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December 20, 2019

The Honorable Ronald D. Kouchi  
Senate President  
415 South Beretania Street  
Hawaii State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki  
Speaker, House of Representatives  
415 South Beretania Street  
Hawaii State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

Subject: *Blast from the Past: An Update to the Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011*

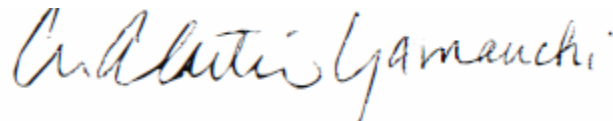
We are pleased to inform you that an electronic copy of the Bureau's latest publication: *Blast from the Past: An Update to the Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011*, which was prepared in response to Act 184, Session Laws of Hawaii (2019), has been transmitted to you via the Legislature's web-based application. An electronic copy of the report may also be accessed on the Bureau's Library website at:

[https://lrb.hawaii.gov/wp-content/uploads/2019\\_BlastFromThePast.pdf](https://lrb.hawaii.gov/wp-content/uploads/2019_BlastFromThePast.pdf)

A limited number of printed copies will be available shortly from the Bureau's Library.

We hope this publication will be of assistance to you and your staff. If you have any questions or require further assistance, please contact Wayne Scott or Valerie Grey by phone at 587-0666 or by email at [w.scott@capitol.hawaii.gov](mailto:w.scott@capitol.hawaii.gov) or [v.grey@capitol.hawaii.gov](mailto:v.grey@capitol.hawaii.gov).

Very truly yours,



Charlotte A. Carter-Yamauchi  
Director

jl  
Attachment  
cc: Senators  
Representatives

**BLAST FROM THE PAST:  
AN UPDATE TO THE  
REPORT OF THE ILLEGAL  
FIREWORKS TASK FORCE  
TO THE LEGISLATURE FOR  
THE REGULAR SESSION OF 2011**

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Legislative Reference Bureau  
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Honolulu, Hawaii  
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## FOREWORD

This report was prepared by the Legislative Reference Bureau (Bureau) pursuant to Act 184, Session Laws of Hawaii 2019, which directed the Bureau to update the findings and recommendations of the *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011*.

The Bureau requested information from industry professionals and from federal, state, and county agencies to complete this study. The Bureau extends its appreciation to all those who generously provided information and assistance in the preparation of this report.

Charlotte A. Carter-Yamauchi  
Director

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## EXECUTIVE SUMMARY

The Legislative Reference Bureau (Bureau) prepared this report pursuant to Act 184, Session Laws of Hawaii 2019 (Act 184), which directed the Bureau to update the findings and recommendations of the *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011*.

Act 170, Session Laws of Hawaii 2010 (Act 170), established the Illegal Fireworks Task Force (Task Force) comprising representatives of various federal, state, and county departments and agencies; the fireworks and shipping industries; and cultural organizations. The purpose of the Task Force was to develop strategies and make recommendations to the Legislature to address the illegal importation and use of fireworks in the State. Pursuant to Act 170, the Task Force adopted its *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011* on January 11, 2011.

Act 184 also instructed the Bureau to seek relevant information from any entity at the Bureau's discretion.

### Overview of Applicable Laws

Due to the combustible and potentially hazardous nature of fireworks, they are subject to significant federal, state, and local regulation. The Consumer Product Safety Commission; Bureau of Alcohol, Tobacco, Firearms and Explosives; and United States Department of Transportation are the primary federal regulatory authorities for fireworks. However, fireworks are also subject to other federal regulations, including those concerning occupational safety and health, wildlife refuges, and national parks.

The State's fireworks regulations are provided in chapter 132D, Hawaii Revised Statutes (HRS), which regulates the importation, storage, sale, purchase, possession, and use of all fireworks in the State. Each county also has its own specific fireworks regulations, as authorized by section 132D-17.5, HRS. Many of these are more restrictive than state laws.

### Updates to Issues and Challenges Identified in the 2011 Report of the Illegal Fireworks Task Force

In its 2011 report, the Task Force identified the following issues and challenges surrounding illegal fireworks:

1. The lack of a clearly defined illegal fireworks problem;
2. Insufficient resources to adequately address the illegal fireworks problem;
3. Difficulties in prosecuting illegal fireworks cases;

## EXECUTIVE SUMMARY

4. The financial burdens and risks associated with the storage and disposal of seized fireworks;
5. Various deficiencies related to inspections for illegal fireworks;
6. The lack of cooperation between stakeholders; and
7. Inconsistencies in the various state and county fireworks laws.

This report provides updated information on these issues and challenges, all of which appear to remain relevant in 2019. This report also recounts legislation introduced since 2011 to address these issues and challenges.

### **Stakeholder Recommendations**

In its 2011 report, the Task Force made the following recommendations for the Legislature to address the illegal importation and use of fireworks:

1. Increase fireworks fees and fines;
2. Decriminalize fireworks offenses in favor of civil fines;
3. Increase random inspections;
4. Consider alternatives such as education and training; and
5. Promote cooperation between stakeholders.

This report provides updated information on these recommendations and summarizes legislation introduced since 2011 to attempt to implement these recommendations. This report also reviews the following additional suggestions made by stakeholders in response to a survey by the Bureau (Bureau's Survey):

1. Consider the impact that increased cargo inspections could have on commerce and shipping;
2. Impose jail time as a penalty for fireworks offenses;
3. Fund seasonal, specialized fireworks enforcement units; and
4. Reestablish statewide consumer fireworks standards.



## **Considerations**

The Bureau makes no specific recommendations regarding the most effective methods to deter the illegal importation and use of fireworks in the State. However, if the Legislature seeks to take additional action to curtail the illegal importation, sale, and use of fireworks, it may wish to:

1. Revisit and possibly act upon recommendations made by the Task Force in its 2011 report; and
2. Consider additional suggestions provided by respondents to the Bureau's Survey for this report.

# Chapter 1

## INTRODUCTION

### Background

The Legislative Reference Bureau (Bureau) prepared this report pursuant to Act 184, Session Laws of Hawaii 2019 (Act 184),<sup>1</sup> which required the Bureau to update the findings and recommendations of the *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011*.<sup>2</sup>

Act 170, Session Laws of Hawaii 2010, established the Illegal Fireworks Task Force (Task Force) to develop strategies to address illegal fireworks in the State. The Task Force met five times during the 2010 interim and heard presentations from representatives of the Federal Aviation Administration, United States Coast Guard, United States Customs and Border Protection, Hawaii Department of Agriculture and Department of Defense, county police departments, fireworks and shipping industries, and cultural organizations.<sup>3</sup>

The Task Force comprised three members of the Hawaii Legislature, eight representatives from federal agencies, seven representatives from state agencies, seven representatives from the counties, three representatives from the shipping and trucking industries, two representatives from the fireworks industry, and three political appointees.<sup>4</sup> The group held its final meeting on January 11, 2011, to adopt its report to the Legislature, which was prepared with the Bureau's assistance.<sup>5</sup>

Act 184 directed the Bureau to prepare this report based on the Legislature's findings that:

- Consumer fireworks cause fires and burn injuries, primarily to children;
- Fireworks produce excessive smoke, making breathing difficult;
- The noise of consumer fireworks traumatizes some pets and residents, including war veterans; and
- Responding to fireworks-related calls strains the resources of public safety agencies and threatens their ability to respond to other emergencies.<sup>6</sup>

Act 184 also instructed the Bureau to "consult with any person, agency, or organization at the bureau's discretion."<sup>7</sup>

### The Bureau's Approach to this Report

The Bureau prepared this report in accordance with the scope of Act 184. Accordingly, the Bureau surveyed agencies and other entities that appeared most capable of providing relevant information, including some original participants of the Task Force.<sup>8</sup> For original Task Force members, the survey (Bureau's Survey)<sup>9</sup> asked the respondents to update the information and

statistics previously provided by those respondents to the Task Force and to make any further recommendations to better address the illegal importation and use of fireworks. Some of the questions in the Bureau's Survey were tailored to reflect the specific roles of respondents with respect to illegal fireworks use—for example, the roles of police departments, fire departments, and prosecuting attorneys' offices.

This updated report also contains input from other relevant respondents that were not included in the original Task Force. The Bureau asked these respondents general questions regarding their efforts to comply with and advocate for or against various federal, state, and county fireworks regulations. However, some survey recipients did not respond, while others were unable to provide all of the requested information.

In addition to providing updated information from the 2011 report, this report also includes, where applicable, information on legislative efforts of the State and counties<sup>10</sup> to address issues, challenges, and recommendations detailed in the 2011 report. Additionally, for purposes of context and clarity, the Bureau has included examples of pertinent federal, state, and county fireworks laws and regulations.

## **Organization of this Report**

The remaining chapters of this report are organized as follows:

Chapter 2 summarizes applicable federal, state, and county fireworks laws, and federal regulatory entities. The chapter also discusses state and county regulations concerning licensing, permitting, and authorized uses of fireworks.

Chapter 3 reiterates and provides relevant updates to the issues and challenges described in the Task Force's 2011 report.

Chapter 4 reviews the recommendations made in the Task Force's 2011 report and any efforts made since 2011 to address these recommendations. Chapter 4 also examines additional suggestions included in various responses to the Bureau's Survey.

Chapter 5 summarizes options that the Legislature may wish to consider if it seeks to take additional action to curtail the illegal importation, sale, and use of fireworks.

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<sup>1</sup> Act 184, Session Laws of Hawaii 2019 (Act 184), is attached as Appendix A.

<sup>2</sup> *See id.* See also Illegal Fireworks Task Force, *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011* (January 2011) (Report of the Illegal Fireworks Task Force), available at [https://www.capitol.hawaii.gov/session2010/studies/IFTF/Illegal\\_Fireworks\\_Task\\_Force\\_2010\\_Report\\_to\\_Legislature.pdf](https://www.capitol.hawaii.gov/session2010/studies/IFTF/Illegal_Fireworks_Task_Force_2010_Report_to_Legislature.pdf).

*INTRODUCTION*

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<sup>3</sup> See Report of the Illegal Fireworks Task Force, *supra* note 2, at 5.

<sup>4</sup> See *id.* at 2-4.

<sup>5</sup> See *id.* at 4.

<sup>6</sup> Act 184, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> The Legislative Reference Bureau (Bureau) contacted the Federal Aviation Administration's Hazardous Materials Division; United States Coast Guard; United States Customs and Border Protection; Hawaii Department of Agriculture, Department of Health, and Department of Transportation's Harbors Division; State Fire Council; police and fire departments for all counties; prosecuting attorneys for all counties; Aloha Air Cargo; American Promotional Events, Inc.; Hawaii Transportation Association (formerly Hawaii Trucking Association); Matson Navigation Company; and Pasha Hawaii Transit.

<sup>9</sup> The survey responses are on file with the Bureau.

<sup>10</sup> The County of Maui does not currently have a publicly accessible archive of unenacted legislation. Accordingly, any discussion of legislation introduced or enacted, or both, contained herein does not include any measures introduced, but not enacted, by the Maui County Council.

## Chapter 2

### OVERVIEW OF APPLICABLE FIREWORKS LAWS

Due to their combustible and potentially hazardous nature, fireworks are subject to substantial federal, state, and county regulation. A common definition of "fireworks" across the regulatory spectrum is "[a]ny composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of 'consumer fireworks' or 'display fireworks.'"<sup>1</sup> Although "consumer fireworks" does not have a single definition across federal, state, and county regulations, the term generally refers to small fireworks that contain up to a certain amount of explosive materials<sup>2</sup> and are intended for purchase and use by the public.<sup>3</sup> The term "display fireworks," on the other hand, generally refers to larger fireworks that contain more explosive material than consumer fireworks and are designed for exhibition display.<sup>4</sup>

#### Federal Laws and Regulatory Agencies

In general, federal laws regulate the types and compositions of fireworks that may be imported, manufactured, distributed, stored, sold, owned, possessed, or used; the labeling, handling, storage, and transportation of fireworks; and the permits and licenses required for certain fireworks-related activities. Fireworks are primarily subject to regulation by the Consumer Product Safety Commission;<sup>5</sup> the Bureau of Alcohol, Tobacco, Firearms and Explosives;<sup>6</sup> and the United States Department of Transportation.<sup>7</sup>

##### **1. The Consumer Product Safety Commission**

The Federal Hazardous Substances Act, codified as 5 U.S.C. §§1261–1278, prohibits and penalizes certain acts involving hazardous substances, including fireworks, and authorizes the Consumer Product Safety Commission (Commission) to regulate these hazardous substances. Regulations contained in 16 C.F.R. Parts 1500 and 1507 include hazardous substance labeling requirements;<sup>8</sup> bans on certain hazardous substances,<sup>9</sup> including certain fireworks devices that are intended to produce an "audible effect,"<sup>10</sup> may be confused with foods,<sup>11</sup> and do not comply with the requirements of 16 C.F.R. Part 1507;<sup>12</sup> and regulations regarding the manufacture and assembly of certain fireworks.<sup>13</sup>

##### **2. The Bureau of Alcohol, Tobacco, Firearms and Explosives**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulates the possession, receipt, importation, manufacture, concealment, transportation,<sup>14</sup> shipment, storage, transfer, sale, disposition, labeling, or use of explosive materials, or any business operations related to any of these acts.<sup>15</sup> However, while display fireworks are considered "explosive materials" according to

the ATF and the Department of Justice's 2018 Annual List of Explosive Materials,<sup>16</sup> published pursuant to 27 C.F.R. §555.23<sup>17</sup> and 18 U.S.C. §841(d),<sup>18</sup> the ATF's regulation of consumer fireworks and articles pyrotechnic only extends to the location of processing facilities for these types of fireworks.<sup>19</sup>

### **3. The United States Department of Transportation**

Display fireworks, consumer fireworks, and articles pyrotechnic<sup>20</sup> are also considered "hazardous materials" pursuant to 49 C.F.R. §171.8<sup>21</sup> as these fireworks are included in the Hazardous Materials Table published in 49 C.F.R. §172.101.<sup>22</sup> Accordingly, these fireworks are also subject to the United States Department of Transportation's (USDOT) Hazardous Materials Regulations, contained in 49 C.F.R. Parts 171–180,<sup>23</sup> which govern the transportation of hazardous materials by rail,<sup>24</sup> air,<sup>25</sup> vessel,<sup>26</sup> and public highway.<sup>27</sup> Additionally, 18 U.S.C. §836 specifically prohibits the transportation of fireworks into a state in which the sale or use of fireworks is prohibited.<sup>28</sup>

### **4. Other Regulatory Agencies**

In addition to the Commission, ATF, and USDOT's regulations, fireworks are subject to various provisions of the Occupational Safety and Health Act<sup>29</sup> and prohibitions on the use of fireworks on national wildlife refuges,<sup>30</sup> in certain areas designated by order pursuant to 36 C.F.R. §261.50,<sup>31</sup> within certain caves,<sup>32</sup> on various developed recreation sites,<sup>33</sup> or in any national parks system parks.<sup>34</sup>

## **State and County<sup>35</sup> Regulations**

Hawaii's state fireworks laws are consolidated in chapter 132D, Hawaii Revised Statutes (HRS), also known as the "Fireworks Control Law."<sup>36</sup> Unlike federal law, which groups fireworks into display fireworks, consumer fireworks, and articles pyrotechnic, state law adds a fourth type: aerial devices. Generally, the Fireworks Control Law regulates the importation, storage, sale, purchase, possession, and use of all fireworks in the State.<sup>37</sup> Although numerous regulations in the Fireworks Control Law address "fireworks" in general, many of the regulations address the following two categories of fireworks separately: (1) consumer fireworks, including firecrackers,<sup>38</sup> and (2) display fireworks, articles pyrotechnic, and aerial devices.

### **1. Consumer Fireworks**

Generally, the Fireworks Control Law allows for the purchase and use of any consumer fireworks, except firecrackers, without a permit (and firecrackers with a permit) "[f]rom 9:00 p.m. on New Year's Eve to 1:00 a.m. on New Year's Day; from 7:00 a.m. to 7:00 p.m. on Chinese New Year's Day; and from 1:00 p.m. to 9:00 p.m. on the Fourth of July."<sup>39</sup>

Under section 132D-10, HRS, of the Fireworks Control Law, a person must obtain a permit to purchase or use:

- (1) Any consumer fireworks commonly known as firecrackers[; and]
- (3) Any consumer fireworks for the purposes of section 132D-5[, Hawaii Revised Statutes,] or for cultural uses that occur at any time other than during the periods prescribed in section 132D-3(1)[, Hawaii Revised Statutes.]<sup>40</sup>

However, it should be noted that in 2011, the City and County of Honolulu enacted an ordinance substantially more restrictive than the Fireworks Control Law. This ordinance effectively bans the purchase and use of any consumer fireworks in the county, except for firecrackers purchased and used with a permit.<sup>41</sup>

The State also prohibits the importation, storage, offering for sale, or sale of any consumer fireworks without a license.<sup>42</sup> However, because firecrackers are the only consumer fireworks allowed to be used in the City and County of Honolulu, the applicability of these licenses is limited there to firecrackers.<sup>43</sup>

## **2. Display Fireworks, Aerial Devices, and Articles Pyrotechnic**

In addition to regulating consumer fireworks, the State requires licenses for the importation, storage, offering for sale, or sale of any display fireworks, aerial devices, or articles pyrotechnic<sup>44</sup> and requires permits for the purchase or use of these types of fireworks.<sup>45</sup> However, unlike its consumer fireworks regulations, the State also requires a license or permit<sup>46</sup> for the possession of any display fireworks, aerial devices, or articles pyrotechnic.<sup>47</sup> Additionally, under chapter 132D, HRS, display fireworks, aerial devices, and articles pyrotechnic may only be set off between 9:00 a.m. and 9:00 p.m., unless authorized times are otherwise extended by the applicable county fire chief, and may only be set off for display purposes.<sup>48</sup>

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<sup>1</sup> 27 Code of Federal Regulations (C.F.R.) §555.11. *See also* 49 C.F.R. §173.59 (defining "fireworks" as "[p]yrotechnic articles designed for entertainment."); and §§132D-2, Hawaii Revised Statutes (HRS), 26-2-2, Hawaii County Code, 20-6.1, Revised Ordinances of Honolulu, 22-3.2, Kauai County Code (Kauai County Code combines the definitions of "fireworks" and "pyrotechnic articles or devices"), 6-201-3, Maui Administrative Rules, and 8.16.010, Maui County Code.

<sup>2</sup> *See* 27 C.F.R. §555.11 ("Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials.").

<sup>3</sup> *See* 49 C.F.R. §173.59 (defining "consumer firework" as "[a]ny finished firework device that is in a form intended for use by the public"); §§132D-2, HRS, 26-2-2, Hawaii County Code, and 20-6.1, Revised Ordinances of Honolulu ("Consumer fireworks' means any fireworks designed primarily for retail sale to the public"); §22-3.2, Kauai

County Code ("Fireworks or pyrotechnic articles or devices for sale to and subsequent use by the general public (household) users"); and §6-201-3, Maui Administrative Rules ("Common fireworks' means any firework designed primarily for retail sale to the public").

<sup>4</sup> See 27 C.F.R. §555.11 (defining "display fireworks" as large fireworks that include "salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as 'consumer fireworks.'"); §§132D-2, HRS, and 26-2-2, Hawaii County Code (defining "display fireworks" as "fireworks designed primarily for exhibition display", including but not limited to "salutes containing more than two grains (one hundred and thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as 'consumer fireworks.'"); and §20-6.1, Revised Ordinances of Honolulu (defining "display fireworks" as "any fireworks used for exhibition display", including but not limited to "salutes containing more than two grains (130 milligrams) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as 'consumer fireworks' . . . This term also includes fused set pieces containing components, which together exceed 50 milligrams of salute power.").

<sup>5</sup> See the Federal Hazardous Substances Act, codified as 15 United States Code (U.S.C.) Chapter 30, and the Federal Hazardous Substances Act Regulations, codified as 16 C.F.R. Subchapter C.

<sup>6</sup> See 18 U.S.C. Chapter 40 and 27 C.F.R. Part 555.

<sup>7</sup> See 18 U.S.C. §836, 49 U.S.C. Chapter 51, and 49 C.F.R. Chapter I.

<sup>8</sup> See 15 U.S.C. §1261(p), repeated in 16 C.F.R. §1500.3(b)(14) (establishing various labeling requirements, noncompliance with which results in the hazardous substance being deemed a "misbranded hazardous substance"); and 16 C.F.R. §§1500.14(b)(7) (additional labeling requirements for fireworks devices), 1500.83(a)(27) (exempting certain packaged fireworks assortments from the labeling requirements in 15 U.S.C. §1261(p) and 16 C.F.R. §1500.3(b)(14)), and 1500.121-134 (various hazardous substance labeling provisions).

<sup>9</sup> See 15 U.S.C. §1261(q)(1), repeated in 16 C.F.R. §1500.3(b)(15)(i) (defining "banned hazardous substance").

<sup>10</sup> See 16 C.F.R. §§1500.17(a)(3) and (8).

<sup>11</sup> See 16 C.F.R. §1500.17(a)(8).

<sup>12</sup> See 16 C.F.R. §1500.17(a)(9).

<sup>13</sup> See 16 C.F.R. Part 1507. Pursuant to 16 C.F.R. §1507.1, 16 C.F.R. "part 1507 prescribes requirements for those fireworks devices (other than firecrackers) not otherwise banned under the act".

<sup>14</sup> Pursuant to 18 U.S.C. §845(a)(1), 18 U.S.C. Chapter 40 does not apply to those "aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security."

<sup>15</sup> See 18 U.S.C. Chapter 40 and 27 C.F.R. Part 555.

<sup>16</sup> 2018 Annual List of Explosive Materials, 83 Fed. Reg. 63,906 (December 12, 2018).

<sup>17</sup> See 27 C.F.R. §555.23 (requiring the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives to "compile a list of explosive materials, which shall be published and revised at least annually in the Federal Register.").

<sup>18</sup> See 18 U.S.C. §841(d) (requiring the Attorney General of the United States to "publish and revise at least annually in the Federal Register a list of . . . explosives which he determines to be within the coverage of" 18 U.S.C. Chapter 40.).

<sup>19</sup> See 27 C.F.R. §§555.141(a)(7) (exempting consumer fireworks and articles pyrotechnic from 27 C.F.R. Part 555) and 555.223, n.2 ("While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.").

<sup>20</sup> See 49 C.F.R. §173.59 (defining "[a]rticles, pyrotechnic for technical purposes" as "[a]rticles which contain pyrotechnic substances and are used for technical purposes, such as heat generation, gas generation, theatrical effects, etc."). See also 27 C.F.R. §555.11 (defining "articles pyrotechnic" as "[p]yrotechnic devices for professional



use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such articles meeting the weight limits for consumer fireworks but not labeled as such and classified by [United States] Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432."); and §§132D-2, HRS, 26-2-2, Hawaii County Code, and 20-6.1, Revised Ordinances of Honolulu (defining "articles pyrotechnic" as "pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 by the United States Department of Transportation.").

<sup>21</sup> See 49 C.F.R. §171.8 ("The term ['hazardous material'] includes . . . materials designated as hazardous in the Hazardous Materials Table (see 49 C.F.R. 172.101)").

<sup>22</sup> See 49 C.F.R. §172.101 (classifying display fireworks (UN0333, UN0334, and UN0335), consumer fireworks (UN0334 and UN0335), and articles pyrotechnic for technical purposes (UN0428, UN0429, UN0430, UN0431, and UN0432) as hazardous materials).

<sup>23</sup> See also 49 U.S.C. §§5101-5128 (the Federal Hazardous Materials Transportation Act).

<sup>24</sup> See 49 C.F.R. Part 174.

<sup>25</sup> See 49 C.F.R. Part 175.

<sup>26</sup> See 49 C.F.R. Part 176.

<sup>27</sup> See 49 C.F.R. Part 177.

<sup>28</sup> See 18 U.S.C. §836.

<sup>29</sup> See 29 C.F.R. Part 1910.

<sup>30</sup> See 50 C.F.R. §27.41 ("Carrying, possessing, or discharging firearms, fireworks, or explosives on national wildlife refuges is prohibited.").

<sup>31</sup> See 36 C.F.R. §261.50(a) ("The Chief [of the Forest Service], each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction."), 261.52(f) (prohibiting the act of "[p]ossessing, discharging or using any kind of firework or other pyrotechnic device" in areas designated by order), and 261.57(c) (prohibiting the possession of fireworks in National Forest wilderness areas that are designated by order).

<sup>32</sup> See 36 C.F.R. §261.10 (prohibiting the act of "[d]ischarging or igniting a firecracker, rocket or other firework, or explosive into or within any cave" under the jurisdiction of the United States Department of Agriculture's Forest Service).

<sup>33</sup> See 36 C.F.R. §261.16(d) (prohibiting the "[d]ischarging or igniting [of] a firecracker, rocket or other firework, or explosive" in any developed recreation site under the jurisdiction of the United States Department of Agriculture's Forest Service) and 43 C.F.R. §8365.2-5 (prohibiting the discharging of fireworks on any developed recreation sites and areas under the jurisdiction of the United States Department of the Interior's Bureau of Land Management).

<sup>34</sup> See 36 C.F.R. §2.38 ("Using or possessing fireworks and firecrackers is prohibited, except pursuant to the terms and conditions of a permit or in designated areas under such conditions as the superintendent may establish, and in accordance with applicable State law.").

<sup>35</sup> Pursuant to §132D-17.5, HRS, the counties are authorized to enact ordinances that chapter 132D, HRS, will not supersede to the extent that these ordinances are "at least as stringent in the control or prohibition of fireworks as" chapter 132D, HRS. Accordingly, in addition to chapter 132D, HRS, this section will also discuss any applicable county deviations from chapter 132D, HRS.

<sup>36</sup> See §132D-1, HRS.

<sup>37</sup> See, e.g., §§132D-3 (permitting the use of consumer fireworks with and without a permit during certain time periods and restricting the number of individual firecracker units allowed for purchase under each permit to five thousand); 132D-4(a) (requiring a display permit for the purchase and use of display fireworks, articles pyrotechnic, and aerial devices) and (b) (authorizing the use of permitted display fireworks, articles pyrotechnic, and aerial devices during certain time periods); 132D-5(a) (prohibiting certain uses of fireworks or articles pyrotechnic without a permit), (b) ("It shall be unlawful to purchase consumer fireworks more than five calendar days before the time periods for permissible use under section 132D-3."), and (c) ("It shall be unlawful to sell consumer fireworks after

12:01 a.m. on New Year's Day, 6:00 p.m. on Chinese New Year's Day, and 8:00 p.m. on the Fourth of July."); 132D-6(2) (authorizing "[t]he sale or use of blank cartridges for a show or theater, or for signal, commercial, or institutional purposes in athletics or sports."); 132D-7 (prohibiting the importation, storage, offer to sell, or sale of any fireworks or articles pyrotechnic without a valid license and the possession of "aerial devices, display fireworks, or articles pyrotechnic without a valid license to import, store, or sell aerial devices, display fireworks, or articles pyrotechnic, or a valid display permit as provided for in this chapter."); 132D-8 (specifying various requirements and penalties for licenses to import, store, offer to sell, or sell fireworks or articles pyrotechnic); 132D-8.5 (limiting the amount of aerial devices, display fireworks, or articles pyrotechnic that a licensee may import or store); 132D-8.6 (providing additional requirements and penalties for licensed importers, storage facilities, wholesalers, and retailers); 132D-9 (providing permit application requirements); 132D-10 (requiring permits for the purchase and use of firecrackers; aerial devices, display fireworks, and articles pyrotechnic; and consumer fireworks for cultural uses, and establishing the fees for each type of permit); 132D-11(a) (establishing the following license fees: "\$3,000 for importers, \$2,000 for each wholesaler's site, \$1,000 for each storage site, and \$500 for each retailer's site for each year or fraction of a year in which the licensee plans to conduct business"); 132D-12 (prohibiting the sale, offer to sell, or giving of fireworks or articles pyrotechnic to any minor and the possession, purchase, sale, or use of any fireworks or articles pyrotechnic by any minor); 132D-13 (authorizing the use of fireworks or articles pyrotechnic by minors "while under the immediate supervision and control of [a] parent or guardian, or under the supervision and control of another adult."); 132D-14(a)(1) (penalizing the importation of "aerial devices, display fireworks, or articles pyrotechnic without having a valid license under section 132D-7," HRS), (2) (penalizing the "[p]urchasing, possessing, setting off, igniting, or discharging [of] aerial devices, display fireworks, or articles pyrotechnic without a valid permit under sections 132D-10 and 132D-16, [HRS,] or storing, selling, or possessing [of] aerial devices, display fireworks, or articles pyrotechnic without a valid license under section 132D-7," HRS), (3) (penalizing the transfer or sale of any aerial devices, display fireworks, or articles pyrotechnic "to a person who does not have a valid permit under sections 132D-10 and 132D-16," HRS), and (4) (penalizing the removal or extraction of pyrotechnic contents from fireworks or articles pyrotechnic and using the contents to construct fireworks or articles pyrotechnic related devices); and 132D-15, HRS (requiring that "[e]ach licensed retail outlet . . . post adequate notice that clearly cautions each person purchasing fireworks of the prohibitions, liabilities, and penalties incorporated in sections 132D-12, 132D-13, and 132D-14," HRS).

<sup>38</sup> See §132D-2, HRS ("Consumer fireworks' include firework items commonly known as firecrackers that are single paper cylinders not exceeding one and one-half inches in length excluding the fuse and one-quarter of an inch in diameter and contain a charge of not more than fifty milligrams of pyrotechnic composition, snakes, sparklers, fountains, and cylindrical or cone fountains that emit effects up to a height not greater than twelve feet above the ground, illuminating torches, bamboo cannons, whistles, toy smoke devices, wheels, and ground spinners that when ignited remain within a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, novelty or trick items, combination items, and other fireworks of like construction that are designed to produce the same or similar effects.").

<sup>39</sup> §132D-3, HRS. See also *supra* note 37 (citing §132D-5(b) and (c), HRS) and §§132D-8(d), HRS ("[N]o fireworks shall be sold to a permittee holding a permit issued for purposes of section 132D-3, more than five calendar days before the applicable time period under section 132D-3."); 26-2-41(b) and 26-2-42(a), Hawaii County Code (§26-2-42(a), Hawaii County Code, provides time periods in which firecrackers may be *both purchased and used*); 20-6.13(d), Revised Ordinances of Honolulu; and 6-201-11(a), Maui Administrative Rules. But see §22-3.9, Kauai County Code (extending these designated time periods as follows: "(a) Fourth of July: 6:00 p.m. to 12:00 midnight[;] (b) New Year's Eve: 6:00 p.m., December 31, to 1:00 a.m. January 1, New Year's Day[;] and (c) Chinese New Year's Eve: 6:00 p.m. to 1:00 a.m., Chinese New Year's Day.").

<sup>40</sup> §132D-10, HRS. See also *supra* note 37 (citing §§ 132D-3 (restricting the number of individual firecracker units allowed for purchase under each permit to five thousand) and §132D-5(a), HRS), and §§132D-3 (specifying the time period (9:00 a.m. to 9:00 p.m.) in which fireworks may be used for a permitted cultural purpose) and 132D-6, HRS (exceptions to the general prohibitions listed in §132D-5, HRS); 26-2-41(a)(1) and 25-2-43, Hawaii County Code; 20-6.3(a) and (b) and 20-6.13(a), Revised Ordinances of Honolulu; 22-3.3(d), (j) (requiring permits for the use of

any fireworks for agricultural purposes), and (k) (requiring permits for the use and construction of "bamboo canons") and 22-3.6, Kauai County Code; and 6-201-9, 6-201-10(1) and (2), and 6-201-11(b), Maui Administrative Rules. §132D-5(a), HRS, lists numerous prohibited activities that are unlawful if performed by "any person without a permit issued under" §132D-10, HRS. Although the Hawaii County Code and the Kauai County Code include prohibitions similar to those found in §132D-5(a), HRS, neither county's code includes language to authorize a person possessing an appropriate permit to perform any of these prohibited acts.

<sup>41</sup> See §20-6.2(a), Revised Ordinances of Honolulu, as enacted by Honolulu Ordinance 10-25 ("It shall be unlawful for any person to possess, use, explode or cause to explode any consumer fireworks within the city."). See also §20-6.3(a) and (b), Revised Ordinances of Honolulu (exempting from the prohibitions in 20-6.2, Revised Ordinances of Honolulu, "[t]he import, storage, sale and use by a person having obtained a license or permit for firecrackers pursuant to section 20-6.4").

<sup>42</sup> See *supra* note 37 (citing §132D-7, HRS). See also *supra* note 37 (citing §§132D-8 and 132D-11, HRS); and §§26-2-31, Hawaii County Code; 22-3.3(a) (requiring a license for "[s]ales by wholesalers for direct shipment out of the County [of Kauai] or to retailers") and (b) (requiring a license for the "[s]torage, sale, or offer for sale or for use in the County" of Kauai), and 22-3.4(a), Kauai County Code (requiring a license "to possess or store for sale, at wholesale or retail, or offer for sale or for use in the County any fireworks, unless such person shall first secure a license therefor."); and 6-201-4(a), Maui Administrative Rules ("It shall be unlawful for any person to import, store, transfer, offer to sell, or sell, at wholesale or retail, aerial common fireworks, special fireworks, or non-aerial common fireworks without a license issued by the fire chief.").

<sup>43</sup> See §20-6.4(a), Revised Ordinances of Honolulu ("It shall be unlawful for any person to import, store, offer to sell, sell, at wholesale or retail, for use in the city, any display fireworks or firecrackers, unless such person shall first secure a license."). See also *supra* note 41 (citing §20-6.3(b), Revised Ordinances of Honolulu).

<sup>44</sup> See §132D-7(1), HRS. See also *supra* notes 37 (citing §132D-14(a)(1) and (2), HRS), 42 (citing §§22-3.3 and 22-3.4(a), Kauai County Code), and 43 (citing §20-6.4(a), Revised Ordinances of Honolulu); §§132D-8 (general license application requirements) and 132D-11, HRS (license fees); and 20-6.3(a), Revised Ordinances of Honolulu (requiring a license to import, store, sale, or use display fireworks).

<sup>45</sup> See §132D-16(a), HRS ("Any person desiring to set off, ignite, or discharge aerial devices, display fireworks, or articles pyrotechnic for a display shall apply to, and obtain a permit as required by section 132D-10, from the county not less than twenty days before the date of the display."). See also *supra* note 37 (citing §132D-14(a)(2), HRS); §§132D-10(2) (requiring a permit for the purchase and use of aerial devices, display fireworks, or articles pyrotechnic) and 132D-16, HRS (providing display permit application requirements); 26-2-41(a)(2) (including permits to use aerial devices, display fireworks, and articles pyrotechnic in a list of permit types) and 26-2-44(a), Hawaii County Code ("Aerial devices, display fireworks, and articles pyrotechnic may be purchased, set off, ignited, discharged, or otherwise caused to explode only for display and if permitted in writing pursuant to this section."); 20-6.3(a) (authorizing the use of display fireworks by a person possessing an applicable permit) and 20-6.12, Revised Ordinances of Honolulu (providing requirements and restrictions for display permits), 22-3.3(c) (authorizing the use of fireworks "for a public display by a non-household commercial or institutional applicant having obtained a permit therefor in accordance with [s]ection 22-3.5," Kauai County Code), and 22-3.5, Kauai County Code (providing requirements and restrictions for display permits); and 6-201-9 ("It shall be unlawful to purchase or discharge non-aerial common fireworks commonly known as firecrackers, aerial common fireworks, or special fireworks without a permit."), 6-201-10(3) (including permits "for the purchase and discharge of aerial common fireworks, special fireworks, or both, for public displays" in a list of permit types), and 6-201-12(a), Maui Administrative Rules (requiring a permit "for the purchase and discharge of aerial common fireworks and special fireworks, or both.").

<sup>46</sup> The counties of Maui and Hawaii only allow for the possession of aerial devices, display fireworks, or articles pyrotechnic with a valid license (see *supra* note 42 (citing §6-201-4(a), Maui Administrative Rules) and §26-2-31(a), Hawaii County Code ("Any person desiring . . . to possess aerial devices, display fireworks, or articles pyrotechnic within the County shall obtain a license issued by the department.")).

<sup>47</sup> See *supra* note 37 (citing §132D-7, HRS). See also *supra* notes 37 (citing §132D-14(a)(2), HRS) and 42 (discussing the County of Kauai's requirement of a license to possess fireworks for sale).

<sup>48</sup> See §§132D-4(b), HRS; and 26-2-44(b), Hawaii County Code.

## Chapter 3

### UPDATES TO ISSUES AND CHALLENGES IDENTIFIED IN THE 2011 REPORT OF THE ILLEGAL FIREWORKS TASK FORCE

At its first meeting on August 24, 2010, the Illegal Fireworks Task Force (Task Force) identified goals and objectives that reflected the group's view of the illegal fireworks problem. The Task Force intended to:

- Determine how to best provide law enforcement with additional resources to address illegal fireworks, especially on New Year's Eve;
- Determine what resources [would] be needed to increase the percentage of shipping containers inspected;
- Increase collaboration with the fireworks industry; and
- Define what . . . "illegal" fireworks [are] and examine the differences between the illegal fireworks problem in the City and County of Honolulu and the other counties.<sup>1</sup>

In its final report, the Task Force expanded these goals into a fuller discussion of the following "Issues and Challenges" surrounding illegal fireworks:<sup>2</sup>

1. The lack of a clearly defined illegal fireworks problem;
2. Insufficient resources to adequately address the illegal fireworks problem;
3. Difficulties in prosecuting illegal fireworks cases;
4. The financial burdens and risks associated with the storage and disposal of seized fireworks;
5. Various deficiencies related to inspections for illegal fireworks;
6. The lack of cooperation between stakeholders; and
7. Inconsistencies in the various state and county fireworks laws.

Act 184, Session Laws of Hawaii 2019, directed the Legislative Reference Bureau (Bureau) to review and update the Task Force findings regarding state and county efforts to address each of the foregoing issues and challenges. To obtain pertinent and substantive updates to these efforts, the Bureau contacted the original Task Force members and requested that each member participate in a survey (Bureau's Survey).<sup>3</sup> The Bureau also asked additional organizations that were not members of the Task Force to provide information relating to the efforts of those organizations to comply with and advocate for the various fireworks regulations. Accordingly,

this chapter reviews and updates the findings and recommendations of the *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011*.

## **Establishing a Clear Statement of the Illegal Fireworks Problem**

The Task Force first noted that fireworks violations vary and that "illegal fireworks" may refer either to fireworks that are illegally imported in the first instance or those that may be legally imported but, subsequently, are illegally sold or illegally used.<sup>4</sup> The Task Force felt that a clearer understanding of these violations would help focus enforcement efforts and encourage public compliance.<sup>5</sup> As outlined by the Task Force, "illegal fireworks" in 2011 included, but were not limited to:

- Illegal aerial or display fireworks imported for sale to consumers;
- Consumer fireworks that are legally imported but are subsequently used in a manner that falls outside of the permit parameters;
- Fireworks, such as aerial devices for [sole] use in a [permitted] fireworks display, that may be legally imported but are diverted into the hands of consumers;
- Fireworks that are imported, stored, sold, or possessed without a proper license; and
- Improvised explosive devices or other illegal devices, such as bombs or other explosive devices that sound like fireworks.<sup>6</sup>

Despite the Task Force's concern, the variety of violations comprising "illegal fireworks" in 2019 remains largely the same.

However, since 2011, two counties have enacted measures establishing new fireworks prohibitions. Coinciding with the Task Force's discussions and issuance of its 2011 report, the City and County of Honolulu banned the importation, storage, sale, possession, and use of any consumer fireworks except for firecrackers, which may only be purchased and used by a person with a permit.<sup>7</sup> In 2016, the County of Hawaii replaced its existing fireworks code with a new code that contained the following additional prohibitions: bans on the use of fireworks near firework retail facilities<sup>8</sup> and within residential and agricultural zones.<sup>9</sup>

## **Inadequate Resources**

In assessing the issues and challenges associated with illegal fireworks, the Task Force found that inadequate resources were a significant barrier to effective enforcement.<sup>10</sup> In their 2010 presentations to the Task Force, both the Hawaii<sup>11</sup> and Honolulu<sup>12</sup> police departments said they lacked sufficient staff to address the overwhelming number of fireworks-related complaints. According to their presentation materials, Honolulu police handled 1,840 fireworks-related

incidents in 2010,<sup>13</sup> while Hawaii police responded to 109.<sup>14</sup> Fewer complaints were received in the Counties of Maui (80)<sup>15</sup> and Kauai (14).<sup>16</sup> The Honolulu Police Department noted that although, on holidays, the department assigned dedicated officers in each patrol district to address fireworks issues, those officers were often diverted to respond to more serious crimes.<sup>17</sup>

Responses to the Bureau's Survey indicate that resource and staffing limitations remain significant barriers to enforcement. The Department of Agriculture—currently the only state agency with the authority to search domestic cargo, absent probable cause—indicated in its response to the Bureau's Survey that the department does not have the resources available to inspect cargo beyond containers that are declared to contain agricultural products. Additionally, multiple counties reported that they have addressed more fireworks-related calls since 2011 with the same, or diminished, financial resources. For example, the County of Hawaii's annual budget included \$66,231 for fireworks enforcement for fiscal year 2010-2011.<sup>18</sup> However, the county's budget for fiscal year 2018-2019 included only \$31,131 for those duties, with no increase expected through at least fiscal year 2021-2022.<sup>19</sup> In response to the Bureau's Survey, the Honolulu Police Department commented that since 2010, "[n]o changes have been made to allocate resources to address fireworks offenses. Resources are pulled from normal operations and funding comes out of [the Honolulu Police Department]'s budget."

Since 2011, fireworks-related complaints have increased in all counties. Despite the ban on consumer fireworks, the Honolulu Police Department stated in an attachment to its response to the Bureau's Survey that in 2017, the department received 2,297 fireworks-related calls. The same year, the Hawaii Police Department handled 426 fireworks-related complaints, while the Maui Police Department handled 414 complaints and the Kauai Police Department handled 43 complaints, according to each police department's respective response to the Bureau's Survey.<sup>20</sup> The Maui Police Department noted in its response to the Bureau's Survey that "[s]taffing remains a constant challenge for many agencies throughout the state," and the Honolulu Police Department reported in its response that the department is "unable to afford [fireworks] initiatives, due to a shortage of personnel."

## **Prosecutions**

The Task Force also identified difficulties associated with fireworks prosecutions, particularly challenges in gathering evidence and meeting the high burden of proof necessary for convictions.<sup>21</sup> The 2011 report noted that the state constitution, which includes an explicit right to privacy, has more stringent search and seizure requirements than the federal constitution.<sup>22</sup> The Task Force specifically commented on the difficulty of proving possession, which is an element of many fireworks offenses, noting that "evidence that fireworks were merely in the vicinity of the suspect or the suspect's residence is not sufficient in a criminal prosecution . . . ." <sup>23</sup>

In July 2019, Governor David Ige signed Act 248, which eliminated the need to prove actual possession where a "homeowner, renter, or person otherwise responsible for the real property . . . intentionally, knowingly, or recklessly allows an individual, while on the real property, to possess, set off, ignite, or otherwise cause to explode any aerial device . . . ." <sup>24</sup> The homeowner or renter may be charged with either a misdemeanor or a Class C felony, depending

on the total weight of the fireworks at issue.<sup>25</sup> The Act, which took effect on July 5, 2019, also expanded the types of evidence that police may use to establish probable cause for arrest in fireworks cases to include "[p]hotographs, video recordings, or other recordings that show the commission of the offense and can be authenticated by one or more witnesses," or recordings from "unmanned aerial vehicle[s]" (drones), regardless of authentication.<sup>26</sup>

However, in its response to the Bureau's Survey, the Honolulu Police Department expressed concern that drone footage, while sufficient for establishing probable cause for arrest under Act 248, will not be admissible in court.<sup>27</sup> The department commented that, in the past, "officers were instructed not to utilize drone footage, as it poses problems for prosecution." The department asserted that "[t]he most significant issue the Honolulu Police Department has encountered regarding fireworks offenses appear[s] to be in prosecution. Laws are enacted, violations are addressed by law enforcement; however, most cases tend to be dismissed."

The departments of the Prosecuting Attorney for the City and County of Honolulu and County of Maui also reported in their respective responses to the Bureau's Survey that the burden of proof in fireworks cases continues to make convictions difficult to obtain. Honolulu prosecutors noted that because fireworks cases are charged criminally, "proof beyond a reasonable doubt still requires more extensive investigation than may be required for administrative or civil proceedings." Honolulu prosecutors also commented that the "[s]tringent definitions[,] such as '[a]erial device' included in [s]ection 132D-2[, Hawaii Revised Statutes (HRS),] routinely create roadblocks to effective prosecution." However, the prosecutors did not elaborate on why the definitions create roadblocks or how the definitions should be amended.

Between 2011 and 2019, Maui police referred twenty fireworks cases to Maui prosecutors, according to the Department of the Prosecuting Attorney for the County of Maui's response to the Bureau's Survey. The office stated that it charged seven cases and obtained four convictions. Maui prosecutors attributed the counties' low prosecution rates to "1) lack of enforcement resources, 2) the evidentiary and procedural requirements of a criminal prosecution in [the State], and 3) lack of widespread significant community support for enforcement . . . ." However, the office noted "an increase in anti-aerial fireworks sentiment" since 2016.<sup>28</sup> During the same time period, Kauai police referred four cases to Kauai prosecutors, with Kauai prosecutors ultimately charging two cases and obtaining one conviction, according to the Office of the Prosecuting Attorney for the County of Kauai's response to the Bureau's Survey. In their response to the Bureau's Survey, prosecutors for the County of Hawaii commented that they "are unable to prosecute if the investigations are not referred to" the office.<sup>29</sup> In a subsequent email to the Bureau, the prosecutors for the County of Hawaii indicated that they have not prosecuted any fireworks cases since 2005.

In their respective responses to the Bureau's Survey, the counties' prosecutors offered mixed opinions on whether Act 248 will increase prosecution or conviction rates. Prosecutors for the County of Hawaii wrote that they are hoping the Act will "have [a] significant impact." Prosecutors for the County of Maui commented that while the legislation "may positively impact enforcement efforts, it is still too early to say whether there will be an actual effect on prosecutions. We will most likely have more data in early 2020." In contrast, prosecutors for the County of Kauai noted that they "don't think much will change," and prosecutors for the City and County of Honolulu speculated that Act 248 will have no effect, since "[t]he addition of [§132D-20(b)(1) and

(2), HRS,] does not expand the facts and circumstances to establish probable cause, it merely clarifies what already existed."

## **Storage and Disposal**

The Task Force also identified as problematic the storage and disposal of seized fireworks, which are often kept as evidence in criminal cases.<sup>30</sup> Improperly stored fireworks may explode, especially if packaging deteriorates or becomes wet.<sup>31</sup> In 2010, the Honolulu Police Department reported that it had one available storage facility that met storage safety specifications—a small "bunker" rented for \$1,500 per month.<sup>32</sup> The Task Force noted that fireworks disposal is governed by federal safety protocols and state environmental laws and sometimes requires the expertise of bomb technicians from the mainland.<sup>33</sup> The Task Force also found that fireworks disposal poses a serious danger to those carrying it out.<sup>34</sup>

This danger was illustrated in April 2011, when five workers were killed on Oahu while disposing of federally seized fireworks.<sup>35</sup> Employees of Donaldson Enterprises were disassembling fireworks to be destroyed at a separate location when a massive explosion occurred at the storage bunker at which they were working.<sup>36</sup> A subsequent report from the United States Chemical Safety and Hazard Investigation Board attributed the accident, in part, to "a lack of regulations or industry standards that adequately address safe fireworks disposal."<sup>37</sup> The Board found that there were no federal, state, or local regulations, or industry standards, providing adequate guidance on the proper way to disassemble or dispose of fireworks.<sup>38</sup>

Since 2011, the Legislature has considered one bill regarding fireworks storage and disposal. Senate Bill No. 1305 (2019) would have allowed law enforcement to safely destroy and dispose of confiscated fireworks while retaining a small sample for evidentiary purposes. The measure would have also allowed a court to impose a conditional fine on a violator to reimburse a county for the costs of safe disposal of seized fireworks. The bill was supported by the Honolulu Police Department, the State Fire Council, and the fire departments for all counties<sup>39</sup> but was not passed.

In response to the Bureau's Survey, the Hawaii Police Department reported no changes since 2011 in the availability or cost of storage for seized fireworks. The Maui Police Department commented in its response to the Bureau's Survey that "[s]torage and disposal of seized fireworks has always been a concern for [the] department." Maui police reported that seized fireworks are currently stored in "a small, non-flammable cabinet in [the department's] evidence facility," and "[a]n alternative storage location as well as cost would be addressed should the need arise." The Kauai Police Department commented in its response to the Bureau's Survey that seized fireworks are stored in the department's only evidence warehouse, although they acknowledged that this situation puts other evidence at risk if the fireworks should explode. Kauai police noted that, in at least one case, disposal "took years to happen," while the seized firework remained in their main evidence facility.

In an email to the Bureau subsequent to the Bureau's Survey, the Honolulu Police Department wrote that between 2011 and 2019, annual fireworks seizures on Oahu ranged from



5,000 to 17,000 pounds. In 2017, in response to increased fireworks seizures, the department paid \$5,130 for a locking evidence container approved for explosives storage. Honolulu police reported that the department keeps the container at a facility with twenty-four hour security and estimated that their annual expenses for fireworks storage and disposal are \$55,000 per year.

## **Inspections**

The Task Force identified numerous concerns regarding cargo searches for illegal fireworks, including the limited authority of state and county agencies to conduct inspections.<sup>40</sup> While multiple state and federal agencies share jurisdiction over the State's harbors, most domestic cargo cannot be searched absent exigent circumstances or probable cause.<sup>41</sup> The Department of Agriculture is otherwise the sole state agency with the authority to search domestic cargo, and its inspections are generally limited to searches for agricultural pests.<sup>42</sup> The Task Force also noted that most state and county agencies lack the personnel and resources to conduct extensive inspections.<sup>43</sup>

The Task Force found that the volume of domestic cargo handled at the State's harbors was the most challenging issue regarding cargo inspections.<sup>44</sup> The Task Force noted that it would be financially and logistically difficult to locate illegal fireworks among the estimated two hundred thousand cargo containers that arrive in the State each year from other United States ports.<sup>45</sup> The Task Force acknowledged that cargo inspections must accommodate the flow of commerce, including the need to expedite shipments from Honolulu to neighbor islands.<sup>46</sup> According to the Task Force, because shipments arrive in Honolulu before being shipped out to the neighbor islands, "[t]ime-consuming inspection processes may delay tight turnarounds for barging shipments to [n]eighbor [i]slands . . ."<sup>47</sup> The Task Force elaborated that "there is a need to balance safety concerns against efficient commerce to ensure that imports to Hawaii are not unnecessarily restricted or that consumer costs are not needlessly driven up."<sup>48</sup>

The Task Force also commented on the lack of technology available to specifically detect fireworks in cargo shipments.<sup>49</sup> Searches are generally limited to visual inspections, accidental discoveries in broken containers, and the detection of discrepancies in shipping manifests.<sup>50</sup> The Task Force commented that these methods are "unlikely to find well-disguised contents hidden in a sea of packages . . ."<sup>51</sup> The Task Force noted that trained dogs could help detect fireworks in cargo and would cost approximately \$70,000 to \$80,000 per year for each dog, including pay for each full-time handler.<sup>52</sup>

Since 2011, the Legislature has considered various measures that would have appropriated funds for the deployment of trained dogs at state harbors,<sup>53</sup> developed new random inspection programs,<sup>54</sup> urged research on new detection technologies,<sup>55</sup> implemented a pilot program for searches by dogs,<sup>56</sup> and required the Sheriff Division's canine unit to assist with cargo inspections.<sup>57</sup> However, no legislation expanding random cargo inspections has been enacted since 2011.

None of the respondents to the Bureau's Survey specifically identified any new or continuing issues and challenges associated with inspections. However, as will be discussed in

further detail in chapter 4 of this report, various respondents did provide recommendations to increase and enhance inspection efforts.

### **Cooperation Between Stakeholders**

The Task Force found that improved collaboration and communication were needed among the various parties involved in fireworks enforcement, including county, state, and federal agencies, as well as the fireworks and shipping industries.<sup>58</sup> As an example, the Task Force pointed to the then informal and voluntary arrangements between fireworks importers and county fire departments, whereby importers would notify county fire chiefs of incoming fireworks shipments.<sup>59</sup> The Task Force noted that this notification would become a requirement in the City and County of Honolulu as of January 2, 2011.<sup>60</sup> Subsequently, Act 127, Session Laws of Hawaii 2011, applied the notification requirement state-wide.<sup>61</sup>

In response to the Bureau's Survey, the county police departments reported that, although no new formal collaborative efforts have been initiated since 2011, they continue to cooperate informally with other agencies. The Honolulu Police Department commented that it engages in "inter-agency cooperation to investigate information gained through tips, witnesses, intel, and informants." Maui police reported that their department "has consistently and successfully collaborated with other local, state, and federal agencies to address the illegal fireworks issue, although there are no . . . new joint efforts."

### **Consistency in Fireworks Laws**

Finally, the Task Force identified as an "Issue and Challenge," a lack of consistency between state laws and county ordinances. For example, the Task Force noted that "the types of actions that constitute fireworks violations vary widely, from sale or possession and use of illegal fireworks to illegal sale or use of legal fireworks."<sup>62</sup> The Task Force found that "this lack of consistency and clarity in the law creates confusion and makes both compliance and enforcement difficult."<sup>63</sup>

Act 170, Session Laws of Hawaii 2010, clarified that the counties were authorized to enact fireworks restrictions more stringent than state statutes.<sup>64</sup> The City and County of Honolulu's ban on most consumer fireworks<sup>65</sup> was enacted during the period in which the Task Force was active, becoming effective in 2011, and remains the strictest fireworks prohibition among the counties. Subsequent Department of Health statistics revealed that fireworks-related injuries dropped dramatically in the year after the City and County of Honolulu's ban was enacted.<sup>66</sup>

Since 2011, the State has not proposed or enacted legislation to address any inconsistencies between state and county laws. While no respondents to the Bureau's Survey specifically identified these inconsistencies as an ongoing problem, the Bureau notes that the inconsistencies that were identified by the Task Force continue to exist.

## Conclusion

The majority of respondents to the Bureau's Survey appeared to agree that the issues and challenges presented by the Task Force in its 2011 report remain relevant today. Other than the City and County of Honolulu's ban on most consumer fireworks, few legislative measures have been enacted, and it seems that no discernable additional financial resources have been provided, since 2011 to address these issues and challenges. However, there appears to be a correlation between the City and County of Honolulu's ban on most consumer fireworks and the significant decline in fireworks-related injuries on Oahu after the ban's enactment.

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<sup>1</sup> Illegal Fireworks Task Force, *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011* (January 2011) (Report of the Illegal Fireworks Task Force), at 4-5.

<sup>2</sup> *Id.* at 13-19.

<sup>3</sup> *See supra* Chapter 1, notes 8 and 9.

<sup>4</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 13.

<sup>5</sup> *Id.* at 14.

<sup>6</sup> *Id.* at 13-14.

<sup>7</sup> *See* Honolulu Ordinance No. 10-25 (adding article 6, entitled "Regulation of Fireworks" to chapter 20 of the Revised Ordinances of Honolulu).

<sup>8</sup> *See* §26-2-21(b)(4)(c), Hawaii County Code (adding prohibition against setting off, igniting, discharging, or otherwise causing the explosion of "any fireworks or articles pyrotechnic. . . [w]ithin three hundred feet of any consumer fireworks retail sales facility").

<sup>9</sup> *See* §26-2-21(b)(5), Hawaii County Code (adding a prohibition against setting off, igniting, discharging, or otherwise causing the explosion of "any display fireworks, articles pyrotechnic, or aerial devices within areas zoned residential or agricultural").

<sup>10</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 14.

<sup>11</sup> Presentation by Hawaii Police Department to the Illegal Fireworks Task Force (September 21, 2010), available at [https://www.capitol.hawaii.gov/session2010/studies/iftf/Big\\_Island\\_Police\\_Department\\_Presentation\\_09-21-10.pdf](https://www.capitol.hawaii.gov/session2010/studies/iftf/Big_Island_Police_Department_Presentation_09-21-10.pdf).

<sup>12</sup> Presentation by Honolulu Police Department to the Illegal Fireworks Task Force (September 21, 2010), available at [https://www.capitol.hawaii.gov/session2010/studies/iftf/Honolulu\\_Police\\_Department\\_Presentation\\_09-21-10.pdf](https://www.capitol.hawaii.gov/session2010/studies/iftf/Honolulu_Police_Department_Presentation_09-21-10.pdf) (Honolulu Police Department Presentation).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Presentation by Maui Police Department to the Illegal Fireworks Task Force (September 21, 2010), available at [https://www.capitol.hawaii.gov/session2010/studies/iftf/Maui\\_Police\\_Department\\_Presentation\\_09-21-10.pdf](https://www.capitol.hawaii.gov/session2010/studies/iftf/Maui_Police_Department_Presentation_09-21-10.pdf).

<sup>16</sup> Presentation by Kauai Police Department to the Illegal Fireworks Task Force (September 21, 2010), available at [https://www.capitol.hawaii.gov/session2010/studies/iftf/Kauai\\_Police\\_Department\\_Presentation\\_09-21-10.pdf](https://www.capitol.hawaii.gov/session2010/studies/iftf/Kauai_Police_Department_Presentation_09-21-10.pdf).

<sup>17</sup> Honolulu Police Department Presentation, *supra* note 12.

<sup>18</sup> *See* Hawaii County Ordinance No. 11-59 (establishing the annual budget for FY 2011-2012). Aside from Hawaii County's annual budgets, no county has enacted any legislation since 2011 allocating resources specifically designated for fireworks enforcement.

<sup>19</sup> *See* Hawaii County Ordinance No. 19-73 (establishing the annual budget for FY 2019-2020).

<sup>20</sup> The Legislative Reference Bureau (Bureau) notes that neither the information presented to the Task Force nor the updated data provided by respondents to a survey conducted by the Bureau (Bureau's Survey) was collected or offered in a standardized format. Some statistical data categories presented to the Task Force were inconsistent between jurisdictions (e.g., the Hawaii Police Department's use of "Adults Arrested," "Adults Cited," "Juveniles Arrested," and "Juveniles Cited" categories; the Kauai Police Department's use of a "Warnings" category; and the

Maui Police Department's use of "Adults Warned/Reprimanded," "Juveniles Warned/Reprimanded," and "No Case Generated" categories). Further, some statistical data provided in response to the Bureau's Survey was neither consistent with the categories used in 2010 nor standardized among respondents to the Bureau's Survey. For example, in 2010, the Hawaii Police Department presented to the Task Force annual statistics on dollar losses for fireworks-related incidents in each of the counties. However, in 2019, neither the Hawaii Police Department nor any other county police department was able to provide updated data on this topic.

<sup>21</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 15.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Act 248, Session Laws of Hawaii 2019 (Act 248).

<sup>25</sup> *See id.*

<sup>26</sup> *See id.*

<sup>27</sup> Act 248 provides that drone footage may be used without authentication to establish probable cause for arrest but does not exempt the footage from section 626-1, HRS, which requires the authentication of evidence presented at trial.

<sup>28</sup> No prosecution statistics were provided to the Legislative Reference Bureau by the Department of the Prosecuting Attorney for the City and County of Honolulu.

<sup>29</sup> The Hawaii Police Department reported carrying out nine criminal investigations between 2011 and 2017 but did not confirm whether any cases were referred to prosecutors.

<sup>30</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 15.

<sup>31</sup> *Id.* at 16.

<sup>32</sup> *Id.* at 15.

<sup>33</sup> *Id.* at 16.

<sup>34</sup> *Id.*

<sup>35</sup> United States Chemical Safety and Hazard Investigation Report, No. 2011-06-I-HI, Donaldson Enterprises, Inc. Fireworks Disposal Explosion and Fire (January 2013), at 8.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 11.

<sup>38</sup> *Id.*

<sup>39</sup> *Hearing Before the S. Comm. on Public Safety, Intergovernmental, and Military Affairs*, 30th Leg. (Haw. 2019) (written testimony of the Honolulu Police Department, State Fire Council, Hawaii Fire Department, Department of Fire and Public Safety of the County of Maui, and Kauai Fire Department), [https://www.capitol.hawaii.gov/Session2019/Testimony/SB1305\\_TESTIMONY\\_PSM\\_02-12-19\\_.PDF](https://www.capitol.hawaii.gov/Session2019/Testimony/SB1305_TESTIMONY_PSM_02-12-19_.PDF).

<sup>40</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 16.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* *See also* section 150A-5(5), Hawaii Revised Statutes (authorizing the Department of Agriculture to inspect domestic cargo).

<sup>43</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 16.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 17.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 18.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *See, e.g.*, House Bill (H.B.) No. 858 (2019), H.B. No. 1577 (2019), Senate Bill (S.B.) No. 968 (2019), H.B. No. 2485 (2016), and S.B. No. 2632 (2016).

<sup>54</sup> See, e.g., H.B. No. 858 (2019), H.B. No. 7 (2017), S.B. No. 598 (2017), H.B. No. 2485 (2016), and S.B. 2632 (2016).

<sup>55</sup> See, e.g., Senate Concurrent Resolution No. 208 (2019).

<sup>56</sup> See, e.g., S.B. No. 2430 (2018) and S.B. No. 169 (2011).

<sup>57</sup> See, e.g., H.B. No. 1099 (2019).

<sup>58</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 19.

<sup>59</sup> *Id.*

<sup>60</sup> See Honolulu Ordinance No. 10-25.

<sup>61</sup> See §132D-8.6(a)(4), HRS, as enacted by Act 127, Session Laws of Hawaii 2011.

<sup>62</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 19.

<sup>63</sup> *Id.*

<sup>64</sup> See §132D-17.5, HRS, as enacted by Act 170, Session Laws of Hawaii 2010.

<sup>65</sup> See Honolulu Ordinance No. 10-25.

<sup>66</sup> Hawaii Department of Health, *Summary of Fireworks-Related Injury Surveillance for 12/31/2018-1/2/2019*, (2019), attached as Appendix B.

## Chapter 4

### STAKEHOLDER RECOMMENDATIONS

Pursuant to Act 170, Session Laws of Hawaii 2010, the Illegal Fireworks Task Force (Task Force) made the following recommendations to the Legislature: (1) increase fireworks fees and fines; (2) decriminalize fireworks offenses in favor of civil fines; (3) increase random inspections; (4) consider alternatives such as education and training; and (5) promote cooperation between stakeholders. Further, respondents to a Legislative Reference Bureau (Bureau) survey (Bureau's Survey) made the following additional suggestions: (1) consider the impact of increased cargo inspection on commerce and shipping; (2) impose jail time as a penalty for fireworks offenses; (3) fund seasonal, specialized fireworks enforcement units; and (4) reestablish statewide consumer fireworks standards.

#### **Recommendations Made by the Task Force in its 2011 Report**

In its 2011 report, the Task Force recommended increasing fireworks fees and fines, decriminalizing fireworks offenses in favor of civil fines, expanding existing inspection efforts, considering alternatives such as education and training, and promoting cooperation between stakeholders.

##### **1. Increase Fireworks Fees and Fines**

The Task Force recommended increasing both permit fees and violation fines to deter the use of illegal fireworks, decrease their supply in the State, and increase funding for prevention and enforcement efforts.<sup>1</sup> As an example of effective fines, the report pointed to federal fireworks violations, which can carry penalties of up to \$500,000 per offense.<sup>2</sup> Generally, under the Fireworks Control Law, existing state fines range from \$500 to \$2,000.<sup>3</sup>

Since 2011, the Legislature has considered, but not enacted, numerous measures to increase existing fees,<sup>4</sup> fines,<sup>5</sup> and penalties<sup>6</sup> and to establish new fees<sup>7</sup> and penalties.<sup>8</sup> While the State and counties have not increased fine amounts, the County of Hawaii did extend civil and criminal liability to any parent, guardian, or other person having custody or control of a minor who ignites fireworks or articles pyrotechnic if negligence on the part of the custodial or controlling person "caused loss of life, injury, or property damage . . ."<sup>9</sup> In 2019, the State similarly extended the scope of certain fines and penalties to provide for civil and criminal liability for homeowners who allow illegal fireworks use on their property.<sup>10</sup>

In 2011, the Legislature authorized county fire chiefs to assess a \$200 inspection fee for aerial fireworks permits to "be used to defray the cost of the official conducting the inspection of the display setup."<sup>11</sup> However, some have argued that the amount of the increase is insufficient. In 2019, State Fire Council Chair Manuel Neves testified in support of a proposed increase of the aerial permit fee from \$110 to \$300, arguing that fees were not keeping pace with the expenses of

county fire departments.<sup>12</sup> Neves explained that permit approval requires the fire departments to conduct an on-site verification of the firework inventory before and after the applicable event; inspect pyrotechnic equipment; and carry out an extensive evaluation of the firing site and safety precautions. In its response to the Bureau's Survey, the Hawaii Fire Department recommended increasing fees for fireworks import permits and using the additional revenue to substantially increase the CrimeStoppers<sup>13</sup> reward for tips regarding illegal fireworks. The Maui Fire Department noted in its response to the Bureau's Survey that it spends approximately \$30,000 per year to review and approve permits for an average of fifteen fireworks displays.

In their responses to the Bureau's Survey, all of the county police departments agreed that current fines are not sufficient to deter illegal fireworks use. The Hawaii Police Department called the fines "significantly ineffective." The Honolulu Police Department responded that "[c]urrent fines and penalties appear to act as little to no deterrence," and Maui police argued that "fines in [themselves] may not deter an individual from possessing, using, or selling illegal fireworks." Kauai police similarly opined that current fines "are not effective deterrents."

## **2. Decriminalize Fireworks Offenses in Favor of Civil Fines**

The Task Force suggested that imposing civil citations and fines for fireworks violations would avoid the high burden of proof required to establish guilt in criminal cases and could eliminate the need to store fireworks as evidence. The Bureau notes that no legislation has been introduced since 2011 to provide for the decriminalization of fireworks offenses. Further, in response to the Bureau's Survey, no stakeholder recommended decriminalization and imposition of civil fines. However, multiple respondents suggested imposing jail time for fireworks offenses, as will be discussed in more detail herein.

## **3. Increase Random Inspections**

The Task Force recommended increasing random inspections by (a) expanding inspection authority and (b) focusing cargo inspections to make the inspections more manageable.<sup>14</sup> In its response to the Bureau's Survey, the Kauai Fire Department also recommended that "[m]ore inspections of shipping containers" should be conducted.

Neither the Task Force nor any of the respondents to the Bureau's Survey addressed the amount of funding necessary to expand inspection efforts. Accordingly, any efforts to expand inspection authority at the state level will require consultation with the appropriate stakeholders to determine the amount of funding necessary to effectuate the desired expansion.

### **a. Expanding Inspection Authority**

The Task Force specifically recommended expanding "state domestic inspection authority beyond agricultural inspections."<sup>15</sup> This recommendation to expand domestic inspection authority

was echoed in the Department of Agriculture's response to the Bureau's Survey in which the department suggested that the Legislature assign inspection authority to additional state agencies.<sup>16</sup> The department opined that illegal fireworks are unlikely to be hidden in shipments declared as agricultural goods since "most importers of these commodities are aware that an inspection will occur on their imported goods."

In overhauling its fireworks code in 2016, the County of Hawaii authorized the Hawaii Fire Department to inspect "any shipment declared on the shipping manifest as fireworks or articles pyrotechnic . . . before a shipment leaves the jurisdiction."<sup>17</sup> Aside from this limited expansion of inspection authority, no other relevant legislation has been enacted by the State or counties. However, the Legislature has considered multiple proposals to expand inspection authority to new agencies<sup>18</sup> and require the county fire departments to inspect all declared fireworks shipments.<sup>19</sup>

One measure, introduced in 2016 and reintroduced in 2017 and 2019, incorporated many of the Task Force's recommendations regarding increased random inspections. Originally introduced as companions Senate Bill No. 2632 (2016) and House Bill No. 2485 (2016), the measures called for extending inspection authority to the Department of Public Safety, conducting random inspections, focusing resources on high-risk containers, moving inspections away from the ports, and using explosive-sniffing dogs. In 2016, the Attorney General submitted the following written comments expressing concerns about Senate Bill No. 2632's constitutionality, among other things:

The bill's references to random and/or discretionary searches raise potential issues with the fourth amendment of the Constitution of the United States and article I, section 7, of the Constitution of the State of Hawaii, which forbid search and seizure without probable cause or warrants, with some exceptions. This may compromise any criminal prosecution expected to result from these searches.<sup>20</sup>

The measure was not scheduled for hearing in 2017 or 2019.

**b. Focus Cargo Inspections to  
Make These Inspections More  
Manageable**

The Task Force also recommended making cargo inspections more manageable by targeting "suspect containers and shippers [and] mixed, consolidated cargo that is shipped by many different individuals."<sup>21</sup> To that end, the Task Force recommended conducting inspections "at freight forwarder and common carrier locations" to "help avert congestion and inefficiencies at the ports," and "focusing . . . on suspect containers and shippers."<sup>22</sup>

The Task Force also suggested collecting and analyzing data in order to identify suspect containers and shippers. The Task Force reasoned that:

Data collection and analysis from shipping companies; freight companies; state, county, and federal inspectors; the respective fire departments and law enforcement agencies; and other entities who encounter illegal fireworks at the county, state, and federal levels can be



collected, shared, and used to pinpoint where the risky cargo loads are and target them for selective screening.<sup>23</sup>

However, at present, it does not appear that data is specifically collected with the intent of identifying cargo shipments that may contain undeclared fireworks.

The Task Force also recommended the use of explosive-detecting dogs at freight forwarder and common carrier locations to identify suspect containers and shippers.<sup>24</sup> Responses to the Bureau's Survey indicated continued support for using dogs to sniff for contraband fireworks. For example, in its response to the Bureau's Survey, the Maui Police Department suggested using "trained canines to search and detect the different avenues utilized by the illegal importers." Similarly, in its response to the Bureau's Survey, the Hawaii Fire Department recommended using dogs to sniff air samples from random containers and conducting more thorough searches when the dog indicates the presence of explosives. Since 2011, the Legislature has considered multiple bills to require inspections by explosive-sniffing dogs.<sup>25</sup> However, none of these measures have been enacted.

#### **4. Consider Alternatives Such as Education and Training**

The Task Force also recommended public outreach and education as a preemptive, rather than a reactionary, approach to deterring illegal fireworks.<sup>26</sup> The Task Force found that the variety of fireworks laws can confuse residents, making compliance difficult.<sup>27</sup> The Task Force noted that education campaigns would be especially important if laws and fines were made more stringent.<sup>28</sup> Further, the Department of Agriculture commented in its response to the Bureau's Survey that, although the Plant Quarantine Branch may discover and report illegal fireworks in the course of an agricultural search, "to expect each agency to 'regulate' for things outside their jurisdictions opens the [S]tate up to increased liability." The department recommended creating a "clearinghouse of information" on what to do if illegal fireworks are found so that the department can distribute informational materials to its employees.

Since 2011, county police and fire departments have used mass media to call for public cooperation and to provide education on fireworks safety and the law. In a search of state newspaper archives, the Bureau found that in December 2017, the Hawaii Police Department issued a written statement asking the public to provide information on the location or owners of any illegal fireworks.<sup>29</sup> In June 2018, West Hawaii Today published an article explaining the safe use of fireworks and summarizing state and Hawaii County law.<sup>30</sup> The Kauai Fire Department and the Fire Prevention Bureau authored similar articles in June 2013<sup>31</sup> and June 2015,<sup>32</sup> reminding the public about types of fireworks that were illegal and types that were legal to use with a permit.

Responses to the Bureau's Survey from county police and fire departments also discussed using mass media and public outreach to educate the public on fireworks issues. The Maui Police Department reported in its response to the Bureau's Survey that, since 1997, it has offered a "Second Chance Program," which educates youth and their parents on the consequences of illegal fireworks. According to its response to the Bureau's Survey, the Honolulu Police Department

offers information on fireworks laws, ordinances, penalties, and safety issues on both its website and Facebook page. The Hawaii Fire Department reported in its response to the Bureau's Survey that the County of Hawaii Fire Prevention Bureau distributes posters to fireworks retailers that explain the potential danger and safe use of fireworks. The Hawaii Fire Department also reported that it advertises collection dates following New Year's Eve and July 4<sup>th</sup> on which the public can safely dispose of unused fireworks rather than store them at home.

According to the Federal Aviation Administration's response to the Bureau's Survey, since 2010, the agency has increased its efforts to educate the public on the penalties for packing fireworks in checked or carry-on baggage. The agency's "Fireworks Don't Fly" brochures are published in ten languages, and its posters are displayed at airport passenger screening locations and in retail stores that sell fireworks. The agency noted that the educational campaign is enhanced more in the days preceding the July 4th holiday.

## **5. Promote Cooperation Between Stakeholders**

The Task Force emphasized that all relevant parties should be included in any discussion of targeted inspections.<sup>33</sup> However, to date, efforts to conduct additional joint inspections have been limited. A measure introduced in 2019, House Concurrent Resolution No. 187, recommended coordinated cargo searches involving the United States Coast Guard; Hawaii Department of Agriculture, Department of Public Safety, and Department of Transportation; and Honolulu Police Department, but the measure was deferred in committee.

The Task Force also suggested an incentive program similar to CrimeStoppers to foster a cooperative relationship between community witnesses and police.<sup>34</sup> As of 2019, no county had implemented a reward system specifically for illegal fireworks. In its response to the Bureau's Survey, the Hawaii Police Department commented that callers who report fireworks offenses can still receive rewards through the general CrimeStoppers program. The Honolulu Police Department noted in its response to the Bureau's Survey that a dedicated incentive program had been considered but rejected "due to concerns [about] its effectiveness and feasibility."

In its response to the Bureau's Survey, the Maui Police Department recommended enhancing collaboration between county law enforcement and the Bureau of Alcohol, Tobacco, Firearms and Explosives to address the illegal manufacturing and distribution of fireworks. However, the department did not elaborate on what this collaboration should entail.

## **Additional Suggestions Provided by Respondents to the Bureau's Survey**

Some respondents to the Bureau's Survey offered additional suggestions about what they believe can be done, or what they are currently doing, to stop the illegal importation and use of fireworks. It should be noted, however, that because each of the following suggestions were made

by one or more individual respondents to the Bureau's Survey, these suggestions may contradict other suggestions, recommendations, or considerations contained in this report.

**1. Consider the Impact of Increased Cargo Inspections on Commerce and Shipping**

The Pasha Hawaii Transit and Matson Navigation Company responses to the Bureau's Survey suggested that, in deciding whether to increase cargo inspections, the Legislature should consider the potential impact this could have on commerce and shipping in the State. For example, Pasha Hawaii Transit noted that the potential impact could include delays in delivering cargo to customers, which would in turn require additional infrastructure to hold containers for inspections and thus increase costs and other logistical needs. Matson Navigation Company similarly asserted that "[a]ny delay in offloading or out-gating . . . cargo will have significant adverse impacts to [the] State, especially to the Neighbor Islands, who . . . depend on timely movement of cargo coming in and out of Honolulu Harbor."

**2. Impose Jail Time as a Penalty for Fireworks Offenses**

Contrary to the Task Force's recommendation to decriminalize fireworks offenses, the Hawaii Fire Department and the police departments for the Counties of Hawaii and Maui and the City and County of Honolulu all recommended imposing jail time as a penalty for fireworks offenses. The Honolulu Police Department argued that "[t]he most effective means to deter illegal importation, possession and use, is to intercept the product before it reaches a point of distribution and to attach heavy sanctions (jail time and or monetary penalties) for violations." The Hawaii Fire Department similarly suggested that a "felony conviction and prison sentence [for persons responsible for illegal importation of fireworks] will add to the deterrence."

**3. Fund Seasonal, Specialized Fireworks Enforcement Units**

The Office of the Prosecuting Attorney for the County of Hawaii suggested that the Legislature fund specialized enforcement units for use solely at New Year's and July 4<sup>th</sup> but did not specify who should serve on these units.

**4. Reestablish Statewide Consumer Fireworks Standards**

In a statement made in lieu of a response to the Bureau's Survey, American Promotional Events, Inc. suggested that the illegal diversion and use of display fireworks and other explosive devices could be avoided by enacting more permissive statewide laws for consumer fireworks. To

that end, the company specifically proposed reenacting Act 180, Session Laws of Hawaii 1994 (Act 180), which: (1) permitted the use and sales of consumer fireworks subject to licensing and under certain conditions, and (2) established statewide consumer fireworks standards by preempting all county ordinances regarding consumer fireworks. American Promotional Events, Inc. reasoned that:

The illegal use of diverted display fireworks and the use of illegal explosive devices was rare until the Honolulu ban was enacted.

Once the citizens of Honolulu have their cultural, religious and legal rights restored, the diversion of display fireworks and the use of illegal explosive devices will immediately plummet and eventually go away completely.

## Conclusion

In its 2011 report to the Legislature, the Task Force made a number of recommendations to address illegal fireworks in the State. To date, few of these recommendations have been implemented. Further, several of the stakeholders surveyed by the Bureau provided additional, and somewhat contradictory, suggestions for the Legislature to consider if it decides to take further action to address the illegal importation and use of fireworks.

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<sup>1</sup> Illegal Fireworks Task Force, *Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011* (January 2011) (Report of the Illegal Fireworks Task Force), at 19.

<sup>2</sup> *Id.*

<sup>3</sup> See §132D-14, Hawaii Revised Statutes (HRS).

<sup>4</sup> See, e.g., House Bill (H.B.) No. 500 (2019), Senate Bill (S.B.) No. 153 (2019), S.B. No. 628 (2019), H.B. No. 1783 (2018), S.B. No. 2186 (2018), H.B. No. 297 (2017), S.B. No. 473 (2017), H.B. No. 1770 (2016), S.B. No. 2169 (2016), S.B. No. 2484 (2016), H.B. No. 193 (2015), H.B. No. 361 (2015), S.B. No. 456 (2015), S.B. No. 663 (2015), H.B. No. 1628 (2014), H.B. No. 1801 (2014), S.B. No. 2087 (2014), and S.B. No. 2303 (2014) (increasing the fee for display permits from \$110 to \$300). See also S.B. No. 150 (2019), S.B. No. 625 (2019), H.B. No. 1779 (2018), S.B. No. 2182 (2018), H.B. No. 298 (2017), S.B. No. 474 (2017), H.B. No. 1566 (2016), H.B. No. 1769 (2016), S.B. No. 454 (2016), S.B. No. 2168 (2016), S.B. No. 2481 (2016), H.B. No. 38 (2015), H.B. No. 191 (2015), H.B. No. 1631 (2014), H.B. No. 1800 (2014), S.B. No. 2090 (2014), H.B. No. 243 (2013), S.B. No. 428 (2013), H.B. No. 2256 (2012), S.B. No. 2151 (2012), S.B. No. 2391 (2012), H.B. No. 490 (2011), and H.B. No. 969 (2011) (clarifying that the \$25 fee for cultural events permits and the \$110 fee for display permits are assessed per permit).

<sup>5</sup> See, e.g., H.B. No. 858 (2019), S.B. No. 670 (2019), S.B. No. 968 (2019), H.B. No. 7 (2017), S.B. No. 598 (2017), H.B. No. 2485 (2016), and S.B. No. 2632 (2016) (increasing the maximum fine for violations of chapter 132D, HRS, without specified penalties from \$2,000 to \$5,000).

<sup>6</sup> See, e.g., H.B. No. 6 (2017) (increasing various penalties throughout chapter 132D, HRS).

<sup>7</sup> See, e.g., H.B. No. 858 (2019), S.B. No. 968 (2019), H.B. No. 7 (2017), S.B. No. 598 (2017), H.B. No. 2485 (2016), and S.B. No. 2632 (2016) (establishing a nominal shipping fee for each shipping container that arrives in the State).

<sup>8</sup> See, e.g., H.B. No. 1097 (2019) (establishing fines and other monetary penalties for the setting off, igniting, discharging, or otherwise causing the explosion of (1) "any fireworks or articles pyrotechnic from any public

highway, alley, street, sidewalk, or other public way" without a proper permit; and (2) in a manner that violates chapter 132D, HRS, and results in damage to real or personal property or bodily injury); H.B. No. 89, House Draft 2, Senate Draft 1 (2019) (authorizing the imposition of a conditional disposal fine in certain situations and providing that "each type of fireworks imported, purchased, possessed, ignited, or discharged shall constitute a separate offense."); and H.B. No. 490 (2011) (providing that offering or exposing for sale, selling, or furnishing any illegal consumer fireworks is a misdemeanor).

<sup>9</sup> §26-2-23(b), Hawaii County Code.

<sup>10</sup> Act 248, Session Laws of Hawaii 2019.

<sup>11</sup> §132D-16.6, HRS, as enacted by Act 127, Session Laws of Hawaii 2011.

<sup>12</sup> See *Hearing Before the S. Comm. on Public Safety, Intergovernmental, and Military Affairs*, 30th Leg. (Haw. 2019) (written testimony of the State Fire Council), [https://www.capitol.hawaii.gov/Session2019/Testimony/SB153\\_TESTIMONY\\_PSM\\_02-12-19\\_.PDF](https://www.capitol.hawaii.gov/Session2019/Testimony/SB153_TESTIMONY_PSM_02-12-19_.PDF). See also S.B. No. 153 (2019).

<sup>13</sup> The CrimeStoppers program offers cash rewards for information leading to an arrest, identification of a criminal perpetrator, recovery of stolen property, or seizure of illegal contraband. See <http://www.honolulucrimestoppers.org>.

<sup>14</sup> See Report of the Illegal Fireworks Task Force, *supra* note 1, at 21.

<sup>15</sup> *Id.* at 20.

<sup>16</sup> For a discussion of the issue of the Department of Agriculture's inspection authority, please refer to the "Inspections" section of Chapter 3.

<sup>17</sup> §26-2-52, Hawaii County Code, as enacted by Hawaii County Ordinance No. 16-107.

<sup>18</sup> See, e.g., S.B. No. 168 (2011) (authorizing the Department of Defense and Department of Transportation to "enter private commercial property at reasonable times to inspect any incoming cargo for the purpose of detecting and confiscating illegal fireworks").

<sup>19</sup> See, e.g., S.B. No. 1284 (2018) (requiring rather than allowing the applicable fire department or persons authorized by the fire department to inspect shipments declared on a manifest as fireworks or pyrotechnics to verify compliance with chapter 132D, HRS).

<sup>20</sup> See *Hearing Before the S. Comm. on Transportation and Energy and the S. Comm. on Public Safety, Intergovernmental, and Military Affairs*, 28th Leg. (Haw. 2016) (written testimony of the Attorney General), [https://www.capitol.hawaii.gov/Session2016/Testimony/SB2632\\_TESTIMONY\\_PSM-TRE\\_02-11-16\\_LATE.PDF](https://www.capitol.hawaii.gov/Session2016/Testimony/SB2632_TESTIMONY_PSM-TRE_02-11-16_LATE.PDF).

<sup>21</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 21.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., H.B. No. 858 (2019), S.B. No. 968 (2019), H.B. No. 7 (2017), S.B. No. 598 (2017), H.B. No. 2485 (2016), and S.B. No. 2632 (2016).

<sup>26</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 21.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Michael Brestovansky, *Police: "We're Coming to Look" for Aerial Fireworks*, HAWAII TRIBUNE HERALD, December 31, 2017.

<sup>30</sup> Max Dible, *Fireworks Permits and Guidelines: Sales Start Today*, WEST HAWAII TODAY, June 29, 2018.

<sup>31</sup> *Kauai Residents Reminded of Fireworks Laws for Independence Day*, HAWAII NEWS NOW, June 25, 2013.

<sup>32</sup> *Residents Reminded of Fireworks Laws for 4<sup>th</sup> of July*, THE GARDEN ISLAND, June 25, 2015.

<sup>33</sup> Report of the Illegal Fireworks Task Force, *supra* note 1, at 21.

<sup>34</sup> *Id.* at 22.

## Chapter 5

### CONSIDERATIONS

The Legislative Reference Bureau (Bureau) makes no specific recommendations regarding the most effective means to deter the illegal importation and use of fireworks. However, if the Legislature seeks to take additional action at this time to curtail the illegal importation, sale, and use of fireworks, it may wish to: (1) revisit and possibly act upon the recommendations made by the Illegal Fireworks Task Force (Task Force) in its 2011 report and (2) consider additional suggestions provided by respondents to the Bureau's 2019 survey (Bureau's Survey).

#### **Revisit and Possibly Act Upon the Recommendations Made by the Task Force in its 2011 Report**

In its 2011 report, the Task Force made the following recommendations to the Legislature:

1. Increase fireworks fees and fines;
2. Decriminalize fireworks offenses in favor of civil fines;
3. Increase random inspections;
4. Consider alternatives such as education and training; and
5. Promote cooperation between stakeholders.

Although some of these recommendations have been addressed at the county level to a limited extent since 2011, if the Legislature feels that further action is needed to address the problem of illegal fireworks at the state level, it may wish to re-consider each of the Task Force's recommendations and evaluate the necessity of enacting legislation to address those recommendations.

#### **Consider Additional Suggestions Provided by Respondents to the Bureau's Survey**

Respondents to the Bureau's Survey to update the original findings and recommendations of the Task Force also suggested that the Legislature:

1. Consider the potential impact that increased cargo inspection could have on commerce and shipping;
2. Impose jail time as a penalty for fireworks offenses;

3. Fund seasonal, specialized fireworks enforcement units; and
4. Reestablish statewide consumer fireworks standards.

### **Consider Further Consultation with Stakeholders**

If the Legislature decides to pursue or examine in further detail any of these recommendations, it may wish to consider consulting with the appropriate stakeholders to determine what resources would be necessary to fully and effectively implement the recommendations. Further, because fireworks violations have proven difficult to prosecute,<sup>1</sup> if the Legislature decides to increase criminal penalties for these violations, the Bureau suggests consulting with the county prosecutors and police departments to address these prosecutorial difficulties, and to also consider the related issue of limited space in the State's correctional facilities.

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<sup>1</sup> For a discussion of this issue, please refer to the "Prosecutions" section of Chapter 3.

Appendix A



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 2, 2019

**GOV. MSG. NO. 1286**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 2, 2019, the following bill was signed into law:

HB497 HD1 SD2

RELATING TO FIREWORKS  
**ACT 184 (19)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i



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# A BILL FOR AN ACT

RELATING TO FIREWORKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the use of consumer  
2 fireworks causes fires and burn injuries, mostly to children.  
3 Fireworks produce excessive smoke that makes breathing  
4 difficult. Loud fireworks noises traumatize many residents,  
5 including war veterans, as well as pets. With the increase in  
6 fireworks-related calls, public safety agencies are strained to  
7 maintain adequate response levels for other critical  
8 emergencies. The legislature further finds that people in the  
9 State and their communities deserve to live in peace and  
10 security, without the public safety risk and disruptive impact  
11 of consumer fireworks.

12 The legislature additionally finds that Act 170, Session  
13 Laws of Hawaii 2010 (Act 170), established an illegal fireworks  
14 task force, within the legislative reference bureau for  
15 administrative purposes, to develop a plan and make  
16 recommendations to stop the importation of illegal fireworks and  
17 explosives into Hawaii; and develop a strategy to ensure the



1 safety and security of the airports, harbors, and other  
2 facilities and institutions in Hawaii against the discharge of  
3 illegal fireworks and explosives. Act 170 also mandated the  
4 task force to submit a preliminary plan and strategy report to  
5 the legislature prior to the Regular Session of 2011.

6 The purpose of this Act is to require the legislative  
7 reference bureau to update its *Report of the Illegal Fireworks*  
8 *Task Force to the Legislature for the Regular Session of 2011*.

9 SECTION 2. (a) The legislative reference bureau shall  
10 review and update the findings and recommendations of its *Report*  
11 *of the Illegal Fireworks Task Force to the Legislature for the*  
12 *Regular Session of 2011*.

13 (b) The legislative reference bureau may consult with any  
14 person, agency, or organization at the bureau's discretion to  
15 prepare an updated report pursuant to this section.

16 (c) The legislative reference bureau shall submit the  
17 updated report, including any recommendations and proposed  
18 legislation, to the legislature no later than December 1, 2019.

19 SECTION 3. This Act shall take effect upon its approval.



APPROVED this 02 day of JUL, 2019

A handwritten signature in black ink, appearing to read "David Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

GOVERNOR OF THE STATE OF HAWAII

HB No. 497, HD 1, SD 2

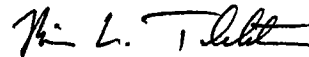
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 24, 2019  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki  
Speaker  
House of Representatives




Brian L. Takeshita  
Chief Clerk  
House of Representatives

**THE SENATE OF THE STATE OF HAWAI'I**

Date: April 9, 2019  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

  
President of the Senate

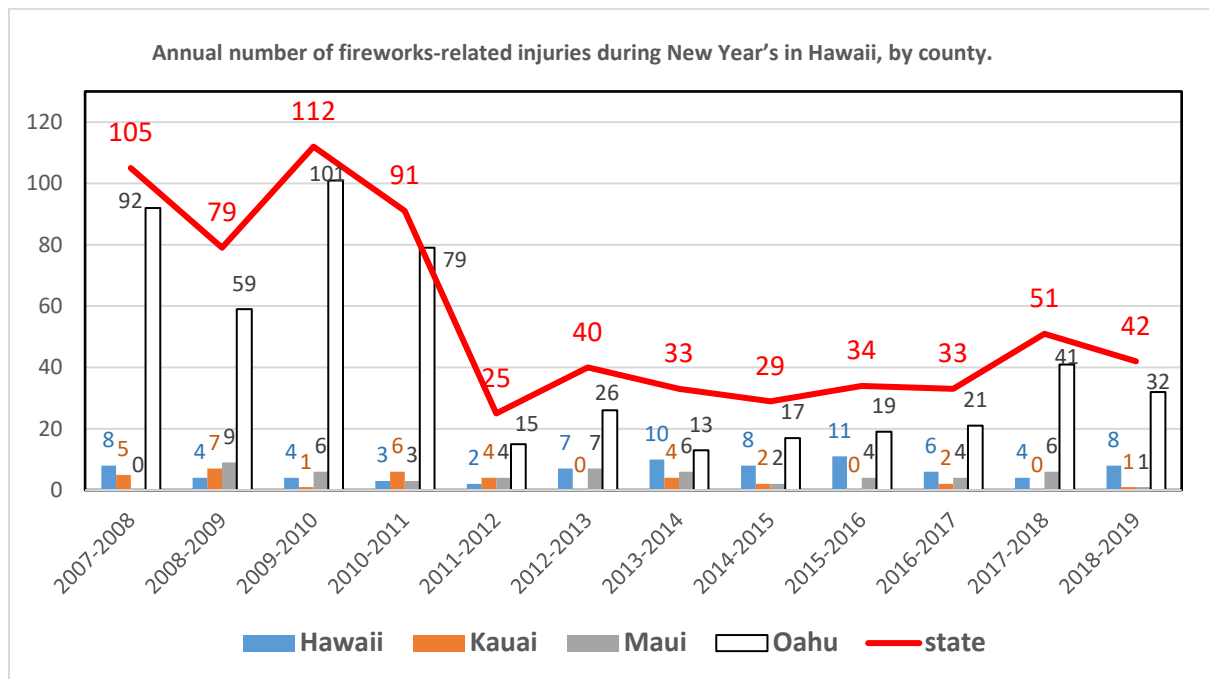
  
Clerk of the Senate

## Appendix B

### Summary of fireworks-related injury surveillance for 12/31/2018 - 1/2/2019

*\*Background:* The Injury Prevention Program of the Hawaii Department of Health annually collects information on fireworks-related injuries that require medical attention over the New Year period. (The New Year period is defined as December 31<sup>st</sup> through January 2<sup>nd</sup>.) Data was collected from the emergency departments (EDs) of all hospitals in the state (22 in total) and 2 health centers (Hana and Waianae Coast Comprehensive Health Center).

*\*Results:* A total of 42 injuries were treated at EDs in Hawaii. This number of injuries was typical of what has been documented over the previous 8 New Year periods; totals were much higher before the fireworks permitting process was put in place in 2011 (graph). Most (32, or 76%) of the injuries occurred on Oahu. There were also 8 injuries reported from Hawaii County, and 1 each from Kauai and Maui counties.



\* The age of the patients ranged from infant to 69 years, with 40% (17 patients) under 18 years of age. There were 13 child-aged patients among those injured on Oahu, compared to an average of 42 injured children during each New Year period on Oahu from 2005 to January, 2011. Most (62%) of the patients injured statewide were males.

\*Most (33) of the patients were discharged from the EDs, but 5 were admitted to hospitals or transferred between hospitals. (Final disposition was not known for the remaining 4 patients.) Three of the patients required EMS transport to the hospital.

\*At least 8 of the patients were injured by an illegal aerial firework, although the type of firework was not available for 21 of the injuries.

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