the State both litigation and liability exposure costs.
- Deputies represent State agencies in attempts to collect unpaid taxes or money improperly billed to State programs. Recently, the largest case among these was worth more than \$50 million by itself.
- Deputies succeed in shielding the State from liability by winning cases, often entirely in the State's favor. In addition to more typical litigation, there are truly exceptional cases where deputies are successful in defending the State against potential liability well into the tens of millions of dollars.
- Deputies represent the State and its agencies in complex cases and issues as they arise regarding Native Hawaiian programs and the status of Native Hawaiians. These issues require significant experience and sophisticated legal knowledge to handle well.
- Deputies represent the State and its officers in high-profile constitutional challenges against Hawai'i laws, including suits brought against the open primary, campaign finance laws, and the marriage equality act. Deputies are often successful in these efforts, even when the State's opponents are represented by prominent private counsel.

For criminal cases:

- The Department has its own prosecutors. This group prosecutes cases that often involve public harms like welfare fraud, or cases where a conflict of interest prevents the county prosecutors from acting on a case.

For advising boards and commissions:

- Deputies assist with regular board and commission meetings. There are over 170 state boards and commissions in Hawai'i. Attending to all of them is a substantial undertaking, as deputies assist in the preparation for the meetings, attend the meetings to provide advice, and assist with follow-up tasks.
- Deputies appear before boards or commissions in formal proceedings. Some of these proceedings are full-blown evidentiary trials.
- Deputies represent boards and commissions with the work and decisions necessary to allow each board or commission to accomplish its objectives.

- Deputies assist with subsequent appeals when parties appearing before the boards appeal to court as provided by law.

DEPARTMENT OF THE ATTORNEY GENERAL DIVISIONS

Administrative Services Office

David Moore, Administrative Services Manager

Division telephone: 586-1287

Division location: Hale Auhau, Third Floor

I. Duties and responsibilities

- Manage budget preparation and submittal
- Coordinate all office leases, build-outs, Kekuanao'a and State Office Tower
- Coordinate with DAGS the Hale Auhau building operations
- Negotiate the DHS billing rate for attorneys.
- Oversees departmental purchasing processes.
- Manage Departmental Safety and Emergency Preparedness Programs.
- Manage Fiscal Services
 - Manage and monitor all ATG department fund accounts
 - As required by B&F, update eBuddi, eRevenue, eVariance, eAnalytical systems
 - As required by B&F, provide Non-General Fund Information and Updates of Revenue Estimates
 - Payroll calculation and processing using the ePCS (electronic Payroll Change Schedules through the new statewide payroll system called HIP.
 - Calculation and processing of all workers' compensation and TDI claims.
 - Approval and payment of all Legal Services invoices including processing of pCard transactions and Bills for Collections from other departments.
 - Approval of all inter-island travel and reimbursement for all travel
 - Provide analysis and detailed back up for divisions to manage special funds
 - Billing to and collections from other departments and agencies for Legal Services provided
 - Review and manage all Special Deputy and Expert Witness contracts
 - to assure conformance with DAGS rules and statutes
 - Manage the annual independent audit
 - Track federal spending and draw down funds in accordance with grant provisions
 - Manage and monitor all assets inventory

- Ordering of all supplies for Legal Services
- Manage Human Resources office
 - Recruitment
 - Position classification
 - Process reorganizations
 - Process employee data
 - Process payroll changes
 - Manage leave of absence programs
 - Coordinate department ISAP Awards ceremony
 - Handle EEOC complaints, grievances, workers' compensation claims, workplace violence/harassment complaints
- Manage Information Services and Technology
 - Manage data services and servers, including purchases and Repairs and maintenance of all PC's and peripherals
 - Process telecommunications requests
 - Provide training for PC and applications
 - Oversee Document Management System (DMS) and ProLaw Case Management System (CMS)
- Manage Internal Support Services
 - Reception/switchboard
 - Internal and external mail delivery
- Manage Law Library
 - Purchase and house all legal books and subscriptions
 - Oversee contract and billings for Westlaw legal database services

II. Personnel

Fiscal – eight positions (two are currently vacant)

Information Services – eight positions

Human Resources – eight positions (one currently vacant)

Internal Support – four positions

Library – one position (the incumbent is on extended sick leave)

III. Funding other than general funds

One Human Resources Specialist and one Account Clerk III are 66% federally funded through CSEA.

IV. Accomplishments

ASM began in February 2006; therefore, accomplishments are from 2006 through 2018.

- 2006 and 2007 – completed upgrade of all PC's for the Legal Services divisions
- 2007 – Completed transfer of the Family Support Division from Hawaii County and County of Honolulu to State AG
- 2008 - secured outside lease space for the Criminal Justice Division due to over crowding
- 2008 – completed transfer of the Family Support Division from Kauai county to AG
- 2008 through 2010 – Completed reorganizations involving Medicaid Investigations to Criminal Justice Division; Missing Children Center to Crime Prevention and Justice Center; Hawaii Criminal Justice Data Center to establish 1) Systems Services Branch, 2) Sex Offender Program, and 3) Criminal History Record Check Sub-unit; create the Deadbeat Parent Unit in Family Law division; Child Support Enforcement Agency reorganization (approved November of 2004) creating the Call Center Unit
- 2009 - Managed and implemented the Reductions in Force
- 2012 – secured and relocated the Family Law Division and the Family Support Unit from downtown Kekuanao'a building to Kapolei in order to have them closer to the Family Court.
- 2016 – Implement department-wide FISH training to improve employee morale and customer service; established Division Ambassadors
- 2016 and 2017 – Completed reorganization of Notary Office from Commerce & Economic Development to Civil Recoveries Division
- 2017 - completed negotiations with federal Department of Human Services to increase billing rates for child Welfare cases from \$124/hour in 2009 to \$147/hour for fiscal year 2017
- 2017 – completed transfer of Office of Child Support Hearings (OCSH) from Child Support Enforcement Services to Legal Services. The division is now called Office of Dispute Resolution (ODR)
- 2017 – secured outside lease space for ODR
- 2017 – secured and transferred Tax and Charities Division offices
- 2018 – transferred CJD/MID offices from Melim Bldg. to 707 Richards Bldg.
- 2018 – Implement EUTF Benefits Fair
- 2018 – HiPay Transition with 100% direct deposit
- 2018 – Transitioned all G1s to esign system eliminating storage space increasing efficiencies and ensuring updated, accurate leave balances
- 2018 – Converted security access system at Hale Auhanu from key codes to access cards for increased security

V. Major issues and projects in order of importance

- Relocate Criminal Justice Division from outside lease space in Melim building to 707 Richards St.
- Project pending with DAGS, when funds come available. To replace all a/c duct work in Hale Auhau. This is a 9-month project that will require relocation of about 20 – 25 people out of Hale Auhau for the duration and vacating certain sections of the building to allow for construction.
- Need to fund the upgrade of approximately 200 PC's.
- Implement electronic document storage.
- Vacant Human Resources Specialist V and Budget Analyst IV were abolished in 2009; not yet restored.
- Filling of vacancies.
- Transfer to Hawaii State Archives records that are deemed historically valuable and no longer being actively used by the Department.
- Ongoing negotiations with the federal Department of Human Services on the approval of billing rates for fiscal year 2018
- Reorganization of Hawaii Criminal Justice Data Center units
- Reorganization of Investigations Division
- Transition of new HiPay system working closely with employees to ensure proper processing

Administration Division

Pat Ohara, Supervising Deputy Attorney General

Division telephone: 586-0618

Division location: Hale Auhau, First Floor

I. General work, primary mission, primary clients

The Administration Division differs from other divisions in the Department of the Attorney General due to the sheer number of client agencies it advises, and the breadth of substantive areas of law that the advice encompasses. Unlike most divisions in the Department that advise one or two client departments, this Division advises all three branches of State government and a few dozen agencies. Given the number of client agencies, and the relative small size of the Division, the supervising deputy attorney general takes on the duties of a line deputy in addition to those of a supervisor.

The Administration Division provides all facets of legal services to its clients, except for personnel and tort matters. The services provided to these clients include: consultation with agency directors and staff; written and oral legal advice and opinions on questions submitted to the Division for response; drafting and review of legislation, administrative rules and contracts; legal counsel at public open meetings of boards and commissions and chapter 91 contested case hearings; negotiating and documenting various transactions; and representing and defending agencies in administrative hearings and in State and federal courts.

Among the primary clients and their administratively attached agencies that are served by Administration Division are the: Office of the Governor; Office of the Lieutenant Governor; Legislature; Judiciary; Department of Accounting and General Services; Department of Budget and Finance; Employees' Retirement System; Employer-Union Health Benefits Trust Fund; Office of the Public Defender; Public Utilities Commission; State Procurement Office; Aloha Stadium Authority; State Foundation on Culture and the Arts; Campaign Spending Commission; Office of Elections; Office of Information Practices; Office of Enterprise Technology Services; State Ethics Commission; Office of the Ombudsman; Judicial Selection Commission; Commission on Judicial Conduct; and Board of Bar Examiners. The Division also advises the Land Use Commission, Research Corporation of the University of Hawaii, and the Department of the Attorney General's Crime Prevention and Justice Assistance Division and Hawaii Criminal Justice Data Center.

In addition, the Division annually reviews more legislation than any other division in the Department (including the state budget bill and agency appropriations), prepares and monitors the Department's responses to audit letters (including the CAFR), completes special assignments from the Attorney General, and assists deputies from other divisions, particularly on issues involving the budget/appropriation process, municipal financing, procurement requirements, contracts, uniform information practices act, and sunshine law.

II. High profile matters and major issues

A. Pasco v. ERS: Defended the ERS against a claim for service-connected disability retirement benefits based on an accident. The Hawaii Supreme Court expanded the definitions of "accident" and "injury" to allow Pasco to be granted service-connected disability retirement benefits.

B. Quel v. ERS: Defending ERS against a claim for service-connected disability retirement benefits based on occupational hazard (the other basis for such benefits besides an accident). Quel is asking the Hawaii Supreme Court to expand the definition of "occupational hazard" to obtain service-connected retirement benefits.

C. Panado v. ERS: Defended the ERS against claim for service-connected disability retirement benefits. The Hawaii Supreme Court expanded the definition of an accident occurring at a "definite time and place," finding sufficient that the injury occurred sometime during plaintiff's work shift and so granting her service-connected disability retirement benefits.

D. City and County of Honolulu et al. v. State et al.: Defended the State respondents against claim by the counties that the proposed constitutional ballot question regarding a surcharge on investment real property for public education was in violation of the statute requiring such questions to be clear and not misleading.

E. Richard Kim v. State et al.: A typical election contest, this one by a pro se, who argued that Colleen Hanabusa was required to resign from her congressional seat before running for governor. There usually are a handful of election contests that challenge the qualifications of a candidate to run for a particular office or a person to vote in a particular precinct, or the outcome of the vote. State prevailed in this contest and other such contests.

F. Thomas Waters a/k/a Tommy Waters v. Scott Nago, et al.; Natalie Iwasa et al. v. Scott Nago, et al.: Two atypical election contests that challenged the results of the Honolulu City Council District IV seat. The Supreme Court disagreed with the State's arguments, including that the

US Postal Service as a designated representative of the C&C of Honolulu, received the absentee ballots before the close of polls; the Court invalidated the results.

G. League of Women Voters et al. v. State of Hawaii: Plaintiffs alleged the Legislature violated the Constitution by employing “gut and replace” in passing legislation. Successfully argued the separation of powers prohibits the courts from interfering with the operations of the Legislature and the necessity of allowing the Legislature to conduct its own business.

H. Dannenberg et al. v. State of Hawaii et al.: Providing assistance to the Dannenberg Team (comprised of deputies from many divisions) by handling the massive discovery portion of a class action lawsuit that began in 2006. Plaintiff retirees claim their constitutional/statutory/contractual rights were violated by the State’s denial of health benefits that are equivalent to those afforded active employees, to the retirees and their beneficiaries.

I. Kono et al. v. Abercrombie et al.: Class action lawsuit by the HSTA Voluntary Employees’ Beneficiary Trust Fund (VEBA Trust). VEBA Trust was repealed, its members transferred to EUTF plans, and plaintiffs claim diminution of their “accrued benefits.” No trial date and no activity since 2013, but presents an important issue re health benefits.

IV. Major projects, achievements, and accomplishments

A. Please see above.

B. Advising DAGS on standards by which to determine which claims for construction expenses by HART are appropriate for reimbursement as non-recurring capital costs.

C. Assisting DAGS with analyzing proposed legislation to effect public – private – partnerships as an alternative means of funding major public works projects such as correctional facilities, stadiums, and hospitals.

C. Assisting ERS with drafting proposed legislation to amend portions of HRS chapter 88 regarding service-connected disability retirement benefits.

D. Representing EUTF in action against insurance company for wrongful withholding of funds due EUTF.

E. Continual representation of judges in matters such as writs for mandamus, which challenge a judge's decision or order of the judge's actions taken below, such actions forming the basis of the writ.

V. Pending major litigation and analysis of impact on State or Department

In light of the Hawaii Supreme Court expanding the qualifications for retirement benefits in general, and for service-connected disability retirement benefits specifically, we are working with the ERS to clarify the qualifications for service-connected disability retirement benefits as well as ordinary disability retirement benefits. The project may well expand to include proposed revisions to other portions of HRS chapter 88.

VI. Names of acting supervisor in supervisor's absences; delegation of authority

Deputy Attorney General Randall Nishiyama

VII. List of professionals and deputies in the division

Supervising Attorney General
9 Deputy Attorneys General (1 vacancy)
Legal Secretary
2 Legal Clerks (1 vacancy)
Paralegal

VIII. Division goals through 2019

- Cross-train. We are fortunate that the deputies and staff get along with each other and work well together as a group. As a result, when the various clients of the Division present demanding assignments with short deadlines (which is the norm), the Division has been able to complete the projects in a professional and timely manner, notwithstanding being short-staffed (1 deputy vacancy due to retirement 12/31/18, 1 legal clerk vacancy, 1 legal clerk on extended sick leave).
- Nonetheless, given the variety of clients and topics, it's important to continue to cross-train deputies to increase their ability to advise and counsel clients other than the deputy's primary clients and on subjects beyond the deputy's areas of expertise. With the relatively recent retirements of a couple of very experienced deputies, and new deputies on board, there is opportunity to expose all the deputies to a broad range of topics and to handle matters outside their usual comfort zone. The deputies should be conversant and nimble to cover matters outside their primary assignments as needed.

- **Employment.** Hire a qualified deputy. Hire a qualified legal clerk. It has been difficult finding someone to fill the legal clerk position. The pay is low, health benefits are less generous, and with general low unemployment in the State, few are on the DHRD list of qualified applicants. We have had some success with 89-day hires and will no doubt need to continue using them; it has been difficult to find qualified 89-day hires as well.

Appellate Division

Clyde J. Wadsworth, Solicitor General and Appellate Division Supervisor

Division telephone: 586-1360

Division location: Hale Auhau, Second Floor

I. General work, primary mission, primary clients.

The Appellate Division has oversight authority over most state and federal appeals in the department, including briefs filed and oral arguments presented on behalf of the State, its agencies and officials in the state and federal appellate courts. This includes, for example, appeals to the Hawai'i Supreme Court and the U.S. Supreme Court, but does not include appeals to the circuit court from agency decisions or in tax cases.

The Appellate Division's goal is for the high professional standards of the department to be reflected in uniformly excellent appellate briefs and oral arguments.

Given staffing limitations, the Appellate Division does not directly handle all the appeals in the department. Instead, the division concentrates on the more significant appeals affecting the State and the people of Hawai'i, including matters in which the Attorney General is defending the constitutional and civil rights of the people. But as to appeals not handled directly by the Appellate Division, the division still serves as an important resource to those wanting either *substantive* legal advice on their appellate issues, or appellate *procedural* guidance and consultation. An Appellate Division member will also often be asked to serve on appellate moot courts for deputies from other divisions. A member of the Appellate Division, most often the Solicitor General, also sits on every Appellate and Opinion Review (AOR) committee meeting.

In addition, the Appellate Division, despite its name, also works on highly significant cases at the **trial** level -- usually where constitutional or other important legal interests of the State predominate -- including, e.g., the *Hawai'i v. Trump* travel ban case, the *Kalima* class action litigation, certain election-related lawsuits, major criminal appeals, and certain Hawaiian matters.

The Appellate Division also drafts recommendations to the Attorney General on whether Hawaii should join dozens of multistate amicus briefs filed annually in the U.S. Supreme Court, in cases having a potentially significant impact upon the State of Hawaii.

The Appellate Division occasionally drafts legislation and testifies before

the legislature on selected proposed legislation. The Appellate Division also sometimes drafts formal and informal opinion letters responding to requests by State agencies or legislators for advice on select issues.

The Appellate Division occasionally files amicus briefs in private party cases where a party has challenged the constitutionality of a Hawai'i statute. On a related front, the Appellate Division also sometimes reviews bills for certain constitutional concerns.

Individual Deputies serve on important legal and/or work-related AG, HSBA, Judiciary, and Hawai'i legal community committees:

Solicitor General Clyde Wadsworth serves as an arbitrator with the Judiciary's Court Annexed Arbitration Program, and as a founding board member (and former President) of the Hawai'i LGBT Legal Association.

First Deputy Solicitor General Kimberly Guidry serves on the AG Training Committee and on the AG's Contracts Committee and is a member of the Judiciary's Appellate Rules Committee. She is also a member of the Board of Bar Examiners.

Deputy Solicitor General Robert Nakatsuji serves as an arbitrator with the Judiciary's Court Annexed Arbitration Program, and just completed serving seven years as Treasurer of the HSBA's Appellate Section Committee.

Deputy Solicitor General Ewan Rayner serves as Vice-Chair of the HSBA's Appellate Section Committee.

Deputy Solicitor General Kaliko'onalani Fernandes serves as President of the Hawai'i LGBT Legal Association.

Paralegal Tammy Tam serves on the AG's committee regarding Information Technology.

Unlike other AG divisions, Appellate Division's clients vary widely, depending upon the particular matter or litigation at hand.

II. High profile matters and major issues (past)

See section III below.

III. Major Projects, Achievements and Accomplishments

The following is responsive to both categories II and III, and is in rough order of importance, from most important to least important. Please note, however, that the ranked order of importance assigned to each matter is relative,

given that all the Appellate Division's work is important.

A. In re Conservation District Use Application HA-3568, aka Mauna Kea Anaina Hou v. BLNR (2018, related to Flores, infra): In this case involving the Thirty Meter Telescope (TMT) on Mauna Kea, the Appellate Division successfully defended the Board of Land and Natural Resources' issuance (after a months-long contested case hearing) of a conservation district use permit to the University of Hawai'i for construction of the TMT Project. This appeal raised issues involving (among other things) Native Hawaiian cultural rights and the Public Trust doctrine.

B. Flores v. BLNR (2017): In this related case involving the Thirty Meter Telescope, the Appellate Division successfully defended the Board of Land and Natural Resources' denial of Petitioner Flores' request for a contested case hearing on its consent to UH's sublease of Mauna Kea Science Reserve Land to TIO (for construction of the TMT Project). Success in this appeal represented an important predicate step in allowing for the continuation of the TMT Project in Hawai'i.

C. Hawai'i v. Trump (2018): In this case of national significance, the Appellate Division worked with a team of attorneys to challenge the Trump Administration's ban on entry of citizens from certain Muslim countries. The Appellate Division helped formulate strategy and edit briefs while this case was pending before the federal district court, Ninth Circuit, and U.S. Supreme Court.

D. In re CompUSA (2018): The Appellate Division successfully defended Hawaii's use tax scheme in the Hawai'i Supreme Court, against a Dormant Commerce Clause challenge. The successful outcome of this case made it possible for the Hawai'i Tax Department to continue to assess use taxes.

E. Nelson v. Hawaiian Homes Commission (2018): The Appellate Division drafted the appellate briefs that contributed to a favorable Hawai'i Supreme Court decision regarding the calculation of the Department of Hawaiian Homeland's administrative and operating expenses.

F. McDermott v. Abercrombie (2015): The Appellate Division successfully defended the Hawai'i Marriage Equality Act against Appellant's constitutional challenge.

G. Masterpiece Cakeshop v. Colorado Civil Rights Commission (2017): The Appellate Division co-authored with Massachusetts an amicus brief on behalf of 19 states and the District of Columbia in support of the respondents in Masterpiece Cakeshop, one of the most significant cases of the U.S. Supreme Court's last term. The question presented was whether application of Colorado's public accommodations law prohibiting

discrimination based on sexual orientation violated the petitioners' First Amendment rights. Our amicus brief argued that the First Amendment does not exempt public accommodations from State anti-discrimination laws, and presented the *amici* States' perspective on the importance of such laws.

H. Hamamoto v. Ige (2018): The Appellate Division successfully obtained a Ninth Circuit ruling that affirmed the U.S. District Court's dismissal of plaintiffs' challenge to the temporary appointment process to fill a vacated Senate seat.

I. Democratic Party of Hawaii v. Scott Nago (2016): The Appellate Division successfully obtained a Ninth Circuit ruling that affirmed the U.S. District Court's rejection of plaintiff's attack on the State's open primary.

J. LC v. MG (2018): The Appellate Division authored an amicus brief and presented oral argument that contributed to a favorable Hawai'i Supreme Court decision, ruling that the marital presumption of parentage applies equally to both men and women, such that a woman is presumed to be the legal parent of a child when she and the child's mother are married and the child is born during the marriage.

K. Radcliffe v. State (2017): The Appellate Division represented the State of Hawai'i in this appeal involving Plaintiff's claim of a constitutionally protected right to medically assisted death. While the appeal was pending in the ICA, the Hawai'i Legislature enacted 2018 Hawaii Session Laws Act 2, which provides a procedure by which a terminally ill patient can obtain medical assistance in dying. After the new law went into effect, the parties stipulated to dismiss the appeal, which the ICA approved.

L. Mandeville v. Hawai'i Department of Education (2017-2018): The Appellate Division obtained victory in the Ninth Circuit, which rejected the plaintiffs' challenge to an Individualized Education Program (IEP) under the Individuals with Disabilities in Education Act.

M. Rachel H. v. Department of Education, State of Hawaii (2017): The Appellate Division obtained a favorable ruling for the Department of Education in this Individuals with Disabilities Education Act ("IDEA") case argued before the Ninth Circuit in June 2017.

N. Lawrence v. State (2016): The Appellate Division successfully defended the circuit court's Order authorizing (under the Kotis standard) the State Hospital to involuntarily medicate a dangerous patient.

O. Brown v. Chinen (2017): The Appellate Division successfully defended against Plaintiff's whistleblower claim that his one-year

employment contract was not renewed because he reported or was about to report alleged employer violations of law.

P. Shavelson v. Hawai'i Civil Rights Commission (2017-2018): The Appellate Division obtained a partial victory in the Ninth Circuit, which rejected the plaintiff's due process claim, after the Hawai'i Civil Rights Commission found there was no reasonable cause to believe the plaintiff's landlord had discriminated against her on the basis of her religion or disability.

Q. State v. Alangcas (2015): The Appellate Division successfully obtained a published opinion from the Hawai'i Supreme Court affirming that the electronic enticement statute is neither vague nor overbroad and does not violate the dormant commerce clause.

R. The Appellate Division drafted for the AG recommendations (to join or not to join) hundreds of amicus joinder requests for states to sign on to briefs filed in the U.S. Supreme Court (ongoing), and sometimes lower courts, covering a wide range of constitutional and other legal issues of importance to the State.

S. The Appellate Division drafted for the AG recommendations to sign or not to sign on to letters from other State AGs commenting upon proposed legislation in Congress, or communicating with appropriate governmental bodies or private actors in matters of interest to states.

T. The Appellate Division served (and continues to serve) as the Department's liaison on various multi-State litigation efforts involving issues relating to, for example, Title X, sanctuary cities, Byrne grant funding, Affordable Care Act litigation, federal regulation of 3D printed guns, Deferred Action by Childhood Arrivals ("DACA"), Temporary Protected Status ("TPS") of aliens, etc.

U. Calvary Chapel Pearl Harbor v. Suzuki (2017-18): The Appellate Division assisted in defending Hawaii's disclosure law relating to limited services pregnancy centers from constitutional challenge, evaluated the effect of the U.S. Supreme Court's related NIFLA decision, and assisted in developing a course of action in this case post-NIFLA.

V. Aloha Pregnancy Care and Counseling Center v. Suzuki (2017-18): The Appellate Division assisted in defending Hawaii's disclosure law relating to limited services pregnancy centers from constitutional challenge, evaluated the effect of the U.S. Supreme Court's related NIFLA decision, and assisted in developing a course of action in this case post-NIFLA.

W. Janus v. AFSCME, Council 31 (2018): The Appellate Division advised the AG and participated in discussions regarding the meaning and impact of the U.S. Supreme Court's 2018 Janus decision, which held that labor unions may not constitutionally require all public employees to pay collective bargaining fees. Continues to consult with the ELD Division regarding the long-term effects of Janus and potential future litigation.

X. Kalaeloa Ventures v. City and County of Honolulu (2017-2018): The Appellate Division drafted and filed an amicus brief on behalf of the Attorney General opposing a City and County ordinance that purported to abrogate the statutory "weekend rule" (which allows filing on the day following a weekend or a holiday) for the filing of appeals from real property tax assessments to the State Tax Appeals Court.

Y. PJY Enterprises v. Kaneshiro (2017): The Appellate Division represented the State of Hawai'i as amicus curiae by drafting a Ninth Circuit amicus brief supporting the City and County of Honolulu, in which it argued that Hawaii's comprehensive policy against gambling compelled the court to find seized gaming machines were illegal "gambling" devices.

Z. State v. Calaycay (2017): The Appellate Division drafted and filed an amicus brief defending HRS § 711-1106 against Defendant's claim that his conviction under the harassment statute violated his right to free speech.

AA. Appellate's paralegals have worked extensively with the Hawaii Supreme Court Clerk's office to suggest and bring about improvements in its JEFS electronic filing system. They also provide invaluable assistance to all AG divisions in helping them to navigate the various appellate electronic filing websites. They have also coordinated the entire AG's office's response to the Ninth Circuit's recent changes to its electronic filing/PACER system to ensure all deputies maintain uninterrupted e-filing capability and access to Ninth Circuit filings and orders.

IV. Major Current Issues and Projects in Order of Importance

See section V below.

V. Pending Major Litigation and Analysis of Impact on State or Department

The following is responsive to both categories IV and V, and is in rough order of importance, from most important to least important. Please note, however, that the ranked order of importance assigned to each matter is relative, given that all of the Appellate Division's work is important.

A. Kalima v. State of Hawai'i (1999-2019): The Appellate Division is defending the State on appeal of this complex class action on behalf of 2,721 claimants alleging breaches of the Hawaiian Home Lands Trust under HRS Chapter 674. Chapter 674 was enacted by the Legislature in 1991 and provides individual beneficiaries of the Hawaiian Home Lands Trust the right to bring an action for recovery of actual damages suffered as a result of breaches of trust occurring between August 21, 1959 and June 30, 1988. This case is on appeal to the ICA, and a motion to transfer it to the Hawaii Supreme Court is currently pending. The appeal relates to the Waiting List Subclass, a group of claimants contending that breaches of trust by the State caused them unreasonable delay in receipt of a homestead award.

B. Young v. Hawai'i (and similar cases) (ongoing): In this Ninth Circuit appeal, the Appellate Division represents the State in its defense of the constitutionality of Hawaii's open carry firearms law. At the panel stage, the Appellate Division filed an amicus brief. At the present *en banc* stage, the State (which is also being represented by outside counsel) is participating as a party and has asked the court to accept *en banc* review of the panel's decision. The petition for *en banc* review is still pending. The State has previously filed amicus briefs in similar public carry cases, such as Baker v. Kealoha (D. Haw.) and Peruta v. San Diego (9th Cir.) (*en banc*).

C. Clarabal v. Dept. of Education (2016): In this case, the Appellate Division has briefed and argued to the Hawai'i Supreme Court that the State Constitution does not require the Department of Education to provide Plaintiff's daughters with the opportunity to receive a Hawaiian language immersion-based education. Awaiting decision from the Hawai'i Supreme Court.

D. Life of the Land v. Public Utilities Commission (2018): The Appellate Division represents the PUC in this direct appeal to the Hawai'i Supreme Court by Life of the Land regarding the PUC's approval of a power purchase agreement between Hawai'i Electric Light Company ("HELCO") and Hu Honua Bioenergy, LLC in connection with a biomass power plant developed by Hu Honua in Pepe'ekeo, Hawai'i. The case is awaiting decision by the Hawai'i Supreme Court.

E. Tax Foundation v. State (2016): The Appellate Division is defending the State on appeal in this challenge to the State's 10 percent deduction from the GET surcharge that funds the Honolulu rail project. The Appellate Division has also monitored related legislative bills that proposed changes to the funding of the rail project. Awaiting decision from the Hawai'i Supreme Court.

F. DW Aina Lea v. Land Use Commission (2017-2019): This is a Ninth Circuit Court of Appeals case in which plaintiff appealed from a dismissal on statute of limitations grounds. The plaintiff brought a damages claim against the State of \$200 million arising from an alleged taking of plaintiff's property resulting from the Land Use Commission's reversion of the property from urban to agricultural use. The Appellate Division handled the briefing in the Ninth Circuit Court of Appeals, and the case is set for oral argument on February 12, 2019.

G. Bridge Aina Lea v. Land Use Commission (2018-2019): The Appellate Division is representing the State in this Ninth Circuit appeal. This case is closely related to the DW Aina Lea case and involves another takings claim for substantial damages resulting from the same Land Use Commission reversion from urban to agricultural use, but brought by a different entity that retained the fee simple ownership of the land. The case is currently in briefing.

H. Cervelli v. Aloha Bed & Breakfast (2018-2019): The Appellate Division is representing William D. Hoshijo, as Executive Director of the Hawai'i Civil Rights Commission, in opposing the plaintiff's petition for a writ of certiorari before the United States Supreme Court. The Appellate Division is defending the ICA's decision that a bed and breakfast in Honolulu violated the state's public accommodations law by refusing to provide lodging to a same-sex couple.

I. Ching v. DLNR (2018-2019): The Appellate Division is representing the State in this appeal from an injunction requiring the State to take various actions to enforce a lease under which the State leases land to the United States Military at Pohakuloa Training Area on Hawai'i Island. The circuit court's injunction was extremely broad and has the potential to disrupt relations between the State and the United States regarding the management and lease of the land. The case has been briefed and, more recently, was transferred to the Hawai'i Supreme Court.

J. McDermott v. Mizumoto (2017): The Appellate Division is representing the Department of Education in this State constitutional challenge to the adequacy of public school (Campbell High School) facilities. Awaiting decision from the ICA.

K. Morning Hill Foods, LLC v. Hawai'i Civil Rights Commission (2018-2019): The Appellate Division is representing the Hawai'i Civil Rights Commission in this appeal of a decision awarding the complainant damages in an age discrimination case. The issue on appeal is whether the appellant has a constitutionally protected right – in violation of Hawaii Administrative Rule § 12-46-33 – to use the term "college student" in its help-wanted advertisements. Awaiting decision from the ICA.

- L. Ho'omoana Foundation v. Land Use Commission (2017): The Appellate Division is representing the LUC in this appeal involving the issue of whether a homeless overnight campground project must go through the district boundary amendment process or the special permit process. Awaiting decision from the ICA.
- M. Keauhou Canoe Club v. DLNR (2016): The Appellate Division is representing the State DLNR in its appeal of a circuit court decision ordering the State defendants to pay Plaintiff's attorneys' fees and costs under the private attorney general doctrine. Awaiting decision from the ICA.
- N. Akina (Makekau) v. State (2017): The Appellate Division is defending the State in this Ninth Circuit appeal involving a challenge to the election and/or convention held by Na'i Aupuni to draft governing documents for a Native Hawaiian governing entity. Awaiting decision from the Ninth Circuit.
- O. City and County of Honolulu v. Department of Health (2018): The Appellate Division drafted and filed an answering brief in this appeal in which the City and County argued that the DOH was required to provide a contested case hearing before issuing a NPDES water pollution permit for the City and County's wastewater treatment plant in Waianae, under Mauna Kea Anaina Hou v. BLNR. The DOH's position is that its issuance of NPDES permits is pursuant to a unique statute that allows it to issue the NPDES permits before holding a contested case hearing if necessary. Awaiting decision from the ICA.
- P. Ke Kauhulu O Mana v. Board of Land and Natural Resources (2018): The Appellate Division drafted and filed an answering brief in this case in which the plaintiff environmental groups allege that the BLNR should have required preparation of an Environmental Assessment for the cancellation and reissuance of a revocable permit under a new corporate name for Syngenta Seeds, which uses the land in question to grow genetically modified seed crop. The State's primary argument was that administrative actions like this that have little or no impact on the environment are subject to a HEPA exception such that an Environmental Assessment is not necessary. Awaiting decision from the ICA.
- Q. Honolulu Civil Beat v. Department of the Attorney General (2017-18): The Appellate Division is defending against a Uniform Information Practices Act ("UIPA") challenge to nondisclosure of a document the Department asserts is, among other things, protected by the attorney-client privilege. This case is awaiting decision by the Hawai'i Supreme Court.

R. Ritchie v. Dept. of Public Safety (federal and state) (2017): The Appellate Division is defending the State defendants in parallel federal and state employment discrimination cases involving allegations of employment discrimination. Awaiting decision from the Ninth Circuit and ICA.

S. Naumu v. Dept. of Public Safety (2016): The Appellate Division is defending the Department of Public Safety's decision to terminate Plaintiff from his position as captain of OCCC. Awaiting decision from the ICA.

T. Greer v. Baker (2015): The Appellate Division drafted and filed an amicus brief in the ICA on behalf of the Legislature in this lawsuit against Senator Rosalyn Baker. The Legislature's amicus brief argued in defense of strong legislative immunity.

U. State v. Ayres (2016): The Appellate Division drafted an amicus brief supporting the constitutionality of HRS § 846F-3, which authorizes assessment of an Internet Crimes Against Children fine. Awaiting decision from the ICA.

V. State Dept. of Public Safety v. Forbes (2018): The Appellate Division is defending the Department of Public Safety's decision to terminate Plaintiff from her position as warden of the Kulani Correctional Facility. Awaiting decision from the ICA.

W. Roberts v. Ballard (2018): The Appellate Division is assisting the Civil Rights Litigation Division in defending the State against Hawaii's ban on possession of electric guns. This case is pending.

X. Dannenberg v. State of Hawai'i (2017-2018): In this long-running case, plaintiffs' asserted class of public employee retirees seeks damages for the alleged diminishment of retiree health benefits provided by the EUTF. It is currently on remand from the second decision by the Hawai'i Supreme Court in Dannenberg v. State. A deputy from Appellate is part of the team preparing for the remand.

Y. Stone v. Administrative Director of the Courts (2016): The Appellate Division drafted and filed an answering brief in this appeal of an administrative driver's license revocation. The driver whose license was revoked challenged the revocation by arguing that the Hawai'i Supreme Court's decision in State v. Won (in which the Court held that breath tests were non-consensual where the driver is threatened with criminal sanctions for non-compliance) applied to administrative revocations as well as criminal convictions. We argued that Won applies only in the criminal context. If our argument is successful it will mean the State

retains an important weapon (revoking driver's licenses for refusal to perform a breath test) in the battle against drink driving. Awaiting decision from the ICA.

Z. Sylvester v. Administrative Director of the Courts (2016-2017): The Appellate Division obtained a victory before the State district court by successfully defending the administrative license revocation of an off-duty HPD officer after he was found to be driving while under the influence of alcohol and hitting another car before driving away. Because this was an HPD officer, this was a case that was reported on by the media. Appellate also handled the briefing on appeal after the driver appealed the revocation to the Intermediate Court of Appeals. Awaiting decision from the ICA.

AA. Lawson v. Attorney General (2016): The Appellate Division defended against an attack on the sex offender registration process and a claim that out-of-state correspondence between plaintiff and the Hawaii Criminal Justice Data Center (which rejected plaintiff's request to exempt him from, or terminate, registration requirement for an upcoming long vacation trip to Hawaii) constituted a "final decision" of a "contested case" which could then be appealed to the circuit court. Awaiting decision from ICA.

BB. Providing on a day-to-day basis advice to deputies in other divisions regarding appellate procedure or advice on substantive legal questions.

CC. Appellate Division regularly sends a representative to the weekly AOR meetings.

VI. Name of Acting Supervisor in Supervisor's absence; delegation of responsibility

Kimberly Tsumoto Guidry, First Deputy Solicitor General

VII. Professionals and deputies in the division

Solicitor General and Supervising Deputy Attorney General
First Deputy Solicitor General
3 Deputy Attorneys General
2 Legal Assistants

VIII. Division goals through 2019

To produce uniformly excellent appellate briefs, oral arguments, legal memoranda, amicus joinder recommendations, and other work for the

department. Continue to provide helpful procedural and substantive advice to deputies throughout the department regarding their appeals and other legal matters. Provide critical and creative input to various AG and Judiciary committees to improve the department's ability to fulfill its mission, and protect its client's interests.

Civil Recoveries Division

Michael Vincent, Supervising Deputy Attorney General

Division telephone: 586-1100

Division location: Hale Auhau, Second Floor

I. **General work, primary mission, primary clients**

In 1991 the Legislature authorized a pilot project to specialize in the systematic collection of certain debts owed to the State. Over the years, the Civil Recoveries Division (CRD) has evolved and is currently responsible for the following:

- **Complex Litigation.** CRD has developed the expertise necessary to responsibly pursue construction claims or other contract related claims on behalf of State agencies. This work involves working closely with State agencies on projects to avoid or minimize contractor claims in construction projects.
- **Department of Human Services (DHS) Recoveries.** CRD is responsible for pursuing reimbursement on behalf of DHS in cases involving third party liabilities or liens, home property liens, estate recoveries, benefit overpayments, provider overpayments, criminal judgments and restitution, Medicaid drug rebates, and other special collection projects, including false claims recoveries.
- **Department of Transportation (DOT) Recoveries.** CRD has a long successful history collecting delinquent lease rents, permit fees, salary overpayments, property damage, and other types of claims for the DOT Highways, Airports, and Harbors divisions.
- **Hawaii Health Services Corporation (HHSC) Recoveries.** CRD is also responsible for collecting delinquent patient accounts for the HHSC.
- **Labor Recoveries.** During the 2018 session, the Legislature tasked CRD with recoveries of Department of Labor and Industrial Relations fines and penalties. While this particular recovery activity is new, it is expected to grow as the department becomes more accustomed to these actions.
- **Tax Collections.** CRD pursues reimbursement of outstanding tax cases, primarily foreclosure actions in tax cases with established tax liens.
- **Miscellaneous Recoveries.** CRD is also responsible for a multitude of other collection cases that do not fit in the above categories, including third party workers' compensation cases, salary overpayment, property damage, restitution orders, tuition stipend recovery, bail forfeiture, Campaign Spending Commission fines, Hawaii Ethics Commission fines,

dishonored checks, and other miscellaneous claims on behalf of various State agencies. Some of these miscellaneous cases include complex false claims, recovery of non-monetary state property and things, as well as other types of cases that require the unique expertise of CRD.

- **Asset Forfeiture.** The Asset Forfeiture Program was transferred to CRD in 2014 where CRD has been charged with making significant improvements in the administration and operation of the Hawaii Administrative Asset Forfeiture Program.
- **Notary Office.** The Attorney General Notary Office which manages the notary commissions for Hawaii's notaries was transferred to CRD in 2017.
- **Department of Defense/Emergency Management.** The Supervising Deputy Attorney General for CRD also provides advice and counsel for the Department of Defense in matters relating to the National Guard, Hawaii Emergency Management Agency, the Office of Homeland Security (including the Hawaii State Fusion Center), the Office of Veterans' Services, and the Youth Challenge Academy. The emergency management and office of homeland security responsibilities include working with other government offices and agencies at various levels.

II. Collections.

The flowing table reflects total amounts recovered, costs, and cost ratio (CRD's cost per \$ collected):

Fiscal Year	Total Revenue	Total Costs	Cost Ratio*
2003	\$9,397,437	\$1,362,960	\$.15
2004	\$12,033,156	\$1,437,964	\$.12
2005	\$16,325,147	\$1,226,855	\$.08
2006	\$14,674,863	\$1,557,900	\$.11
2007	\$16,084,654	\$1,530,434	\$.10
2008	\$12,475,308	\$1,611,831	\$.13
2009	\$14,347,134	\$1,712,413	\$.12
2010	\$11,532,711	\$1,534,201	\$.13
2011	\$16,529,627	\$1,318,438	\$.08
2012	\$12,403,154	\$1,201,531	\$.10
2013	\$29,950,131	\$1,123,887	\$.04
2014	\$9,904,934	\$1,459,147	\$.15
2015	\$11,040,041	\$1,678,746	\$.15
2016	\$9,966,581	\$1,861,960	\$.19
2017	\$16,650,589	\$1,713,818	\$.10
TOTAL	\$212,721,802	\$22,332,085	\$.12
* Cost per \$ collected			

III. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Deputy Attorneys General Reese Nakamura, Steve Bumanglag, and Dean Soma.

IV. CRD Positions

Position Type	Position	Vacant
Office Assistant	7	3
Legal Clerk	3	1
Legal Assistant	10	5
Account Clerk	2	
Legal Secretary	1	
Program Manager	1	
Student Helper/Interns	1	4
Deputy AG	7	2
Sup. Deputy AG	1	

V. Division goals through 2019

A. Strengthen team and operations by meeting regularly to assess the well-being of team members and identify ideas, areas of strength, areas for improvement, and to develop appropriate action plans.

B. Significantly improve efficiency of case management, tracking, and litigation by using existing case management technology (iManage, ProLaw, and software in the division) and identifying future flexibility.

C. The Civil Recoveries Division will continue reducing and/or eliminating paper files through the use of technology for simple debt collection accounts.

D. HHSC team will develop electronic tracking of HHSC referred patient account collection cases with the objective of eventually moving to a completely electronic filing and management system. We also intend to transition to internal electronic files and to explore expanding to a complete accounts receivable system.

Civil Rights Litigation Division

Caron Inagaki, Supervising Deputy Attorney General

Division telephone: 586-1494

Division location: Hale Auhau, First Floor

I. General work, primary mission, primary clients

This Civil Rights Litigation Division (CRLD) provides legal defense to the State, its departments and agencies, and certain state employees in lawsuits or other claims that involve allegations of constitutional and civil rights violations, including, but is not limited to, answering legal complaints filed in court, investigating claims, conducting discovery, filing motions as necessary, and representing state interests at arbitrations, mediations, administrative hearings, and trials. CRLD does not have primary responsibility for giving advice and counsel but does provide legal advice within the context of litigation, most often in the area of risk management. The division also handles most of the appeals that arise out of its cases. However, it does not handle employment matters between the State and its employees.

CRLD represents many of the departments and its employees; most frequently litigation is from the Departments of Public Safety (PSD), Education, Human Services, and Health.

II. High profile matters and major issues

See pending major litigation below.

III. Major projects, achievements and accomplishments

CRLD has been very successful in: resolving a substantial number of cases by dismissal through dispositive motions and prevailing at administrative hearings, arbitrations, and trials in both federal and state courts; terminating claims against the State before the Medical Inquiry and Conciliation Panel; dismissing prisoner civil rights lawsuits soon after a complaint is filed for plaintiff's failure to state a legally cognizable federal or constitutional claim; obtaining favorable results on the majority of the motions for summary judgment, including plaintiffs'; defending the PSD physicians from claims of inmates that their Eight Amendment rights were violated due to claims of deliberate indifference to inmates' medical needs; and in its practice before the Ninth Circuit Court of Appeals on denials of dispositive motions based on qualified immunity.

CRLD deputies recently prevailed in two jury trials (*Ricks v. DOE*, *Kimes v. DOE*) in federal court involving the Department of Education (DOE) where it was alleged, among other claims, that DOE violated section 504 of the Rehabilitation Act which prohibits discrimination based on disabilities. In both cases, all claims other than the section 504 claims were dismissed by motions prior to trial. The jury in each case found that the DOE did not violate section 504. Both cases are on appeal. CRLD deputies also obtained favorable results in three bench trials in state and federal court, and one case on appeal.

IV. Major issues and projects in order of importance

In the aftermath of the *Slingluff v. State of Hawaii*, Civil No. 06-1-1654-09 (VSM) (I.C.A. No. 30233) appellate decision, PSD was required to purchase insurance, including tail coverage, for its physicians. The ICA found that PSD physicians are not considered government employees for purposes of the qualified privilege afforded to other government employees by creating a distinction between medical discretion and governmental discretion. We strongly believe the ICA's analysis was wrong and applied for a writ of certiorari to the Hawaii Supreme Court, but the application was denied. Therefore, as it now stands, physicians employed by the State will now have their personal assets at risk and claimants can demand payment from the physicians separate from the State and would not need to wait for legislative approval. Although we will argue that the *Slingluff* decision should be narrowly construed and does not extend beyond physicians, the ICA's reasoning creates the possibility that any professionally licensed government employee could be at risk. While PSD was able to find the money to purchase insurance, purchasing insurance for every professionally licensed government employee would be cost prohibitive. In addition, well-qualified professionals may be reluctant to work for the State because of the concern for liability. Indeed, soon after the *Slingluff* decision, several physicians and nurses left PSD because of their concern about the risk to their personal assets should they be sued.

Efforts have been made to introduce legislation that would address this problem. The bill was patterned after the federal Westphal Act which allows suit only against the federal government, not individual federal employees, for claims under the Federal Tort Claims Act. We had worked with the Hawaii Association for Justice, which lobbies for the plaintiffs' bar and reached an agreement on the language of the bill. In the years that the bill has been introduced, it passed out of the Senate but did not get the requisite hearings in the House.

V. Pending major litigation and analysis of impact on State or Department

- A. *A.B., et al. v. Hawaii State Department of Education*, Civil No. 18-00477 LEK-RT, USDC

The ACLU filed this purported class action pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, alleging that DOE has failed and continues to fail to comply with Title IX and the state Gender Equity in Athletics Law, Haw. Rev. Stat. § 302A-461, by not providing equal treatment, benefits, and opportunities to athletics to all genders statewide. The representative plaintiffs are two seniors at Campbell High School who are on the varsity water polo and girls' varsity swimming teams. Although the ACLU is seeking only injunctive and declaratory relief, and not monetary damages, they are asking for attorneys' fees and costs which are anticipated to be substantial if this case is fully litigated.

- B. *Chauntelle Acol, et al. v. State of Hawaii, et al.*, Civil No. 18-1-0052-01 KKH, First Circuit Court

Plaintiffs are the surviving siblings of Peter Boy Kema who disappeared in 1997 at the age of 6. The complaint was not filed against the State until 2018, but Plaintiffs assert that their claims arising from this disappearance did not accrue under the "discovery rule" until 2016 when the Kemas admitted to manslaughter in causing the death of Peter Boy. Plaintiffs claim that DHS was negligent in failing to timely follow up on the later abuse claim given the clear history of abuse in this family and that DHS' inaction was a factor in the death of Peter Boy.

- C. *Marchet Denise Fullum, et al. v. Dr. Christina Kishimoto, et al.*
Civil No. 18-00332 KJM, USDC

This action arises from the Plaintiffs' claims that the State of Hawaii, Department of Education ("DOE") has not taken action to address bullying and harassment in Hawaii's public schools. This lawsuit is styled as a class action. The named Plaintiffs are students or former students at four DOE schools: Castle High School, Mililani Middle School, Waianae Intermediate School, and Wailuku Elementary School on Maui. The Plaintiffs claim that the Defendants violated their rights under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990, and that the Defendants committed various state law torts. The Plaintiffs seek declaratory and injunctive relief and an award of monetary damages.

- D. *Elizabeth Hall, et al. v. State of Hawaii, et al.*, Civil No. 15-1-0383,
Third Circuit Court

Plaintiffs are the family of Rory Wick (his three minor children and his mother) who was murdered by David True Seal. Seal was committed

to the Hawaii State Hospital (HSH) after being acquitted by reason of insanity for attempted sexual assault and kidnapping of an eight-year-old girl on Maui. The lawsuit alleges that HSH workers watched Seal escape and did nothing, and that the State made no effort to recapture him.

E. *R.H., et al. v. Matayoshi, et al.*, Civil No. 12-1-327-12, First Circuit Court

Plaintiffs allege that the Department of Education (DOE) negligently supervised special education student A.H., who had sexual encounters with other special education students at McKinley High School and Lanakila Pacific, a non-profit organization that provides vocational training to special education students such as A.H, between January and April 2011.

Several delays have occurred as a result of Plaintiffs' claims that A.H. now suffers from emotional instability brought on by her oral deposition sessions. Her further deposition has been suspended, as well as R.H.'s deposition and all expert discovery. The court has ordered its own IME to determine A.H.'s status before making any further rulings. Defendants seek completion of A.H.'s deposition before taking the deposition of R.H. and setting the Rule 35 examination. Assuming A.H.'s well-being, the expectation is that this case will proceed to trial in mid to late 2019

F. *Hawaii Disability Rights Center V. Kishimoto, et al.*, Civil No. 18-00465 LEK-RLP, USDC

This is a purported class action lawsuit alleging that the Department of Education (DOE) is failing to provide medically necessary Applied Behavior Analysis (ABA) services to students who have been diagnosed with Autism Spectrum Disorder. The lawsuit also alleges that the Department of Human Services (DHS) is failing to meet its obligations imposed by federal law to provide medically necessary ABA services to Medicaid-eligible individuals under the early and periodic screening, diagnostic, and treatment mandate (EPSDT) of the Medicaid Act. The Hawaii Disability Rights Center is seeking a preliminary and permanent injunction to direct DHS to provide medically necessary ABA during school hours for Medicaid recipients, direct DOE to allow private ABA providers onto campus to supply ABA for students with Autism during school hours, direct DOE to individually evaluate each student with Autism using a qualified professional to determine whether ABA services should be included as part of a student's Individualized Education Plan and to appoint a special master to coordinate and monitor compliance with these injunctions. While the lawsuit seeks injunctive and declaratory relief and

not monetary damages, Plaintiff is asking for attorneys' fees and costs which are anticipated to be substantial.

G. *James Shields, et al. v. State of Hawaii, et al.*,
Civil No. 18-1-1897-11, First Circuit Court

James Shields and his girlfriend, Brenda Reichel, made a pre-suit demand of \$1.5 million to resolve claims arising from Mr. Shields suffering a heart attack on the day of Hawaii's false missile attack alert. This demand was rejected, and suit was filed. Plaintiffs will claim damages because of the false alert.

IV. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Until recently, the Tort Litigation Division and the Civil Rights Litigation Division were both supervised by Deputy Attorney General Caron Inagaki. The two divisions became discrete divisions in June of 2018. Deputy Attorney General Marie Gavigan, the supervisor of the Tort Litigation Division and Caron Inagaki, the supervisor of the Civil Rights Litigation Division, act as each other's acting supervisor in the other's absence.

VI. List of professionals and deputies in the division

Supervising Deputy Attorney General
6 Deputy Attorneys General
3 Legal Assistants
2 Legal Clerks
Legal Secretary

VII. Division goals through 2019

- A. The Tort and Civil Rights Litigation Divisions had provided litigation training to various departments in the past. The divisions plan to continue to work together to provide litigation training to departments that are frequently sued to ensure that employees have a deeper understanding of the litigation process and know what to do when they are sued.
- B. Work with the departments to assign litigation liaisons, if they do not already have one, to streamline and increase efficiency of information gathering and discovery responses.
- C. Develop better cooperation and coordination between the litigation deputies and advice and counsel deputies when dealing with mutual clients in litigation cases.

- D. Develop and mentor younger, less experienced deputies to ensure smooth transitions and a continued ability to handle major and complex litigation cases.

Commerce and Economic Development Division

Bryan C. Yee, Supervising Deputy Attorney General

Division telephone: 586-1180

Division locations: Hale Auhau, Third Floor

I. General work, primary mission, primary clients

The general mission of the Commerce and Economic Development Division (CED or the division) is consumer protection, business regulation, and economic development.

Our primary clients are the departments and attached agencies of Commerce and Consumer Affairs (DCCA); Business, Economic Development, and Tourism (DBEDT); Agriculture (DOA), and the Administrative Driver's License Revocation office. The division is also responsible for antitrust enforcement, consumer protection matters, and overseeing the Department's compliance with the laws pertaining to information privacy and security.

The division provides the full range of legal services to its clients including: providing formal and informal opinions to clients and legislators raising questions in the division's subject area, advising and assisting clients in drafting and reviewing contracts, leases and other real property documents, administrative rules, and legislative proposals, and reviewing all legislation pertaining to the division's subject areas; attending board and commission meetings, responding to legal questions from staff and board members, and monitoring compliance with the sunshine law; appearing as an advocate before adjudicative agencies; representing the Commissioner of Insurance and the Commissioner of Financial Institutions in actions to obtain court orders to take over failed institutions and place them under supervision or in receivership; prosecuting administrative actions on behalf of clients; advising adjudicative agencies when prosecutions are brought before them; and representing clients' interests in bankruptcy proceedings.

The division also is responsible for antitrust enforcement and consumer protection matters providing legal advice, reviewing private class action complaints and settlements pursuant to the Class Action Fairness Act, monitoring state and federal legislation, assisting in the formulation of policy, and providing litigation support related to enforcement of the civil and criminal antitrust and consumer protection laws. The division reviews proposed mergers and business

consolidations for compliance with the antitrust laws and may initiate litigation as appropriate to prohibit a violation of law or to ensure that the transaction is structured in compliance with the laws. CED coordinate with federal agencies in antitrust enforcement including the Department of Justice and the Federal Trade Commission. The division also reviews proposed multistate investigations and lawsuits and may monitor or join in these initiatives as dictated by Hawaii's interests. DCCA's Office of Consumer Protection has concurrent jurisdiction over general consumer protection matters (unfair and deceptive trade practices) and CED monitors their activities so that there is consistency in the State's position on these matters.

II. High profile matters and major issues

- Multi-state consumer protection cases: Along with the Office of Consumer Protection, CED attorneys review requests to join and recommend whether to be involved in multi-state consumer protection cases. These cases are typically national in scope and involve both injunctive relief and damage recovery. For example, Hawaii is one of the plaintiffs in a multistate lawsuit about federal regulations affecting student borrowers. U.S. District Judge Randolph Moss recently sided with Hawai'i and nineteen other jurisdictions and ruled that the U.S. Department of Education arbitrarily and capriciously delayed "Borrower Defense Regulations" that were designed to provide protections for student borrowers. According to some estimates, Judge Moss's decision will affect "tens of thousands of students at over 1,400 schools who will now be eligible for \$400 million in automatic debt relief across the nation." Maria Danilova, "Students defrauded by colleges score win in court decision," Associated Press, Oct. 16, 2018 (citing estimate by The Century Foundation; article was also published in the October 16, 2018 Honolulu Star-Advertiser). The lead case is *Bauer et al. v. DeVos*, Civil Action No. 17-1330 (RDM). Hawaii is also a member of various multistate investigative working groups, including the opioid investigative working groups which are examining the actions of opioid distributors and manufacturers as they relate to the national opioid problem.
- Antitrust cases: CED reviews a number of mergers every year that might affect Hawaii. Many of these mergers are deemed to be either beneficial or at least not harmful to Hawaii. Among the industries/topics subjected to review and investigation were telecommunications, petroleum, pharmaceutical drugs, pharmaceutical benefit managers, health care insurers, air ambulances, agriculture, airlines, media, food distribution, office products, trade associations, and procurement.
- PUC cases: On behalf of the Strategic Energy Division, CED is

involved in a number of PUC dockets, including ones to expand the penetration of renewable energy in the State, update the utilities' interconnection requirements to allow for such expansion, and revise the utilities' resource planning scenarios for longer-term generation planning.

- **Land Acquisitions:** CED assists its clients in the acquisition of lands, such as the new Innovation Center for the High Technology Development Corporation or the Galbraith Lands for the Agribusiness Development Corporation.
- **Boards and Commissions:** CED advises over 30 boards and commissions, attending their meetings and assisting the Board in responding to a variety of requests regarding licensure requirements and scope of licensure.

III. Major projects, achievements, and accomplishments

In 2016, CED represented the Strategic Industries Division and the Office of Planning in opposing Nextera's request to the Public Utilities Commission to merge with the utility companies of HEI. The PUC agreed with us and denied Nextera's request.

In 2016, together with attorneys from the Office of Consumer Protection, CED attorneys were involved in a multistate investigation that confirmed that Volkswagen sold more than 570,000 diesel vehicles in the United States equipped with "defeat device" software. Under the settlements relating to 2.0-liter vehicles, Volkswagen was required to implement a restitution and recall program for owners and lessees of 2.0-liter diesel vehicles, including up to 820 affected vehicles in Hawai'i. Volkswagen also paid \$2.5 million in penalties to Hawai'i for violations of state consumer protection laws, and Hawai'i is eligible to receive moneys to fund environmental mitigation projects.

As part of that settlement, states (including Hawaii) were named "Beneficiaries" of moneys held in the Volkswagen Environmental Mitigation Trust. In Hawaii's case, the amount awarded was \$8,125,000. From 2016, when Governor Ige designed DBEDT, through its State Energy Office division, to be the Lead Agency for purposes of participation in that Trust, CED attorneys have been working closely with the Energy Office to create, vet, and implement its Beneficiary Mitigation Plan in order to receive Hawaii's allotment of money from the Trustee.

In 2017, the State of Hawaii settled a case involving the drug Provigil, based upon allegations that the company suppressed competition between the brand drug manufacturer and generic drug manufacturer. Hawaii received over a million dollars.

IV. Pending major litigation and analysis of impact on State or Department

- Na Kia'i Kai v. State of Hawaii Agribusiness Development Corporation, Docket No. 18-0005.

ADC is responsible for the management and control of over 12,000 acres on the Island of Kauai, including two irrigation ditches of approximately 26 miles in length that begin in the Waimea watershed. At the end of the ditches, water is pumped into the ocean to lower the water table. If pumping were to cease, Kekaha town and the Pacific Missile Range would flood. Plaintiffs allege that ADC is required under the Clean Water Act to have an NPDES permit for the discharge from the Kekaha ditches into the ocean, and that ADC is breaching its public trust duties, under article XI, §§ 1 and 6 of the Hawai'i Constitution.

- Transfer of HCDA Park Lands

HCDA and the City and County of Honolulu have agreed in principal to transfer the HCDA Park Lands which include a number of revenue generating parcels to the City and County of Honolulu. The division is working with the client and the City and County to effectuate this transfer.

- Multistate Cases

In addition to the matters listed above, Hawaii and twenty-two other state attorneys general are appealing the Federal Communication Commission's rule repealing net neutrality. *Mozilla Corp. v. Federal Communications Commission*, Docket No. No. 18-1051.

Hawaii and eighteen other jurisdictions have also sued the U.S. Department of Education for refusing to enforce the Gainful Employment Rule, a federal regulation designed to protect students from predatory for-profit schools. The Rule would require schools to provide students with disclosures about the average debt loads and earnings of their graduates. It would also ensure that federal student loan funding does not go to programs that repeatedly fail to prepare students for gainful employment. *Maryland et al. v. United States Department of Education*, Civil Action No. 17-2139 (KBJ).

- Generic Drug Multistate Litigation

The litigation concerns a broad, well-coordinated, and long running series of schemes to fix prices and allocate markets for at least fifteen generic drugs sold in the United States.

- Suboxone Multistate Antitrust Litigation

The litigation concerns a schedule to impede the entry of generic competition and extended patent protection for the brand drug.

V. List of professionals and deputies in the division

Supervising Deputy Attorney General

15 Deputy Attorneys General (one vacancy as of 12/31/18)

1 Legal Secretary

1 Legal Assistant

2 Legal Clerks (one vacancy as of 1/8/18)

1 Office Assistant (one vacancy as of 11/16/18)

Crime Prevention & Justice Assistance Division

Julie Ebato, Division Supervisor

Division telephone: 586-1150

Division location: Leiopapa A Kamehameha Building, Ste 401, 301, 206

I. General work, primary mission, primary clients

Our mission is to assist the criminal justice system agencies to improve service delivery and to promote the involvement of communities in the prevention of crime. CPJAD serves as the central agency to provide the Attorney General with the information and resources needed to address crime and crime prevention. CPJAD accomplishes this by:

- Researching crime issues and reporting comprehensive crime statistics for the state;
- Utilizing federal and state funds and non-financial resources to address crime problems and criminal justice system issues;
- Planning, developing, and implementing education and crime prevention programs to promote community involvement in crime prevention efforts;
- Developing and maintaining a computerized juvenile offender information system.
- Assisting in locating, recovering, and reuniting missing children and runaways with their families.

This enables the Attorney General to facilitate and coordinate efforts to improve the criminal justice system and to encourage community partnerships in addressing crime. Division responsibilities are specified at HRS §§ 28-10.5, 28-10.6, 28-121, and chapter 846D.

A. Administration

The division supervisor and the administrative services assistant oversee the daily operations, budgets and expenditures, accomplishments of goals and objectives, and supervision of staff. The fiscal staff processes all financial transactions and maintains the financial records.

The Witness Security Protection Program (HRS § 28-101) in which police and prosecutors submit applications to justify why a witness must be in the protection program is administered by the division supervisor. The Attorney General reviews and determines whether to approve each request.

B. Community and Crime Prevention Branch (CCPB)

CCPB is responsible for the planning and implementation of crime prevention programs and activities; conducting training workshops on crime prevention and promoting and maintaining contact with individuals, community organizations, agencies, and businesses, who can be active partners in crime prevention efforts; collaborating with other federal, state, county, and non-profit organizations in maximizing resources for the prevention of crime and the safety and well-being of communities.

C. Grants and Planning Branch (G&P)

G&P is responsible for: assessing and developing plans to address the needs of the criminal and juvenile justice systems and administering financial and other resources to assist agencies in their efforts to improve both systems, and works with agencies, through various committees, task forces, and groups, to identify issues and gaps and to develop recommendations. G&P serves as staff for two advisory committees that the Attorney General chairs: the Governor's Committee on Crime and the Violence Against Women Act State Planning Committee.

D. Juvenile Justice Information System (JJIS)

JJIS is a statewide information system that combines juvenile offender information from the police, prosecutors, Family Courts, and Hawaii Youth Correctional Facility for use by the participating agencies in tracking juvenile offenders. The JJIS is the repository for statewide information on missing and runaway children. The Juvenile Justice Information Committee (JJIC) guides the policy decisions associated with the statewide JJIS. Members are appointed by the Attorney General. The Senior Judge of the Family Court of the First Circuit is the current chairperson of the JJIC.

E. Missing Child Center-Hawaii (MCCH)

MCCH assists law enforcement agencies and parents to locate missing and abducted children. It uses resources from national databases and interfaces with other state missing child centers for assistance. The Center is also responsible for coordinating the efforts of federal, state, and local law enforcement agencies as well as other public and private agencies, in the protection of children; developing and implementing programs that promote community awareness about child abduction; and maintaining a system to notify the public when a child is missing in Hawaii.

F. Research and Statistics Branch (R&S)

R&S is Hawaii's federally designated Statistical Analysis Center for crime data and information and the primary source of information on the nature and extent of crime in Hawaii including the collection of data from the police departments for the FBI's Uniform Crime Reporting (UCR) program, and conducts crime-related studies, and utilizes federal grants to coordinate research projects with local research institutions and

contractors.

G. Hawaii Sex Assault Response and Training Program

The Division Supervisor applied for and received the FY 2016 Bureau of Justice Assistance (BJA) National Sexual Assault Kit Initiative (SAKI), a \$2 million dollar award to test the untested sexual assault kits in Hawaii. The FY 2016 BJA National SAKI grant ends in September 2019. Act 113 (SLH 2018) established the Hawaii Sexual Assault Response and Training (HSART) Program in the Department of the Attorney General. The purpose of the Act is to address the manner in which sexual assault evidence collection kits are processed and tracked and to ensure that victims of sexual assault are informed of their legal rights, including notification. The Act also requires that an annual statewide inventory and report of sexual assault evidence collection kits be submitted to the Legislature.

A Site Coordinator was hired to ensure that project activities and milestones for the FY 2016 BJA National SAKI grant are completed and that the Department meets the goals and objectives of Act 113 that includes the HSART Program. The HSART/SAKI Site Coordinator is responsible for institutionalizing systems, policies, and protocols developed by the HSART members and the Hawaii SAKI Team to strengthen the coordinated community response and level of quality care for victims of sexual assault.

II. High profile matters and major issues

A. Domestic Violence, Sexual Assault, Dating Violence, and Stalking

CPJA is involved in several efforts to address violence against women. G&P administers the U.S. Department of Justice (DOJ), Violence Against Women Act (VAWA) STOP Formula Grant Program and the Sexual Assault Services Formula Grant Program, and the state-funded Statewide Sexual Assault Services Master Contract. Every 3 years, the state is required to develop a STOP Implementation Plan that includes local data on violence against women, information on available resources, gaps in services, and priority areas for using STOP funds. The plan is used as a source material by stakeholders in the field.

G&P also administers the DOJ, Victims of Crime Act Grant. Funds are subgranted to each county prosecutor's Victim Assistance Unit for victim assistance services and to non-profit service providers that assist crime victims. The services provided are primarily for victims of violent crimes.

CCPB participates in the Sexual Violence Prevention Program that is led by the Department of Health (DOH). CCPB continues to receive national recognition for its community mobilizing efforts to improve and strengthen sexual violence prevention efforts across Hawaii.

G&P and MCCH participates in the Hawaii Coalition Against Human Trafficking and in efforts to prevent runaways and children in foster care from being commercially exploited by sex traffickers.

The Division Supervisor is a member of the Department of Health led Domestic Violence Fatality Review (DVFR). The purpose of the DVFR is to review intimate partner homicides, near deaths and suicides to recommend changes that can reduce domestic violence fatalities. As a result of the DVFR recommendation to have core and consistent training for state and county workers that may come into contact with a domestic violence case, a one-day training was developed. The training covers the dynamics of domestic violence; characteristics of batterers/perpetrators and behavioral patterns and violent relationship; and childhood development and domestic violence. The training is held annually on Oahu, Maui, Kauai, and Hawaii County. The Judiciary, Department of Health, Department of Human Services, and Department of the Attorney General-CPJAD plan the training and share the training cost.

B. Meeting Federal Grant Requirements

The average number of special conditions attached to the federal grants have increased in recent years and can range as low as 42 to a high of 65 special conditions. The following are a brief listing of the on-going and pending issues related to the grants administered by G&P:

- Certification of compliance with 8 U.S.C. §§ 1373 and 1644;
- Noninterference (within the funded "program or activity") with federal law enforcement: No public disclosure of certain law enforcement sensitive information;
- Noninterference (within the funded "program or activity") with federal law enforcement: Interrogation of certain aliens;
- Noninterference (within the funded "program or activity") with federal law enforcement: Notice of scheduled release;
- Requirement to report actual or imminent breach of personally identifiable information;
- Submission of eligible records relevant to the National Instant Background Check System; and

C. Securing funding for HSART

Act 113 (SLH 2018) Section 4 appropriated out of the DNA Registry Special Fund, the sum of \$350,743 or so much thereof as may be necessary for fiscal year 2018-2019 for the staffing, training, materials and travel expenses of the HSART program and for costs related to testing and storage of sexual assault evidence collection kits pursuant to Chapter 844G, Hawaii Revised Statutes. No funding was provided beyond FY 2019. The DNA Registry Special Fund was created to collect fees from

convicted offenders to cover the cost to test convicted felony offender DNA. Income into the fund is based on DNA fees collected from offenders. Currently, the DNA testing fee is about \$35. The Fund was not established to generate revenue to cover the cost of the HSART program, which includes the costs for DNA testing of sexual assault kits. CPJAD's biennial request for FY 20-21 includes \$130,614 for a 1.0 FTE Coordinator and operating cost.

D. Restoration of state funding for the Career Criminal Prosecution Program

The current allocation for the Career Criminal Prosecution (CCP) Program is \$1,233,922. The CCP Program was established by the Legislature and is implemented by the county prosecutors. G&P administers these state-funded programs. The funding level of the CCP Program has experienced drastic reductions and incremental increases over the past 12 years. In FY 2008, the funding level was at \$1,769,311, which was then reduced to a low of \$653,208 in FY 2013. Beginning in FY 2014, funding for the program increased and has now leveled off to a funding level of \$1,233,922. CPJAD's biennial request for FY 20-21 includes funding for the City and County of Honolulu in the amount of \$350,000, the County of Hawaii in the amount of \$343,071, the County of Maui in the amount of \$66,597, and the County of Kauai in the amount of \$41,525. The additional funding will maintain the continuity of the staffing, and therefore, the effectiveness of the CCP program. CPJAD requested that \$801,193 be added to the base budget of the CCP program, however, the funding was not included in the Executive Budget request. This would have resulted in a total annual allocation of \$2,035,115 to fund the program across all counties.

E. Commercial Exploitation of Children

Runaway and homeless youth are frequently targeted by sex traffickers. MCCH continues to work with the National Center for Missing and Exploited Children, county, state, and federal law enforcement, and the Department of Human Services, Child Welfare Services to improve the coordinated effort between law enforcement, social services, and families to locate missing children. Child sex trafficking involves the recruitment, harboring, transportation, provision, obtaining, or advertising of a minor child for the purpose of a commercial sex act. Traffickers often prey upon a child's vulnerability and use psychological pressure and intimidation to control the child for financial benefit relating to their sexual exploitation. Purchasers of children for sex encompass all racial, socio-economic and cultural statuses. Child sex trafficking has devastating consequences for its minor victims, including long-lasting physical and psychological trauma, disease or even death.

F. National Incident-Based Reporting System

The National Incident-Based Reporting System, or NIBRS, is part of the FBI's Uniform Crime Reporting (UCR) Program. The FBI has established the goal to transition states and police departments from the Summary Reporting System to NIBRS by 2021. Since 2016, the R&S has been working with the four police department to meet the FBI goal. R&S traditionally produced SRS reports a.k.a the Crime in Hawaii Reports. NIBRS when implemented will improve the overall quality of crime data collected by law enforcement, captures details on each single crime incident—as well as on separate offenses within the same incident—including information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in the crimes.

G. Prevention Initiatives

1. Internet Safety

CCPB developed the “Keeping Safe in Cyberspace Trainer’s Manual” to provide law enforcement with the tools to educate the community on ways to be safe online. Staff provide train-the-trainer sessions to law enforcement directly to schools, community groups, and the public. Presentations have been developed for: parents, teens/tweens (7-12th grades), and grade school (K-3rd grades and 4-6th grades).

2. Fraud Prevention

CCPB is again partnering with the DOH, EOA, Senior Medicare Patrol (SMP) Hawaii Program, and the DCCA, Office of the Securities Commissioner to produce the third edition of the “Fraud Prevention & Resource Guide” that is slated for 2019-2020.

3. Kupuna Alert Partners (KAP)

From 2013, CCPB staff has partnered with DPS, Narcotics Enforcement Division (NED); DOH, EOA; and Department of Commerce and Consumer Affairs, Office of the Securities Commissioner; to educate seniors on Medicaid and financial fraud and prescription drug misuse. There is steady demand for the KAP presentation.

H. Hawaii Medication Drop Box and Disposal Program

The Hawaii Medication Drop Box and Disposal Program (Program) is a public health and safety partnership between the Office of the Lieutenant Governor (LG), Department of the Attorney General (AG), Department of Health (DOH), Department of Public Safety (PSD), and the Hawaii, Maui,

and Kauai Police Departments. The roles and responsibilities of the partnering departments are based on a cooperative understanding to initiate and sustain the Program by leveraging federal, state, and county resources.

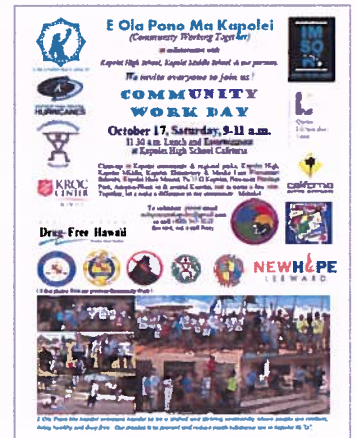
The Program provides the public with the opportunity to drop off unused prescription medication at designated police stations across the state. The Program expands the scope of the prescription drug take back events, as the public will no longer need to wait for a scheduled event to dispose of prescription medications, especially controlled drugs. The public will be able to dispose of prescription medications at a designated police station at their convenience. Regular meetings are scheduled to ensure that the implementation of the Program and the opportunities to expand the Program can be discussed. AG participants includes CPJAD, OAG, HHSD, and CED.

III. Major projects, achievements and accomplishments

A. **Community and Crime Prevention Branch (CCPB)**

1. E Ola Pono Ma Kapolei

CCPB is a member of this coalition that seeks to reduce youth substance abuse in the Kapolei 96707 area. The coalition consists of the police, schools, non-profit agencies, parents, community members, and businesses that have a connection to 96707. The coalition is a Coalition for a Drug Free Hawaii (CDFH) initiative. CDFH collaborates with key community stakeholders to plan and implement effective prevention programs that are relevant to the community's cultures, demographics, assets, needs, vision and environment. As various communities take a stand against substance abuse, the coalition supports those efforts by participating in community events, providing education and training, offering technical assistance, and sharing resources. Recognizing that each community is unique, CCPB and CDFH work with and partner with E Ola Pono Ma Kapolei to develop and implement meaningful and sustainable community prevention efforts.



2. National Take Back Initiatives

CCPB partners with the Drug Enforcement Administration and NED to collect and safely dispose of expired and unused prescription medications across the state. CCPB assists in the public awareness and in the collection of unused medication. Take Backs are conducted twice a year. In 2016, 5,118.55 lbs. were

collected and in 2017 5,672 lbs. were collected statewide. In 2018, 4,582 lbs. have been collected thus far and which does not include the upcoming October 27, 2018 statewide event.

3. Kupuna Alert Partners

CCPB continues to partner with the DCCA, Office of the Securities Commissioner; EOA, Senior Medicare Patrol (SMP) Hawaii; and NED on the Kupuna Alert Partners (KAP). KAP provides community education to seniors on prescription drug misuse and Medicare and securities fraud.

4. Celebrate Safe Communities

Celebrate Safe Communities (CSC) is a national effort by the National Crime Prevention Council and the Bureau of Justice Assistance, DOJ. The purpose of CSC is to encourage the community to work with law enforcement to prevent crime. This year the event took place at the Pearl Ridge Center and included 30+ exhibitors. CCPB continues to be the main organizer of the event.

5. Anti-Bullying and Violence Prevention

CCPB partners with the Adult Friends for Youth (AFY) for AFY's "Student Anti-Bullying and Violence Prevention Convention" held for middle school students. The half-day convention was held to raise awareness on bullying and cyber-bullying, the effects and consequences of bullying, and to encourage students to show respect, empathy, compassion, and acceptance toward others. Nearly 3,000 students from 15 elementary middle schools on Oahu attended the convention held at the Neal Blaisdell concert hall.

B. Grants and Planning Branch (G&P)

1. Federal Grant Programs

G&P administers federal crime grants from the DOJ. This past fiscal year approximately \$11,090,700 was received for 9 crime programs. At the same time, staff applied for 9 crime programs, which total another \$17,670,129. G&P manages approximately 30 active federal grants and 100 contracts (projects). The largest federal grants administered include:

- Victims of Crime Act: for county prosecutors' victim assistance units and non-profits as well as other state programs that service crime victims. The county victim assistance units use the funds for personnel to contract with victim service agencies within their counties. The formula grant since FY 2015 have

ranged from 8 to 14 million per year.

- Justice Assistance Grant: to assist agencies to address crime and criminal justice system issues. This formula grant is approximately \$800,00 per year.
- Violence Against Women Act: for projects that address violence against women (domestic violence, sexual assault, stalking, and dating violence). The formula grant is approximately \$1.1 million annually.
- Sex Assault Services Program: for services for sexual assault victims. The grant amount has been steadily increasing with the FY 2018 award at \$359,308.
- Residential Substance Abuse Treatment: for incarcerated juvenile and adult offenders for substance abuse treatments to successfully transition these offenders into the community. This formula grant amount fluctuates. In FY 2017 the award was for \$75,376 and for FY 18 the award is for \$162,272.
- Paul Coverdell National Forensic Science Improvement Grant: for crime and forensic laboratories. This includes the police departments' crime labs, the medical examiner, and the DPS narcotics crime lab. This formula grant amount fluctuates. In FY 2017 the award was for \$108,332 and for FY 18 the award is for \$271,960.
- John R. Justice Student Loan Repayment Program: funds are used for student loan repayment for state and federal public defenders and local and state prosecutors who commit to at least three years of continued employment as public defenders or prosecutors. The program award amount has been steady at around \$30,000.

2. State Grant Programs

G&P also administers state-funded crime and victim assistance grants. In FY 2018, \$4,181,096 was received for 3 programs which included the Career Criminal Prosecution Program (\$1,233,922), Victim Witness Assistance Program (\$567,174), and the Statewide Sexual Assault Services (\$2,380,000). G&P is managing 9 state-funded contracts (projects). For FY 19, G&P is also administering 3 state Grant-in-Aid awards that total \$150,000.

3. VAWA STOP Implementation Plan

G&P coordinated Hawaii's VAWA State Planning Committee (VPC) meetings in which an equitable representation of criminal justice agencies and non-profit, non-governmental victim services

organizations meet to identify funding priorities to be supported by the state; discuss statewide crime and victim services data; and determine the state's VAWA funding strategy.

4. JAG Strategic Plan

Assists in the development of the 2019-2023 JAG Strategic Plan, the G&P received technical assistance from the National Criminal Justice Association (NCJA) to develop a stakeholder engagement strategy. As part of the engagement strategy, staff sought input from traditional and non-traditional stakeholders in the criminal justice system across the state on identifying critical areas for funding.

5. Partnerships and Collaborations

Multi-agency planning and coordination efforts related to crime and victim issues.

- Victim Witness Coordinators. Staff facilitates quarterly meetings with key personnel from the four county victim programs, the Crime Victim Compensation Commission, the U.S. Attorney's Office, the FBI, and the Missing Child Center. Meetings enable federal, state, and county criminal justice personnel to network, share information and resources, and discuss victim services issues. This improves coordination and collaboration of victim services.
- Statewide Forensic Sciences Laboratory Services. Branch staff facilitates bi-annual meetings for the forensic science laboratory services that serve the state. The meetings are a forum to exchange information, discuss efforts to share limited resources, and to improve communication, coordination, and collaboration. The four county police departments, the Honolulu Medical Examiner's Office, the Department of the Attorney General Investigation Division and the DPS - Narcotics Enforcement Division Forensic Lab (NEDFL) participate in the meetings.
- Drug Interdiction Multi-Jurisdictional Task Forces. Staff participates in semi-annual meetings with the federally funded Statewide Marijuana Eradication Task Force (SMETF). The meetings provide participants with the opportunity to share information, intelligence, and resources. Mission scheduling and operational tactical planning are also discussed. Portions of these meetings are periodically used for additional drug awareness training. Topics have included marijuana indoor grows, medical marijuana rules and regulations, officer and helicopter safety (including rappel safety), and operational readiness.

- Justice Reinvestment Initiative (JRI) Victim Services Team. Staff participates in quarterly meetings of the JRI Victim Services Team. The group is tasked with developing a plan to implement the DPS's Victim Service Program and to improve victim notification and safety planning for victims. This inter-agency team is part of the larger JRI initiative that seeks to employ a data-driven justice reinvestment approach to develop a statewide policy framework to reduce spending on corrections and reinvest savings in strategies that increase public safety.

6. Grant Administration Training

Staff held a training in September 2018 for the VAWA and VOCA subrecipients. This included fiscal and program staff. Approximately 80 participants attended.

C. Juvenile Justice Information System (JJIS)

1. Next Generation (NG) JJIS

NG JJIS went into production on August 9, 2016. JJIS continues to monitor and improve the system and are working on the Phase 2 development. The major components are combine, archive, FC Detention Risk Assessment, National Center for Missing and Exploited Children (NCMEC) interface and outgoing messaging (Push Broker). JJIS supports NIBRS data with multiple counts. For example, JJIS receives police report numbers with multiple counts from HPD and are analyzing how that data is entered when received by downstream agencies, e.g. Prosecutors and Family Court. This will be ongoing as we implement HCPD's Spillman interface in Sept 2018. Release of new user interface and additional functionality went operational on October 10, 2018.

2. National Juvenile Information Sharing Initiative

The JJIS team works on the National Juvenile Information Sharing Initiative (NJISI). The JJIC Policy Subcommittee passed an information sharing policy which allows participating agencies to share information beyond juvenile justice agencies via JJIS. The participating agencies can explore the possibilities of sharing information with other agencies that work with juveniles who are dually involved in the juvenile justice system as well as other systems. The other agencies may include, but are not limited to, the DHS, the DOH and the DOE.

Because the information sharing policy was approved and adopted by the JJIC, the impact for participating agencies is tremendous. Critical information related to juveniles involved with multiple systems can be shared amongst the decision makers so

that the best action plan can be developed to ensure that the juvenile is successful.

3. Improving Information Sharing

The JJIS team worked with the National Criminal Justice Association, the Hawaii Integrated Justice Information Sharing (HIJIS) project and SEARCH to expand and improve the efficiency of the information sharing capabilities of the Maui Prosecuting Attorney and Kauai Prosecuting Attorney. The prosecutors will be able to take the arrest message data and pre-populate their case management systems with initial case information.

4. Juvenile Justice Research and Data

The JJIS program makes progress in addressing the research and data needs of the participating agencies and their partners.

D. Missing Child Center-Hawaii (MCCH)

MCCH staffing stabilized with the hiring of a new coordinator in May 2018 and an assistant coordinator in June 2018. The new staff have accomplished the following: 1) strengthened the relationship between MCCH and the Honolulu Police Department, FBI, Department of Human Services - Child Welfare Services, and the neighbor island police departments to increase referrals and recoveries 2) increased MCCH's visibility; 3) and leveraged the National Center for Missing and Exploited Children and other stakeholders for local law enforcement training.

In August 2018, MCCH reported 13 active cases (4 new referrals) and 4 recoveries; and in September 2018, MCCH reported 13 active cases (10 new referrals) and 7 recoveries. For FY 2017 MCCH had reported the following: opened 24 cases (9 custodial interference and 15 runaway cases), closed 23 cases, and worked on 7 ongoing cases and 10 cold cases.

E. Research and Statistics Branch (R&S)

During FY 2018, Branch staff published six study reports. The reports are available on-line on the branch's website.

1. Research Support for HOPE Probation

"Hawaii's Opportunity Probation with Enforcement" (HOPE) program, administered by the Judiciary, using Branch staff for data collection and analyses, which are used for tracking, outcome and effectiveness assessment, and development purposes. HOPE has dramatically reduced probation failure rates in all Circuits. The analyses conducted by staff throughout the year assisted the

Judiciary by providing critical documentation of the HOPE Program's innovative and extremely successful approach to supervising felony probationers.

2. Research Support for the Interagency Council on Intermediate Sanctions

The Branch contributes to Interagency Council on Intermediate Sanctions (ICIS) efforts to reduce criminal recidivism through a comprehensive restructuring of policies and practices relating to the community supervision of criminal offenders. The Branch provides technical assistance, including the publication of study reports, conducting specialized data analyses and assessments, offering protocol-oriented recommendations, giving presentations to various ICIS-related audiences, and serving on the ICIS Working Group, Training, and Research and Evaluation subcommittees. Branch staff chair the latter committee and maintain the ICIS web site.

3. NIBRS

Refer to CPJAD, Section II. High profile matters and major issues

IV. Major current issues and projects in order of importance

Refer to CPJAD Section II.

V. Pending major litigation and analysis of impact on State or Department

Not applicable.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Acting supervisor delegation is rotated among the Branch Chiefs/Coordinators:

Community and Crime Prevention
Grants and Planning
Juvenile Justice Information System
Missing Child Center – Hawaii
Research and Statistics Branch

VII. List of professionals and deputies in the division

All division personnel are exempt employees. The positions and

incumbents are approved through June 30, 2019.

Administration

Division Supervisor
Administrative Assistant
HSART/SAKI Coordinator
2 Account Clerks

Community and Crime Prevention Branch

Branch Chief
2 Specialists

Grants and Planning Branch

2 Branch Chiefs
6 Specialists (1 vacant, as of 1/10/2019)

Juvenile Justice Information System

Coordinator
Office Assistant
Lead Analyst
4 Analysts (1 vacant, as of 12/10/2018)
1 Information Accuracy Analyst (vacant, as of 3/1/2018)

JJ Research Analyst

Missing Child Center – Hawaii

Coordinator
Assistant Coordinator

Research and Statistics Branch

Branch Chief
Senior Research Analyst
Research Analyst

VIII. Division goals through 2019

- A.** Fill the vacant JJIS Info Accuracy Analyst, JJIS Analyst, and VAWA Criminal Justice Planning Specialist positions.
- B.** Improve the criminal justice system response to crime by securing additional resources such as state and federal grants, no-cost technical assistance provided by local and national organizations, and reassessing available resources; and
- C.** Provide timely and complete information to criminal justice practitioners and policy makers.

Criminal Justice Division

Kevin K. Takata, Supervising Deputy Attorney General

Division telephone: (808) 586-1160

Division location: Melim Building, 333 Queen Street, 2nd floor (Criminal Justice Division), 4th floor (Tobacco Enforcement Unit); 707 Richards Street, 4th floor (Medicaid Fraud Control Unit); 235 S. Beretania Street, 16th floor (Internet Crimes Against Children)

I. General work, primary mission, primary clients

The Mission Statement of the Criminal Justice Division (CJD) “is to serve as the state-wide prosecutorial arm of the Department of the Attorney General; to enforce the laws of the State of Hawaii; to ensure public safety through the just, efficient and effective administration of justice; and to advocate for the passage of laws that protect the people of Hawaii.”

The primary function of CJD is to discharge the Attorney General’s responsibilities as the State’s chief law enforcement officer. The division accomplishes this function primarily through the following:

- investigation and prosecution of criminal offenses
- management of the Internet Crimes Against Children task force
- management of the Medicaid Fraud Control Unit
- management of the Tobacco Tax Enforcement Unit
- management of the Surveillance Review Unit
- participation in the sex offender registration unit
- assist in the coordination of state and county law enforcement efforts
- legislative advocacy to improve criminal laws and the criminal justice system
- membership in organizations and committees

The CJD provides advice and counsel on crime, criminal procedure, and the criminal justice system to the Attorney General (AG) and any state agencies or officers that may request such assistance. In particular, CJD will often provide assistance to the other State and County agencies that have the responsibility for enforcing criminal laws. These agencies include the Departments of Public Safety, Department of Transportation, Health, Land and Natural Resources, Human Services, Taxation, Agriculture, county police and prosecutors.

CJD is also tasked with responding to inquiries from the general public by providing non-legal information on criminal inquiries and making appropriate referrals.

A. Criminal Investigations and Prosecutions

The Attorney General is charged with the ultimate authority to prosecute criminal violations.

While the four county prosecutors have assumed most of the criminal prosecutions in this State, the AG is the chief prosecutor for the State and must be able to prosecute all criminal violations of law.

As the criminal prosecution arm for the Attorney General, CJD concentrates on:

- crimes involving a state agency, official or employee;
- crimes that have statewide impact or implications;
- crimes committed in more than one county;
- cases that a county prosecutor has a conflict of interest with, or is otherwise unable or unwilling to prosecute;
- internet crimes against children, including human trafficking;
- Medicaid fraud;
- enforcing tobacco tax and tobacco regulations;
- state tax violations; and
- insurance fraud (DCCA, Insurance Fraud Branch).

CJD prosecutes cases involving fraud against the State (e.g., welfare, tax, unemployment insurance and workers compensation fraud), theft and embezzlement from state agencies, white collar crime, public corruption, crimes investigated by state sheriffs at the Daniel K. Inouye International Airport, crimes occurring within correctional facilities, internet crimes against children, environmental crimes, the unauthorized practice of law, as well as other types of crimes.

B. Surveillance Review Unit (SRU)

The SRU is responsible for reviewing applications for the interception of wire, oral or electronic communications (colloquially known as "wire taps") before the applications are submitted to a state judge. Additionally, the SRU provides training on the legal requirements for applications and is in the process of creating a webpage for law enforcement.

C. Medicaid Fraud Control Unit (MFCU)

The MFCU conducts a statewide program for the investigation and prosecution of Medicaid fraud cases and violations of state laws relating to provider fraud. The MFCU also investigates and prosecutes offenders who commit physical and financial crimes against patients in Medicaid/Medicare supported facilities.

D. Internet Crimes Against Children Task Force (ICAC)

This task force coordinates federal, state and local law enforcement

agencies that investigate and prosecute internet crimes against children, including human trafficking, and provides education and prevention programs addressing internet safety. ICAC also provides equipment and training to its members.

E. Sex Offender Registration Unit (SOR)

Convicted sex offenders are required to register with the State. The Hawaii Criminal Justice Data Center (HCJDC) handles the registration of sex offenders who reside in the State. CJD assists HCJDC with classification of offenders and prosecutes sex offenders who fail to comply with registration requirements.

F. Assist in the Coordination of State and County Law Enforcement Efforts

CJD assists the AG in his/her role as the leader of the Law Enforcement Coalition (LEC). The LEC is a group of law enforcement officials that include the four county police chiefs and prosecutors, the U.S. Attorney and the Attorney General. The LEC focuses on proposing legislation related to law enforcement and the criminal justice system.

G. Tobacco Enforcement Unit (TEU)

The TEU is responsible for administering, operating, monitoring, and ensuring compliance with tobacco tax laws and the Tobacco Master Settlement Agreement. The TEU also assists in the prosecution of state tax violators.

H. Legislative Advocacy to Improve Criminal Laws and the Criminal Justice System

CJD is responsible for identifying criminal issues that impact the criminal justice system and drafts legislation to address those issues. CJD also reviews and provides comments on criminal legislation submitted during the legislative session.

I. Law Enforcement Officer Independent Review Board (Board)

The Board reviews all incidents of law enforcement officer involved deaths to determine the fairness of the criminal investigation and to determine whether, in the Board's opinion, criminal prosecution or further investigation may be warranted. The Board is placed in the Department of the Attorney General for administrative purposes. Two CJD deputy attorney generals are Board members.

II. Major projects, achievements and accomplishments

A. **Remake of CJD Deputies:** Since June 2015, there has been a major changeover of deputy attorney generals who, as presently

constituted, have been recruited for trial experience, legal skills and knowledge, and commitment to ethical prosecution and justice.

B. Reinvigoration of Internet Crimes Against Children Task Force: The ICAC task force was transferred from the Investigations Division to CJD in 2015-16, and the ICAC commander was replaced, resulting in increased ICAC activity. Additionally, for the first time in its 20-year existence, ICAC received state funding in 2018. ICAC is also expanding investigations to include human trafficking of juveniles over the internet and exploring techniques to reduce demand for sexual exploitation of children.

C. Creation of a Formal Surveillance Review Unit: A formal SRU staffed by two knowledgeable deputy attorney generals was created in 2018. Forms and policies for wire intercepts were created and a webpage will soon be up.

III. Major issues and projects in order of importance

The Tobacco Enforcement Unit was tasked with registering retailers of electronic cigarettes without any additional funding in 2018. The Department of Taxation (DoTax) is willing to assume this task. Either move this task to DoTax or obtain funding and hire personnel to execute the task.

There were 8 law enforcement officer involved fatalities awaiting review by the Law Enforcement Officer Independent Review Board as of October 2018. The primary responsibility for preparing a written opinion and recommendation whether to prosecute will fall on the 2 CJD deputy attorney generals Board members as the other members are either employed full time or retired.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Deputy Attorneys General Albert Cook and Lance Goto

VII. List of professionals and deputies in the division

Supervising Deputy Attorney General

CJD

9 Deputy Attorneys General

Legal Assistant

Legal Secretary

4 Legal Clerks

TEU

Deputy Attorney General Unit Supervisor

3 Deputy Attorneys General

Legal Clerk
Legal Assistant

MFCU

Deputy Attorney General Unit Supervisor
2 Deputy Attorneys General
Legal Clerk
Office Assistant
Legal Assistant
Auditor
Accountant
2 Auditors
Chief Investigator
6 Investigators

ICAC

Commander
3 Investigators
Forensic Computer Examiner
Office Assistant

VIII. Division goals through 2019

- Increase ICAC investigations and prosecutions. Implement techniques to reduce demand for sexual exploitation of children.
- Complete review and recommendation of all pending law enforcement officer involved fatalities.
- Increase public corruption and state tax fraud prosecutions.
- Complete divisional move in a timely and efficient manner with minimal disruption to the Division.

Education Division

Holly T. Shikada, Supervising Deputy Attorney General

Division telephone: 586-1255

Division location: Leiopapa A Kamehameha, Ste 304

I. General work, primary mission, primary clients

The Education Division provides legal advice and counsel to the following clients: The Department of Education, the Board of Education, the Public Charter School Commission, the various individual Charter Schools and their Governing Boards, the Hawaii State Public Library System, the Hawaii Teacher Standards Board, the Executive Office on Early Learning, and the Early Learning Board.

Generally, the deputies in the Education Division provide advice, counsel and representation to our clients on all legal matters except employment matters, tort actions, and some civil rights actions. Legal services that our division provides include, but are not limited to: providing advice and counsel to boards and commissions at public meetings of the boards, including enforcing the State Sunshine Law; drafting and reviewing administrative rules; writing legal advice and legal opinions letters; reviewing contracts and agreements; attending legislative committee hearings, preparing testimony, and testifying on various bills; participating in administrative contested case hearings, particularly due process hearings allowed by federal law involving special education services to disabled students, as well as administrative hearings relating to procurement challenges; representing our clients and their officials in court matters, including federal court (the United States District Court and the Ninth Circuit Court of Appeals) and state court (the various Circuit Courts, the Intermediate Court of Appeals, and the State Supreme Court); and providing client training relating to discipline issues and federal special education law, in an effort to address and hopefully minimize procedural violations, which impact the State's liability.

The primary mission of the Education Division is to provide timely and effective legal services to our clients.

II. High profile matters and major issues

A. US DOE Office of Civil Rights Investigations

The Education Division is working with the Department of Education (DOE) on several matters being investigated by the US Department of Education's Office of Civil Rights (OCR). There are a wide range of issues relating to discrimination complaints. In each of the cases,

OCR has stated to the DOE that it received a complaint and is either seeking further information to determine whether an investigation is warranted or is already investigating the matter.

One major matter the Education Division is working on with the DOE is the compliance requirements based on a Voluntary Resolution Agreement (VRA) the DOE entered into with OCR regarding Title IX discrimination. The Education Division is also assisting our Civil Rights Litigation Division in defending the State in a lawsuit filed by the American Civil Liberties Union (ACLU) alleging that the DOE is discriminating against female athletes under Title IX due to the lack of equal and the equitable use of athletic facilities.

B. DOE Becoming a Land Owner

Act 210, Session Laws of Hawaii (SLH) 2018, designated the DOE landowner of certain parcels of land on which some of the DOE schools currently sit. Because land ownership and management is a new function for the DOE, the Education Division has been working hard to come up to speed on land ownership and management issues and where needed, has been consulting with our Department's Land & Transportation Division to ensure we are providing effective counsel to our client.

C. Over Age Case

The Education Division was recently involved in the settlement of a civil class action lawsuit regarding the provision of compensatory education services to special education eligible students whose services were stopped when the students reached age 20. Our State law allowed DOE to service special education eligible students until age 20. The federal law provides for services until age 22 unless the State has a different cut off and so long as services beyond the State's cut off age is not provided to non-special education students. Students who were denied special education and related services beyond age 20 filed a lawsuit claiming the State provides education to non-special education eligible individuals beyond the age of 20 through the DOE's Adult Education Program. The State prevailed at trial in the United States District Court (USDC). The Plaintiffs filed an appeal to the Ninth Circuit Court of Appeals (Ninth Circuit). The Ninth Circuit overturned the USDC's decision finding that because the DOE provides education in its Adult Education Program to individuals over the age of 20 and does not provide for special education eligible students to continue their education beyond the age of 20, the DOE was discriminating against the special education students and must provide special education and related services to those students until the federal cut off age of 22. Because of the Ninth Circuit's decision, the DOE was required to provide compensatory education services to those special education eligible students whose services were

cut off at age 20 and would have been entitled to and possibly benefitted from continued education services until age 22.

The State settled this case (fully funded through the DOE's budget) for \$10.25 million; \$1.5 million was for Class Counsels' attorneys' fees and costs. The remaining funds (\$8.75 million) were put into a Settlement Fund for distribution to approximately 450 Class Members to pay for compensatory education services or reimbursement for such services. Supreme Court Justice James E. Duffy, Jr. (ret.) is the Settlement Administrator and will make determinations on the payment for services or reimbursement for services applied for by the various Class Members.

D. Use of DOE Facilities

There are issues relating to use of DOE facilities by various organizations and individuals. Private individuals have raised issues regarding the DOE allowing religious organizations to use school facilities for long periods of time and at what individuals' claim are "reduced rates." A civil *qui tam* lawsuit has been filed against some of the churches that use DOE facilities. Under a *qui tam* suit, the State receives a percentage of whatever the Plaintiffs recover as a result of the lawsuit. One church group settled the claims against them, giving the DOE a little over \$500,000 as its share of the settlement. While there are no State defendants in this case, the Education Division has been monitoring the matter as it is presumed that at some point, DOE principals will be deposed to obtain information on how facilities were being lent out and how the schools were charging for the use of the facilities.

III. Major projects, achievements and accomplishments

A significant accomplishment of the Education Division, which occurred last year (2018) is the formation of two informal units within our division. Because of the issues with land ownership and management resulting from the DOE becoming a landowner, as indicated above, the Education Division formed a Land Unit, which consists of three (3) deputies. In addition to the Land Unit, the increase in the number of civil rights matters our division has been handling has resulted in the Education Division also forming a Civil Rights unit. That unit also consists of three (3) deputies. These new units allow the deputies so assigned to gain more expertise due to the deputies' focus on these issues.

The Education Division has worked with the DOE and managed to reduce the number of special education administrative hearing cases that are filed. Last school year (School Year 2017-2018), there were 43 cases filed, which is a decrease from the 2016-2017 School Year when 87 cases were filed. The clear majority of the cases are parents filing because they are seeking to have the State pay for their child to attend private special education schools and facilities. These parents file on an annual basis in an effort to keep their child in the private programs. Under the Individuals with Disabilities Education Act (IDEA), a student

is allowed to remain (stay-put) in their last agreed upon placement while they challenge any change in placement recommended by the DOE.

The DOE's Facilities Development Branch has worked with our division to establish a system to expedite the review process for construction and architect and engineer contracts. We are actively working with the DOE to create procedures to ensure consistency in contract awarding and review. The current process has expedited the period of review such that many contracts are being approved in one week. We anticipate, with the additional procedures the DOE is currently working on, the process will be further expedited.

IV. Pending major litigation and analysis of impact on State or Department

Settlement of the case relating to over age students (E.R.K. v. DOE) identified in section II.C. above has brought great relief to the DOE and the State. The cost of providing compensatory education could have been astronomical had the Court adopted Plaintiffs view that each student is entitled to services that go well beyond services required for educational purposes or agreed that a reasonable and objective assessment is required to determine whether a student was significantly negatively impacted because his/her educational services were stopped two years earlier. The ability of the DOE to pay money into a Settlement Fund and allow a Settlement Administrator to administer the fund is the best the DOE and the State could have hoped for. It was also essential that the settlement of the case, which set forth the requirements for Class Members to obtain money from the fund, required that Class Members could only receive release of funds for payment directly to a service provider or reimbursement, upon proper presentation of receipts, for services that had already been delivered.

Shortly after the decision from the Ninth Circuit was rendered, the DOE began providing special education and related services to students until age 22, thereby containing the number of Class Members entitled to compensatory education.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Carter Siu

VII. List of professionals and deputies in the division

Supervising Deputy Attorney General
10 Deputy Attorneys General
3 Paralegals/Support Staff:
Legal Secretary

Office Assistant

2 Legal Clerk vacancies (one is funded by the DOE and is currently in active recruitment, and the second position is currently in active recruitment and temporarily filled by an 89-day hire)

VIII. Division goals through 2019

- Our division would like to engage in more proactive work with our clients instead of being reactive all the time. We would like to be able to engage in more client training to help our clients better respond to and prepare for various situations, which we anticipate would reduce the number of legal issues our clients face.
- We continue to work on our electronic filing system to reduce the amount of paper our division uses. An electronic filing system ensures that files are accessible to the entire division, which greatly assists when a deputy needs someone to cover a case or hearing.
- Continue to ensure that deputies with specific skill sets share and train other deputies to build capacity within our division.
- Work on training for our own division staff to increase their capacity, which will improve their ability to assist the deputies.

Employment Law Division

James E. Halvorson, Supervising Deputy Attorney General

Division telephone: 587-2900

Division location: State Office Tower, Fifteenth and Sixteenth Floors

I. Duties and responsibilities

The Employment Law Division (“ELD”) represents all branches of State government, including all Departments, Directors, Agencies, Boards and Commissions in all employment and personnel-related matters except for the University of Hawaii and Hawaii Health Systems Corporation. ELD even provides advice and counsel to the county civil service commissions.

ELD advises, counsels and represents the State in all matters arising out of its activities as an Employer. These matters include: workers compensation; labor grievances; administrative hearings before the Merit Appeals Board, Labor Appeals Board, Hawaii Labor Relations Board, Hawaii Civil Rights Commission and the U.S. Equal Employment Opportunity Commission; and civil rights litigation in State and Federal courts on issues including Title VI, VII and IX of the Civil Rights Act of 1964, Americans With Disabilities Act, Whistleblower Protection Act, Age Discrimination In Employment Act, and Hawaii’s Civil Rights Act.

II. High profile matters and major issues

A. Major Issue:

1. Substitute Teacher under payment case: Case has settled for \$14 M.
2. Part time teacher under payment case: Similar issues to substitute teacher case. Exposure was \$54 M, but we prevailed on the merits.
3. Collective bargaining interest arbitration.

B. Major Litigation:

- **Carolyn C. Ritchie vs. Department of Public Safety and Neal Wagatsuma, in his Individual Capacity**, CN. 14-00046 LEK-BMK; USDC; and CN. 14-1-0015 JRV; Circuit Court of the 5th Circuit

Plaintiff Carolyn Ritchie brought an action against her former employer, the State of Hawai‘i, Department of Public

Safety (“DPS”) and Warden Neal Wagatsuma (“Wagatsuma”), for employment retaliation she claimed to have suffered when she worked at the Kauai Community Correctional Center (“KCCC”) as a psychiatric social worker from April 2009 to November 2012. Ritchie asserted both statutory and common law claims and requested both compensatory and punitive damages for approximately \$1.3 million dollars, with anticipated fees and costs estimated in the range of \$300,000-\$500,000.

Jury trial before the United States District Court began on November 1, 2016 and ended with a defense verdict on December 20, 2016. Later, in early 2017, the state court dismissed the state claims based on the defense verdict rendered in the federal court. Presently, both cases are on appeal.

- **USA v. State of Hawaii and Department of Transportation;**
Civil No. 14-2014 JMS/RLP ; USDC

U.S. Department of Justice (“DOJ”) brought a Title VII lawsuit against the State of Hawaii Department of Transportation (“DOT”) alleging that DOT failed to stop co-workers from sexual harassing the alleged victim. DOJ also alleged that DOT retaliated against the alleged victim after she reported the harassment.

This matter was litigated in federal court. DOT received a very favorable verdict from the federal jury and was only required to pay \$38,000 to alleged victim. The jury also ruled that DOT did not retaliate and cleared DOT of any intentional discrimination.

III. Names of acting supervisor(s) in supervisor’s absences; delegation of responsibility

Deputy Attorney General Jeffrey A. Keating

IV. List of professionals and deputies in the division

Supervising Attorney General
8 Deputy Attorneys General (one vacancy as of 2/1/19)
3 Legal Assistants (one vacancy as of 2/1/19)
Legal Secretary (two vacancies as of 2/1/19)
2 Legal Clerks
Office Assistant

V. Division goals through 2019

The mission of the Employment Law Division is to provide high quality and timely legal representation to the State, its departments, attached agencies, and senior managers in personnel/labor disputes with their employees or prospective employees.

The division has continued to cross-train deputies both by assigning a wide variety of cases to each deputy but also by teaming experienced deputies with less experienced deputies in certain areas as back-up or second chair. E-filing in federal and state appellate court is now well established as all support staff are now well versed in e-filing. We are completing our twelfth year of standardized procedures with the Department of Education, especially in the area of workers compensation

We have made a point of making ourselves available to clients for meetings in advance of taking action or making decisions. We have met or had telephone contact with the directors or deputies of the following departments: Budget and Finance, Education, Health, Human Services, Hawaiian Homelands, Labor and Industrial Relations, Land and Natural Resources, Human Resource Development, Public Safety, Transportation, Tax, Defense, and the Research Corporation of the University of Hawaii.

Family Law Division

Julio C. Herrera, Supervising Deputy Attorney General

Division telephone: 693-7081

Division locations:

Oahu: 1001 Kamokila Blvd, Suites 211 and 309
Kapolei, Hawaii 96707

Hilo: 75 Aupuni Street, Suite 202
Hilo, Hawaii 96720
Phone: 933-8883

Kona: 77-6399 Nalani Street, Room 101
Kailua-Kona, Hawaii 96740
Phone: 327-6260

Maui: 1955 Main Street, Suite 401
Wailuku, Hawaii 96793
Phone: 243-5811

Kauai: 3060 Eiwa Street, Room 302A-1880
Lihue, Hawaii 96766
Phone: 274-3222

I. General work, primary mission, primary clients

The Division is responsible for representing state agencies in hearings held at Family Court on all islands. The clients represented include the Departments of Education (DOE), Health (DOH), and Human Services (DHS), and the Office of the Public Guardian (OPG). The deputies in the Division represent DHS social workers in child welfare cases, adult protection cases, and in juvenile matters. They represent the DOH in juvenile matters, at the detention home and at the family court, and also at involuntary hospitalization hearings at the Hawaii State Hospital, The Queens' Medical Center on Oahu, and at the family courts in Hilo, Kona, Maui, and Kauai. They represent the DOE on truancy matters and in other matters where the DOE is actively involved in offering services to families. The deputies also represent the OPG, the DHS and the DOH in guardianship cases involving incapacitated adults.

II. High profile matters and major issues

Our cases are confidential. Occasionally some become high profile due to serious harm of a child resulting in criminal trials. This is relatively rare.

III. Major projects, achievements, and accomplishments

- We continue to be successful in having the Intermediate Court of Appeals affirm most of the appeals taken by parents whose parental rights were terminated.
- We successfully collaborated with the Family Court of the First Circuit and the DOE to start the Truancy Court Pilot Project.
- We continue working with the task force that revamped the Child Protection Act in 2010 to deal with problems of implementation as they arise.
- Our deputies participate in the various family court specialty courts such as the truancy court, the family drug court, the juvenile drug court, the girl's court, and the Zero to Three initiative which provides special assistance for cases where the child is in that age group.
- We participate on a variety of committees that bring agencies and the court together to work collaboratively at improving the system.
- The supervisor is the AG's representative on several committees including: 1) the Sexual Orientation Task Force (Act 13, 2018 Haw. Sess. Laws 41); 2) the Court Improvement Program Advisory Committee; 3) the Hawaii Children's Justice Act Statewide Task Force (Section 107(a) Child Abuse Prevention and Treatment ACT, P.L. 111-320); 4) the Children's Justice Center Interagency Advisory Committee; 5) the Hawaii Child Welfare Continuous Quality Improvement Project Council; 6) the Commercial Sexual Exploitation of Children Steering Committee; 7) the Hawaii Interagency State Youth Network of Care Committee (S.Con.Res. 11, S.D.1, H.D.1, 29th Leg., Reg. Sess. 2018); and 8) the Committee on Lesbian, Gay, Bisexual, and Transgender Youth in Hawaii's Juvenile Justice System.
- One deputy is the AG's representative on the State Council under the Interstate Compact for Juveniles.
- One deputy is on the Standing Committee on Children in Family Court established by the Hawaii Supreme Court, and he regularly attends the Oahu Child Welfare Mediation Program Stakeholders Meetings.
- The Felix consent decree came to an end some years ago, but many of the children that appear in family court on juvenile matters are identified, or the court wants them to be identified, as needing special services. Felix is over in name only; the issues continue to arise. The resources within the State are not limitless and may be

insufficient to meet the needs of these children. The court previously frustrated by this had ordered our client agencies to pay for services that may not have been appropriate. We were successful in appealing some of these inappropriate orders, and the court is much more aware of the issue, but it has not totally disappeared.

Cases

- Child Welfare Services cases: over 1000 active
- Juvenile delinquency cases: over 1000 active
- Involuntary Hospitalization cases: over 1200 petitions are filed each year, though these often are resolved before having to go to hearing.
- Adult Protection cases: 25 per year

IV. Major current issues and projects in order of importance

The biggest issue facing the Division is the lack of human resources in our Hilo office. The office of five, including three deputies and two support staff, is down to only two deputies. We are currently flying a deputy over to Hilo weekly to help with the caseload until a full-time replacement can be found. We also have an emergency hire person helping out on a part-time basis. In addition, with the help of the Human Resources office, we are exploring the possibility of using a temp agency to help with the clerical work.

V. Pending major litigation and analysis of impact on state or department

We have an average of 20 trials set each month, about half of which settle on the day of trial. These trials are usually in the child welfare area establishing the court's jurisdiction or terminating parental rights. Although important in terms of protecting children and families, they generally incur no financial liability.

We attend several thousand hearings each year. We have approximately 7-10 appeals pending at any given time. Our appeals for child protection cases are expedited. The filing times are shortened, and extensions are not permitted.

Federal statutes have been amended to shorten deadlines for determining the permanent plan for a child, *i.e.*, whether a child must stay permanently out of the home or can be safely returned. These shorter deadlines are good for children, but often set up an adversarial situation. If a family has a longer period of time they may realize that they are unable to make their home safe for a child. In the shortened time frame, families often ask for trials on the issue. Contributing to the complications of the work, the crystal methamphetamine "ice" problem is involved in approximately 80-85% of the CPS cases.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibilities

Deputy Attorney General Erin Torres: child welfare, juvenile matters, mental health, adult protection, incapacitated adults, and appeals

Deputy Attorney General Ian Tsuda: child welfare, juvenile matters, mental health, adult protection, incapacitated adults, and appeals

Deputy Attorney General Erin Yamashiro: child welfare, juvenile matters, mental health, adult protection, incapacitated adults, and appeals

VII. List of professionals and deputies in the division

Supervising Attorney General

Oahu:

18 Deputy Attorneys General

6 Legal Assistants

7 Support Staff (1 vacancy – actively recruiting)

Hilo:

3 Deputy Attorneys General (all 3 are vacant but actively recruiting)

2 Support Staff (both vacant but actively recruiting)

Kona:

2 Deputy Attorneys General

2 Support Staff

Maui:

2 Deputy Attorneys General

2 Support Staff

Kauai:

Deputy Attorney General

Support Staff

VIII. Division goals through 2019

Our main goal is to continue to improve our representation of our various clients.

We have a few deputies that are new to the division. Some are new not only to the Division, but to the practice of law. One goal is to make sure they are trained to do the work. We bring in some of our service providers to train them

on substantive areas. The appellate division has provided specific training on how to do the expedited appeals that come routinely to the Division.

Work on succession. Through our system of cross-training deputies and rotating them through all the areas that we handle, and through having deputies take on projects, they are learning what is involved in supervising the group.

Health Division

Diane K. Taira, Supervising Deputy Attorney General

Division telephone: 587-3050

Division location: Kekuanao'a, 2nd floor and
Melim Building, 9th floor

I. General work, primary mission, primary clients

The Health Division provides principal legal services to the Department of Health (DOH) and the Department of Human Services (DHS). The division gives legal advice to, and represents, DOH's programs; enforces the State's environmental and facility licensing laws in court and administrative proceedings; monitors and advises on legislation affecting DOH's areas of responsibility; reviews, advises on, assists in drafting administrative rules and hundreds of contracts annually; takes appeals to circuit court from administrative decisions; and handles appeals in both the State and federal appellate systems. While the Tort, Civil Rights Litigation and Employment Divisions handle matters falling within their subject areas, Health Division deputies serve as litigation team members or liaisons, assisting the affected programs and as sources of information on the programs and the substantive laws at issue.

The division's thirteen deputies are loosely organized into three teams, each of which focuses on one of our substantive areas: environmental law, behavioral health law, and public health law.

A. *Environmental:* We advise and represent DOH's environmental management programs (clean water, safe drinking water, underground injection wells, wastewater, solid and hazardous waste, underground storage tanks, clean air, the hazard evaluation and emergency response office, and the deposit beverage container program). We bring administrative and civil actions to enforce the State's environmental laws. We advise and represent DOH's environmental health programs (food and drug, sanitation, vector control, noise and radiation, and indoor air) and pursue enforcement actions on their behalf. Administrative rules are an area of focus to address developments in case law and rule changes by the U.S. Environmental Protection Agency (EPA). We are also involved in a number of multistate efforts to petition or support other states in matters involving issues that will impact Hawaii's environment.

B. *Behavioral health:* We advise and represent DOH's behavioral health programs (the adult mental health division including the Hawaii State Hospital, the child and adolescent mental health division, the alcohol

and drug abuse division, and the developmental disabilities division), regarding the governing State and federal laws. Our deputies handle requests for confidential information, review administrative rules and contracts for services, and advise on procurement and on contract disputes. They assist with challenges to determinations of eligibility for services and help to work out placement of difficult-to-place clients of the behavioral health programs. We advise and represent DOH in the movement of individuals into and out of the Hawaii State Hospital, at times appearing in court to address such matters and to obtain orders to medicate involuntarily those HSH patients who are dangerous to themselves or others, refuse medication, and cannot be treated with less intrusive measures.

C. Public health: We advise and represent the office of health care assurance on licensing and certification of all types of health care facilities, including administrative enforcement actions. Our deputies also advise and represent other DOH programs that provide services to the public, such as the office of health status monitoring (vital records), the family health services division, the disease outbreak control division, the communicable disease and public health nursing division, the emergency medical services division, and the chronic disease prevention & health promotion division. We provide advice to both the medical cannabis registration program and the medical cannabis dispensary program. Our deputies also advise and represent administratively attached agencies: the State Health Planning and Development Agency (SHPDA), the Hawai'i State Council on Developmental Disabilities, the Executive Office on Aging (EOA), and the Disability and Communication Access Board (DCAB) in various matters ranging from procurement, contracts, rulemaking, contested case hearings, and court challenges to program decisions.

II. High profile matters and major issues

A. The Hawaii State Hospital (high census)

For a number of years the census at the Hawaii State Hospital (HSH) has steadily increased, although the physical facility has stayed the same. Currently individuals are admitted only via criminal cases to await forensic examinations; after a finding that the person lacks fitness to proceed; after a finding that the patient is not penally responsible for the crime by reason of physical or mental disease, disorder, or defect, and is therefore acquitted of the criminal charges and committed to the custody of the Director of Health; or because the person fails to comply with the terms and conditions of conditional release. Patients are usually transported to HSH from PSD facilities or the courts. HSH is funded for approximately 168 patients; however, over the past years the census has

approached and usually surpassed HSH's licensed capacity of 202. HSH regularly relies on its contractual capacity to place up to 48 other individuals, who meet a certain level of care, with other providers. The high census puts pressure on patients and staff alike. We are actively involved in troubleshooting, resolution of problems in individual cases, and resolution of larger systemic issues. DOH's five-year plan for building a new, larger facility is moving ahead on schedule; ground was broken in August 2018 and the facility is expected to open in 2021.

B. *Nonpoint source pollution program*

In 2016, Earthjustice brought suit in U.S. District Court for the District of Hawaii against DOH (and the Hawaii Agribusiness Development Corporation (ADC)) for, among other things, failure to protect the public trust by not requiring ADC to control nonpoint source pollution from its lands in West Kauai. DOH was dismissed from that action on the grounds of sovereign immunity. DOH and ADC have executed an MOA requiring ADC to study the problem, monitor sources of nonpoint pollution, and propose solutions. DOH is currently drafting nonpoint source pollution management and control rules, with which we are assisting. We are also assisting DOH in the development of this program.

C. *Red Hill leaking underground storage tank enforcement action*

The Red Hill underground storage tank facility is a complex of tanks and piping above Pearl Harbor used for petroleum storage (mostly aviation fuel) by the United States Navy. Consisting of twenty 250 ft. tall cylinders, each of which is capable of holding approximately 12.5 million gallons of petroleum, the Navy considers this a vital military asset. There is, however, a significant threat to Oahu's environment and drinking water due to past leaks and the potential for future releases. As a consequence of a release of approximately 27,000 gallons of fuel from tank #5 in 2014, DOH, EPA, and the Navy entered into an Administrative Order on Consent (AOC) for the implementation of facility upgrades to address environmental concerns. Implementation of the AOC is underway with the Navy due to provide a proposal for tank upgrades late this year or in early 2019. The Sierra Club sued DOH over its alleged failure to adopt rules governing these tanks. The Environmental Court ordered DOH to adopt rules by July 2018. This deadline was met. Pursuant to these new revised tank rules, the Navy must obtain a DOH permit to operate the tank system at Red Hill no later than July 2019. We anticipate further administrative and court proceedings to address this matter.

D. *Wastewater Treatment Plant Permits*

The City and County of Honolulu (CCH) filed for contested case hearings before the DOH hearings officer for its Kailua, Honouliuli, and Sand Island wastewater treatment plant permits. CCH and other county wastewater treatment plants, along with some private entities, have contested the DOH clean water branch's (CWB) recent National Pollutant Discharge Elimination System (NPDES) permits because CWB is requiring them to meet more stringent water pollution effluent limits than in previous permits. Citing Mauna Kea Anaina Hou, CCH has taken the position that their NPDES permits cannot be issued before an opportunity for a contested case hearing to challenge permit conditions. In one case, we prevailed in the Environmental Court; that decision is on appeal to the ICA and is being handled by our Appellate Division. We anticipate similar arguments in future permit cases, which could slow the permitting process. On behalf of DOH, we have negotiated settlements of two contested cases brought by the City and County regarding 2014 permits for its Sand Island wastewater treatment plant and its municipal separate storm sewer system. We are in the process of negotiating similar settlements for the City's wastewater treatment plants at Honouliuli and Kailua and are also negotiating a settlement in the contested case of IES Downstream, LLC v. DOH, another case challenging the issuance of a CWB permit.

E. Multistate efforts

i. Petition for Rule regarding asbestos reporting

In January 2019, Hawai'i joined Connecticut, Maryland, Massachusetts, Main, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia in petitioning the EPA to eliminate the reporting exemption for "naturally occurring substances" in asbestos reporting and require processors, manufacturers and importers of asbestos to adhere to the new requirements, to require reporting of items that contain asbestos and ensure that the exemption for "impurities" does not apply to asbestos. The purpose of this effort is to prevent allowing any amounts of toxic asbestos from passing into our community and into the lungs of our residents.

ii. LULAC v. Wheeler, (9th Cir, Case No. 17-71636)

The State of Hawaii joined New York, Maryland, Vermont, Washington, Massachusetts, DC and California as intervenors in LULAC v. Wheeler (EPA), concerning EPA's refusal to ban chlorpyrifos (a pesticide). Petitioners (collection of environmental nongovernmental organizations) and the intervening states prevailed in a 3-1 decision in the 9th circuit and the court ordered

EPA to take immediate action. The decision was delivered on August 9, 2018 and final judgement entered September 12, 2018.

iii. *West Virginia v. EPA (DC Cir 15-1363)*

Hawai'i joined New York, California, Mass., Penn. and 19 other likeminded states and municipalities supporting the Obama Administration's EPA and the Clean Power Plan (CPP) against West Virginia and other fossil fuel producing states and corporations. The CPP is comprised of federal rules addressing the emissions of Greenhouse Gasses (GHG) by members of the electric power generating industry. Covered Sources are large electric power generators that are major sources of air pollution.

Under the Trump administration, however, the EPA has abandoned the CPP and is now proposing rules entitled the Affordable Clean Energy (ACE) Rule to replace it. We anticipate that the ACE rules will give authority to the states to create their own less stringent rules for coal-fired power plants. This will result in significantly less GHG emissions reduction than the CPP rules allow. As a result of the EPA's newly proposed, but not yet final, ACE rules, and the EPA's abandonment of the CPP rules, the litigation in *West Virginia v. EPA (D.C. Cir. 15-1363)* is not dismissed, but is held in abeyance by the U.S. Court of Appeals for the District of Columbia Circuit. The focus of the intervening states is now on preventing the rescission of the CPP and the promulgation of less stringent ACE GHG rules.

F. *Placement of youth in out-of-state facilities*

DOH's Child and Adolescent Mental Health Division (CAMHD) is the state agency responsible for providing intensive mental health services to children and youth. In some cases, CAMHD must place youth in mainland residential facilities. When the nature and severity of the mental health condition cannot be adequately addressed in Hawaii, mainland placement is required so that services determined to be necessary under a youth's Individualized Education Plan (IEP), under a Coordinated Service Plan (CSP), can be provided. Some youth committed to the DHS's Hawaii Youth Correctional Facility (HYCF) receive services from CAMHD and require intensive mental health services that are not available here and may also be transferred to mainland placements. Health Division deputies provide advice and representation to CAMHD, attend client and treatment team meetings, review court orders and conditions, review contracts and memoranda of agreement for services, and facilitate the mainland placement process, usually under very short deadlines.

G. Medical cannabis registry and dispensary programs

DOH manages, and we advise, two medical cannabis programs: the registry and dispensary programs. The medical cannabis registry program operates the electronic registration system for qualifying patients and primary caregivers pursuant to chapter 329, Hawaii Revised Statutes (HRS). The medical cannabis dispensary program licenses and regulates the eight licensed cannabis dispensaries throughout the state and conducts inspections of dispensary facilities to ensure compliance with chapter 329D, HRS. The dispensary program works with licensees to ensure that the cannabis and manufactured cannabis products sold in licensed dispensaries meet the stringent testing requirements of chapter 329D and chapter 11-850, Hawaii Administrative Rules, thereby maintaining product safety and public safety. We are consistently tasked with advising on new legislation and resolving issues in the start-up and oversight of the dispensaries, and we assist in revising the administrative rules to conform to legislative changes. In 2018, the Legislature established the office of medical cannabis control and regulation, which will administer the registration of qualifying patients and primary caregivers as well as the licensure and regulation of medical cannabis dispensaries. We will assist DOH on the transfer of these two programs into a new office.

H. Hu Honua Bioenergy, LLC, Pepe'ekeo, Hawai'i

We are working with DOH on permitting for discharges into groundwater that will migrate to State waters from this facility in the wake of *Hawai'i Wildlife Fund v. County of Maui*, which is now pending a decision by the U.S. Supreme Court on the County's Petition for Writ of Certiorari. At the same time, we are assisting DOH with an enforcement action for unpermitted discharges of pollutants and with responding to numerous requests for contested case hearings regarding Hu Honua's permits for the operation of underground injection wells and industrial storm water discharges.

I. Information sharing agreements and contracts

Many of our clients offices wish to share confidential personal information with other programs or outside entities, for various reasons including for the purposes of feeding information into state IT and data systems that are currently being built. Federal and state laws and restrictions in this area are complex; we advise on multiple information-sharing projects and contracts.

III. Major projects, achievements, and accomplishments

See Section II above. In addition:

A. Successful transition from the Connector to a supported state-based marketplace

We assisted Human Services Division deputies, along with deputies from the Commerce and Economic Division and the Labor Division, in participating in, and providing advice for, every stage of a complex, lengthy but successful transition to a state-based marketplace to remain compliant with the ACA, and to avoid establishment of a federal marketplace that might have jeopardized Hawaii's Prepaid Healthcare Act (HPHA).

B. Medical cannabis

We have worked closely with DOH personnel to implement the medical cannabis program starting in 2015, which includes the registry of certificate holders and the licensing of dispensaries. Legal support includes work on new interim administrative rules and various day to day issues such as ownership, transfer of interests, county regulations, authorization of visitors to dispensaries, advertising, allowed dispensary products.

C. Death with dignity

We worked with legislators to develop a comprehensive measure on death with dignity, the "Our Care, Our Choice" Act (Act 2, SLH 2018), that would withstand constitutional scrutiny and provide this right to Hawaii's residents. We continue to advise DOH on related issues.

D. Division Transition

We have successfully transitioned from the former Health and Human Services Division to the Health Division, with the Human Services Division now being a separate division within our department.

IV. Issues and projects in order of importance

In addition to the above, we are monitoring closely the anticipated issuance of new federal rules regarding Title X funding. We expect these new rules will end funding for entities like Planned Parenthood and various state funded clinics which provide comprehensive family planning and related

preventive health services, including contraceptive services and client centered education, counseling and referrals. These services are provided on six islands (Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii) through 12 contracts (9 of which receive federal funds) at 30 services sites. These sites include, but are not limited to:

- a. Eight Federally Qualified Health Centers in medically underserved rural areas,
- b. Three academic settings on Kauai, Maui and Hawaii Islands, and
- c. One hospital-based setting on Molokai Island.

V. Pending major litigation and analysis of impact on State or Department

Though we are involved in a number of court cases, none are presently considered as having the potential for “major” impact.

VI. Names of acting supervisor(s) in supervisor’s absences; delegation of responsibility

Deputy Attorneys General Jill Nagamine and/or Kathleen Ho.

VII. Professionals and deputies in the division

Supervising Deputy Attorney General
17 Deputy Attorneys General
2 Legal Assistants (one vacancy currently in active recruitment)

VIII. Division goals through 2019

- Maintain level of good quality service to DOH;
- Continue to look for ways to make operations more efficient by making better use of existing office technology; provide continuous training on various program capabilities;
- Continue transition to electronic records;
- Fill vacant positions quickly

Human Services Division

James W. Walther, Supervising Deputy Attorney General

Division telephone: 587-3050

Division location: Kekuanao'a, 2nd floor and
Melim Building, 9th floor

I. General work, primary mission, primary clients

Formerly a part of the Health and Human Services Division, the Human Services Division (HSD) was created as a separate division from the Health Division in November 2018, to focus on providing the principal legal services and support to our assigned client agency, the Department of Human Services (DHS). The work of the two divisions is still closely related and overlapping so that there is close communication and cooperation between the two divisions.

HSD deputies provide advice and counsel to all DHS programs and its administratively attached boards and commissions. Among other things, HSD enforces licensing laws in court and administrative proceedings, appeals to circuit court from administrative hearing decisions on eligibility for services or licenses, and findings of abuse or neglect by caregivers, as well as subsequent appeals to the Intermediate Court of Appeals and the Hawaii Supreme Court. We respond to hundreds of subpoenas and other requests for confidential information, review rules, and review and negotiate hundreds of contracts annually for all DHS programs, and for DHS's department-wide administration support offices, such as Personnel, Financial Management, and Administrative Appeals offices. In addition, HSD reviews and monitors all legislative bills introduced each year that pertain to DHS's programs, and provides written and oral testimony on bills as necessary. HSD Deputies also advise the Office of the Governor, the Attorney General, and the Legislature on a broad range of human services issues, and serve as members of various departmental committees.

We assist the DHS Social Services Division including the adult protective and child welfare services branches, foster care and adoption assistance programs, as well as programs that handle child and adult abuse and neglect allegations. (Family Law Division deputies appear in family court in child protective and juvenile actions.) Our deputies advise the programs in the DHS Benefits & Support Services Division with the Temporary Assistance for Needy Families (TANF), First-To-Work,

LIHEAP, Child Care Program Office, General Assistance, the Homelessness Program Office, and the Supplemental Nutrition Assistance Program (SNAP); we also bring enforcement actions for some of these programs. We advise the DHS Vocational Rehabilitation Division, including its program for services to the blind (Ho'opono), which includes arbitration and litigation in State and Federal Court. HSD deputies advise the Office of Youth Services, which provides community services for youth at risk and oversees the Hawaii Youth Correctional Facility, and we also represent agencies and offices attached to the DHS such as the Commission on the Status of Women, the Fatherhood Commission, the Hawaii Interagency Council on Homelessness, and the Governor's Coordinator for Homelessness.

Our deputies assist the DHS Med-QUEST division of DHS with compliance with State and federal laws, procurement, contracts for services and IT systems, rulemaking, and compliance with confidentiality requirements as part of Med-QUEST's efforts to provide medical services to eligible Hawaii residents. These efforts include waiver services to support eligible clients in the community. We handle appeals of administrative hearing decisions to circuit court and beyond, primarily regarding eligibility for services. HSD deputies review trusts to assist DHS in its determination of eligibility for Medicaid long-term care and handle challenges to denials of eligibility.

II. High profile matters and major issues

A. Homelessness programs

The DHS Homelessness Program Office (HPO) and the Governor's Coordinator for Homelessness are very active in providing services to homeless individuals through contracts and oversight; in monitoring the status of the homeless population in the State; in coordinating solutions with other agencies and entities; and in coordinating the various state and county actors involved in enforcement of laws regarding trespass on state lands. We advise the HPO and the Governor's coordinator in many of these areas. Unique, complex, and time-sensitive legal issues come up regularly. Enforcement is particularly complicated and involves numerous other State departments including Public Safety, Land and Natural Resources, Transportation, Hawaii Public Housing Authority, and Housing Finance and Development Corporation. A new 9th Circuit case, Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018), was published in September of 2018, and expanded on enforcement of municipal laws and regulations involving camping, loitering, and sitting or lying on sidewalks. Along with other divisions we are analyzing the application of this case to Hawaii's laws and enforcement efforts.

B. Texas v. United States

Along with a group of states led by California, we have intervened as a party in this challenge to the Affordable Care Act that was brought by nineteen states in the Northern District of Texas. The Department of Justice declined to defend major portions of the law; the intervenor states are carrying the burden of full defense, and have recently been joined by the U.S. House of Representatives. The California Attorney General's office is lead. Our appellate division coordinates contact with the other intervenor states; an HSD deputy is admitted *pro hac vice* in N.D. Texas, and represents Hawaii in the litigation. This case is currently on appeal to the 5th Circuit Court of Appeals, and will likely proceed to the U.S. Supreme Court.

C. Placement of youth in out-of-state facilities

The Department of Health Child and Adolescent Mental Health Division (CAMHD) is the state agency responsible for providing intensive mental health services to children and youth. In some cases, the CAMHD must place youth in mainland residential facilities. When the nature and severity of the mental health condition cannot be adequately addressed in Hawaii, mainland placement is required so that services determined to be necessary under a youth's Individualized Education Plan (IEP), under a Coordinated Service Plan (CSP), can be provided. Some youth committed to the DHS's Hawaii Youth Correctional Facility (HYCF) receive services from CAMHD and require intensive mental health services that are not available here and may also be transferred to mainland placements. HSD deputies provide advice to HYCF, attend client and treatment team meetings, review court orders and conditions, review contracts and memoranda of agreement for services, and facilitate the mainland placement process, usually under very short deadlines.

D. Information sharing agreements and contracts.

Many of our clients wish to share confidential personal information with other programs or outside entities, for various reasons including for the purposes of feeding information into State IT and data systems that are currently being built. Our clients are also trying to utilize data sharing and analytics to determine strengths, areas for improvement, and potential areas for reducing costs in their own programs. Federal and state laws and restrictions in this area are complex; we advise on multiple information-sharing projects and contracts, such as the All-Payers Claims Database.

F. *HDRC vs. Kishimoto; Provision of medical and community services to individuals with autism spectrum disorder*

For several years, advocates for families with autistic children have been lobbying for insurance coverage for treatment of autism-spectrum disorders. Of particular concern is applied behavioral analysis (ABA), an intense individualized treatment modality. HSD assisted the Civil Rights Litigation Division in defending the State in J.E. v. McManaman, Civ. No. 14-00399, which resulted in a finding that DHS did not deny any "medically necessary" ABA services to the plaintiff in the lawsuit. However, the Court indicated that DHS must provide sufficient notice that medically necessary ABA services are available for Medicaid-eligible children. HSD has assisted DHS in implementing widespread notification efforts and in intensifying its oversight of contracted health plans required to coordinate efforts to ensure the delivery of medically necessary ABA for eligible Medicaid members.

In 2018, SCR 81 requested the formation of a working group in which DHS, DOE, their Deputy Attorneys General, a Medicaid health plan representative, and others are to participate. The group's purpose is to examine how DOE can maximize reimbursements from Medicaid sources for any medically necessary ABA provided on school campuses. This is an on-going effort that requires significant legal support.

Despite the efforts of the work group, the Hawaii Disability Rights Center recently sued the State Department of Education and the DHS, Hawaii Disability Rights Center v. Kishimoto, et. al., Civil 18-00465 LEK-RLP, USDC, alleging that the State has not provided legally required ABA services to individuals with autism. HSD Deputies are working with Deputies from the Civil Rights Litigation Division and Education Division to defend the State's actions in providing appropriate ABA services.

G. *California et al. v. Azar et al.*

The Affordable Care Act requires certain insurers to cover preventative care and screenings at no cost to the patient, including contraceptive coverage for women. 42 U.S.C. §300gg-13(a)(4). Since the contraceptive-coverage requirement took effect in 2012, women across the country have saved approximately \$1.4 billion per year. The U.S. Departments of Human Services, Labor, and Treasury now seek to limit access to cost-free preventative care services by implementing restrictive regulations that allow any employer or health insurer to opt-out of the contraceptive-coverage requirement based on a moral or religious objection. These employers and health insurers will be able to do so without notice to the women who rely on this coverage.

In 2018, Hawaii joined as a party to California et al. v. Azar et al., which is a multi-state litigation effort to prevent the federal government from implementing those restrictive regulations that were promulgated in violation of the Administrative Procedure Act, the Establishment Clause of the First Amendment, and the Equal Protection Clause of the Fifth Amendment. The 15 plaintiff states recently successfully received a preliminary injunction order preventing the federal government from implementing the regulations. An HSD deputy is admitted *pro hac vice* to the Northern District of California and represents Hawaii in the litigation, which includes duties such as reviewing all drafts, fact gathering for Hawaii, and legal research. Hawaii also joined an amicus brief supporting Pennsylvania and New Jersey's litigation against the federal government to prevent the implementation of the same regulations.

H. Religious Discrimination lawsuits and Office of Civil Rights Complaints

The newly formed division of Conscience and Religious Freedom in the U.S. Department of Health and Human Services, Office for Civil Rights (OCR) is creating an increased focus and inquiry by the Federal Government into State issues and items that the Federal Government feels violate moral conscience. As such, OCR have opened up numerous investigations into the various laws and practices of different states including Hawaii.

Religiously-affiliated pregnancy centers, and an organization composed of religiously-affiliated pregnancy centers, brought two lawsuits in the U.S. District Court for the District of Hawaii against the Attorney General challenging the constitutionality of Act 200, enacted in 2017. In addition, plaintiffs in both cases filed complaints with OCR making substantially the same allegations. Act 200 was based largely on a similar law in California which was challenged and determined to be unconstitutional by the U.S. Supreme Court. See Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S.Ct. 2361 (2018) (NIFLA). Hawaii settled the court cases based on NIFLA, but the plaintiffs continue to pursue their complaints through OCR.

HSD deputies, with assistance from the Appellate Division, have been handling all document requests, negotiations, and coordination dealing with this OCR investigation. In addition, HSD deputies have been reviewing the newly proposed regulations for the division of Conscience and Religious Freedom in order to determine what next steps to take.

III. Major projects, achievements, and accomplishments

See Section II above. In addition:

a. Successful transition from the Connector to a supported state-based marketplace (SSBM)

In June 2015, the U.S. Department of Health and Human Services (HHS) determined that the Hawaii Health Connector, Hawaii's ACA insurance exchange, was not in compliance with requirements under the ACA (including self-sustainability by January 1, 2015). This prompted the State's decision to establish a plan to transition marketplace functions from the Connector to the State to remain compliant with the ACA, and to avoid establishment of a federal marketplace which might jeopardize Hawaii's Prepaid Healthcare Act (HPHA) and its success. The transition encompassed coordination and collaboration between the Connector, the marketplace health plans, DHS, DOH, DLIR, DCCA, the State CIO, the Governor's Office, the U.S. Center for Consumer Information and Insurance Oversight (CCIIO), and the Centers for Medicare & Medicaid Services (CMS), to address the delegation of exchange authorities to the State, the transfer of functions to the State, the exchange cost allocation plan, the transition of current qualified health plans to the federally facilitated marketplace, the effective transition of current enrollees and new enrollment, and issues related to a state-based SHOP to protect the unique HPHA. Under the ACA, there were certain functions that only the registered exchange could perform. During the transition and in the 2016 open enrollment period, the Connector unexpectedly ceased its operations. The State was able to procure vendors to ensure that services would continue uninterrupted for a successful enrollment period. Later, the Governor issued Executive Order 16-01 in May 2016, establishing the DLIR as the State's exchange authorizing it to carry out all the functions of a state-based exchange consistent with the ACA. HSD deputies, along with deputies from CED and Labor Division, participated in, and provided advice for, every stage of this complex and lengthy transition. The HSD supervisor served as coordinator of ACA-related legal issues within our department.

B. Dissolution and receivership of the Hawaii Health Connector

On December 5, 2015, in the midst of the 2016 open enrollment period and while the State was engaged in a plan to transition to a supported state-based marketplace, the Connector suddenly closed its doors, leaving the State to accelerate its transition plan and take on all of the Connector's functions as the state-based marketplace. Subsequently the Attorney General petitioned for the Connector's dissolution in *Chin v. Hawaii Health Connector, et al.*, Civil No. 16-1-0262 KTN, (1CC), and by court order filed on April 8, 2016, the Connector was dissolved, and a receiver appointed to conduct an accounting and disposition of the

Connector's assets to creditors, and to address any ACA-related compliance issues regarding the Connector's assets. HSD deputies, along with deputies from the Labor and Tax & Charities divisions, worked on this dissolution and receivership and an HSD deputy represented the creditor DHS in the matter. Because of the limited liquid assets, the Connector's creditors could not be fully compensated for debts owed. The court allowed one of the creditors to intervene as a named party. This intervenor challenged the debt owed to the DHS, claiming the DHS did not have the right to argue that its contractual right to offset applied (i.e., the offset in amounts owed between the DHS and the Connector resulted in a balance of \$171,804.89 which the DHS claimed was owed by the Connector). The receiver's final report and recommendation to the court accepted HHSD's argument on behalf of the DHS, which the Court approved. Out of the Connector's resources a large sum was paid to the receiver and receiver's attorneys before any distribution to the creditors. The DHS was awarded \$56,483.29, while the other creditors received much less or nothing at all. The dissolution action has been concluded.

C. Hawaii Youth Correctional Facility campus

Reform efforts have reduced the census at the Office of Youth Services' Hawaii Youth Correctional Facility (HYCF) from approximately seventy to eighty youth to about twenty to thirty. The drop has opened up premises on the HYCF campus to other uses. Our division worked extensively with the Office of Youth Services (OYS) on the 2018 juvenile justice reform bill (Act 208, SLH 2018). Act 208 authorizes other uses for HYCF grounds and expanded the population served by OYS to include young adults ages eighteen to twenty-four. We helped OYS to (1) obtain the consent of the Board of Land and Natural Resources to issue revocable permits for service providers to use these premises, and (2) issue the permits to specific nonprofit providers. One permit is for the operation of a shelter for commercially sexually exploited children. A second permit is for operation of a shelter for homeless young adults. Other permits are being developed.

IV. Issues and projects in order of importance

See Sections II and III above.

IX. Pending major litigation and analysis of impact on State or Department

See Section II above.

X. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Deputy Attorneys General Lili Young and Melissa Lewis.

XI. List of professionals and deputies in the division

Supervising Deputy Attorney General

8 Deputy Attorneys General (1 currently vacant)

Legal Assistant (1 other Legal Assistant shared with Health Division, currently vacant)

Legal Secretary

Legal Clerk (2 other Legal Clerks shared with Health Division, 1 currently vacant)

XII. Division goals through 2019

- Make better use of existing office technology
- Continue transition to electronic records and reduce the use of paper records
- Fill vacant positions
- Cross train in all substantive areas
- Provide professional development opportunities for all Deputies

Investigations Division

Chief Special Agent Daniel Hanagami

Division telephone: (808) 586-1240

Division location: 465 South King Street, B-2, Honolulu, Hawaii 96813

I. General work, primary mission, primary clients

The Investigations Division exists within the Department of the Attorney General of the State of Hawaii. 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. The division is usually called upon to be the lead agency when addressing matters involving the Statewide Law Enforcement Coalition (SLEC).

Conducts investigations into a wide range of matters including government corruption, complex white collar crimes, career criminal suppression, public safety and homeland security, sex offender registration violations, high technology computer crimes, identity thefts and other crimes against property rights, drug and gambling nuisances that degrade the safety and quality of life in our neighborhoods, environmental crimes, tobacco tax enforcement, crimes within correctional facilities, and other crimes that significantly affect the safety and well-being of our community. Investigators are appointed by the Attorney General and have statewide law enforcement empowerment with all the powers and authority of police officers and deputy sheriffs.

The Investigators are Special Agents at the Investigator V level, under the supervision of Supervising 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 89-day emergency hires. Some law enforcement retirees are classified as "hard-to-fill," and are hired as civil service law enforcement officers with limited benefits.

Investigators provide public safety services during emergency mobilization in response to hurricanes, tsunamis and other critical events; and provides essential law enforcement services to protect the community, prevent crime, and bring criminals to justice.

The division continues to be in the process of reorganization and reconfiguration to improve and enhance operational efficiency, improve the overall effectiveness of the division, establish more efficient lines of supervision and chain of command, provide optimal supervisory span of control, improve the

accomplishment of objectives and assignments, establish greater accountability, assign specific areas of focus to specific positions, support the optimal utilization of personnel and resources, enhance transparency and provide the framework for the most cost-effective discharge of the division's responsibilities.

II. High profile matters and major issues

The division has Program Areas that are fundamental to the mission and functions of the division.

A. Program Area – Criminal Investigations

The criminal 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.

B. Program Area – White Collar Crime

The division has acquired expertise in white collar crime investigations to combat corruption and embezzlement of state funds.

Financial crime investigations (i.e. white collar crimes) are complex and can require sifting through thousands of financial transactions, multiple accounts and multiple financial institutions. The culprits in public corruption and fraud schemes devote considerable effort in hiding their crimes.

Division administrators are directing these investigations and developing financial crimes expertise among the Special Agents assigned to the division. To develop these skills in others, administrators are 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.

The division is providing leadership to the law enforcement community in Hawaii as a whole by coordinating 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 law enforcement agencies.

C. 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 Master Settlement

Agreement payments under Chapter 675 of the HRS. Tobacco tax revenues were \$13,148,236 in 2011 and \$11,212,063 in 2012 (Source: data.hawaii.gov).

Inspections are conducted statewide of wholesalers and distributors, retail establishments, and cigarette vending machines for compliance. The Tobacco Enforcement Unit also engages in certain complex types of investigation, including United States Customs seizure cases and counterfeit tax stamp cases.

D. Program Area – DNA Buccal Swabbing

The division is the statewide leader for implementing Chapter 844D HRS and ensuring that all convicted felons in the state comply with its provisions.

The division obtains DNA samples from felons and coordinates the efforts of other law enforcement agencies and coordinates the distribution of DNA Buccal Swabbing kits to other agencies.

E. Program Area – Sex Offender Registration and Compliance

The 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. The division carries out the 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.

F. Program Area – High Tech Crimes

The High Tech Crimes Unit concentrates efforts on Internet crimes. The High Tech Crimes Unit also provides forensic and investigative technical assistance to law enforcement agencies, and educational information to parents, educators, prosecutors, law enforcement. The computer forensics section processes digital evidence and provides other technical support with technically proficient professional staffing and a digital forensics laboratory.

The division participates with the United States Secret Service as a task force addressing high-tech crimes in the Pacific region.

G. Program Area – Memorandum of Understanding and Other Investigative Services

The Investigations Division provides investigative support for a number of state departments under Memorandum of Understanding (MOU), including:

Department of Agriculture - Criminal
Department of Health - Office of Solid Waste Management
Department of Health - Hawaii State Hospital
Department of Human Services, BESSD - Administrative
Department of Human Services, Office of Youth Services, Hawaii Youth Correctional Facility - Administrative
Department of Land and Natural Resources - Administrative
Department of Public Safety - Criminal
Department of Transportation, Airport's Division – Criminal & Administrative
Department of Transportation, Harbors Division - Criminal & Training
Department of Transportation, Highway's Division - Administrative
Department of Taxation - Administrative
Hawaii Health System Corporation - Administrative

II. Major projects, achievements and accomplishments

- A. Strategic Direction** – The division established its Vision Statement, Mission Statement and Core Values.
- B. Strategic Plan** – A Strategic Plan was developed for the division and significant progress has been made in its implementation.
- C. 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. The division has been tasked with the investigations from the Department of Education and the Hawaii Charter School Commission. These financial crimes have been concealed for years by suspects and these crimes entail the analysis of thousands of internal and financial institution records. These investigations continue to be the most labor intensive and costly type of investigation.

III. Major current issues and projects in order of importance

A. Issues

- 1. **Staffing** – There is a staffing shortage in relationship to the amount of incoming complex financial crimes investigations

being addressed by non-MOU Special Agents. The majority of all Special Agents are bound by MOUs. Currently, there are six Special Agents assigned to handle all complex financial crimes affecting State of Hawaii interests. The number of Special Agents needed to address these incoming complex cases should be bolstered by another five Special Agents.

2. **Department of Education (DOE)** – The DOE continues to decline entering into a Memorandum of Understanding with the division. The DOE has repeatedly been the target of procurement violations, thefts, misappropriations, embezzlements, and other crimes. White collar crimes have diverted millions of dollars in state funds from its intended use, and new financial manipulation and frauds schemes continue to be uncovered. When a crime is identified by DOE administrators, it continues to take months for the DOE administration to make a decision on what should be done. Incidents are investigated within the DOE administratively and are not up to the standards of a criminal investigation. By the time the DOE passes these cases to the division, evidence has been lost, witnesses have been contaminated or their recollections have dimmed. This hindrance places cases at risk of being closed due to the expiration of the statute of limitation.
3. **Charter Schools** – As with the DOE, the charter schools continue to be problematic in areas involving procurement violations, thefts, misappropriations, embezzlements, and other crimes. Unlike the DOE, the Hawaii Charter School Commission is willing to work with the Department of the Attorney General in acquiring Special Agents and funding to address crimes committed by Charter School personnel.
4. **Facilities** – During 2016, the Investigations Division moved from B-1 to the newly renovated B-2 office. The amount of office space fell short in housing the division's Special Agents. Currently we have two Special Agents off-site at Department of Agriculture offices, one being housed at Hale Auhau, and three at the Daniel K. Inouye International Airport. There is a need to establish a second office facility in the West Oahu area to mitigate the lack of office space.

B. Projects

1. **Reorganization** – The division continues to reorganize to adapt to

changing funding and personnel needs, crime trends and responsibilities.

2. **White Collar Crime Unit** – This unit has been addressing corruption and complex financial crimes involving politicians, law enforcement officers, and department heads. Some of these investigations are long term and complex, and we have partnered with federal authorities to have them prosecuted in federal courts.
3. **SLEC** – The division is a member and active participant with the SLEC and works with other members to advance coordination among state law enforcement agencies.
4. **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.
5. **LInX (Law Enforcement Information eXchange)** – Participation in LInX is an ongoing process of training and information management to maintain access to records management system information of police and sheriff's departments and to the N-DEx – the National Data Exchange managed by the Federal Bureau of Investigation.
6. **Hawaii Integrated Justice Information System (HIJIS)** – Participates in this ongoing project coordinated by the Hawaii Criminal Justice Data Center.
7. **Records Management System** - The division continues seeking a records management technology system. Due to the cost and complexity of these systems, the division is working with county law enforcement to participate in a multi-agency shared system.

IV. **Number of investigators and staff in the division.**

Chief Special Agent
47 investigators
3 support staff

V. **Division goals through 2019**

- Efficiently and effectively carry out its responsibilities by attaining more Special Agent positions in addressing complex financial and organized crimes
- Work with County, State and Federal law enforcement colleagues to ensure a united effort in making Hawaii a safe place to live and

work. Offer the County Police Department training in complex financial crimes.

- Conduct fair and impartial investigations while protecting the rights of the public through law enforcement services, protecting all citizens in the State of Hawaii.
- Advance its core values – integrity, ethics, professional attitude, respect, teamwork, partnerships, and improved efficiency through the use of technology.
- Seek funding to sustain personnel and operations. Funding is needed to conduct covert operations addressing organized crimes and political corruption
- Seek funding from grants and other sources to address major civil disturbance events.
- Provide training and professional development for its personnel and State and County law enforcement.

HIGHLIGHTS FROM 2014 THROUGH 2018

2014

- Investigation and execution of search warrant of the Waianae Community Outreach. This was a State-funded organization in which the executive director, her daughter, and three others embezzled over \$1.2 million dollars in funding for a period of four years. The principal suspect was convicted for multiple counts of Theft 1st. The executive director died prior to the indictments.
- The investigation and execution of search warrant of the Myron B. Thompson Academy. The principal was convicted of misdemeanor thefts and her sister, the vice-principal, was convicted of multiple counts of felony theft second.

2015

- Investigation and conviction of campaign spending violation of House Representative Angus McKelvey. Conviction of the misdemeanor offense.
- Investigation and conviction of campaign spending violation of House Representative James Tokioka. Conviction of the misdemeanor offense.
- Civil campaign spending violation of House of Representative Romy Cachola. \$50,000.00 fine.
- Investigation and execution of search warrant at Halau Lokahi Public Charter School. Executive director indicted. Trial pending.
- Fifteen Special Agents deployed to Mauna Kea as part of SLEC to address the TMT protesters. Deployed for one week. Court issued an order to cease construction.

2016

- Investigation of Mayor Billy Kenoi for multiple counts of theft second. He was found not guilty after trial.
- Investigation/search warrant concerning Honolulu Police Officer Maulia Labarre. Convicted on five felony corruption counts in federal court.
- Investigation of a multi-year theft and computer fraud scheme victimizing Hawaii musician John Cruz. Multiple search warrants and financial records revealed the former manager and booking agent was on welfare and receiving food stamps for years while stealing proceeds from the victim's music and living in a waterfront home in a Hawaii Kai marina.

2017

- Investigation/search warrant of Honolulu Liquor Inspector Donald Iseki for forgery II. Indicted.
- Investigation of career criminal Ryan Sumiye committing a fraud scheme while on parole. Pending CJD.
- Investigation/search warrant/extradition of escapee from Hawaii State Hospital Randal Saito. Trial pending. This escape involved an extraordinary escape that was the culmination of years of planning and preparation. The investigation revealed the suspect's arrest prevented what appeared to be his plan to become a celebrity serial killer through the murder.

2018

- Investigation/search warrant of the Ka'u Learning Academy. One suspect arrested. Executive Director and Manager fled the State.
- Assisted the State Auditor from 03/18 through 07/18 on the HART audit.
- Investigation of OHA. Continuing.
- Investigation of the Kanaka Public Charter School. Continuing.

Labor Division

Li-Ann Yamashiro: Supervising Deputy Attorney General

Division telephone: 586-1450

Division location: Hale Auhau, 3rd Floor

I. General work, primary mission, primary clients

The Labor Division is assigned to represent and advise the Department of Labor and Industrial Relations (DLIR). The Division provides the following principal services:

- Advises on substantive matters about each program;
- Assists with legislation;
- Reviews proposed or amended administrative rules;
- Reviews public notices for variances;
- Certifies chapter 42F grantees;
- Reviews contracts;
- Serves as counsel at meetings of boards and commissions;
- Prosecutes or defends cases on behalf of client agencies in contested case as well as in less formal hearings;
- Represents client agencies in agency appeals;
- Assists in guiding investigations; and
- Collects outstanding overpayments and penalties.

The major divisions of the DLIR that utilize our services most frequently include the following:

- Disability Compensation (workers' compensation,¹ temporary disability, and prepaid health care; prepaid health care advisory council);
- Occupational Safety and Health, including the boiler & elevator branch;
- Unemployment Insurance;
- Wage Standards (includes wage claims, prevailing wage on public works, work injury discrimination, family leave law); and
- Workforce Development (includes employment training programs, apprenticeship, plant closing).

In addition, we provide legal services to the following administratively

¹ One of our roles relating to workers' compensation is to represent the Special Compensation Fund. Our role is to be distinguished from the workers' compensation cases that are handled by the Employment Law Division (ELD). ELD represents State agencies as the employer when claims are filed by State employees.

attached agencies:

- Employment Security Appeals Referee's Office (primarily for procedural advice);
- Hawaii Civil Rights Commission;
- Hawaii Labor Relations Board (primarily for rules only, as we also appear before this Board as a party);
- Hoisting Machine Operators Advisory Board;
- Labor and Industrial Relations Appeals Board (primarily for rules only, as we also appear before this Board as a party);
- Office of Community Services;
- State Fire Council; and
- Workforce Development Council.

The Division also advises and represents the Medical Board of the Employees' Retirement System which is administratively attached to the Department of Budget and Finance.

II. High profile matters and major issues

None of the matters below are high profile, but they are important issues to the Labor Division.

A. In the workers' compensation arena, there are a number of cases pending in the Intermediate Court of Appeals of significance to our division. The issue in three of the cases – Agasiva v. Realty Laua, LLC, CAAP-17-0000596; Pave v. Production Processing, CAAP-17-0000600; and Dias v. Altres, Inc., CAAP-17-0000925 – boils down to the sufficiency of evidence necessary to satisfy the statutory requirements to impose liability on the Special Compensation Fund.² One case, Higuchi v. Otaka, Inc., CAAP-18-0000019, raises the issue of whether an employer can be barred from obtaining contribution from the Special Compensation Fund years after the employer pays more than its statutory share of 104 weeks. Another case, Berkoff v. IQ Designs, CAAP-18-0000686, challenges a rule that requires employers to make a claim against the Special Compensation Fund within 30 days of certain events occurring.³ Finally, in Garcia v. Fernandez, CAAP-18-0000492, we maintain that the penalty for not maintaining workers' compensation insurance coverage should be assessed for the entire period the employer had employees, not just from the date the employee suffered a work injury.

² The Special Compensation Fund is funded by annually assessing insurance companies and self-insured employers. As expenditures from the Fund increases, so do the assessments.

³ Another case with this issue is pending a determination at the Labor and Industrial Relations Appeals Board on a motion for reconsideration; as the initial decision was favorable to us and the motion will likely be denied, we expect that this case will also be appealed to the ICA.

B. Although not currently at the forefront, issues about the gig economy are expected to come to a head in the near future. At present, approximately 50 cases involving Lyft and Uber are pending the setting of contested case hearings. The issue is whether the gig economy worker is an employee or independent contractor for unemployment insurance purposes.

C. Personnel in the division are U-funded by DLIR; two of the major programs we service (Unemployment Insurance and Occupational Safety and Health) are federally funded. One program's funding has decreased, while the other has remained flat. If this funding situation persists, and especially if the demand for legal services increases, general funds may be needed to supplement the special funds to pay salaries.

III. Major projects, achievements and accomplishments

A. DLIR embarked on a collaborative investigation involving several divisions within DLIR and other Departments, resulting in violations against an employer for lack of workers' compensation and other insurance coverage. Based on what was learned from that collaboration, we provided training to all the investigators at DLIR.

B. Specific training regarding investigations of chapter 104 (Wages and Hours of Employees on Public Works Projects) complaints was also given for investigators.

C. Litigation was likely averted by providing review and advice prior to the issuance of an occupational health and safety violation.

D. A deputy participated in a group project to help streamline the chapter 42F grant contracting process, in order for grantees to obtain funding more quickly.

E. Division manuals (used for training purposes) were updated for various practice areas. In addition to the manuals, the division forms are also continuously updated.

F. From July 2014 through June 2018, we collected, or assisted the DLIR in collecting, \$5,916,633 and closed over 1,400 cases.

IV. Major current issues and projects in order of importance

A. See sections II, above and V, below.

B. In the 2018, the Legislature established positions in the Civil Recoveries Division (CRD) to do certain collection work for DLIR, some of which our Division had been doing. We have transferred cases and are working with CRD to ensure a smooth transition of collection cases to CRD, facilitating discussions between CRD and DLIR, and providing the necessary assistance to CRD to make this transition successful.

V. Pending major litigation and analysis of impact on State or Department

A. See section II above discussing the issues pending before the ICA involving the Special Compensation Fund. If these cases are not resolved in the Fund's favor, the Fund will be paying for benefits in more cases and, as a consequence, the assessment against insurance companies and self-insured employers (including the State of Hawai'i) will increase. These are the cases:

- Agasiva v. Realty Laua, LLC, CAAP-17-0000596
- Pave v. Production Processing, CAAP-17-000060
- Dias v. Altres, Inc., CAAP-17-0000925
- Higuchi v. Otaka, Inc., CAAP-18-0000019
- Berkoff v. IQ Designs, CAAP-18-0000686

B. In the penalty case, Garcia v. Fernandez, CAAP-18-0000492, if the Labor and Industrial Relations Appeals Board's decision is upheld, employers will have more incentive to go without workers' compensation insurance coverage and gamble that its employees will not get injured. In addition, if the employer is unable to pay for the benefits to the injured employee, the Special Compensation Fund will have to pay the benefits.

C. Spar Marketing Services, Inc. v. State, CAAP-13-0001140, is pending in the Intermediate Court of Appeals. The issue in the case is whether the worker is an employee or independent contractor for unemployment insurance purposes. A decision will likely impact how the gig economy cases will need to be analyzed.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Deputy Attorneys General Robyn Kuwabe and Staci Teruya

VII. List of professionals and deputies in the division

Supervising Attorney General

7 Deputy Attorneys General (one vacancy as of 12/1/19)

Legal Secretary

3 Legal Clerks

Office Assistant

VIII. Division goals through 2019

- Maintain highest levels of professionalism and provide timely legal services.
- Complete manuals for professional positions.
- Continue to update division manuals and forms.
- Planning for succession.

Land/Transportation Division

William J. Wynhoff, Supervising Deputy Attorney General

Division telephone: 587-2992

Division location: Kekuanao`a (Old Territorial) Building, Room 300

I. General work, primary mission, primary clients

The Land/Transportation Division provides advice and counsel to the Department of Land and Natural Resources (DLNR) and the Department of Transportation (DOT). The DLNR comprises 10 divisional agencies and offices, as well as numerous administratively attached agencies, including the Commission on Water Resources Management, the Island Burial Councils, and the Kaho`olawe Island Reserve Commission. The DOT comprises four divisions: Administration, Airports, Harbors, and Highways. Our primary mission is to assist client departments and their agencies and boards legally to meet their goals and policy objectives. We seek to minimize litigation, but aggressively and successfully represent the clients when they are involved in litigation.

II. High profile matters and major issues

A. We advised DLNR in matters relating to the conservation district use permit for the proposed telescope on the summit of Mauna Kea

B. In addition to advising the DOT in all its real property acquisitions, we initiate condemnation proceedings against encumbered property and landowners who contest value. Most recently, property was condemned for Saddle Road, Lahaina Bypass, and numerous bridge projects on Oahu, Kauai and in Hilo.

C. We assist the DLNR with major land acquisitions. Specific projects include 1) the recent acquisition of almost 3,000 acres of former Dole land in Wahiawa for forestry, hunting, and public recreational purposes, 2) acquiring an entire ahupua`a on Molokai to preserve a valuable watershed, and 3) acquisition of approximately 3,000 acres of land in Kamehamehenui on the slopes of Haleakala for the eventual planting of a substantial native forest.

D. We advised the DLNR on behalf of the State in the negotiation and signing of the Memorandum of Agreement (MOA) for the Papahānaumokuākea Marine National Monument. The MOA recognized the Office of Hawaiian Affairs as a co-trustee of the Monument, and the Monument Expansion area created by former President Barack Obama.

E. Our office was instrumental in the creation of the State's first community-based subsistence fishing area (at Hā'ena, Kaua'i) by rulemaking. The new administrative rules chapter is a community-driven management program for sustainable nearshore ocean resources, recognizing and protecting traditional and customary native Hawaiian fishing and gathering practices.

F. We are assisting DOT with a major re-development of the Honolulu Harbor. There are environmental issues and challenges with re-locating existing tenants and issuing new leases.

G. We successfully defended DLNR's Forestry and Wildlife Division in a legal challenge to the management plan covering 61,641 acres and protecting numerous endangered and threatened species in the Ka'u forest reserve. The plan includes the protection of native plant species and watershed lands, as well as the release of the 'alalā (Hawaiian crow). Plaintiffs' appeal to the Intermediate Court of Appeals was rejected, and they were recently also denied a writ of certiorari to the Hawai'i Supreme Court.

H. We advised the Commission on Water Resource Management in the resolution of the petition and complaint against water waste and for amendment of interim instream flow standards in West Kaua'i (Waimea River, and its headwaters and tributaries in Koke'e and Kekaha). The mediation accord resulted in a historic agreement in a hands-on approach to managing area water resources as between the Kekaha Agriculture Association, the State Agribusiness Development Corporation, the State Department of Hawaiian Home Lands, and the Kaua'i Island Utility Cooperative.

I. We advised the DOT as to completion of the Hawaiian Airline maintenance facility. This project is a key component of DKI revitalization. The project stalled because the contractor is in major financial difficulty. We assisted in physical completion, arranged for payment of numerous sub-contractors, and are now handling multifaceted litigation with the contractor and others regarding the contractor's failure to complete.

J. We are assisting both the DLNR and the DOT as to houseless persons on their property throughout the State.

K. We have assisted and continue to assist DOT with a federal court consent decree regarding its obligations as to environmental compliance in all its three divisions.

L. The DOT awards the highest number of contracts for major multi-million construction, for projects at public airports (modernization of commuter terminal; construction of Consolidated Rental Car Facilities), highway (roadways, bridges), and commercial harbors (Harbor Modernization Plan). Our division is involved in every step up through successful completion of the major projects.

The deputies are in charge of overseeing the following steps (in general): when DOT puts out a contract for construction: ensuring compliance with HRS Chapter 343; publishing of a Notice for Bids, or Notice for Proposals; representing DOT in administrative hearings when a construction company challenges DOT's award to another company; reviews and approves contracts; represents DOT in contract disputes and/or default; and assists in the suspension or debarment of a company.

M. We are assisting the DOT with on-going efforts to comply with the Endangered Species Act and its state counterpart. A major milestone in the effort was our success in dismissing a lawsuit by Earthjustice on 11th Amendment grounds.

III. Major projects, achievements, and accomplishments

See section II above.

- A. The division helped ELD represent DOE in a class action litigation regarding back pay for substitute and part time teachers. Judgments totaling \$60 million were entered against DOE. Our division was lead counsel for the appeal. The Supreme Court reversed and entered judgment for DOE – a \$60 million win. *Kawashima v. State*, 140 Hawai'i 139, 398 P.3d 728 (2017).
- B. Our division won two inverse condemnation cases against the Land Use Commission resulting from the failed Aina Le'a development on the Big Island. *Bridge Aina Le'a v. LUC*, Civil No. 11-00414 SOM KJM (after jury trial) and *DW Aina Le'a v. LUC*, Civil No. 17-00113 SOM-RLP (on motion to dismiss). The two cases together had potential value of over \$100 million. Both cases are on appeal.
- C. Our office has already collected \$11 million from Ciber, Inc. relating to Ciber's failed software for the DOT. The suit was initiated by Ciber. We defeated its claim and prevailed on the counterclaim. We are now seeking millions more from various insurers.
- D. We are working on condemnation of property at the Maalaea small boat harbor on Maui. The case involves innovative application of "the undivided fee rule" to limit the amount of compensation the State had to pay. That result saved the State over \$1 million. Plaintiff has appealed.
- E. We tried a case concerning public trust duties with respect to land leased to the United States Army as part of its Pohokuloa Training Range. That case and appeal will help clarify the State's public trust duties.

- F. We assist the DOT with the Daniel K. Inouye International Airport, Airport Modernization Program (the “Program”). This Program is an important airport initiative intended to transform the airport into a more distinctive, efficient, and functional airport. The Program has been years in the making and construction began in 2013. Land/Trans provided legal advice on various issues including procurement (construction of CONRAC facility), document review (various real property leases, equipment leases, concession contracts, professional services contracts, and requests for proposals) and litigation support (Hawaiian Airlines Cargo and Maintenance Facility Lease).
- G. We assist the DOT with the Harbors Modernization Plan. This plan is harbor’s ongoing effort to improve state harbors including Honolulu Harbor, Kalaheo Harbor, Kawaihae Harbor, and Hilo Harbor. Land/Trans provided legal support regarding matters including infrastructure improvements, land acquisition, and tenant relocations.
- H. We help DOBOR provide a constitutionally required due process hearing to persons towed from harbor parking lots. Without our assistance, a crucial income stream of \$100,000 per month would be lost or curtailed.
- I. We advised the Board of Land and Natural Resources in a contested case involving a habitat conservation plan and incidental take license for the Na Pua Makani wind energy project in Kahuku. The Board’s decision is now on appeal at the Circuit Court.
- J. We advised the Climate Change Mitigation and Adaptation Commission. That Commission provides direction, facilitation, and coordination among various state and county agencies, and federal agencies on climate change mitigation and resiliency strategies.
- K. Our office is assisting the DLNR in the creation of a public-private partnership for redevelopment of the Ala Wai Small Boat Harbor. The Ala Wai Small Boat Harbor is a well-known property at the entrance to Waikīkī, and has been featured prominently in many films and television shows shot in Hawai‘i. The development of such state lands remains a challenge under environment laws and land use regulations.
- L. We represent the State in ongoing collaborative efforts with many other states and non-profit environmental organizations to defend against federal initiatives to reduce or eliminate national monuments, including marine national monuments such as Papahānaumokuākea.
- M. Our office coordinated comment by the Office of the Attorney General and DLNR in urging Hawaii’s Congressional Delegation to oppose proposed legislation to relax national standards allowing alien species

introductions via commercial shipping in ballast water or on the hulls of commercial ships (the proposed Vessel Incidental Discharge Act – “VIDA”). While initially one of several sponsors of the Senate bill, Senator Brian Schatz has since opposed the bill in its several forms. Further versions of VIDA remain pending.

- N. We successfully defended a putative class action brought on behalf of ALL shoreline landowners in the State and involving an alleged constitutional taking of accreted land. After a preliminary loss in the intermediate court, we shepherded a change in applicable law through the legislature. We then succeeded in having class certification denied. We recently received a ruling in the State’s favor. Most likely there will be an appeal.
- O. In *In re Honey Bee U.S.A., Inc.*, a major bankruptcy case regarding the so-called Waikiki Landing property, the Division served as lead counsel for DLNR, which had entered into a public-private partnership with the debtor for the construction of multi-million-dollar improvements. Our Division successfully moved for termination of the Lease and fought off numerous motions. DLNR is currently in full possession of the property and has plans for development.
- P. In *Li Cobian v. DLNR*, a U.S. District Court case, the Division successfully dismissed a lawsuit against DLNR and official capacity defendants relating to a Kahuku motocross park. The plaintiff sought to force DLNR to cancel a revocable permit on the alleged grounds that the permittee was violating federal tax laws. The court dismissed for lack of subject-matter jurisdiction.
- Q. In *Li Cobian v. DLNR II*, a First Circuit Court case, the Division obtained dismissal with prejudice on a complaint alleging procurement violations relating to the Kahuku motocross park.
- R. In *Pagett v. DLNR*, a Third Circuit Court Case, the Division successfully dismissed an HRS § 91-7 lawsuit seeking to invalidate a boating rule requiring certain event organizers to obtain marine event permits from DOBOR. The issue upon which the Division prevailed was whether a plaintiff could bring a lawsuit under HRS § 91-7 when it challenged not the validity of the rule itself, but an interpretation of ambiguous language in the rule that would allegedly extend the reach of the rule beyond its statutory basis. The circuit court ultimately agreed with the State and dismissed for lack of subject-matter jurisdiction.
- S. In *Kekuhulu O Mana v. BLNR*, a Fifth Circuit Case, the Division obtained summary judgment on a claim that the Board of Land and Natural Resources failed to comply with Chapter 343, HRS, when it

issued a new lease to Syngenta Seeds, LLC regarding agricultural land in the conservation district on Kauai.

- T. Ala Wai Watershed Flood Control Project. The project is to reduce flood risks in the Ala Wai Watershed. This \$340 million project will involve the United States Army Corps of Engineers, the State of Hawaii, and the City and County of Honolulu.
- U. Habitat conservation plans for various projects. Various developments and projects will cause or are causing take of threatened or endangered species. Habitat conservation plans are required for take that is incidental to otherwise lawful activities. This is especially important for projects such as wind farms that provide a source of clean energy for the state.
- V. Na Wai Eha water permitting decision. There are over 100 applicants for surface water permits in the Na Wai Eha watershed on Maui. Assist the Commission on Water Resource Management in its decision to issue permits to these applicants for water from the Waiehu, Wailuku, Waihee, and Waikapu streams on Maui.
- W. *Makawao Cemetery Association v. Department of Defense, Office of Veterans Affairs and the State of Hawaii; Civil No. 15-1-0209*; The State is working with the federal government to comply with federal and state requirements to protect neighboring historical properties and other interests so that plans to develop and expand the Maui Veterans Cemetery can be successfully completed.
- X. *State v. O'Shea*; Civil No. 17-1-1543. The State filed a lawsuit against private landowners asking the court to order removal of an illegal seawall built on state land. This unprecedented action by the state will affect how the state handles sea level change and shoreline hardening in the future as this becomes an increasing problem.

IV. Major current issues and projects

See sections II and III above.

V. Pending major litigation and analysis of impact

See sections II and III above.

- A. Pohakuloa. The circuit court's ruling is an unprecedented expansion of public trust concept and duties. The Supreme Court's ruling will clarify those issues.

- B. State v. O'Shea. This litigation has the potential to address for the first time the question of where the private / public ownership line is with respect to hardened shoreline property. It will also set precedent for how to deal with private structures threatened with destruction by erosion and sea level rise.

VI. Names of acting supervisors

Land: Deputy Attorney General Linda L. W. Chow
Transportation: Deputy Attorney General Michael Q. Lau

VII. List of deputies and staff

Supervising Attorney General
15 Deputy Attorneys General
2 Legal Assistants
1 Legal Secretary
7 Legal Clerks (1 position is vacant since September 2017)

VIII. Division goals through 2019

Our primary goal is to continue our history of excellent and prompt legal advice, counseling, and representation for client departments and agencies. We can accomplish that goal by unleashing the creativity and talents of the division staff, primarily our deputies. Our focus is to support, train, motivate, and empower those deputies such that they look forward every day to working at the Department of Attorney General and strive to achieve their maximum potential as attorneys and individuals.

Legislative Division

Maurice Kato, Supervising Deputy Attorney General

Division telephone: 586-1276

Division location: Hale Auhau, Third Floor

I. General work, primary mission, primary clients

The Legislative Division provides legal services on matters pertaining to legislation, including the preparation of legislative session extension documents and special session convening documents for the Governor when requested, and pertaining to proposed administrative rules and executive orders. The division coordinates the preparation and review of all legislative bills proposed by the executive branch agencies and coordinates the review, monitoring, and evaluation of all legislative bills during and after each session of the Legislature in accordance with chapter XIII of the Attorney General's Legal Services Procedures Manual and through the legislative bill tracking system on the department's computer system. When the position of the Special Assistant to the Attorney General is filled and assigned the duty of the legislative coordinator of the Department, the Special Assistant has coordinated the policy concerns and testimony of the Attorney General on bills proposed by the Department and other bills that affect the Department and the division assists in the review of testimony and letters to the Legislature.

The division assists in the promotion of uniform laws by providing legal services, staffing, and assistance to the Commission to Promote Uniform Legislation, the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws pursuant to chapter 3, Hawaii Revised Statutes (HRS). The Commission is advisory to the Attorney General and to the Legislature and is placed within the Department. The division assists the Commission in the preparation of meeting notices and minutes to comply with the Sunshine Law, the preparation of the Commission's annual report, and the preparation of legislative bills to enact uniform laws.

The members of the Commission to Promote Uniform Legislation are appointed by the Governor with confirmation by the Senate. Pursuant to the Constitution of the National Conference of Commissioners on Uniform State Laws, each commissioner must be a lawyer. The present members of the Commission to Promote Uniform Legislation are Chairman Lani Liu Ewart, Vice Chairman Ken H. Takayama (he is the retired Director of the Legislative Reference Bureau), Elizabeth Kent (she is the retired Director of the Center for Alternative Dispute Resolution in the Judiciary), and Peter J. Hamasaki and Kevin P.H. Sumida. In addition, Robert S. Toyofuku, a former member of the Commission, is recognized by the National Conference as a Life Member (he

serves as the member of the National Conference's Legislative Council who oversees the legislative activities in the states in the Western Region -- Alaska, California, Hawaii, Nevada, Oregon, and Washington) and continues to participate as a volunteer member of Hawaii's delegation to the National Conference. Deputy Attorney General Maurice S. Kato has been recognized by the National Conference as an Associate Member since 1985 and is also considered to be a member of Hawaii's delegation.

The division also coordinates, monitors, and reviews the preparation of administrative rules of the Department. This division also performs the final review (format requirements, citation and quotation checking, and proofreading) of the formal numbered opinions issued by the Attorney General in accordance with AG Legal Services Procedures Manual chapter I and pursuant to section 28-3, Hawaii Revised Statutes, that are made available for inspection by the public.

II. High profile matters and major issues

None.

III. Major projects, achievements and accomplishments

The division has coordinated the review of, and checked the review of, the legislative proposals of the executive branch agencies. For the following regular sessions, the division received, referred to other divisions, and reviewed legislative proposals, totaling 185 for 2015, 208 for 2016, 180 for 2017, and 124 for 2018.

During the regular legislative sessions, the division receives, reviews for referrals, and refers the introduced bills, committee reports, and resolutions to appropriate legal services and non-legal services divisions. During the following regular sessions, the division received, reviewed, and referred 2,894 bills for 2015, 2,387 bills for 2016, 2,918 bills for 2017, and 2,260 bills for 2018.

The division provides coordination and review of the reports to the Governor on passed bills submitted by the Governor to the Attorney General for review and of the suggested veto documents drafted for, or submitted for review by, the Governor, again within sometimes very limited time periods. For the following regular sessions, the division reviewed the reports on 252 passed bills and reviewed and edited or prepared 16 versions of veto documents for 14 bills for 2015; on 269 passed bills and 4 veto documents for 4 bills for 2016; on 230 passed bills and 23 veto documents for 19 bills for 2017; and on 229 passed bills and 22 veto documents for 22 bills for 2018.

IV. Major current issues and projects in order of importance

A. Obtaining Legislature's Print Shop Copies of Bills.

The division has reviewed hard copies of introduced legislative bills, offered resolutions, and legislative committee reports on those bills and resolutions and referred them to appropriate divisions (determined by subject matter, state agency involved, or pending litigation being handled) for review and monitoring and, if necessary, for the preparation of testimony and correspondence. The former Senate President, the Honorable Colleen Hanabusa, implemented a "paperless" initiative, which imposed a limit on the number of hard copies available from the Senate Print Shop (no more than one set) and the House of Representatives adopted a fee (\$420) to be charged for hard copy sets of legislative bills, resolutions, and committee reports.

Because the Department must review and monitor all of the bills and be prepared to testify before the legislative committees when appropriate, advise the legislators and executive branch officials about the contents of and noticed legal problems with any bill, and report to the Governor on passed bills the Department must pay the fees and use its own paper.

B. Reimbursement of Costs to Attend the Annual Meetings of the National Conference of Commissioners on Uniform State Laws.

Section 3-2, HRS, sets forth the duties of the members of the Commission to Promote Uniform Legislation, including the duty to "represent the State in conventions of like commissioners of the several states and territories for the consideration and recommendation of uniform laws to be submitted to the several state and territorial legislatures for action." Furthermore, section 6.1 of the Constitution of the National Conference of Commissioners on Uniform State Laws states in pertinent part, "It is the duty of the Commissioners from each State: . . . (2) to attend annual and special meetings of the Conference." Section 26.1 of the National Conference's Bylaws provides that "[t]he Executive Committee shall terminate the membership of any Commissioner who, without being excused by the Executive Committee, is absent from two consecutive meetings of the Conference."

V. Pending major litigation and analysis of impact on State or Department

The Legislative Division is not handling any pending major litigation.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

None.

VII. List of professionals and deputies in the division

Supervising Deputy Attorney General
Legal Clerk

VIII. Division goals through 2019

- A. Coordinate the legal services review of legislative proposals of the Executive Branch.
- Ensure the timely review of legislative proposals by divisions.
 - Ensure the accurate and effective review of legislative proposals by the divisions to which the proposals were referred.
 - Coordinate with the Governor's legislation review staff to establish reasonable deadlines for the submission of legislative proposals to the Office of the Governor.
- B. Coordinate the legal services review of legislative bills pending before the Legislature.
- Ensure the effective review of pending legislative bills by divisions.
 - Assist in the reporting of problems discovered during the review of legislative bills by preparing a list of bills to be tracked, determining whether hearings have been scheduled for the bills with problems, ensuring that appropriate testimony is prepared, and reviewing testimony and legal advice letters on those bills.
 - Continue to obtain, copy, and distribute bills and legislative committee reports in hard copy form and, when necessary, in electronic form or by links to online webpages to divisions; continue to maintain the Legislative Bill Tracking System on the ProLaw Information Management System to provide information on the referrals of bills and to provide necessary reports; and continue to maintain manually prepared problem bill lists.

- C. Coordinate the legal services review of passed legislative bills referred by the Governor for review.
- Ensure the timely review of passed legislative bills by divisions.
 - Assist in ensuring the accurate and effective review of passed legislative bills by the divisions to which the proposals were referred.
 - Ensure the timely and accurate preparation of suggested veto documents for the Governor.
 - Continue to: coordinate the review of passed bills with the legislation review staff of the Office of the Governor; set internal staggered deadlines for the review of passed bills; maintain computerized records of referrals and deadlines; review bills and reports prepared by the divisions before the reports to the Governor are sent to the Attorney General for approval; and review, edit, and transmit suggested veto documents to the Governor in electronic form.
- D. Provide to government officials of the Executive, Legislative, and Judicial Branches appropriate legal services on legislative matters and matters pertaining to administrative rules.
- As specifically assigned by the Attorney General or the First Deputy Attorney General, continue to provide timely and accurate legal advice on legislative matters and matters pertaining to administrative rules.
 - Ensure that the administrative rules of the Department are prepared and adopted in accordance with the administrative rules format and the Hawaii Administrative Procedure Act.
 - Perform legal research, review documents and rules, and prepare and deliver legal advice.
- E. Assist in the promotion of uniform state laws.
- Provide staff support and assistance to the Commission to Promote Uniform Legislation.
 - Subject to available funding, participate in and monitor the activities of the National Conference of Commissioners on Uniform State Laws and attend the annual meetings.
 - Continue to: prepare meeting notices, agendas, and minutes for the Commission to Promote Uniform Legislation in compliance with the Sunshine Law; assist in seeking legislative appropriations of funds for the payment of Hawaii's dues for the National Conference of Commissioners on Uniform State Laws and for the payment of the registration and travel expenses for Hawaii's commissioners to attend the National Conference's annual

meetings; prepare bills to enact uniform laws; and annually prepare for the Commission to Promote Uniform Legislation reports to the Legislature on the activities of the National Conference and the Commission to Promote Uniform Legislation.

Office of Child Support Hearings

Kim Leonillo, Supervisor

Division telephone: 692-7110

Division location: Kakuhikewa Building, Room 436
601 Kamokila Boulevard
Kapolei HI 96707

I. General work, primary mission, primary clients

Our primary work is to provide quality, expedited resolution of child support disputes for administrative proceedings initiated through the Child Support Enforcement Agency (CSEA). We resolve cases that have not been resolved after the parties have been served with proposed administrative orders generated by and served upon the parties by the CSEA. We help to reduce the burden on the Family Court system by resolving thousands of child support issues that would otherwise need to be decided along with more difficult and time-consuming issues faced by Family Court judges, such as custody, visitation, and property division. We therefore help all parties in Family Court cases because we assist in minimizing the backlog in Family Court proceedings and promote more efficient use of Family Court resources. The average Hearings Officer, as compared to the average Family Court judge, costs far less to the state (especially with 66% federal funding) in terms of salary, office space, and support personnel.

Cases are primarily resolved through an administrative process. The parties through a pre-hearing may be able to reach an agreement and if they are unable to do so, they may proceed to a contested hearing in which a Hearing Officer will make a final decision. Our statutory authority is generally limited to child support and medical insurance. OCSH orders, when filed with the Family Court, have the same force and effect as a circuit court order. On a limited basis, spousal support arrearages may also be resolved when presented in conjunction with child support.

Our primary mission is to resolve child support disputes fairly, impartially, and expeditiously pursuant to Chapters 576E and 576D, Hawaii Revised Statutes.

OCSH does not have clients but provides a forum for parents and CSEA where they can request an administrative hearing to resolve their child support disputes in lieu of having to file an action and appear in Family Court. There have been many instances where the Family Court has deferred to OCSH to resolve the child support issue thereby freeing the court to decide other issues.

II. High profile matters and major issues

Contested child support hearings are not high profile as compared to the major litigation handled by the rest of the Department. Nevertheless, contested child support hearings may create issues of concern because several thousand hearings are conducted each year, and some parties may be dissatisfied with the outcome and/or the administrative child support process. The Supervisor, Kim Leonillo, is responsible for managing complaints from parties and the CSEA.

III. Major projects, achievements, and accomplishments

A. Orders issued for the years 2014 through 2017

Calendar year 2014 – 3,594 orders

Calendar year 2015 – 3,339 orders

Calendar year 2016 – 2,523 orders

Calendar year 2017 – 2,148 orders

B. Expedited hearings, expedited orders: January 2014 through December 2017

OCSH consistently resolves the cases that come before them in an expedited manner. For the period January 1, 2014 through December 31, 2017, OCSH conducted approximately 11,158 child support hearings and issued 11,160 orders. Out of these hearings, approximately:

10,237 orders (88.2%) were issued on the day of or prior to the hearing;

793 orders (6.8%) were issued 1 to 7 days of the hearing;

174 orders (1.5%) were issued 8 to 14 days of the hearing;

167 orders (1.4%) were issued 15 to 29 days of the hearing; and

233 orders (2.0%) were issued 30 or more days after the hearing.

OCSH issued 95% of its orders within 7 days of the hearing.

Appeals from orders issued by OCSH continue to be low and the appeal rate from January 2014 through December 2017 remains below 1%.

C. Website version of General Information Classes

A Power Point version of the OCSH General Information classes has been posted on the OCSH public website. The hardcopy presentation has been updated and will be posted on the OCSH website.

C. OCSH's participation, along with other members, to revise the 2014 Hawaii Child Support Guidelines. The revisions occur at least once every

four years to comport with Federal law as well as Hawaii statutory and case law while reflecting current economic data relevant to the cost of raising children.

IV. Major current issues and projects in order of importance

Major issues and projects that affect the CSEA, such as compliance with federal disaster recovery requirements, KEIKI upgrades, downtrend in cases, and computer interfacing with Department of Human Services' (Medicaid) computer system impact the OCSH because all hearings arise out of CSEA administrative proceedings.

V. Pending major litigation and analysis of impact on State or Department

No pending major litigation.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Erin Sugita and Brian Buckley, in that order.

VII. List of professionals and deputies in the division

Supervisor/Hearings Officer
Four Hearings Officers
2 Office Assistant III
Legal Clerk
Legal Assistant

VIII. Division goals through 2019

- Maintain expedited hearings by resolving over 90% of cases within 7 days of the hearing.
- Maintain appeal rate below 1%.
- Maintain history of no physical violence inflicted on any attendees, as well as CSEA or OCSH personnel, during hearings.
- Maintain ongoing training and development.

Office of Dispute Resolution

Michelle Puu, Supervisor

Direct telephone: 586-1172

Division telephone: 587-7680

Division location: Richards Building
707 Richards Street, Suite 403
Honolulu, Hawaii 96813

I. General work, primary mission, primary clients

Our primary mission is to conduct impartial due process hearings in accordance with the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). We hear and decide cases that the parents of disabled children and the Department of Education (DOE) have not been able to resolve concerning the eligibility, placement and services for a disabled and/or special needs child(ren).

Our primary mission is to resolve child support disputes fairly, impartially, and expeditiously pursuant to IDEA, Section 504 and Chapter 60, Hawaii Administrative Rules.

ODR does not have clients but provides a forum in which parents and/or guardians of disabled or special needs children and the DOE may have an impartial due process hearing.

II. High profile matters and major issues

Impartial due process hearings are generally not high profile as compared to the major litigation handled by the rest of the Department. Nevertheless, cases involving the Department of Education and special education may draw the attention because they involve children with disabilities and/or special needs and parties may be dissatisfied with the outcome and/or the administrative process. Parents may also elect that their impartial due process hearing be open to the public.

III. Major projects, achievements, and accomplishments

ODR was created in May 2017 and cases reported are by school years.

A. May 2017 through June 30, 2017 (SY17)

Total number of Due Process Complaints:	13
Cases fully adjudicated:	1
Decisions within the 45-day timeline:	0
Decisions within extended timeline:	1
Due process complaint carried over to the following school year:	2
Due process complaints withdraw or dismissed:	10

85% of the cases resolved within the same school year.

B. July 2017 through June 30, 2018 (SY1718)

Total number of Due Process Complaints:	43
Cases fully adjudicated:	6
Decisions within the 45-day timeline:	1
Decisions within extended timeline:	5
Due process complaint carried over to the following school year:	2
Due process complaints withdraw or dismissed:	35

95% of the cases resolved within the same school year.

C. Expedited process

Of the 6 cases that were fully adjudicated in SY1718, the average length of time in which a hearing was held and a written decision was issued was 74 days (approximately 2 ½ months).

Of the 37 cases that were either withdrawn or dismissed, 15 or 41% were resolved within 45 days, a total of 25 or 68% were completed within 90 days and less than 1/3rd were older than 91 days.

IV. Major current issues and projects in order of importance

- A. Continue to work towards completing hearings within the time frames provided in IDEA as well as the DOE's Administrative Rules.
- B. Relocation into permanent office space.

V. Pending major litigation and analysis of impact on State or Department

No pending major litigation.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Denise Balanay and Jennifer Young.

VII. List of professionals and deputies in the division

Supervisor
2 Hearings Officers
Legal Clerk

VIII. Division goals through 2019

- Continue to conduct expedited hearings and to complete hearings within timeframes prescribed by IDEA and the DOE Administrative Rules.
- Draft and/or develop Hearing Officer's bench book.
- Maintain ongoing training and development.
- Assess need for additional clerical support staff.

Public Safety, Hawaiian Home Lands and Housing

Craig Iha, Supervising Attorney General

Division telephone: 587-2978

Division location: Hale Auhau, various offices on all three floors

I. General work, primary mission, primary clients

This division provides advice and counsel and representation in litigation, and other types of proceedings, to the following departments and agencies:

- Department of Public Safety and its attached agencies and commissions, which include the Hawaii Paroling Authority, the Correctional Industries Advisory Committee, the Corrections Population Management Commission and the Crime Victim Compensation Commission;
- Department of Hawaiian Home Lands;
- Hawaii Housing Finance and Development Corporation; and
- Hawaii Public Housing Authority.

Tort, civil rights litigation and employment matters are, for the most part, handled by other divisions. This division handles the litigation and administrative claims involving most other legal issues involving our clients. Litigation issues have included compliance with the Americans with Disabilities Act, contract and procurement issues, land use and development, construction, fair housing, evictions, foreclosures, quiet title, inmate claims involving constitutional and other correctional issues, DHHL beneficiary claims and compliance with the Hawaiian Homes Commission Act, among a variety of other issues. This division also provides advice and counsel on an equally vast range of issues, processes pardon and commutation applications, prepares extradition requests, reviews and assists clients with leases and other conveyance documents, development agreements, financing instruments, contracts, administrative rules, and reviews and testifies, when necessary, regarding legislation.

II. Ongoing Matters and Major Issues

For Public Safety--

The division is assisting the client in identifying and addressing issues related to mental health and medical care of inmates, Americans with Disabilities Act issues, procedures for intake and release of pretrial detainees and inmates, the rights of inmates to practice Native Hawaiian and other religions, and other matters

For Department of Hawaiian Home Lands—

The division is assisting and advising the client regarding a number of ongoing issues related to Hawaiian Home Lands, including ensuring that DHHL homestead and other lessees continue receiving adequate telecommunications services. Other issues include assisting DHHL with turning over sewer infrastructure to the City and County of Honolulu, and other intergovernmental projects.

For Hawaii Housing Finance and Development Corporation--

The division is assisting and advising the client with respect to several upcoming affordable housing projects, including drafting real estate and contract documents, and assisting with bond closings. Specific projects include:

- Sale of HHFDC's Rental Property Portfolio

The client is selling its leasehold interests in six (6) affordable multifamily rental properties. The Portfolio is comprised of 1,221 units in three Kakaako properties (Pohulani Elderly, Kamakee Vista and Kauhale Kakaako) and one each in Kapolei, Lahaina (Honokawai), and Kailua-Kona (Lailani). The buyer is Standard Property Company, Inc. and Stanford Carr Development, LLC ("Buyer").

- Ongoing new and redeveloped affordable housing projects

Legal support for the client's financing and development of new and redeveloped affordable housing projects is ongoing. At the present time, we are aware of a total of 15 large projects/closings for this fiscal year. This number is anticipated to increase.

The division also represents the client in a case entitled, Michael Tuttle, et al. v. Front Street Affordable Housing Partners, et al., (Civil No. CV 18-00218 JAO-KJM). The suit involves an affordable rental project in Lahaina, financed in part with low-income housing tax credits administered by the Hawaii Housing Finance and Development Corporation ("HHFDC"). The residents are suing the owner and HHFDC as a result of the original period of affordability established for the project recently being shortened.

For Hawaii Public Housing Authority—

- Ongoing work for Redevelopment Projects at N. School Street, Mayor Wright Homes, and Kuhio Homes/Kuhio Low-Rise projects.
- Renewal of trust declarations and confirmation of ownership for all projects

Pursuant to the U.S. Department of Housing and Urban Development (HUD) requirements, the client is required to record new Declarations of Trust, in favor of HUD, against each of its federal housing projects.

III. Major Projects, Achievements and Accomplishments

For Public Safety—

- USA v. State of Hawai'i, Civ. No. CV 08-00585 JMS KSC (USDC Hawai'i)
Obtained dismissal of a 10 year case involving the Department of Justice's oversight of mental health services at the Oahu Community Correctional Center (OCCC).
- Streamlined pardons procedures
Successfully worked with other agencies and jurisdictions in improving existing systems for vetting pardon applications.
- Inmate litigation
Successful outcomes on a large volume and variety of inmate litigation matters, including numerous habeas corpus cases.

For Hawaiian Home Lands—

- Hoolimalima Rent-to-Own Residential Homestead Project
Assisted DHHL with converting its first "rent to own" project, in which native Hawaiian renters of the Hoolimalima project were given first opportunity to purchase their homes and receive 99-year DHHL homestead leases. Guided DHHL through sophisticated financing issues related to the conversion of the project from rentals to homestead leaseholds.
- In Re Molokai Public Utilities (CWRM Appeal to HI Supreme Court)
Won a case of first impression before the Hawaii Supreme Court. Molokai Public Utilities appealed a 2017 Commission on Water Resources Management dismissal of a 1993 water use application to use water in the redevelopment of shuttered golf course and resort facilities on Molokai's west end. Successfully briefed and argued DHHL's position before the Hawaii Supreme Court.
- Development Agreement and Revolving Loan, East Kapolei IIB Homesteads
Negotiated and drafted development agreement, loan agreement, and other documents for a 100-lot residential homestead development in

East Kapolei. Project involves a first-of-its-kind \$10 million revolving, interim construction loan from DHHL to the Developer, which will lower the purchase price of the homes for DHHL beneficiaries.

- Kamakana Ali'i Mall
Continued to advise and assist DHHL with lease, land use, contract negotiation, land acquisition, and other issues during the development phase of the DeBartolo-owned project on leased DHHL land in Kapolei. The project is projected to bring in more than a billion dollars of lease and participation rent to DHHL over the 65-year lease.
- Costa v. DHHL
Won a lengthy contested case hearing involving a breach of trust case by a DHHL pastoral homestead applicant. Plaintiff claimed that DHHL breached its fiduciary duties by prioritizing residential homestead development over pastoral homesteads and seeks to overturn DHHL's 20-year development plans. Also defeated a motion for class certification in circuit court. Case is stayed while plaintiff pursues a contested case before the Hawaiian Homes Commission. Recently completed contested case hearing.

For Hawaii Housing Finance and Development Corporation--

- Affordable Housing Development
Assisted the client in closings on loans and development agreements for 19 affordable housing projects and the administration of Low Income Tax Credits for 26 affordable housing projects.

For Hawai'i Public Housing Authority—

- Hawai'i Civil Rights Commission Cases
Assisted the client with closing and obtaining favorable settlements in a number of Hawaii Civil Rights Commission and the U.S. Department Housing and Urban Development matters.
- Redevelopment Projects
Assisted the client with its procurement, contracting and due diligence period for redevelopment projects at Mayor Wright Homes, N. School Street, and Kuhio Homes/Kuhio Low-Rise.
- Administrative Rules
Assisted the client in drafting administrative rules for its state and federal housing programs, including emergency rules issued under Governor's emergency proclamations for the homeless and lava victims.

IV. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Deputy Attorney General Michelle Agsalda. Other lead deputies are identified on a case by case basis.

V. List of personnel in the division

Division-wide Personnel

Supervising Deputy Attorney General

Legal Secretary

4 Legal Clerks

Public Safety Unit

3 Deputy Attorneys General

Hawaiian Home Lands Unit

4 Deputy Attorneys General

Legal Assistant

Hawaii Housing Finance and Development Corporation (HHFDC Unit)

2 Deputy Attorneys General

Hawaii Public Housing Authority (HPHA Unit)

3 Deputy Attorneys General

Legal Assistant (currently vacant but in recruitment. Services both the HHFDC unit and the HPHA unit)

VI. Division goals through 2019

- Fill vacant positions.
- Create an additional Public Safety Deputy Attorney General and Legal Assistant position.
- Increase experience and capacity.
- Increase client training.

Tax and Charities Division

Gary S. Suganuma, Supervising Deputy Attorney General

Division telephone: 586-1470

Division location: Melim Building, Suite 903

I. General work, primary mission, primary clients

The Tax and Charities Division (the "Division") provides legal representation and advice to the Department of Taxation ("DOTAX") and other State departments and agencies relating to tax matters. This includes, but is not limited to, representing DOTAX in all state, federal and appellate courts in litigated tax controversies; enforcing and collecting liens in foreclosure and quiet title proceedings; reviewing tax related legislation and preparing written testimony on proposed bills when necessary; reviewing and/or drafting tax rules; preparing legal opinions; providing legal advice, counsel, and opinions on tax matters to DOTAX, other state agencies, the Governor, and the legislature; representing the State in all bankruptcy matters and providing bankruptcy assistance. The Division also represents the Attorney General in his capacity as *parens patriae* in the oversight and enforcement of laws pertaining to charitable trusts, public charities, public benefit corporations, and private foundations. The Division is also responsible for overseeing and enforcing the registration of charities, professional solicitors and professional fundraising counsels under Chapter 467B, Hawaii Revised Statutes ("HRS"), and is the custodian of certifications by charities that issue charitable gift annuities under HRS § 431:204(b).

II. High profile matters and major issues

A. Airbnb Subpoena

Despite the proliferation of short-term rentals in recent years, the State has been unable to fully realize the tax revenue it is due. Legislation that would assist DOTAX in collecting general excise tax and transient accommodations tax for short-term rental bookings failed in 2016, 2017, and 2018. Additionally, limitations in information available from the IRS and the booking platforms have made it difficult for DOTAX to identify hosts and enforce compliance. Accordingly, on August 31, 2018, the Division filed a petition in Circuit Court on behalf of DOTAX, requesting permission to serve an administrative subpoena that would require Airbnb, Inc., one of the largest booking platforms of short-term rentals in the State, to identify its hosts, property addresses, and amounts paid for bookings in the State.⁴ Airbnb, Inc. opposed the subpoena based on an argument that

⁴ Prior to serving an administrative subpoena that seeks the identity of unknown taxpayers, HRS section 231-7(e) requires DOTAX to obtain court approval.

the subpoena violates the federal Stored Communications Act. The application of the Stored Communications Act to booking platforms has been litigated throughout the country with varying results. The hearing on the petition is currently scheduled for February 7, 2019. If successful, the Division intends to file similar petitions against other booking platforms operating in the State.

B. Kamehameha Schools Sex Abuse Lawsuit

The Division has represented the Attorney General as *parens patriae* in the probate court proceedings to approve a settlement in the Kamehameha Schools Bishop Estate ("KSBE") sexual abuse case. The lawsuit involved 32 Plaintiffs who claimed to have been sexually abused by psychiatrist Dr. Robert Browne during therapy sessions. Most of the Plaintiffs were required to attend the therapy sessions by KSBE while they attended the school. KSBE has agreed to pay the Plaintiffs a total of \$80 million to settle the case. It is our understanding that there are several more lawsuits against KSBE with similar allegations that we may get involved in should the cases settle and probate court proceedings commence for approval of the settlements.

C. Kawananakoa Probate Case

The Division represented the Attorney General as *parens patriae* in the probate court matter involving the Abigail K. K. Kawananakoa Trust (the "Trust"). The case arose after Ms. Kawananakoa was hospitalized for stroke-like symptoms in July 2017. At that time, she was the sole trustee of the Trust which named several beneficiaries, including a charitable organization called the Abigail K. K. Kawananakoa Foundation (the "Foundation"). Soon after being discharged from the hospital, the court granted an emergency *ex parte* motion to appoint Jim Wright, Ms. Kawananakoa's longtime attorney and named successor trustee, as the successor trustee due to concerns that Ms. Kawananakoa lacked capacity to continue serving as trustee. After Wright's appointment, Ms. Kawananakoa married Veronica Worth and executed an amendment to her trust removing Mr. Wright as successor trustee and replacing him with Worth, and two other individuals. Ms. Kawananakoa, Ms. Worth, Mr. Wright, and additional interested parties disagreed as to Kawananakoa's capacity to serve as trustee and the court appointed a special master to determine whether Ms. Kawananakoa had the mental capacity to remove Mr. Wright as trustee and appoint new trustees, and whether she has the capacity to make amendments to her trust going forward, including the changing of beneficiaries. Based on the findings of the special master, the court recently ruled that Ms. Kawananakoa had the requisite capacity to remove Mr. Wright as trustee, but she lacks the capacity to name successor trustees. Accordingly, the court has appointed First Hawaiian Bank as successor trustee, but it is uncertain whether the bank will accept the appointment. The court also ruled that Ms. Kawananakoa lacks

capacity to make complex changes to her estate plan going forward. This is significant because it means that she will likely be unable to remove the Foundation as a beneficiary under the trust. The parties have agreed to enter mediation in an attempt to resolve a number of pending issues and to avoid appeals of the court's recent ruling. The Division will continue to represent the Attorney General in this matter as *parens patriae* to protect the public interest in the protection of the charitable assets that the Foundation is anticipated to receive as a beneficiary under the Trust.

D. Charities Online Registration System and Single Portal Pilot Project

The Division is currently working to streamline the registration and annual reporting process to make it easier for organizations to file with our office and to provide additional helpful information to us and to the public. The streamlined registration and annual reports will be the starting point for Hawaii to become a lead state in the Single Portal Pilot Project, which is a new multistate online registration system that is envisioned to be the only site organizations would need to visit to complete filings for multiple states. The Division is also currently working to implement other major upgrades to its existing systems to automate previously manual processes (such as mailing registration confirmation letters and storing paper internal documents), to increase user functionality that will help professional fundraisers to comply with laws, and to expand the Division's administrator capabilities in the systems that will assist the Division in the enforcement of Hawaii laws.

E. High Inventory of Older Tax Appeal Cases

Our Division currently has an inventory of nearly 80 tax appeal cases. Around 20 of these cases are from 2014 or older. The Tax Director would like us to resolve or close our older cases. Our efforts to complete and close our older tax appeal cases is ongoing.

III. Major projects, achievements and accomplishments

- The Division collected nearly \$90 million during the last four fiscal years for the State's general fund from judgments and settlements reached in tax appeals, bankruptcy cases, foreclosures and other cases. It should be noted, however, that approximately \$53 million of this amount was from amounts collected from the Litigated Claims Fund in 2016 as a result of the Hawaii Supreme Court's March 2015 Travelocity.com decision, and approximately \$25 million was from a settlement reached in 2015 in the tax appeal involving taxpayer CCHH Maui LLC.
- The Hawaii Supreme Court issued a ruling earlier this year in DOTAX's favor holding that Hawaii's use tax is constitutional under the commerce and equal protection clauses of the United States Constitution. The case was brought by CompUSA, Inc., who

challenged the disallowance of a use tax refund request on the grounds that Hawaii's use tax was unconstitutional.

- The Division continues to maintain and improve its charities website which provides public access to all forms, guidance, enforcement actions, checklists, answers to frequently asked questions, and links to other valuable resources for the nonprofit sector. See <http://ag.hawaii.gov/tax/>
- The Division has implemented an internet based registration system for professional fundraisers and online registration exemption system.
- The Division recently built and launched a new online registration system for commercial co-venturers to submit its required consent forms to the Division, which eliminates the hassle of paper filings, creates a more efficient review process, and provides timely information to the public through the online charity registry.
- The Division also recently deployed a new online invoicing system to easily assess and collect penalties from organizations, professional fundraisers, and other entities for violations of Hawaii Revised Statutes chapter 467B.

IV. Major current issues and projects in order of importance

See matters identified in section II above.

V. Pending major litigation and analysis of impact on State or Department

The "Airbnb Subpoena Matter" in section II above is an attempt by DOTAX to obtain information from the online booking platform about the names of its hosts, property addresses, and amounts paid for bookings in the State. As noted, if successful, we could file similar actions against other booking platforms operating in the State. Currently, it is unknown how much tax revenue the State is missing out on from short-term vacation rentals because Airbnb and other similar platforms have refused to furnish DOTAX with information that would enable such a calculation.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Deputy Attorney General Nathan Chee.

VII. List of professionals and deputies in the division

Supervising Attorney General
7 Deputy Attorneys General (one vacancy as of 2/2019)
4 Legal Assistants

Legal Secretary
Legal Clerk (3 vacancies – efforts to fill are ongoing)

VIII. Division goals through 2019

- Continue assisting DOTAX in its pursuit of information from online platforms or any other sources needed to ensure that all hosts of short-term vacation rentals are paying their share of general excise and transient accommodations taxes.
- Continue working to reduce our inventory of pending tax appeal cases, especially the older cases, by more aggressively pursuing settlements or by the filing of dispositive motions.
- Complete Single Portal Pilot Project to create a unified internet site for multi-jurisdictional charity registrations and submissions.
- Continue assisting DOTAX with the completion of the Tax System Modernization project.

Tort Litigation Division

Marie Manuele Gavigan, Supervising Deputy Attorney General

Division telephone: 586-1300

Division location: Hale Auhau First Floor

I. General work, primary mission, primary clients

The Tort Litigation Division provides legal defense to the State, its departments and agencies, and certain State employees in personal injury, property damage, and other tort lawsuits and claims. This division does not have primary responsibility for giving advice and counsel to any state department, agency or employee nor does it handle criminal or collection matters. In general, the services provided by the division include answering legal complaints made against state departments, agencies and its employees, investigating claims, conducting discovery on claims, and representing state interests in arbitration, mediations, and trials. The division also handles the majority of the appeals that arise out of its cases. Also, although the Division does not have primary responsibility for giving advice and counsel to any state department, agency or employee, the Division does provide advice to state departments and agencies at the conclusion of lawsuits relating to the avoidance of future claims.

Because litigation can arise out of any department, our division has represented many different state departments and its employees; however, the most frequent litigation has been from the Department of Transportation, Department of Public Safety and Department of Education.

II. High profile matters and major issues

See pending major litigation below.

III. Major projects, achievements and accomplishments

Provided comprehensive litigation training to administrative level officers and engineers in the Department of Transportation (DOT) to advise DOT employees of the litigation process and what to do if they are sued and what their role is in litigation involving their department.

The division has been successful in resolving a substantial number of cases by dismissal through the filing of dispositive motions and prevailing at administrative hearings, arbitrations and trials. The division

has also been able to settle cases for substantially less than actual value and has even been able to have cases voluntarily dismissed against the State without any money being paid by the State. A recent success was *Matsuda v. City and County of Honolulu and State of Hawaii, et al*, Civil No. 14-1-0921 KKH, where the State prevailed on a Rule 52 Motion at the close of Plaintiff's case during a bench trial in the First Circuit. This case involved a woman who was badly injured in a fall from the top of a State designed and constructed seawall to a rocky beach seven feet below. The Plaintiff was seeking approximately \$375,000 in special and general damages.

Another recent success was *E.P., by and through her Next Friend, Sean Parkman, v. State of Hawaii*, Civil No: 14-0094(1), in the Second Circuit, where the State obtained judgment in its favor after trial. This case involved the allegation that a second grade girl at a DOE elementary school was bullied by fourth and fifth grade boys when she allegedly intervened to stop the older boys from harming a second grade autistic boy. Plaintiff sought over \$5,000,000 in damages at trial.

Another successful case was *Gonzales, et al, v. State of Hawaii*, Civil No. 17-1-1241-07, First Circuit Court. In this case, the Plaintiff's decedent, an inmate, passed away while incarcerated at Halawa Correctional Facility. Plaintiffs alleged negligence against the State in the medical care of the decedent. This case went to a Court Annexed Arbitration Hearing that resulted in a verdict and judgment in favor of the State.

Another successful case was *Silva, et al v. Alana.*, Civil No. 12-1-0778(1), Second Circuit Court. Plaintiffs were working as Harbor Agents in an office at the Lahaina Small Boar Harbor. Defendant Alana was working as the Facility Security Officer at the harbor that day and was testing a portable gasoline-powered generator outside the office. Plaintiffs contend that they suffered carbon monoxide poisoning and permanent injuries. Their wives have also sued for loss of consortium. The State obtained summary judgment in its favor, and the case is now up on appeal.

IV. Major current issues and projects in order of importance

We plan to review current statutes relating to tort litigation to ensure that they do no conflict with other statutes that are in effect. We have found instances where certain statutes conflict with other statutes that relate to tort litigation. In those instances, we need to assess whether clarifications should be made to the statutes to alleviate the conflicting provisions.

V. Pending major litigation and analysis of impact on State or Department

The following cases are all Department of Transportation highway cases with a potential high value. These cases do not involve any extraordinary issues, but they all involve death or major injuries as a result of allegations of negligent maintenance and/or design of highways. Also, under Hawaii Revised Statutes §§663-9 and 10.5, the State could be found jointly and severally liable with any joint tortfeasors, increasing the potential amount the State would have to pay for not only its own percentage of fault, but also for the fault of other joint tortfeasors.

O'Grady v. State, Civil No. 07-1-0372 Third Circuit Court
Perdue v. State et al., Civil No. 13-1-0351, Fifth Circuit Court
Siu v. State of Hawaii, Civil No: 16-1-1230-06, First Circuit Court
Vares v. State of Hawaii, Civil No: 16-1-0512-03, First Circuit Court

Other high value cases include:

- *Millano v. State of Hawaii.*, Civil No. 13-1-0031(1), Second Circuit Court. A five-year old student was walking with his father to his class at Lihikai Elementary School in Kahului, Maui, when he walked or ran into the latch on the gate of a chain-link fence and permanently blinded himself in one eye.
- *Tina Marie Kasten, Personal Representative for Shaelynn Lehano-Stone, et al, v. State of Hawaii, et al*, Civil No: 18-1-0926-06, First Circuit Court. On June 28, 2016, nine-year old Shaelynn was found unconscious in her home and was transported by ambulance to the hospital where she died. Cause of death was starvation/malnutrition.

VI. Names of acting supervisor(s) in supervisor's absences; delegation of responsibility

Until recently, the Tort Litigation Division and the Civil Rights Litigation Division were both supervised by Caron Inagaki. The two divisions became discrete divisions in June of 2018. Caron Inagaki, the supervisor of the Civil Rights Litigation Division, and Marie Gavigan, the supervisor of the Tort Litigation Division, act as each other's acting supervisor in the other's absence. Each has full supervisory authority.

VII. List of professionals and deputies in the division

Supervising Attorney General
7 Deputy Attorneys General
4 Legal Assistants
Legal Secretary

VIII. Division goals through 2019

- A. Continue providing litigation training to departments (in addition to the Department of Transportation) that are frequently sued to ensure that employees have a deeper understanding of the litigation process and know what to do when they are sued.
- B. Work with the departments to assign litigation liaisons to streamline and increase efficiency of information gathering and discovery responses.
- C. Develop better cooperation and coordination between the litigation deputies and advice and counsel deputies when dealing with mutual clients in litigation cases.
- D. Develop and mentor younger, less experienced deputies to ensure smooth transitions and a continued ability to handle major and complex litigation cases.

ATG 231

Hawaii Criminal Justice Data Center

Christopher D.W. Young, Administrator

Division telephone: 587-3110

Division location: Hawaii Criminal Justice Data Center
465 South King Street, Rooms 101 and 102
Honolulu, Hawaii 96813

I. General work, primary mission, primary clients

Mission Statement: To provide the highest quality identification and integrated justice information to improve public safety through effective leadership and partnerships.

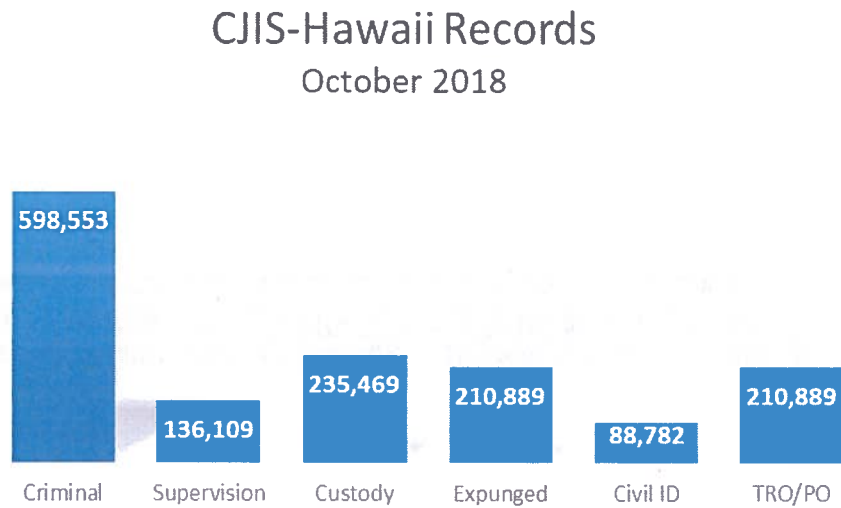
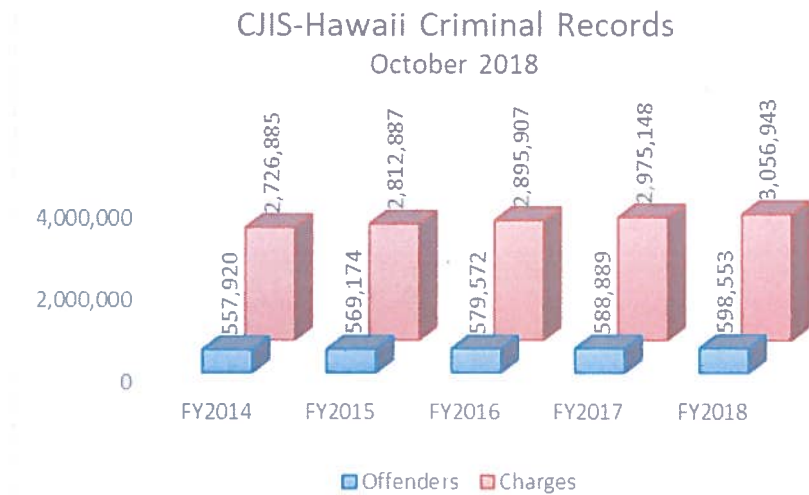
General Work: The Hawaii Criminal Justice Data Center (HCJDC) is responsible for the statewide criminal justice information system (CJIS-Hawaii), the statewide Automated Biometric Identification System (ABIS) which includes the statewide facial recognition system, the Hawaii Integrated Justice Information Sharing (HIJIS) Program, the Criminal History Record Checks, the statewide Sex Offender Registry (SOR) and expungements. The HCJDC also serves as the State Point of Contact for the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Systems, including the National Crime Information Center (NCIC). HCJDC's functions are defined and governed by Chapter 846, Chapter 846E, and §831-3.2, Hawaii Revised Statutes (HRS).

Primary Clients: The HCJDC is responsible for the (8) major program areas listed below. These programs service statewide and national criminal justice agencies, non-criminal justice agencies, and the general public.

A. CJIS-Hawaii:

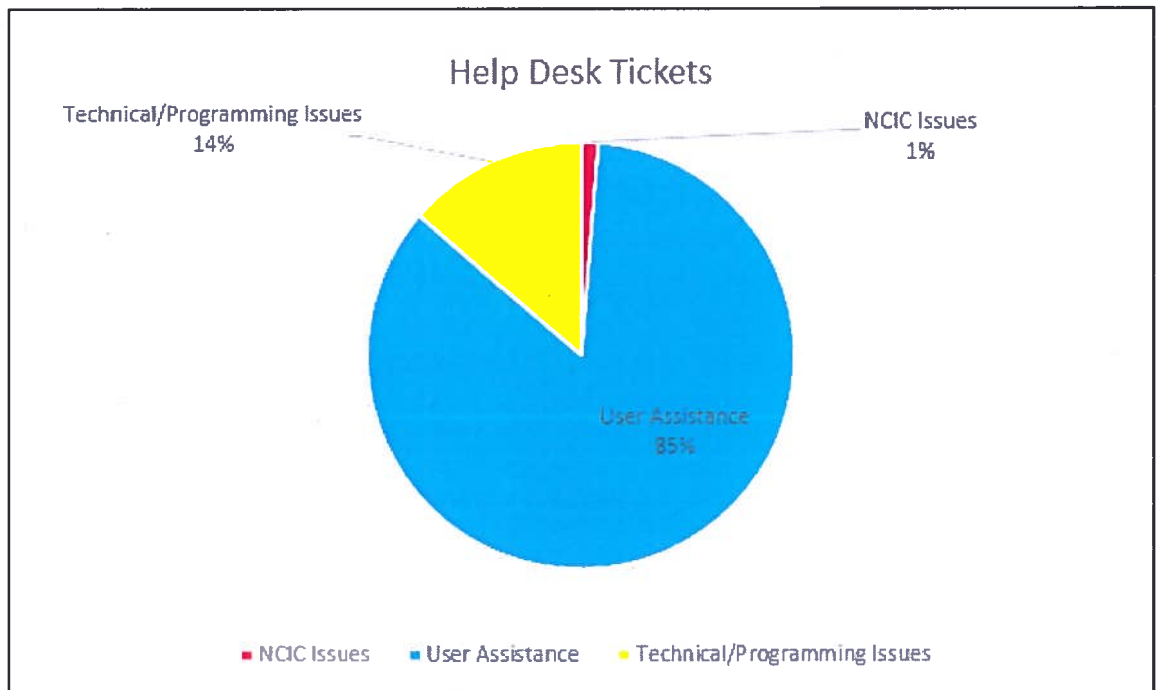
CJIS-Hawaii is the only statewide, centralized automated system that is designed to maintain a comprehensive adult criminal history of all offenders arrested in Hawaii. (See §846-2.5 HRS) As of October 2018, CJIS-Hawaii contains information of almost 600,000 offenders and 3 million charges from the police, sheriffs, prosecutors, all levels of the courts, intake service centers, correctional facilities, probation and parole agencies. CJIS-Hawaii includes several subsystems such as the Sex Offender Registry, Temporary Restraining Orders and Protection Orders, Expunged Records, and Custody and Supervision

information. Although separated from criminal records, civil demographic information is also maintained in CJIS-Hawaii, CJIS-Hawaii is accessed by every state and local criminal justice agency in Hawaii, authorized federal agencies and other authorized non-criminal justice agencies. We currently have 4,695 active users accessing CJIS-Hawaii



HCJDC's Help Desk provides first level support to law enforcement, criminal justice and non-criminal justice agencies statewide during

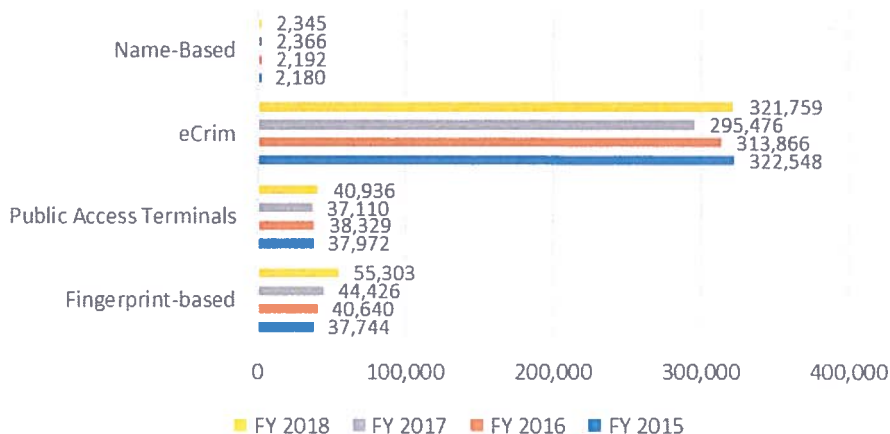
normal working hours with IT staff on call 24x7. The Help Desk initiates approximately 600 help desk tickets yearly. Approximately 600 help desk tickets are created and resolved each year.



B. Criminal Records Clearance:

CJIS-Hawaii is used to provide access to timely and accurate criminal history record information for all authorized purposes, including public access to conviction-only information, and to conduct criminal history record checks on all individuals subject to such requirements by law. Presently, our Criminal History Record Checks (CHRC) Unit services a growing list of programs that do criminal background checks for child care providers, public and private schools, private guards, county liquor commissions, cooperative housing and condo corporations and much more. HCJDC processes over 400,000 record checks each year. The public may access conviction information via walk-in public access terminals or the internet.

Criminal History Record Checks Processed



C. Expungements:

This program researches an applicant’s criminal history to determine eligibility for expungement of a record within the statutory limitation of 120 days. This activity consists of researching an applicant’s criminal history, determining if records meet the expungement criteria, issuing expungement orders, issuing certificates of expungement, and sealing these records, as detailed in §831-3.2, HRS. Last calendar year, the HCJDC processed over 1,400 applications for the expungement of arrest records.

D. Sex Offender Registration (SOR):

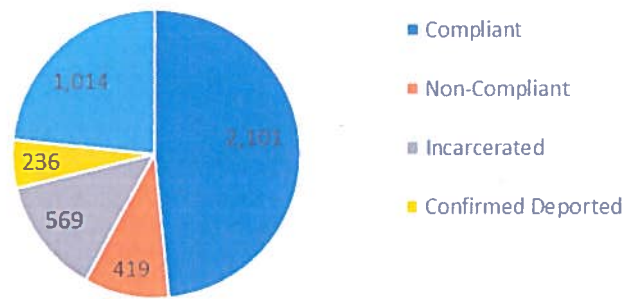
Chapter 846E, HRS mandates the requirements for the registration of convicted sex offenders in the State of Hawaii. Every covered offender must register for life, unless after certain requirements are met, the covered offender successfully petitions the court for termination of registration requirements. Registration information must be verified every quarter, and each covered offender must report in-person annually to ensure the accuracy and timeliness of registration information.

As of October 2018, there were 4,300 records maintained by the Sex Offender Registration Unit. These are records for compliant, non-compliant, incarcerated, and confirmed registered elsewhere or deported covered offenders. We continue to work with the AG Investigations Division, the U.S. Marshals Service, and the Criminal Justice Division to improve our compliance and enforcement rates.

Chapter 846E, HRS allows for all repeat covered offender and felony covered offender information to be made available to the public. The public may access registration information via public terminal access at the HCJDC and main county police stations, the Sex Offender and Other Covered Offender Public Website

(<http://sexoffenders.ehawaii.gov>), and through Android and iOS compatible mobile applications. Users are able to make name, zip code, and radius queries of registered sex and other covered offenders in the State of Hawaii. The application will generate automatic results within the desired search parameter. The 'Nearby' feature uses Global Positioning System (GPS) to list any address associated with a registered offender within a two-mile radius of the mobile device. Users can also sign up to receive email alerts about covered offenders who register a residence or employer in their subscribed geographical areas.

Registered Covered Offenders Offenders
October 2018



E. Hawaii Integrated Justice Information Sharing (HIJIS) Program:

The HCJDC administers HIJIS portal which serves as a single gateway to statewide services via a common architecture to securely and efficiently share appropriate information, both locally and nationally, for justice and non-justice purposes, for improved public safety and homeland security, while respecting the privacy of citizens. HIJIS works under the motto, *Pupukahi I Holomua* – 'United in order to progress'. HIJIS supports community policing strategies and crime prevention activities by providing real-time, secure, enterprise-wide information sharing capabilities for law enforcement officers, justice agencies, and statewide practitioners of public safety and homeland security.

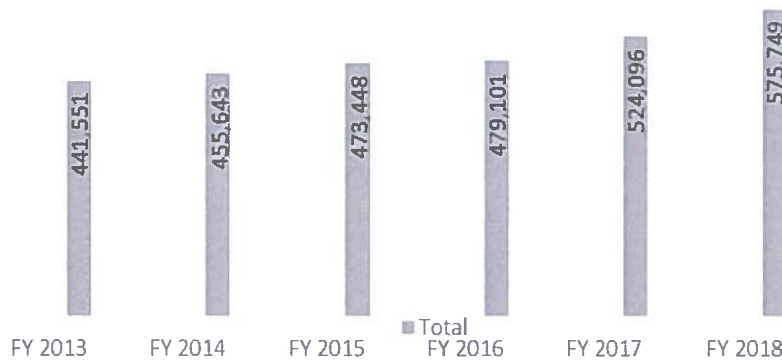
F. Address Confidentiality Program:

Act 115, S.B. No. 2346. S.D. 2, H.D. 1, C.D. 1, effective July 5, 2018 created an Address Confidentiality Program (ACP) within the Department of the Attorney General. ACP is assigned to the HCJDC and its purpose is to protect the confidentiality of the actual address of a victim of domestic abuse, a sexual offense, or stalking and to prevent the victim's assailants or potential assailants from finding the victim through public record.

G. Criminal Identification (ABIS which includes facial recognition):

The HCJDC has been designated as the State Identification Bureau by the FBI. We maintain and coordinate a statewide criminal fingerprint identification system of arrested offenders, juvenile law violators, and other records received from contributing law enforcement, custodial, judicial and state agencies in Hawaii. We also process and started to retain civil applicant fingerprints from agencies authorized by law since December 2016, and latent fingerprints to assist criminal investigations. The number of civil applicants has been gradually increasing every year, which has created an increase of records that need manual intervention from a Criminal Identification Technician. We have the same amount of staff with a gradual increase of the civil workload every year. The HCJDC operates and maintains the State's ABIS system which electronically stores and processes the above fingerprints, and a facial recognition system that is used by statewide law enforcement agencies.

ABIS FIVE-YEAR DATABASE GROWTH

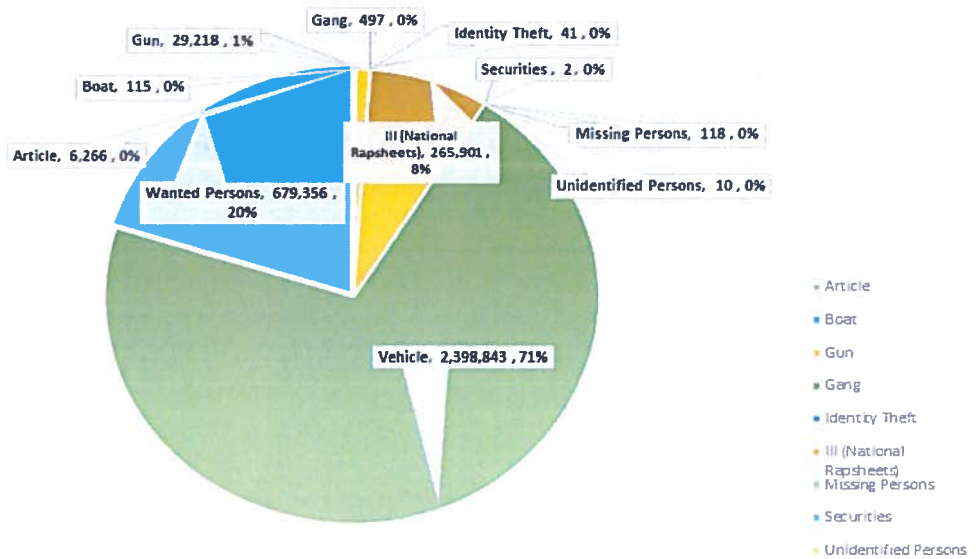


H. NCIC:

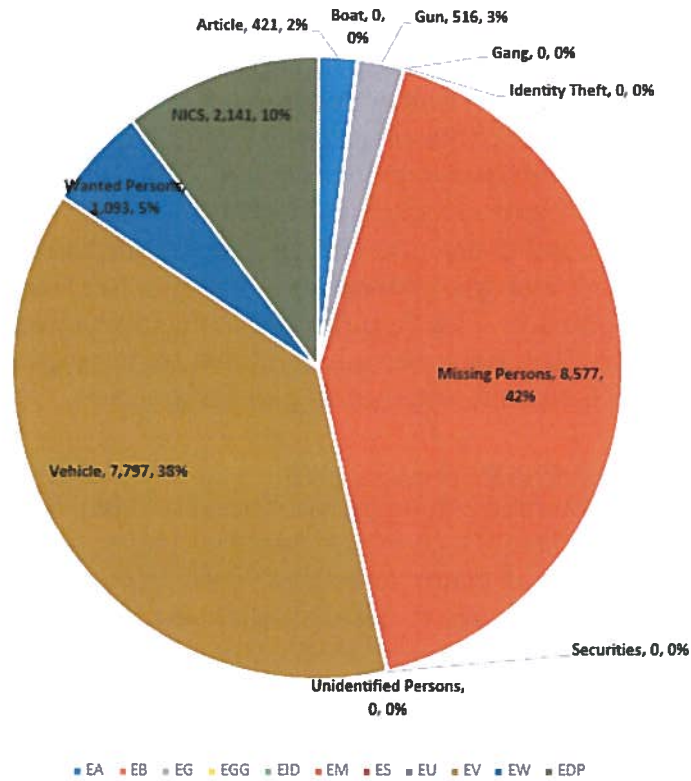
The HCJDC serves as the FBI CJIS System Agency (CSA) having administrative responsibilities for the maintenance and oversight of the State's access to FBI Systems, including NCIC, which is the FBI's nationwide computerized criminal justice information system. This program was transferred from the Honolulu Police Department (HPD) to the HCJDC in 2007 and brings major ongoing responsibilities, such as training, auditing, and data validation. Additionally, the State's reporting requirements have increased significantly to include CCH to the Interstate Identification Index (III), the FBI's Next Generation Identification (NGI) System, the National SOR, the National Instant Criminal Background Check System (NICS), and Protection Order

information. Statewide law enforcement and criminal justice agencies have the ability to query national criminal justice information in addition to entering data that would be accessible to other law enforcement and criminal justice agencies nationwide.

All NCIC / III Inquiry Transactions
1/2015 - 9/2017



All NCIC Entry Transactions
1/2015 - 9/2017



II. High profile matters and major issues

A. Refocus HCJDC resources on core infrastructure (hardware/software) and services:

Upon becoming HCJDC's administrator in December 2017, I identified the need for HCJDC to refocus its resources on critical internal hardware and software (program) needs. Within the first six months of 2018, we identified core hardware that were past or near end of their useful life and failed to have maintenance agreements covering the hardware if a malfunction occur.

The statewide Integrated Booking System (Green Box) is in the process of being upgraded by migrating its data entry application to utilize the most current version of the browser-based .NET application framework. At the same time, the hardware and software that the application and database servers utilize will be upgraded to the latest server hardware and database and operating system software.

In January 2016, the Lights Out Transaction Controller (LOTG) was upgraded to use the most current version of the operating system software and SQL server. Also, the database was migrated to a separate server from the application server.

B. Rap Back Program:

The Rap Back Program is a service that extends the criminal background check process. The project began in 2011 with the passing of Act 117, SLH 2011 by the 2011 State Legislature, to provide for the retention and use of fingerprints for Rap Back purposes. Since then, the project has encountered many obstacles causing the development of the project to be ongoing today. Rap Back requires major modifications to four core HCJDC systems. Because of the highly integrated systems needed to conduct a full criminal history background check, the HCJDC must coordinate any and all other systems changes into the scheduling of the Rap Back project's development. The Rap Back initiative also includes participation in the Federal Rap Back services and this requires coordinated efforts with the NGI system and meeting all FBI policies.

C. Civil Fingerprint Identification:

The number of fingerprint-based criminal history record checks has increased by 30% over the past five years, and we expect the number to continue to increase as each year more entities are granted statutory authority to conduct such checks on its applicants for licensure, employment or volunteer services. While the workload has increased, the personnel responsible processing and verifying the fingerprint images has not. Within the next five years, the volume of civil quality control and verifications will increase where additional staff may be needed to be able to complete the civil tasks in a timely manner. The shortage of personnel has resulted in longer processing times for criminal history records checks. Affected agencies include the Department of Education, Department of Human Services and several other government and non-government agencies responsible for the employing or regulating individuals which provide care for Hawaii's vulnerable population or otherwise hold a position of trust.

D. Statewide Information Technology:

The legislature is moving the Office of Enterprise Technology Services (ETS) closer each year to full IT centralization. Some of the smaller agencies' IT staff is already under the management of ETS. In addition, ETS is providing much of the commodity IT services, such as, Office 365, Adobe, security, etc. Every department is required to submit their projects and IT procurements via SharpCloud, which is shared with the legislature and to the public on the ETS website. ETS recognizes that HCJDC's systems are mission critical and very complex. While they are able to comply with FBI CJIS security requirements, they are not prepared to take on support of HCJDC's systems.

E. Hawaii's National Presence:

Because of all the efforts over the years to get to the table, it is very important that we continue our level of participation for the HCJDC, the Department and the State of Hawaii. Our attendance and participation in the criminal justice and non-criminal justice arenas have allowed the HCJDC to make valuable contacts and to become active participants on the national stage with the ability to have an impact on the national agenda. We are now viable partners in helping to shape national policies for criminal and non-criminal justice initiatives, and look forward to the continued support from the Administration to allow HCJDC to continue its participation at the national level.

All trips have been approved by the State Ethics Commission and paid for by the agencies requesting our participation. Listed below are the national organizations and roles that key HCJDC personnel currently fill:

1. SEARCH – National Consortium for Justice Information and Statistics is a consortium of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, dedicated to the promotion of effective use of technology to benefit criminal justice. It is a private, nonprofit structure, functioning in the public interest as an important resource for criminal justice agencies nationwide. SEARCH has been in existence since 1974 and is an organization created and operated by the states to represent their interests in the development of criminal justice information systems and policy.
 - Christopher Young was appointed by Governor David Y. Ige to represent Hawaii at SEARCH meetings in December 2017.
 - Semi-annual meetings are paid for by membership dues.
2. National Crime Prevention and Privacy Compact (Compact) – The Compact establishes a Compact Council to promulgate rules and procedures for the effective use of the FBI's III System for noncriminal justice purposes. Its goal is to make available the most complete and up-to-date records possible for noncriminal justice purposes. The Council, as a national independent authority, works in partnership with the FBI, criminal history record custodians, end users, and policy makers to regulate and facilitate the sharing of complete, accurate, and timely criminal history record information to noncriminal justice users in order to enhance public safety, and the welfare and security of society while recognizing the importance of individual privacy rights.

- By statute, Christopher Young, as the HCJDC Administrator has been designated as Hawaii's State Compact Officer, and represents Hawaii at the FBI Compact Council meetings.
 - Jennifer Bishop, HCJDC's Dissemination Services Section Supervisor has been appointed to the Standards and Policy Committee, and attends these meetings as a subject matter expert.
 - Semi-annual meetings are paid for by the FBI.
3. Idemia Users' Group and Executive Board – Statewide AFIS and facial recognition vendor
 - Lori Kaneshiro, the Criminal Identification Section Supervisor serves on the User Group's Executive Board of Directors for Idemia. Travel to the User Group's Executive Board of Directors meeting are funded by Idemia.
 - Travel to the annual meetings will be funded through HCJDC's special fund.
 4. Advisory Policy Board (APB) of the FBI – Hawaii belongs to the FBI CJIS Western Regional Working Group. This group of fifteen (15) western states makes policy recommendations to the APB.
 - Brenda Abaya, the HCJDC Customer Support Supervisor, serves as Hawaii's CJIS Systems Officer (CSO) and currently chairs the Western Regional Working Group comprised of representatives from all the western regional states that make policy recommendations to the APB and the FBI.
 - Brenda also is a member of the APB Security and Access Subcommittee.
 - Brenda also serves as the chair of the Mobile Security Task Force.
 - HCJDC represents the state as the CJIS Systems Agency (CSA).
 - Semi-annual meetings are paid for by the FBI.
 5. Nlets – The International Justice and Public Safety Network, provides the vehicle for the interstate exchange of law enforcement, criminal justice, and public safety-related information across the nation.
 - Clay Sato, System Services Branch Chief, has served as the State Nlets representative since 2008. He has been elected as the Nlets Region H chair each year and has served on the Nlets Board of Directors since 2013.
 - Annual meeting is paid for by Nlets membership fees.
 6. Open Justice Broker Consortium (OJBC) – The OJBC is a multi-state criminal justice group using open source software to develop

plug-and-play criminal justice solutions. Hawaii is one of three charter member states and has paved the way for using OJBC solutions for our HIJIS project.

- Clay Sato serves as the Treasurer for the OJBC.
- Annual meeting is covered by OJBC membership fees.

III. Major projects, achievements and accomplishments in order of importance

- A. HIJIS Program: HIJIS envisions statewide services via a common architecture to securely and efficiently share appropriate information, both locally and nationally, for justice and non-justice purposes, for improved public safety and homeland security, while respecting the privacy of citizens.

The Attorney General serves as the executive sponsor and chairs the HIJIS Executive Committee. Key representatives from state, local, and federal justice agencies throughout the State of Hawaii have organized and support HIJIS by participating in the planning, development, and implementation of agreed upon initiatives. A detailed presentation of this program and initiative can be arranged at your convenience.

In 2011, the State of Hawaii and the HIJIS Program joined the OJBC which provides resources to utilize open source information sharing solutions from agencies within the justice community nationwide.

The first two (2) exchanges that were initiated for HIJIS under the Open Justice Broker Consortium (OJBC) are described below:

1. Subscription Notification – Subscription notification enables HIJIS users to request automatic notifications when certain events occur across various systems. For example, a supervision officer will request the subscription service to be notified when one of his/her clients is rearrested.

Noteworthy recognition – The HIJIS Project was awarded the 2013 Best of the National Information Exchange Model award for its development and implementation of the parole/probation Subscription/Notification Service.

2. Federated Query Service – Based on user search criteria, the federated query service will allow authorized users to search across multiple information systems and receive consolidated results. For example, users can search through criminal history and bench warrant and firearms registration records (currently, Maui and Honolulu; Hawaii and Kauai should be resuming their firearms

HIJIS exchange after implementing their new RMS). Also, federated identity management has been implemented for the overall security framework, which provides for single sign-on and stronger security.

Additional exchanges are in development for HIJIS under the OJBC are described below:

1. Dispositions – Prosecutor temporary and final dispositions with the Judiciary and criminal history systems (i.e. CJIS-Hawaii and JJIS).
2. Incidents – The ability to provide HPD RMS data via HIJIS is underway. HPD removed direct access to various agencies, leaving a void which HIJIS is being requested to fill.
3. National Incident-Based Reporting System (NIBRS) – CPJA is working through the HCJDC to provision NIBRS, an incident-based reporting system used by law enforcement agencies for collecting and reporting data on crimes

B. CJIS-Hawaii Migration:

The HCJDC completed a major project to migrate the state's criminal history repository system CJIS-Hawaii to a new technical environment. The new environment has made it much easier to deploy updates to CJIS-Hawaii. The look and feel of the CJIS-Hawaii on-line applications was also migrated to use a browser-based environment. This eliminated the need to deploy special software on every user's personal computer.

A two-phased approach to the production deployment was undertaken. The first phase, completed in September 2014, involved deploying specific inquiry, maintenance, and report applications to just HCJDC staff to ensure the environment was stable and to find and eliminate any bugs. The second phase involved the full system deployment to all CJIS-Hawaii users statewide on June 28, 2015.

C. Lights Out Transaction Controller (LOTIC) Upgrade:

The HCJDC implemented lights-out processing in 2007. In January 2016, HCJDC completed a major upgrade to the LOTIC environment. The operating system software and the database software were upgraded to the most current versions. And the database and application were migrated to separate servers.

D. Civil Fingerprint Retention:

In December 2016, the HCJDC started retaining civil fingerprints for programs and agencies that conduct state and national criminal history

record checks pursuant to section 846-2.7, HRS. This was a major milestone for the Rap Back project, that involve significant changes to three of the HCJDC's core systems.

E. ABIS Project:

Hawaii's Lights Out process provides for rapid positive identification through the use of fingerprints and the historical demographics of the CJIS-Hawaii system. In 85% of the time, this is performed without human intervention for both the criminal and non-criminal justice queries. In March 2017, the State's Automated Biometric Identification System (ABIS) had been upgraded and enhancement of the State ABIS including facial recognition as described below:

- Morpho Face Investigate (MFI) –MFI is a powerful investigative tool. While it is not used to make a positive identification with its findings alone, the HCJDC has aggressively pursued this technology to strengthen the crime-fighting capabilities of our law enforcement agencies. MFI has been upgraded and is included in the new ABIS system.
- Civil Fingerprint Retention: In December 2016, the HCJDC started retaining civil fingerprints for programs and agencies that conduct state and national criminal history record checks pursuant to section 846-2.7, HRS. This was a major milestone for the Rap Back project, that involve significant changes to three of the HCJDC's core systems.

The latent matchers have been proven to be more accurate and more identifications have been made with this upgrade. IDEMIA, our ABIS vendor guaranteed 66% accuracy. During the Factory Acceptance Test old latent cases that hit and did not hit on the old AFIS system were searched on the new system. During the tests, the system hit 94.7% accuracy. 10 cases that never hit on the old AFIS were also searched on the new system, 4 out of the 10 cases hit on the new system, statutes of limitations have expired on these cases. 8 unsolved latent palm cases were run as well, 7 out of the 8 hit on the new system. The one case that did not hit was very poor quality.

F. HCJDC Infrastructure Upgrade:

In November 2017, HCJDC upgraded the firewalls that protect the production systems and office site. The new hardware allows us to install and enable the features to efficiently block the malicious attacks. In September 2018, the aging core switches for production systems were upgraded and the new communication device will help to increase the efficiency and throughput of the data transactions.

G. Funding Sources:

HCJDC received \$2,200,000.00 through ATG 231 for fiscal year 2019. 59% (\$1,323,000.00) of the budget will be used for personnel costs and 41% (\$888,096.00) will be used for daily operational costs and support items such as yearly maintenance agreements for hardware, yearly software licenses, system/program support contracts for core services and hardware upgrades.

Special and Federal Grant Funds: Because of limited general funds, the HCJDC aggressively pursues all available Federal grant monies. The following lists special funds and current grants that have been awarded to the HCJDC:

1. Criminal History Record Improvement Revolving Fund – This revolving fund was established in 1995, pursuant to Act 7, Special Session 1995. Fees collected for services related to criminal history record information are deposited into this fund and used for the improvement of the criminal history record information system to benefit all criminal justice agencies statewide as established under Chapter 846, HRS. This fund is used as a pass-through for FBI fees, and to support the state's connectivity to the FBI's NCIC system.
2. Department of Homeland Security (DHS) Grant – This grant provides funding to prevent, protect against, mitigate, respond to, and recover from potential terrorist attacks and other hazards.
3. Justice Assistance Grant (JAG) – This grant provides funding to improve and enhance the State's criminal justice infrastructure and criminal history repository system.
4. JAG Sex Offender Registration and Notification Act (SORNA) Reallocation Grant – This grant provides additional equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice programs in order to comply with national sex offender registration program requirements.
5. National Criminal History Improvement Program (NCHIP) Grant – This critical grant provides funding to improve and enhance the State's criminal history repository system and improve timely positive identification of offenders.
6. Sex Offender Sentencing, Monitoring, Apprehending, and Tracking Office (SMART) Grant – This grant enables the state to develop and enhance the Sex Offender Registration Program to comply with the Federal Sex Offender Registration and Notification Act (SORNA) under the Adam Walsh Child Protection Act.

IV. Major current issues and projects in order of importance

A. Address Confidentiality Program:

Act 115, Session Laws of Hawaii 2018, established an Address Confidentiality Program (ACP) in Hawaii to protect the confidentiality of the actual address of a victim of domestic abuse, a sexual offense, or stalking and to prevent the victim's assailants or potential assailants from finding the victim through public record. ACP has been assigned to HCJDC to implement and operate. Unfortunately, ACT 135 failed to provide funding to implement or operate the program. HCJDC has begun to take steps towards developing processes, forms and procedures which will guide the operations of the program once proper funding is identified and obtained.

B. Rap Back:

The Rap Back project continues to battle several obstacles, both technical and personnel resources. Four core systems, CJIS-Hawaii, the LOTC, the HIJIS and the ABIS must be dedicated to the development and testing efforts of the project. Rap Back also requires the use of the Green Box booking system to generate arrests for testing efforts. The use of all 5 systems causes resource constraints on the technical side as all other system changes, including the network, must be on hold or factored into the development timeline of the Rap Back project. HCJDC staff cannot be dedicated to the project 100% of the time. Personnel time must be divided between the project and the HCJDC core operational duties. HCJDC understands the need to implement this program and has given this program priority to ensure an implementation of the program by the end of March 2019.

C. Five-year Plan:

HCJDC is currently working on upgrading the IT infrastructure that our mission critical systems (CJIS-Hawaii, Green Box Booking System, LOTC, NCIC and HIJIS) utilize:

1. Replacing the servers that are on extended hardware support and migrating the test and development systems mentioned above to the new hyper-converged infrastructure (HCI) hardware, i.e. Dell VxRail; migrating all production application systems to the VxRail after successful migration and testing of the test systems.
2. Upgrade the HCJDC backup system so that our applications servers can be backed up and restored to production without errors.

3. Upgrade the remaining communications hardware and systems to supported levels.
4. Upgrade HCJDC application and database software to supported levels.
5. Upgrade the HIJIS database software from community edition to enterprise edition to improve the backup/restore processes and utilize the encryption and compression features, which are only available in the enterprise edition.
6. Implement a security information and event management (SIEM) tool to efficiently monitor and analyze the network and application systems' events to identify and proactively mitigate the vulnerabilities, malicious activity, threats and other security risks.
7. Implement a data hard drive destruction process to ensure the secure data is destroyed properly in compliance with FBI CJIS security requirements.
8. Deploy a fully functional disaster recovery system to ensure that the HCJDC's mission critical services are available, reliable and secured for the law enforcement agencies and public users.
9. Upgrade the office site's data cabling and telephone system to the Voice Over IP solution to improve the network bandwidth, system reliability and reduction of maintenance costs.
10. Assessing and planning on migrating all HCJDC systems to a cloud environment for resource efficiency. (pending feasibility study and data transfer testing on security, reliability and stability).
11. Continuing the technical training for IT staff.

D. Civil Fingerprint Identification:

The number of fingerprint-based criminal history record checks has increased by 30% over the past five years, and we expect the number to continue to increase as each year more entities are granted statutory authority to conduct such checks on its applicants for licensure, employment or volunteer services. While the workload has increased, the personnel responsible processing and verifying the fingerprint images has not. Within the next five years, the volume of civil quality control and verifications will increase where additional staff may be needed to be able to complete the civil tasks in a timely manner.

E. HIJIS Funding:

In addition to state and local agency investments for their respective systems, present HIJIS funding includes: NCHIP grants. The major challenge for HIJIS remains the funding required to sustain the HIJIS initiative. Annual OJBC membership at \$85,000 and HIJIS Portal support at \$10,000 was approved by the legislature in 2018. The membership fee is highly cost effective, as the resources made available through this organization are invaluable in providing technical

development support at a fraction of the cost that we would otherwise pay for current market-value technical consultant services and maintenance. HIJIS IT positions, have been reassigned to operationalize HIJIS support within the HCJDC Systems Support staff. The HCJDC continues our efforts to explore and aggressively pursue funding alternatives, especially as grant funding becomes available; however, this continues to be a difficult avenue, as funding sources may not be available or awarded every year.

F. Sex Offender Registration and Notification Act (SORNA) Compliance:

To date, only eighteen (18) states have substantially implemented SORNA. Hawaii has been working toward compliance with SORNA, and many provisions are being met. In 2011, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) conducted a review of our statutes and standard operating procedures. They determined that Hawaii has not substantially implemented SORNA. While we have addressed some issues from their 2011 review, such as Frequency of In-Person Verification and Foreign/Tribal Convictions, our biggest hurdle of Juvenile Registration still remains.

Each year that Hawaii is deemed not to have substantially implemented SORNA, we are penalized 10% of the State's portion of the Byrne Justice Assistance Grant funding; however, each year the penalized funds have been reallocated to the State to be dedicated solely towards SORNA Implementation.

V. **Pending major litigation and analysis of impact on State or Department**

N/A

VI. **Names of acting supervisor(s) in supervisor's absences; delegation of responsibility in the absence of the HCJDC Administrator, the delegation of responsibility falls to the following positions in this order:**

- A. Philip Higdon, Assistant Administrator
- B. Clay Sato, System Services Branch Chief
- C. Supervisors in charge of specific program areas

VII. **List of professionals and deputies in the division**

Administrator

Assistant Administrator

Division Secretary

Fiscal Clerk Supervisor (1 Vacant position– Fiscal Clerk III became vacant on December 12, 2018, requested list, no list received.)

System Services Branch

Supervisor

Customer Service Section - 6

Information Systems Section – 5 (2 vacant positions - ITS Band B became vacant on July 6, 2018, two recruitments no candidate chosen, ITS Band B became vacant December 1, 2018)

Technical Support Services Section - 6

Dissemination Services Branch

Dissemination Services Section

Criminal History Record Checks – 2 (2 vacant positions– Office Asst. III became vacant January 1, 2019. Office Asst. IV – est. 1/1/17, did not filled since program OA was to support has not been established.

Request to fill has been made since program should be completed by April 2019)

Data Integrity Unit - 4 (1 vacant position – Office Assistant IV became vacant November 11, 2018, requested list no one selected awaiting new list.)

Sex Offender Registration Unit -3 (2 vacant positions – 1 Office Assistant V became vacant June 20, 2018, requesting list to fill., 1 OA IV 7/27/18, received one list, no candidate chosen, awaiting new list)

Expungement Unit – 1

Criminal Identification Section - 1 Supervisor, 5 staff (1 vacant position – CRID III became vacant on November 2, 2017, two recruitments, first recruitment one candidate on list that was not selected. Open recruitment since, recently requested a temporary down grade to CRID II to see if a list candidate list could be obtained.)

Sex Offender Registration Unit (currently vacant)

VIII. Division goals through 2019

A. Develop and implement a five-year essential core operation plan:

The HCJDC will complete the migration of our core systems to the updated IT infrastructure that is resilient, scalable, secure, and in compliance with the FBI's CJIS security standards.

B. Rap Back Initiative:

The Rap Back program will provide a notification service to inform an employer or other authorized entity when activity is reported on an individual. It is a fingerprint-based positive identification service. Stored fingerprints and those obtained after an arrest are compared and a match will trigger an unsolicited response back to those

agencies that have performed fingerprint-based criminal history record checks on individuals when such individuals are subsequently arrested. These responses can include both criminal justice and non-criminal justice purposes.

Benefits of having a Rap Back program is extensive. It will assist criminal justice and law enforcement agencies for supervision and investigative purposes. It will also assist the non-criminal justice agencies to identify previously screened individuals who come in contact or care for children, the elderly, or disadvantages and may no longer be suitably employed.

We are targeting implementation in Spring 2018. This will include the Criminal Justice and Non-Criminal Justice State Rap Back Program with participation in Criminal Justice and Non-Criminal Justice Federal Rap Back.

C. Address Confidentiality Program (ACP):

Establish program rules, obtain funds to cover personnel, office supplies, postage, P.O. box, interisland travel, program identification cards and equipment and to fully implement the ACP program throughout the Hawaii.

D. Complete Division Re-organization:

HCJDC has internally adjusted its organizational structure over the past 5-6 years to more efficiently address various duties and responsibilities of the division. The internal adjustments have proven to better address use of staff and workflow within the division. A formal reorganization has been pending completion and approvals for several years.

E. HIJIS Project Goals:

The following are the short-term project goals for the HIJIS program:

1. Rap Back Exchange – The HIJIS Portal will play an important role in the operation of the Rap Back program at both the State and Federal levels. It would be the vehicle for agencies to manage and access their subscriptions for arrest notifications, as well as processing authorized queries for justice information. Work on HIJIS to provide the services required by the Rap Back program is targeted for completion by April 2019.
2. Dispositions – Completion of Honolulu Prosecutors temporary dispositions which will provide all district prosecutors reporting their temporary dispositions. Targeted for completion by March 2019.

3. Firearm Registrations – Statewide availability of police firearms registrations will be completed with Hawaii and Kauai Police which is in discussion.
4. Incidents – Availability of HPD RMS data in discussion with HPD plan to replace their RMS.
5. Updated HIJIS Strategic Plan – The HIJIS Strategic Plan was first published in 2008 and contains the high-level goals for this major project. The HCJDC will be coordinating with the HIJIS Executive Committee to update this important document and obtain agreement with all participating entities. Work on his Strategic Plan is targeted for completion by December 2019.

HB-1278

Submitted on: 2/2/2019 12:43:20 AM

Testimony for JUD on 2/6/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

Waste of Money !!