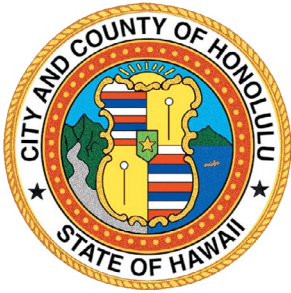




Office of the City Auditor



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

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

**Audit of the Honolulu
Police Department's
Policies, Procedures,
and Controls,
Resolution 19-255**

**Report No. 20-07
December 2020**

Audit of the Honolulu Police Department's Policies, Procedures, and Controls, Resolution 19-255

A Report to the
Mayor
and the
City Council
of Honolulu

Submitted by

THE CITY AUDITOR
CITY AND COUNTY
OF HONOLULU
STATE OF HAWAII

Report No. 20-07
December 2020



OFFICE OF THE CITY AUDITOR
CITY AND COUNTY OF HONOLULU

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TROY SHIMASAKI
ACTING CITY AUDITOR

December 2, 2020

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

Dear Chair Kobayashi and Councilmembers:

A copy of our report, *Audit of the Honolulu Police Department's Policies, Procedures, and Controls, Resolution 19-255*, is attached. This audit was conducted pursuant to Resolution 19-255, requesting the city auditor to conduct a performance audit of the Honolulu Police Department and the Department of Prosecuting Attorney's policies and procedures related to employee misconduct. In order to properly assess and evaluate these distinct city agencies, we are issuing two separate reports. This report focuses exclusively on the Honolulu Police Department; the audit of the Department of Prosecuting Attorney is issued under separate cover.

The audit objectives were to:

1. Evaluate the effectiveness of HPD's existing policies, procedures, and controls to identify and respond to complaints or incidents concerning misconduct, retaliation, favoritism, and abuses of power by its management and employees;
2. Evaluate the effectiveness of HPD's management control environment and practices to correct errors and prevent any misconduct, retaliation, favoritism, and abuses of power by its management and employees; and
3. Make recommendations to improve HPD's policies, procedures, and controls to minimize and avoid future managerial and operational breakdowns caused by similar misconduct.

Due to extenuating circumstances caused by COVID-19 emergency orders, our office was unable to complete fieldwork and issue this audit report by the November 6, 2020 deadline imposed by Resolution 19-255. On November 5, 2020, the Honolulu City Council adopted Resolution 20-267 which granted our office's request for a one-month extension to issue this audit report no later than December 7, 2020. I would emphasize that the department fully cooperated with this audit and that the delay in issuing the report was caused solely by restrictions and emergency orders related to COVID-19.

Background

In June 2019, Louis and Katherine Kealoha were convicted by a federal jury for abusing their power by conspiring with four police officers to frame Katherine Kealoha's uncle, Gerard Puana, for a crime he

did not commit in an effort to discredit his claim that the Kealohas stole a substantial amount of money from him and his 100-year-old mother – Katherine’s own grandmother – Florence Puana. The former police chief and his wife, a deputy prosecutor, entered into sentencing agreements in the case where the jury found them guilty of conspiracy to frame Katherine’s uncle. Both Kealohas admitted in plea agreements that they defrauded banks with elaborate schemes in order to obtain loans to fund their extravagant lifestyles. They were recently sentenced for their crimes. In the wake of the Kealoha convictions for conspiracy to defraud the United States and four counts of attempted obstruction for an official proceeding in a highly-publicized public corruption case, the city council had grave concerns as to how such abuses of power by the former chief of police and high-ranking police officers were allowed to go on seemingly unchecked.

Audit Results

We found that the department is generally responsive in identifying and correcting officer misconduct. However, the department could improve its policies, procedures, and training to prevent misconduct rather than punishing officers after-the-fact. Specifically, we found that:

- Complaint investigations and review are well controlled and effective, but lessons are not learned to improve responsive preventive measures;
- Prevention outcomes of current department training are unknown;
- Employee early recognition system is not meeting its preventive purpose; and
- Officer discipline can be changed or reduced by the grievance process.

The audit report made 10 recommendations to improve the police department’s policies, procedures, and programs for identifying and administering officer misconduct.

The Police Chief and Managing Director generally agreed with the audit’s findings and recommendations, and indicated that the department has begun to implement some of the recommendations.

We would like to express our sincere appreciation for the cooperation and assistance provided us by the managers and staff of the Honolulu Police Department. We are available to meet with you and your staff to discuss this report and to provide more information. If you have any questions, please call me at 768-3134.

Sincerely,



Troy Shimasaki
Acting City Auditor

- c: Kirk Caldwell, Mayor
Roy Amemiya, Jr., Managing Director
Susan Ballard, Chief of Police, Honolulu Police Department
Manuel T. Valbuena, Acting Director, Department of Budget and Fiscal Services

Table of Contents

Chapter 1 Introduction and Background

Background.....	1
Honolulu Police Department	2
Independence, Integrity, Disclosure and Conflict of Interest.....	11
Issues for Future Consideration.....	17
Audit Objectives, Scope and Methodology	17
Audit Results	20

Chapter 2 Complaint Investigation and Review is Well Controlled and Effective, but Lessons Are Not Learned to Improve Responsive Preventive Measures

Background.....	23
Professional Standards Office Complaints Review	23
Police Commission Complaints Review.....	25
Number of Officers with Multiple Serious Discipline Cases Declining	33
Resolving Final Discipline for Police Misconduct Through Grievance Can Be a Lengthy Process	34
Correction of Misconduct Is Highly Impacted by the Grievance Process.....	37
Misconduct Needs to Be Actively Monitored and Internally Reported, So That Training Can Be Appropriately Adjusted	40
Recommendations	42

Chapter 3 The Honolulu Police Department Has Not Demonstrated Positive Outcomes from Its Training and Early Recognition Programs to Reduce or Prevent Misconduct

Prevention Outcomes Are Unknown Due to Current Implementation of Training	43
The Department Is Pursuing EPIC Training to Reduce Officer Misconduct by Peer Intervention.....	48
Misconduct Needs to Be Actively Monitored and Internally Reported So That Training Can Be Appropriately Adjusted	49
Employee Early Recognition System Is Not Meeting Its Preventive Purposes	50
Recommendations	60

Chapter 4 Conclusions and Recommendations

Conclusion	61
Management Response	64

Appendices

Appendix A	Resolution 19-255	71
Appendix B	Honolulu Police Department Organizational Chart	75
Appendix C	HPD Professional Standards Office Administrative Complaint Process	77
Appendix D	HPD Professional Standards Office Criminal Complaint Process	79
Appendix E	HPD Professional Standards Office Intake and Investigation Process	81
Appendix F	Honolulu Police Commission Process to Review the Chief's Conduct	83
Appendix G	Honolulu Police Commission 2019 Guidelines for Personnel Matters Involving the Chief of Police	85
Appendix H	Complaint Processing and Internal Investigation Criteria Scorecard	87
Appendix I	Background on EPIC (Ethical Policing is Courageous) Training	89
Appendix J	Honolulu Police Department Employee Early Recognition Process	91
Appendix K	HPD Employee Early Recognition Program Process	93

List of Exhibits

Exhibit 1.1	Organization Chart – Honolulu Police Department	3
Exhibit 1.2	Police Officer Complaint Review and Processing	5
Exhibit 1.3	2015-19 Total Number of Administrative Complaints	7
Exhibit 1.4	2015-19 Administrative Complaints with Corrective Action	7
Exhibit 1.5	2015-19 Administrative Complaints: Officers involved - Named in Complaints	8
Exhibit 1.6	2015-2019 Administrative Complaints: Number of Officers Subjected to Corrective Action	8
Exhibit 1.7	2015-19 Criminal Investigations: Employees Investigated	9
Exhibit 1.8	2015-19 Criminal Cases Conferred for Prosecution	9
Exhibit 1.9	2015-19 Criminal Cases Accepted for Prosecution by PAT	10
Exhibit 1.10	2015-2019 Criminal Investigations: Officer Involved Shootings	10
Exhibit 1.11	2013-2019: Ethics Commission HPD Complaints: Case Status	13
Exhibit 1.12	2013-19: Ethics Commission Closed Case Determinations	14
Exhibit 1.13	2013-19: Corrective Action Recommended by Ethics Commission	14
Exhibit 2.1	2015-19 Type of Police Conduct Most Complained About, Honolulu Police Commission	26
Exhibit 2.2	2015-19: HPD Professionalism in Interaction Complaints Received by Honolulu Police Commission	27
Exhibit 2.3	2015-19 HPD Use of Force Complaints Received by Honolulu Police Commission	28
Exhibit 2.4	2015-2019 Suspension and Discharge Discipline Cases with Criminal Conduct Initiated	30
Exhibit 2.5	2015-2019 Criminal Charges Alleged with Discharge Discipline Reported	31
Exhibit 2.6	2015-2019 Criminal Charges Alleged with Suspension Discipline Reported	32
Exhibit 2.7	Criminal Conduct Investigated and Conferred to Prosecuting Attorney	33
Exhibit 2.8	2015-2019 Number of Officers with Multiple Cases Reported	34
Exhibit 2.9	Percentage of Cases where Discipline Issued was Reduced by Grievance Process	36
Exhibit 2.10	2015-2019 Changes to Suspension and Discharge Discipline	38
Exhibit 2.11	Recommended Suspension Durations Reduced by Grievance or Arbitration	39
Exhibit 3.1	2015-2019 Completed Employee Early Recognition Reviews Submitted	53

Chapter 1

Introduction and Background

This audit was conducted pursuant to City Council Resolution 19-255 (2019), which requested the city auditor to conduct a performance audit of the Honolulu Police Department's (HPD) policies, procedures and controls. The city council had concerns that the events of the *Kealoha* controversy, including patterns of corruption, misconduct, retaliation, favoritism, and abuses of power, should have been evident to management and personnel within the police department long before they were brought to light by media reports about the mailbox case, and the indictments and convictions of the former police Chief Louis Kealoha and his former wife, deputy prosecuting attorney, Katherine Kealoha. The city council found it in the public interest for this audit to be conducted to review and assess the sufficiency of HPD's existing policies, procedures, and controls to prevent similar misconduct, retaliation, favoritism, and abuses of power in the future; to determine whether it complied with their existing policies, procedures, and controls; and to provide recommended improvements and corrective measures for its policies, procedures, and controls so as to minimize future managerial and operational breakdowns.

Background

In June 2019, Louis and Katherine Kealoha were convicted by a federal jury for abusing their power by conspiring with four police officers to frame Katherine Kealoha's uncle, Gerard Puana, for a crime he did not commit in an effort to discredit his claim that the Kealohas stole a substantial amount of money from him and his 100-year-old mother – Katherine's own grandmother – Florence Puana. The former police chief and his wife, a deputy prosecutor, entered into sentencing agreements in the case where the jury found them guilty of conspiracy to frame Katherine's uncle. Both Kealohas admitted in plea agreements that they defrauded banks with elaborate schemes in order to obtain loans to fund their extravagant lifestyles. They were recently sentenced for their crimes.

The case of the former police chief and co-conspirator officers showed how he as chief could cause a group of officers under his direct control to commit crimes against family members for his and his former wife's personal benefit; obstruct and miscarry justice by filing false reports, making false statements and arrests; withholding and filing false evidence; and misuse of his authority

as chief of police for his own personal interests. It also showed how accountability measures for misconduct by the police chief were severely lacking at the time.

In the wake of the Kealoha indictments for conspiracy to defraud the United States and four counts of attempted obstruction for an official proceeding in a highly-publicized public corruption case, the city council had grave concerns as to how such abuses of power by the former chief of police and high-ranking police officers were allowed to go on seemingly unchecked.

Honolulu Police Department

The Honolulu Police Department serves as the primary law enforcement agency for the island of O'ahu. The chief of police directs the department's operations and administration and is responsible for the following:

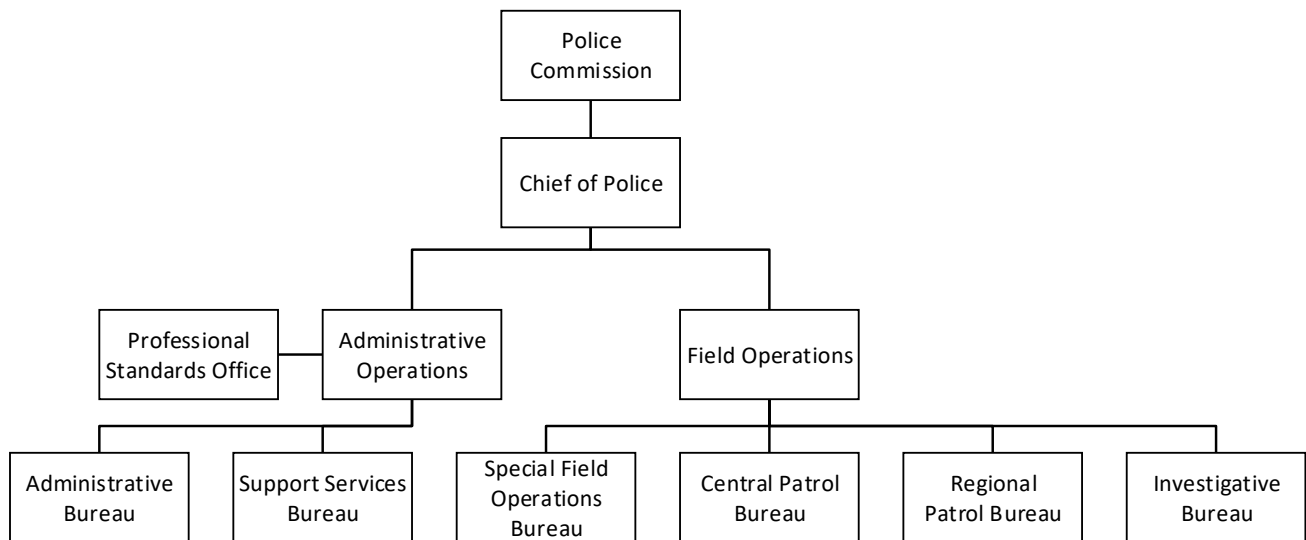
- preservation of the public peace;
- protection of the rights of persons and property;
- prevention of crime;
- detection and arrest of offenders against the law;
- enforcement and prevention of violations of state laws and city ordinances; and
- service of processes and notices in civil and criminal proceedings.

The department's jurisdiction is the City and County of Honolulu, which includes the entire island of O'ahu. For police operations, the island is divided into eight patrol districts: each district is subdivided into sectors and beats. The department's headquarters is located in downtown Honolulu. District stations are found in Kalihi, Kaneohe, Kapolei, Pearl City, and Wahiawa. The police substations are located in Chinatown, Kahuku, Kailua, Waikiki, and Waianae.

The department is organized into Administrative Operations and Field Operations. Administrative Operations includes the Administrative Bureau and Support Services Bureau. Field Operations includes the Investigative Bureau, the Special Field Operations Bureau, and the Central and Regional Patrol Bureaus. The Office of the Chief of Police directs the department's operation and administration, with deputy chiefs overseeing

the administrative and field operations and administration of the functional divisions in their responsibility grouping. Exhibit 1.1 shows the general organization of the police department. Appendix B shows the department's full detailed organizational chart.

Exhibit 1.1 Organization Chart – Honolulu Police Department



Source: Honolulu Police Department

Professional Standards Office

The Professional Standards Office (PSO) is charged with ensuring the integrity of the Honolulu Police Department by conducting fair and impartial investigations into allegations of police misconduct. The division is divided into four sections: Administrative Investigation, Criminal Investigation, Quality Assurance, and Accreditation. The major and staff of the PSO operate exclusively as staff officers.

Administrative Investigation Section

The Administrative Investigation Section investigates matters involving allegations of policy and/or procedure violations. Its findings are forwarded to the department's Administrative Review Board for review and recommendations to the chief of police. Its complaint investigation process is provided in Appendix C.

Criminal Investigation Section

The Criminal Investigation Section investigates matters that violate Hawai'i laws and city and county ordinances. Allegations of assault, theft, etc., are investigated thoroughly and presented to the Department of the Prosecuting Attorney (PAT) for its disposition. The section's complaint investigation process is provided in Appendix D.

Quality Assurance Section

The Quality Assurance Section conducts staff inspections of other units' operations, administrative procedures, personnel, equipment, health and safety practices, and for any other requirements that may be necessary or evident to identify performance efficiency characteristics.

Accreditation Section

The Honolulu Police Department is nationally accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). The Accreditation Section is responsible for documenting the department's continuing compliance with applicable standards.

Complaints against HPD employees

All police officers are held to the high standards of personal and professional conduct and integrity reflected in the department's professional responsibilities, standards of conduct, the city's code of ethics and the department's internal code of ethics. Concerns about compliance with any of these standards and responsibilities can be lodged as complaints with the department's Professional Standards Office.

Complaints about officer misconduct can be received by any police staff. Complaints can also be made internally in the department by supervisors. Complaints are tracked and issued a number by the Professional Standards Office. Complaints against police officers are investigated by the Honolulu Police Commission (HPC), HPD's Professional Standards Office, or Human Resources Division (HRD) depending upon the circumstances.

Exhibit 1.2 Police Officer Complaint Review and Processing

<i>Reviewer</i>	<i>Complaints From</i>	<i>Time Frame</i>	<i>Complaints Reviewed/Investigated</i>	<i>Outcome</i>
Professional Standards Office, Administrative Investigation Section	<ul style="list-style-type: none"> Notarized from Public By police report Internal from Department 	<ul style="list-style-type: none"> Within one year of incident While on or off-duty Falls outside HPC 60-day limit Within criminal statute of limitations in involves alleged criminal conduct 	<ul style="list-style-type: none"> Standards of Conduct Civil Service Rules 	<ul style="list-style-type: none"> No violation Violation subject to corrective action and/or discipline
Professional Standards Office, Criminal Investigation Section	<ul style="list-style-type: none"> By police report Internal from Department 	Anytime during statute of limitations of alleged criminal conduct	Involves violation of criminal law	<ul style="list-style-type: none"> No probable cause found - no action Probable cause found: Conferred to Prosecuting Attorney for review Officer-involved shooting: Referred to Prosecuting Attorney and Law Enforcement Officer Independent Review Board for independent review
Honolulu Police Commission	<ul style="list-style-type: none"> Notarized from Public 	<ul style="list-style-type: none"> Within 60 Days of Incident In the Performance of Duty 	<ul style="list-style-type: none"> Conduct Towards Public Dereliction of Duty Use of Force Mistreatment of Prisoners 	<ul style="list-style-type: none"> Public service report (Complaint not valid for investigation) HPC makes determination <ul style="list-style-type: none"> Sustained Not sustained Unfounded Exonerated Transferred to PSO <ul style="list-style-type: none"> Involves other HPD standard of conduct Outside time limit Not in the performance of duty
Human Resources Division	<ul style="list-style-type: none"> From public or within department 	<ul style="list-style-type: none"> Within one year 	Concern employees and/or prospective employees involved in Equal Employment Opportunity issues (e.g. sexual harassment, discrimination)	<ul style="list-style-type: none"> No Violation Violation subject to corrective action and/or discipline

Sources: Honolulu Police Department, Honolulu Police Commission

Each complaint is reviewed by the Professional Standards Office, police commission, or other appropriate review group. Generally, complaints must be investigated within 60 days and have occurred within the past year. Complaints are divided into criminal conduct (which is separately investigated by the PSO's criminal investigation unit), and administrative misconduct involving standards of conduct whether in the performance of duty or not. Personnel matters are also investigated by the department's Human Resources Division if the complaint concerns Equal Employment Opportunity issues (e.g., sexual harassment, discrimination). An overview of the PSO intake and investigation process is provided in Appendix E.

Due process hearings and review are provided for all complaints, attestation and notarization of complaints, allowing for response, review of evidence, written findings, and recommendations for correction as appropriate.

Administrative investigation of complaints

From 2015-2019, the Administrative Investigative Section received approximately 3,600 complaints. Most of the complaints came from within the department. Annually, a large percentage of administrative complaints are sustained and result in corrective action. Of those sustained complaints, the majority of them are for administrative offenses (e.g. motor collisions, overdrawn gas, vehicle/equipment violations, special duty, etc.) rather than serious misconduct offenses (e.g. commission of criminal offense). Since multiple officers can be named in a complaint investigation; the total number of officers involved exceeded the number of annual complaints.

This is also reflected in the number of officers subject to corrective action as a result of a sustained complaint, since multiple officers can be given corrective action from a single complaint. Corrective action is considered verbal counseling, divisional counseling, written reprimand, suspension and discharge. Verbal counseling and divisional counseling are not considered disciplinary action and are more often imposed for administrative offenses (e.g. equipment violations, overdrawn gas, etc.). Suspension and discharge are considered significant disciplinary actions. Summary data about administrative complaints for 2015-2019 are listed in the following exhibits.

Exhibit 1.3
2015-19 Total Number of Administrative Complaints

<i>Year</i>	<i>Total Complaints</i>	<i>Internal Complaint Count</i>	<i>External Complaint Count</i>	<i>Internal Complaint Percentage</i>	<i>External Complaint Percentage</i>
2015	746	649	97	87%	13%
2016	961	878	83	91%	9%
2017	764	656	108	86%	14%
2018	623	510	113	82%	18%
2019	503	378	125	75%	25%
Total Complaints	3,597	3,071	526	85%	15%

Source: Honolulu Police Department

Exhibit 1.4
2015-19 Administrative Complaints with Corrective Action

<i>Year</i>	<i>Total Complaints</i>	<i>Complaints with Corrective Action</i>	<i>Percentage of Complaints Sustained</i>
2015	746	528	71%
2016	961	730	76%
2017	764	558	73%
2018	623	410	66%
2019	503	318	63%
Total	3,597	2,544	71%

Source: Honolulu Police Department

Exhibit 1.5
2015-19 Administrative Complaints: Officers involved -
Named in Complaints

<i>Year</i>	<i>Total Complaints</i>	<i>Officers Involved/ Named in Complaints</i>
2015	746	760
2016	961	1,095
2017	764	891
2018	623	709
2019	503	645
Total	3,597	4,100

Source: Honolulu Police Department

Exhibit 1.6
2015-2019 Administrative Complaints: Number of Officers
Subjected to Corrective Action

<i>Year</i>	<i>Complaints with Corrective Action</i>	<i>Number of Officers Subjected to Corrective Action</i>
2015	528	585
2016	730	753
2017	558	599
2018	410	434
2019	318	347
Total	2,544	2,718

Source: Honolulu Police Department

***Criminal Investigation of
Complaints***

From 2015 through 2019, the Criminal Investigation Section investigated 754 complaints with alleged criminal conduct that involved 470 department employees. Thirty-eight percent (285) of these cases were conferred to the prosecuting attorney. The section uses a probable cause standard for conferring cases to the prosecutor, meaning there is probable cause to believe a crime was committed after investigation.

From 2015 through 2019, the prosecuting attorney accepted an average of 19 percent of all cases investigated by the section

per year. This resulted in an average of 11 percent of accused employees being prosecuted per year. Full annual results are shown in Exhibits 1.7 and 1.8. The number of cases resulting in an employee's conviction or plea during the period are listed in Exhibit 1.9.

Exhibit 1.7
2015-19 Criminal Investigations: Employees Investigated

Year	Cases Investigated by HPD PSO	Cases Accepted for Prosecution by Prosecuting Attorney	Percent of Cases where Criminal Conduct Identified
2015	139	23	17%
2016	124	25	20%
2017	164	40	24%
2018	161	31	19%
2019	166	26	16%
Total Cases	754	145	19%

Source: Honolulu Police Department

Exhibit 1.8
2015-19 Criminal Cases Conferred for Prosecution

Year	Employees Investigated by HPD PSO	Number of Employees Prosecuted by Prosecuting Attorney	Percent of Employees Investigated and Prosecuted
2015	88	10	11%
2016	88	12	14%
2017	95	9	9%
2018	97	6	6%
2019	102	15	15%
Total	470	52	11%

Source: Honolulu Police Department

Exhibit 1.9
2015-19 Criminal Cases Accepted for Prosecution by PAT

Year	Cases Accepted for Prosecution by Prosecuting Attorney	Cases Resulting in Conviction or Plea	Number of Employees Involved
2015	23	20	6
2016	25	17	7
2017	40	8	5
2018	31	13	4
2019	26	5	3
Total	145	63	25

Source: Honolulu Police Department

The section also refers officer-involved shootings to the prosecuting attorney as an independent third-party reviewer to avoid the appearance of conflicts in officer-involved shooting cases, all 37 cases (13 percent) were conferred to the prosecutor on this basis from 2015 through 2019. All officer involved shootings that result in death are also submitted to the Law Enforcement Officer Independent Review Board for an independent recommendation to the prosecuting attorney. The data on criminal investigations are presented in the Exhibit 1.10 below.

Exhibit 1.10
2015-2019 Criminal Investigations: Officer Involved Shootings

Year	Total Number of Officer-Involved Shootings (Not Including Less Lethal)	Total Cases Conferred to Prosecuting Attorney	Percent of Conferrals (Third Party Reviews of Officer Shootings)
2015	7	53	13%
2016	5	37	14%
2017	4	67	6%
2018	12	70	17%
2019	9	58	16%
Total	37	285	13%

Source: Honolulu Police Department

Both the administrative and criminal investigation sections actively investigate and review complaints about violations related to standards of conduct, civil service rules, and criminal conduct. The department has 2,284 employees, of which 1,820 are sworn officers and 464 are civilian employees. Annual administrative complaint counts (-33 percent) and sustained complaints that result in corrective action (-40 percent) have reduced significantly over the past five years. Criminal case investigations of employees have increased over recent years, with conferrals taking place at the same rate as five years ago.

Independence, Integrity, Disclosure and Conflict of Interest

To comply with city ethics guidelines, certain appointed police department officers are required to file financial disclosure forms annually with the Ethics Commission. Department employees are also required to report in disclosure of interest statements any conflict of interest to his or her appointing authority, as well as to the Ethics Commission. Such disclosure statements are public records and are filed with the city clerk. This is intended to prevent public officials from being in a position of conflict, even if they would not take advantage of the conflict.

The police chief and two deputy chiefs file an annual financial disclosure with the City Clerk. All of the assistant chiefs also file an annual financial disclosure with Ethics Commission. Officers ranked major and below are not required to file an annual disclosure. These are the appointed officers required to file by city charter. When there is a potential conflict of interest, the chief, deputies, and assistant chiefs are required to fill out a Disclosure of Conflict of Interest Statement and submit it to the Ethics Commission.

Operationally, handling of conflicts of interest concerning officers and employees depends on the circumstances of the conflict itself. For conflicts of interest regarding work assignment, all transfers and work go through the Human Resource Division (HRD). If a situation arises where HRD believes a conflict is possible, it will alert the chiefs as well as the affected commander so assignments can be made, largely to prevent a situation where an officer is assigned to directly supervise a relative.

The collective bargaining agreement allows officers of the rank of lieutenant and below to transfer to their desired division if available, while captains and above are assigned by the chief. It is not possible to prevent two brothers, for example, from transferring to the same district, however they can be assigned to different watches within the district, so that one is not directly

supervising the other. This helps prevent accusations of favoritism and appearances of conflict situations. If one of the individuals is ranked as a captain or higher, the chief will reassign the higher ranked officer to another assignment to avoid a conflict.

Another component of the conflict-of-interest is self-reporting and third person reporting. This requires the officer to self-report any known conflicts, or for third persons to report situations that appear to be conflict-of-interest situations. This tends to arise when two officers begin dating. Their commander must be mindful of the rank and assignments of the individuals. It may be brought to the commander's attention through self-reporting or through reported rumors. Either way, the commander would be responsible for monitoring the situation to ensure a conflict of interest does not arise and to make any necessary re-assignments.

As for outside conflicts of interest, the department has developed policies to protect against outside conflicts of interest from affecting an officer's work or operations, which include:

- There are policies on the use of departmental information and data for unofficial business. Officers are prevented from accessing and/or sharing departmental information for personal use. All systems are audited and most databases have audit trails that are monitored at different times.
- Officers and civilian employees cannot seek the influence or intervention of any organization or persons outside the department for purposes of personal preferment, advantage, or transfer.
- Officers and civilian employees cannot solicit or accept any gifts, gratuities, loans, fees, or rewards where there are any direct or indirect connections between the solicitations or offerings and their departmental membership or employment. The prior written approval from and prior determination by the chief of police that the item is not intended to influence the recipient in the performance of his or her official duties are required before the item can be accepted.
- Officers and civilian employees shall not suggest, recommend, advise, or otherwise counsel any person who comes to their attention as a result of police business in the retention of any attorney, bail bond broker, tow service, alarm company, private investigator, or security service.

All are designed to discourage and prohibit the officers from having conflicts-of-interests or individually profiting from their role as an officer. If the charges are sustained, they face disciplinary charges.

Two city organizations additionally review the compliance of the department and its officers with legal and other requirements

Honolulu Ethics Commission

We requested and reviewed complaints made to the Honolulu Ethics Commission about the police department from 2013 to 2019. The summary status and results of those complaint reviews are noted in the exhibits below. Among its many duties, the Ethics Commission reviews and investigates standards of conduct concerns; recommends discipline to appointing authorities for standards of conduct violations; and imposes civil fines for violations by exempt or elected officials.

- There were 20 complaints received by the commission from the police department about questionable activities requiring commission review and investigation.
- The commission investigated 19 of them. One concerning the status of a worker compensation case was not investigated.
- The commission referred 2 of these complaints to the police department and the Department of Budget and Fiscal Services for further review.

Exhibit 1.11

2013-2019: Ethics Commission HPD Complaints: Case Status

<i>Case Status</i>	<i>Count</i>	<i>Percent</i>
Open	9	45%
Closed	11	55%
Total	20	

Source: Ethics Commission

Exhibit 1.12
2013-19: Ethics Commission Closed Case Determinations

<i>Type</i>	<i>Count</i>	<i>Percent</i>
Violation	1	9%
No Violation	6	55%
No Violation Determination	4	36%
Total	11	

Source: Ethics Commission

Exhibit 1.13
2013-19: Corrective Action Recommended by Ethics Commission

<i>Corrective Action Recommended</i>	<i>Count</i>	<i>Note</i>
For Violation	1	Advisory opinion issued (AO2014-5), ordered to reimburse costs of private phone calls
For Concerning Situation	1	Letter to HPD chief about supervisory situation involving family members
Total	2	

Source: Ethics Commission

Both of the complaints where the Ethics Commission recommended corrective action occurred during the previous police chief's administration. Two years prior to the Kealoha incident, the Ethics Commission found the actions of a former deputy chief to use police officers and resources for their family's benefit, and misuse their authority as a deputy chief for their own personal interests to be unethical. HPD provided us with the additional complaint to review from October 2012 concerning the conduct of a deputy chief in the previous chief's administration. The Ethics Commission found that the deputy chief had used their position to request that HPD provide officers, services, facilities and equipment for the preferential treatment of organization that involved their family member. This was found to be unlawful

special treatment, a civil fine was assessed that was equal to the amount of overtime spent by HPD, and the deputy chief and their conduct was identified in the advisory opinion, due to their high rank and nature of their conduct.

Honolulu Police Commission Complaint Registration and Investigation

The Honolulu Police Commission receives, considers, and investigates charges brought by the public against the conduct of the police department or any of its members and submits a written report of its findings to the chief of police. The commission receives formal complaints at its office or via alternate arrangements through its outreach program. The commission considers a limited selection of cases in the following areas:

- Conduct towards the public, including partiality, discourtesy, overbearing conduct, solicitation, conduct unbecoming an office, damaging private property, theft of private property, and threatening;
- Dereliction of duty;
- Use of physical force including unnecessary, excessive, or malicious uses of force, and unnecessary use of authorized police issued equipment (e.g. firearms, pepper spray, baton, taser, and other equipment like flashlights, handcuffs, etc.); and
- Mistreatment of prisoners.

Complaints must be filed within 60 days of an incident to ensure accurate investigative information. Exceptions to this timing rule include excusable neglect, newly discovered evidence which reasonable diligence could not have discovered in time, and any other reason justifying relief. The commission received and registered 512 complaints about the police department between 2015 and 2019.

The commission may consider complaints to ascertain its facts. It does not decide whether personnel should be disciplined. The commission reports its findings to the chief of police, the complainant and the person against who the complaint is made. If the chief disagrees with the findings of the police commission, the chief must submit the reasons in writing to the police commission.

Honolulu Police Commission Guidelines for Disciplining the Chief of Police

To implement its revised powers under the city charter, the police commission developed guidelines to discipline, suspend or remove the chief of police in October 2018. This could be for conduct specified in the charter; self-reporting of the chief's involvement in a criminal investigation, legal proceeding, or accused involvement in a personnel matter; and any information from the chief's annual review, a police department or public complaint, or a matter involving the department.

These current guidelines would have applied to the situation involving the former police chief, given his involvement in a criminal investigation, a civil suit and as a material witness in a criminal action. At the time when the prior police chief was being federally investigated, the commission chose not to investigate the former chief because of its narrow interpretation of its oversight role and the dynamic between the commission and the department. The charter revision and guidelines now enable the commission to suspend or remove the chief for any reason. It also can temporarily suspend the chief during an investigation.

In May 2019, the police commission approved guidelines for personnel matters involving the chief of police. These guidelines were intended to provide further clarification and definition about how the chief could be removed or suspended during the chief's five-year term, to assist the responsible exercise of this power by the commission, and to give the chief due process if such a commission action became necessary. A flowchart of the police commission review process for a personnel matter concerning the chief of police is provided in Appendix F. A detailed summary of the guidelines for reviewing the chief of police's conduct, including their appointment is provided in Appendix G.

Although it has not been necessary to apply the guidelines against the current chief, the commission has defined a process by which it will handle personnel matters concerning the chief, including appropriate due process. This could guide its review, investigation and determination of appropriate discipline or removal of any chief of police in the future, when necessary and warranted. The guideline also provides immediate intermediate action steps, such as administrative leave and restriction of police authority, to preserve the department's integrity and reputation while a review and investigation of the police chief can be conducted.

Issues for Future Consideration

During our review of the department, we considered the role of the Honolulu Police Commission in providing advisory reviews and oversight over the police department and its officers. The commission has advisory review powers in the city charter for providing department oversight, but we found that a more detailed review of the commission's function may be warranted because there are questions surrounding its role, relationship to the police department, and its effectiveness. Some of the issues that should be reviewed are:

- The commission's charter status as being part of the department versus being independent.
- Whether and how the commission should use its various advisory review powers.
- Defining roles and responsibilities between the department and the commission, and information sharing to facilitate advisory reviews.
- The impact of the non-interference with police department administrative affairs clause to the commission's advisory review role.

As a result, a future review may be warranted to evaluate and assess whether the police commission has met its charter mandate to provide advisory reviews and exercise oversight of the police department.

Audit Objectives, Scope and Methodology

The audit objectives were to:

1. Evaluate the effectiveness of HPD's existing policies, procedures, and controls to identify and respond to complaints or incidents concerning misconduct, retaliation, favoritism, and abuses of power by its management and employees;
2. Evaluate the effectiveness of HPD's management control environment and practices to correct errors and prevent any misconduct, retaliation, favoritism, and abuses of power by its management and employees; and
3. Make recommendations to improve HPD's policies, procedures, and controls to minimize and avoid future managerial and operational breakdowns caused by similar misconduct.

To complete this audit, we reviewed department efforts to identify, respond, correct and prevent police misconduct during calendar years 2015 through 2019.

We identified and reviewed department policies and procedures, standards of conduct and responsibilities, ordinances, laws and the city charter, and other sources of information that provided insight into key department functions and processes. We also reviewed management internal control objectives and responsibilities, quality control initiatives, and improvement efforts implemented by the department as they related to our audit objectives.

We reviewed how these were then implemented into key areas of control, such as identification, response and correction of misconduct complaints using its administrative and criminal investigation processes, management and supervision, and responsive prevention measures such as early intervention and training.

We interviewed members of the department's management, supervisors, and other staff to obtain an understanding of their related roles and responsibilities in key control areas. We held discussions with external reviewers of the department in the police commission and its staff, including former commissioners, and ethics commission staff about their oversight roles and responsibilities, complaint review, handling and investigations, and concerns. We reviewed data from external reviewers to assess their control effect over responding and correcting police misconduct in their specific areas of review and concern.

We researched best practices and standards concerning identification, response, correction and prevention of misconduct, and police oversight from law enforcement sources, including CALEA, the department's accreditation body, and the Department of Justice. We also reviewed law enforcement practice periodicals, academic sources, and from similar jurisdictions in the nation to learn about their practices and provide potential recommendations for improvements.

We evaluated the risk of fraud, waste, and abuse related to how the department identifies, responds to, corrects and prevents officer misconduct via its policies and procedures, administrative and criminal investigative processes, related operations, and management and supervisory controls. We evaluated the reliability of the department's records management systems and its IT-related risks, and evaluated internal controls related to the department's processes to reduce and prevent misconduct.

We reviewed administrative investigation files maintained by the department's Professional Standards Office from calendar year 2017 through the end of calendar year 2019. We also examined administrative reviews of pursuits, critical incidents, weapon use, traffic investigations, district investigations and unscheduled inspections for quality control emerging from complaints in the same period. We reviewed a sample of 105 administrative complaint files from calendar years 2017 through 2019. This sample was derived from a statistically valid random sample based on the total complaint counts for these years, using a 90 percent confidence interval. We reviewed physical files maintained by the department at its Professional Standards Office.

For purposes of this audit, we assessed the adequacy and sufficiency of information and data pertaining to complaints, their investigation, and resolution, individually and in general, using professional judgment and reasonableness in review of meeting compliance, criteria, or management objectives.

This review was criteria-based and focused on the resulting impacts and outcomes of the department's efforts to reduce and prevent misconduct. We did not apply expert technical, legal, or law enforcement standards for making these assessments, or review any discretionary decisions made on these bases.

We also analyzed published reports on the suspension and discharge of police officers and other relevant performance metrics and statistics. This was done to gain insight on the management of standards of conduct, the most severe discipline determinations, common characteristics involved, administration of discipline and corrective action. We also reviewed factors impacting the resolution of discipline, and management responses to promote responsive preventive efforts from information gathered, including revisions and changes to policies and procedures, management and supervisory control, and/or training emphasis.

This review was conducted from March through September 2020.

Prior OCA Audits

The Office of the City Auditor (OCA) conducted three prior audits concerning the Honolulu Police Department. However, none of the previous audit findings or recommendations were relevant to the objectives in this audit. We identify the three prior audits for informational purposes only:

- Report No. 07-04, August 2007 – Audit of the Honolulu Police Department Patrol Officer Staffing Practices
- Report No. 11-01, August 2010 - Audit of the Honolulu Police Department’s Utilization of the 800-Megahertz (MHz) Telecommunications System
- Report No. 17-02, June 2017 - Audit of How Domestic Violence Cases Are Handled, Processed, and Resolved

This audit was performed in accordance with generally accepted government auditing standards from March to September 2020. These standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

The Kealoha controversy raised many serious questions and issues concerning the police department’s ability to identify, respond, correct and prevent misconduct. It also called into question how a police chief can be held accountable for occupational and personal misconduct. The current chief has prioritized restoring community and organizational trust, increased emphasis on reducing domestic violence in the department, and promoting training that emphasizes ethics, integrity, and guardian mentality. Although this has resulted in a department that identifies and responds appropriately to misconduct using its existing systems, it has not fully applied valuable feedback information from its corrective systems to deploy responsive preemptive measures to prevent and avoid misconduct.

In 2016, the police commission was given additional powers in the city charter to hold the police chief more accountable. The commission developed guidelines in 2019 to responsibly use this review power and develop a process to review and investigate the chief’s conduct and discipline, suspend or remove the chief when necessary, and take steps to protect the department’s integrity while reviewing the situation.

As a departmental policy, citizens and department members are encouraged to report police misconduct in an effort to address public concern, correct inappropriate behavior, and uphold the public’s trust in the police department. This is a primary way

that the police department identifies, responds to and corrects misconduct by its officers. The department has a well-established complaint investigation and resolution process of conducting fair and impartial investigations into allegations of administrative and criminal police misconduct through its Professional Standards Office.

We found that while the complaint investigation and review process of the department is very well designed and controlled, the department does not use feedback information produced by its review to consider or make responsive, proactive management changes in order to *prevent* misconduct or reduce complaints. The complaint data identifies common areas of misconduct, themes, trends, and risks that can be useful to focus training or management intervention. We were not provided with any examples to review that demonstrated consideration or responsive management corrective action as a result of this information.

Training and early intervention systems are used by police departments to identify, respond to and prevent officer misconduct. The department currently prioritizes ethics and integrity training in its strategic plan and is in the process of implementing a new training program for ethics and integrity called EPIC (*Ethical Police Is Courageous*), which emphasizes preventive peer intervention to reduce misconduct. While the training is currently being rolled out, prevention outcomes regarding misconduct and complaints are currently unknown.

The EPIC program notwithstanding, the department has significant information from its complaint resolution and discipline process to already develop responsive preventive training. For example, in the past five years, at least 27 percent of the officers recommended for suspension or discharge discipline annually had complaints alleging criminal conduct. Domestic violence, sex assault and driving under the influence were the crimes most often alleged in complaints and recommended for discharge, while assault and harassment were the most often alleged in complaints and recommended for suspension. By not aggregating or reporting this information to management, the department has no insight as to whether it could have taken measures to prevent the conduct, what factors may be causing it, and develop appropriate training.

Internal reviews also found that officers were allegedly engaging in the same kinds of conduct in multiple incidents or complaints; officers were being reviewed for not intervening to prevent misconduct; and officers had personal problems related to their domestic life or misuse of intoxicants that contributed to

their misconduct. With better monitoring and reporting of this information, the department would have the ability to develop insights from the information and could have considered measures to raise awareness about and potentially prevent the conduct, including providing appropriate training to address these emerging concerns or risks of misconduct.

Additionally, the department has not administered its employee early recognition program to work appropriately or maximize its identification and preventive objectives. The department does not accurately know how many employees were reviewed for early recognition and intervention, and thus cannot report accurately on the use of the system or its effectiveness.

The system has not effectively identified officers that might benefit from early intervention. It is currently is not managed to identify and produce this kind of information, so that informed evaluation of program effectiveness can be performed to realize its preventive value in avoiding misconduct and discipline. In addition to its informational shortcomings, the current system may not be correctly prioritizing areas for early intervention preventive effect.

Information derived from review of officer complaints and discipline outcomes indicates that there is significant contribution of personal misuse of alcohol and drugs, violence against and harassment of women, harassment and threatening behavior in confrontations, as well as other acts in already defined warning behaviors for early recognition of signs of potential for serious misconduct which receives the most serious of discipline. Although the department has prioritized domestic violence for active management and preventive outcomes, it should also consider prioritizing these other known areas which fuel complaints and serious misconduct for early recognition and intervention. The department should also determine appropriate criteria for addressing these problem behaviors before they manifest as or contribute serious misconduct.

Chapter 2

Complaint Investigation and Review is Well Controlled and Effective, but Lessons Are Not Learned to Improve Responsive Preventive Measures

The Honolulu Police Department (HPD) encourages citizens to report police misconduct in an effort to address public concern, correct inappropriate behavior, and uphold the public's trust in the police department. This is a primary way that the police department identifies, responds to and corrects misconduct by its officers. The department has a well-established complaint investigation and resolution process of conducting fair and impartial investigations into allegations of administrative and criminal police misconduct through its Professional Standards Office (PSO).

We found that while the department's complaint investigation and review process is sufficiently designed and controlled, it is not used to consider or make responsive, proactive management changes in order to prevent misconduct or reduce complaints. We did not find any evidence that demonstrated consideration or responsive management corrective action as a result of complaint data and information, even after being notified about common areas of misconduct.

Background

The department uses two systems to identify and address police misconduct. They include the department's Professional Standards Office, and complaints reviewed by the police commission. We reviewed both mechanisms to determine their effectiveness in identifying and responding to complaints of officer misconduct.

Professional Standards Office Complaints Review

Between 2017 and 2019, there were 1,890 complaints of officer misconduct filed with the department's Professional Standards Office. We reviewed a statistically random set of 105 complaint files from that time period. Files included complaint and administrative files related to use of force reviews, use of electric weapons, and unscheduled inspections.

We reviewed the department's intake and investigation process, and the review processes for both its administrative and criminal investigation sections. The details of these processes are listed in Appendixes C, D, and E. We found processes and controls to be generally adequate but sought to determine if the department reported information produced by its complaint and misconduct reviews to management and if it resulted in responsive changes to policy and management controls to reduce police misconduct and citizen complaints. Our scorecard review of complaint processing and internal investigation criteria is presented as Appendix H.

Standards of Conduct provide guidance on standards and expectations on behavior

The police department maintains standards of conduct that apply to all police officers. Prior to assuming sworn status, all officers take an oath of office to enforce the law and uphold the United States Constitution and State Constitution of Hawai'i. All sworn officers are issued a copy of the police department's Standards of Conduct, Policy 2.21, and agree to abide by those standards. The Standards of Conduct are used for control, disposition and governing the officers.

In Article 6 of the Standards of Conduct, *Command*, superior officers and supervisory personnel are responsible for adherence to the department's Standards of Conduct and all other directives, orders, and procedures. They administer disciplinary action in accordance with departmental directives.

Disciplinary action can be taken for violating Standards of Conduct

The threshold for Standards of Conduct violation are established by a preponderance of evidence (if a claim can be demonstrated to be more likely to be true than not true). Violation of law, ordinance, Standards of Conduct, directive, order, or procedure shall be sufficient to justify the implementation of disciplinary action under the Standards of Conduct.

Discipline for violations of Article 6, and Article 7, Section B and C, of the Standards of Conduct are determined by the chief of police. Discipline for violations of Article 8 standards, are subject to minimum and maximum discipline actions listed in classification standards A-E. Each classification includes a group of violations for which discipline can be taken. For example, Class A includes malicious use of force, cowardice, mistreatment of prisoners, and use of marijuana. Violations of Class A standards can include a minimum disciplinary action of suspension of ten working days and a maximum of dismissal.

The chief of police has the sole authority to demote or dismiss any employee for infractions of departmental orders, policies, or

the Standards of Conduct. Discipline can include restriction of police authority which occurs while under suspension, on leave with or without pay pending investigation, or appealing dismissal from the department. While under restriction of police authority, an officer is prohibited from carrying a firearm, including department issued or approved firearms. In addition, the officer is prohibited from wearing the police uniform and must surrender their badge and police identification card. The police radio is also removed from the officer's vehicle. The officer is also prohibited from working any special duty jobs during this period.

Police Commission Complaints Review

We reviewed the results of the Honolulu Police Commission's resolution of public complaints for the past five years. The commission receives, considers and investigates written, notarized complaints from the public about officer conduct, while on duty, that occurred within the past sixty days. The complaint must involve a specific prohibited act such as conduct towards the public, dereliction of duty, use of force, and mistreatment of prisoners. Misconduct towards the public includes swearing/profanity, refusal to provide name and badge number, overbearing conduct, etc. After investigation, the commission will review and decide whether there is sufficient evidence to sustain the allegations of the complaint. Complaints upheld by the commission are forwarded to the chief of police. The department provides monthly updates on the status and outcome of police commission conversion cases to the executive assistant of the police commission.

Most complaints were in common complaint areas and few are sustained

The top ten types of conduct most complained about by the public to the police commission comprised 465 of the 512 total complaints received by the police commission between the years 2015-2019. This represented 91 percent of all complaints made against the police by the public. Exhibit 2.1 details the most frequent complaints made to the police commission and the commission's determination.

Exhibit 2.1

2015-19 Type of Police Conduct Most Complained About, Honolulu Police Commission

Type of Conduct Most Complained About	Sustained Charges	Complaint Count	Complaint Sustained Rate
Conduct Unbecoming an Officer	21	124	17%
Overbearing Conduct	12	61	20%
Excessive Use of Force	3	52	6%
Partiality	3	40	8%
Threatening	3	39	8%
Unnecessary Use of Force	2	35	6%
Name/Badge (Discourtesy)	10	34	29%
Profanity (Discourtesy)	4	34	12%
Harsh Remarks (Discourtesy)	1	18	6%
Malicious Use of Force	0	14	0%
Mistreatment of Prisoner	1	14	7%
Totals	60	465	13%

Source: Honolulu Police Commission

There is a low overall rate of sustained complaints, which means the commission did not find that most complaints were supported by evidence after review and investigation. There is a heavy concentration of complaints around officer professionalism in conduct and alleged misconduct concerning use of force.

Despite the low rate of sustaining complaints, the volume and type of complaints may also be indicators of issues beyond the complaints themselves. Complaints can be indicative of the level of trust the community has in the police department, and areas of concern or opportunities that police department management should focus on for preventive and corrective training.

Most complaints handled by the commission concern officer professionalism

From 2015-2019, the majority of complaints made by the public to the police commission were about officer conduct. There is significant complaint concern about police officer professionalism and conduct in public interactions. From Department of Justice best practices and review of consent decree jurisdictions, we precautionarily note that officer misconduct in the area of professionalism is often cited as a contributing factor that could lead to more severe misconduct and loss of public trust, which

has brought federal scrutiny to police departments in many jurisdictions. From 2015-2019, 68 percent of complaints received were about unprofessional police conduct. Exhibit 2.2 details the complaints received regarding police conduct.

Exhibit 2.2
2015-19: HPD Professionalism in Interaction Complaints Received by Honolulu Police Commission

<i>Complaint Type</i>	<i>HPC Sustained Charges</i>	<i>Complaint Count</i>	<i>Complaint Sustained Rate</i>
Conduct Unbecoming an Officer	21	124	17%
Overbearing Conduct	12	61	20%
Partiality	3	40	8%
Threatening	3	39	8%
Name/Badge (Discourtesy)	10	34	29%
Profanity (Discourtesy)	4	34	12%
Harsh Remarks (Discourtesy)	1	18	6%
Total	54	350	15%

Source: Honolulu Police Commission

The subject matter of the three most sustained complaints were:

- Name/badge (discourtesy)
- Overbearing conduct
- Conduct unbecoming an officer

These complaints indicate potential violations of the responsibilities and standards of police department conduct. When violated, the officer may be subject to discipline. Conduct unbecoming an officer is a potential violation of the responsibilities of an officer contained in Article 7, Section C, Section 12. This directive states that officers and civilian employees shall conduct their private and professional lives in a manner which conforms to the highest professional behavior and demeanor. If violated, discipline is determined by the chief of police.

Overbearing conduct and conduct unbecoming an officer, including name/badge (discourtesy) are both potential violations of the department’s officer standards of conduct. There is a Class

C standard of conduct, C14, called *Overbearing Conduct*. The standard prohibits overbearing or oppressive conduct under color of police authority. If a Class C standard is violated, the minimum discipline is suspension for one working day, and a maximum penalty of dismissal from the force. Partiality (impartial attitude), another common complaint, is also a Class C standard and subject to the same discipline.

Conduct unbecoming an officer, which includes name/badge discourtesy, is covered by Class D Standards of Conduct, D2, *Conduct Towards the Public*. The conduct standard states that officers and civilian employees shall be courteous when dealing with the public. They shall refrain from using harsh, violent, degrading, or insolent language that could be construed as being directed at a member of the public. Providing name and badge information is required by the standard and, when requested by a member of the public, officers shall courteously furnish their names and badge numbers both orally and in legible writing. If a Class D standard is violated, discipline ranges from a minimum of divisional counseling and up to a ten working days suspension. Harsh remarks and profanity, also common discourtesy complaints, would be subject to the same discipline if violated.

Misconduct allegations about use of force comprised 20 percent of police commission complaints

Over the past five years, 101 out of 512 total complaints, or 20 percent of all complaints received by the commission were about police use of force. These complaints raise concerns about how members of the public perceived police use of force during their interaction, that it may have been excessive, unnecessary or malicious under the circumstances. The following exhibit shows information about the use of force complaints made to the commission.

**Exhibit 2.3
2015-19 HPD Use of Force Complaints Received by Honolulu Police Commission**

Complaint Type	HPC Sustained Charges	Complaint Count	Complaint Sustained Rate
Excessive Use of Force	3	52	6%
Malicious Use of Force	0	14	0%
Unnecessary Use of Force	2	35	6%
Totals	5	101	5%

Source: Honolulu Police Commission

After review and investigation by the police commission, there was a low rate of sustained complaints for use of force. However, it is clear that police use of force, particularly perceived excessive and unnecessary force, is a top public concern. This serious concern is unlikely to go away based on recent events involving police use of force and increased public awareness and concern around the country. In light of recent events, the department is currently reviewing its use of force policy, in particular its use of vascular neck restraint.

Complaint information may not be used to make responsive changes to officer conduct

It is unclear what action the department has taken in response to the information from the commission about the level of complaint concern over officer professionalism, particularly in areas where there are significant percentages of complaints sustained. We sought to review if this information was used to consider or make responsive management changes in order to prevent misconduct in officer professionalism or reduce complaints about officer conduct. We asked the department to provide examples of corrective action at the management level and whether it monitors and analyzes complaint data to assess causes and risks in order to make responsive corrective changes (e.g., policies, procedures, controls, training, etc.)

The department did not provide us with examples which demonstrated that it reviewed, monitored, and used data to make policy changes. Management advised us, however, that there are examples of responsive correction that are taken even if caused by single instances or incidents. We acknowledge that the department is responsive to complaints, but those actions are reactive and do not have preventive or corrective value until the incident occurs. As a result, we could not determine if proactive changes were considered or made in the interest of correction and prevention. We feel it is important for the department to consider taking proactive actions to help prevent misconduct, especially since the department receives complaint information from the police commission.

Similarly, with misconduct complaint information about use of force from the police commission, we sought to review if this information was used to consider or make responsive, proactive management changes to prevent misconduct, legally wrongful use of force, or reduce complaints about use of force. We were not provided with any examples that demonstrated consideration or responsive management preventive action. Based on explanations provided to us, we conclude that responsive corrections are only made in reaction to incidents after they occur, and we could not determine if proactive changes were considered or made in the

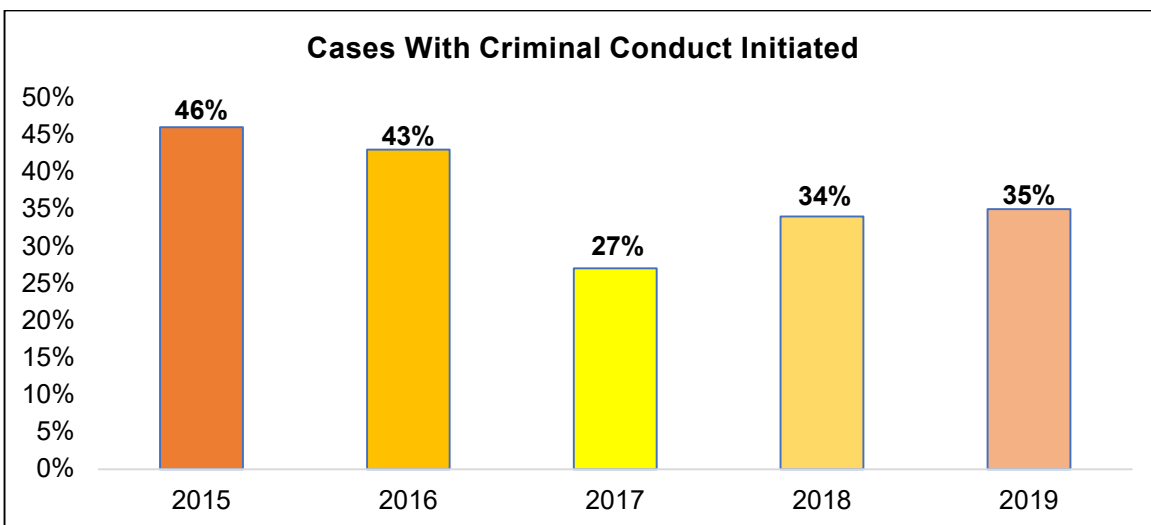
interest of correction and prevention. In our view, prevention of use of force complaints should be a priority since it has been a common complaint concern made to the commission a for the past five years, and when sustained, results in actual harm.

PSO Complaints and Suspension and Discharge Review

We reviewed the department’s annual reported suspension and discharge report to determine what misconduct was disciplined the most severely with suspensions and discharge, and if there were patterns, trends or common sets of conduct violations that caused discipline by suspension or discharge to be recommended for corrective action. We found that the complaints in our sample had very similar characteristics to the suspension and discharge cases, so we reviewed annual reports of the most severe discipline cases in the department more closely.

We found that the department’s investigations of its most severe misconduct often identified criminal conduct as part of the misconduct and the recommended discipline was suspension or discharge of the officer. Annually, criminal conduct has been alleged in at least 27 percent of the most serious misconduct discipline cases. Although the rate of criminal conduct alleged in cases that resulted in suspension or discharge declined 11 percent overall from 2015 to 35 percent in 2019, the rate remains high and upsets the fundamental expectation for officer personal and professional conduct to be lawful.

Exhibit 2.4
2015-2019 Suspension and Discharge Discipline Cases with Criminal Conduct Initiated



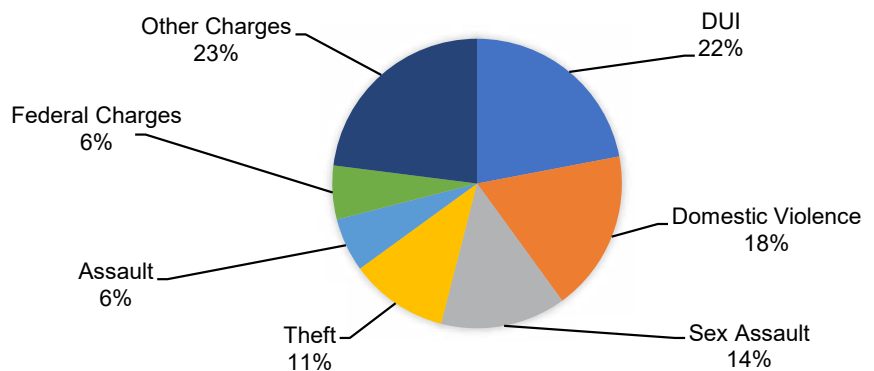
Source: Honolulu Police Department

Basic standards of conduct dictate that officers know and obey laws and regulations, and that they shall not commit criminal acts. Criminal conduct is a very serious violation of the department's professional standards, which damages public trust in law enforcement.

Driving under the influence, domestic violence and sex assault are commonly referred for discharge discipline

Between 2015-2019, the types of offenses alleged resulting in a recommendation for discharge included driving under the influence (DUI/OVUII), domestic violence, sex assault, theft, assault, federal charges, harassment, and multiple charges arising from a violent incident. The top crimes alleged annually for officers receiving discharge discipline over the last five years has been DUI twice most recently, domestic violence twice, and sex assault once. These three crime categories have been the top three crimes involved for officers receiving discipline discharge recommendations in three of the past five years.

**Exhibit 2.5
2015-2019 Criminal Charges Alleged with Discharge Discipline Reported**



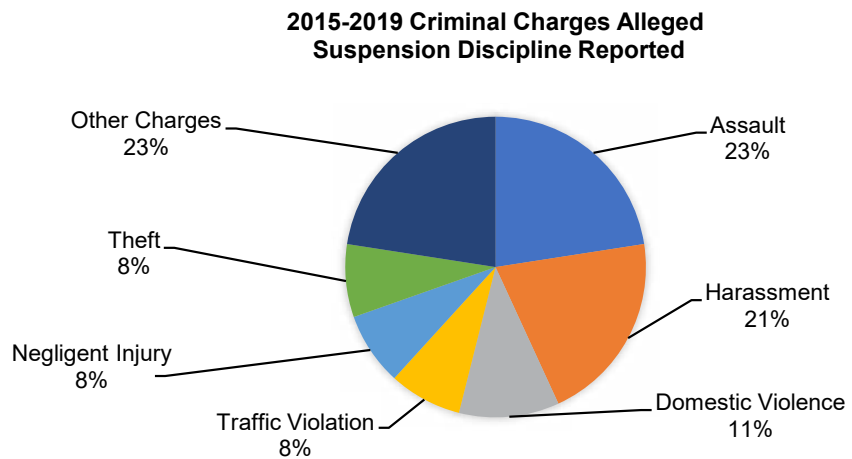
Source: Honolulu Police Department

Assault and harassment commonly referred for suspension discipline

In the five-year period 2015-2019, the types of alleged offenses most commonly receiving a recommendation for suspension were assault, harassment, domestic violence, theft, negligent injury, and traffic violations. Assault and harassment are by far the top two crimes alleged to result in officer suspension during the period. Harassment was the top crime alleged three times most recently, and assault twice before that. Combined, they comprise the top two criminal conduct alleged in the past three years.

Domestic violence was third for suspensions, but this conduct was disciplined with discharge more often after 2017. Since the department prioritized reducing officer involvement in domestic violence, this conduct allegation has decreased and is more likely to receive a discharge recommendation when substantiated after investigation.

Exhibit 2.6
2015-2019 Criminal Charges Alleged with Suspension Discipline Reported



Source: Honolulu Police Department

Criminal conduct is more likely to receive a discharge recommendation

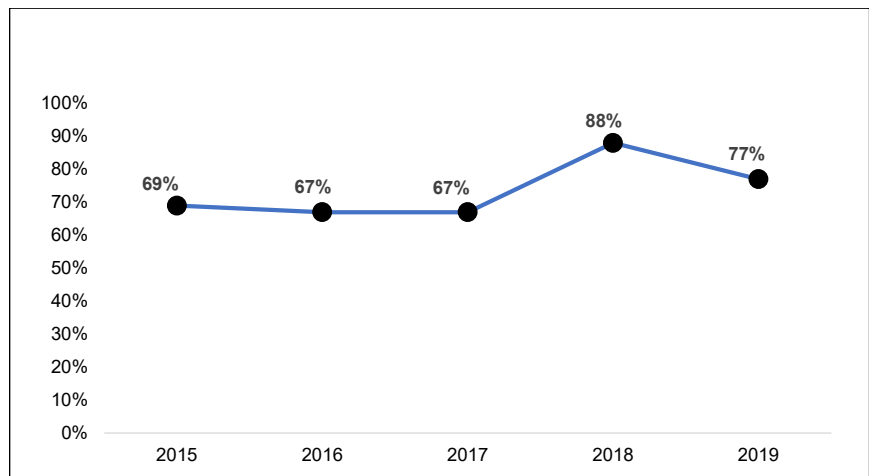
Although each case of misconduct has different facts and circumstances involved, we found that in the past five years, 61 percent of cases involving alleged criminal conduct received a discipline recommendation of discharge, and 39 percent received officer suspension. The kind of criminal conduct commonly alleged was DUI, domestic violence, sex assault, harassment and assault. Comparatively, for cases without criminal conduct alleged, suspension was recommended for 87 percent of the cases, with discharge recommended for only 12 percent.

We believe preventing conduct that causes criminal complaints and is subject to the most serious punishment should be a review priority for management attention. The intent of the review should be to find proactive methods of awareness, prevention, and training to address the common complaints internally investigated and identified as a concern for management correction attention for the past five years.

Criminal Conduct of police officers is investigated and Conferred to PAT for review and charging

During the past five years, the Criminal Investigation Section reported an overall conferral rate of 38 percent of its investigations to the Department of the Prosecuting Attorney (PAT) for review and possible prosecution. The section’s rate of investigation and conferral in recommended discharge and suspension cases was higher at between 69 and 77 percent annually. The proportion of cases turned over to the prosecuting attorney’s office demonstrates that the department is willing to turn over officers for possible prosecution when their misconduct warrants it after investigation, beyond just imposing administrative corrective discipline.

**Exhibit 2.7
Criminal Conduct Investigated and Conferred to Prosecuting Attorney**

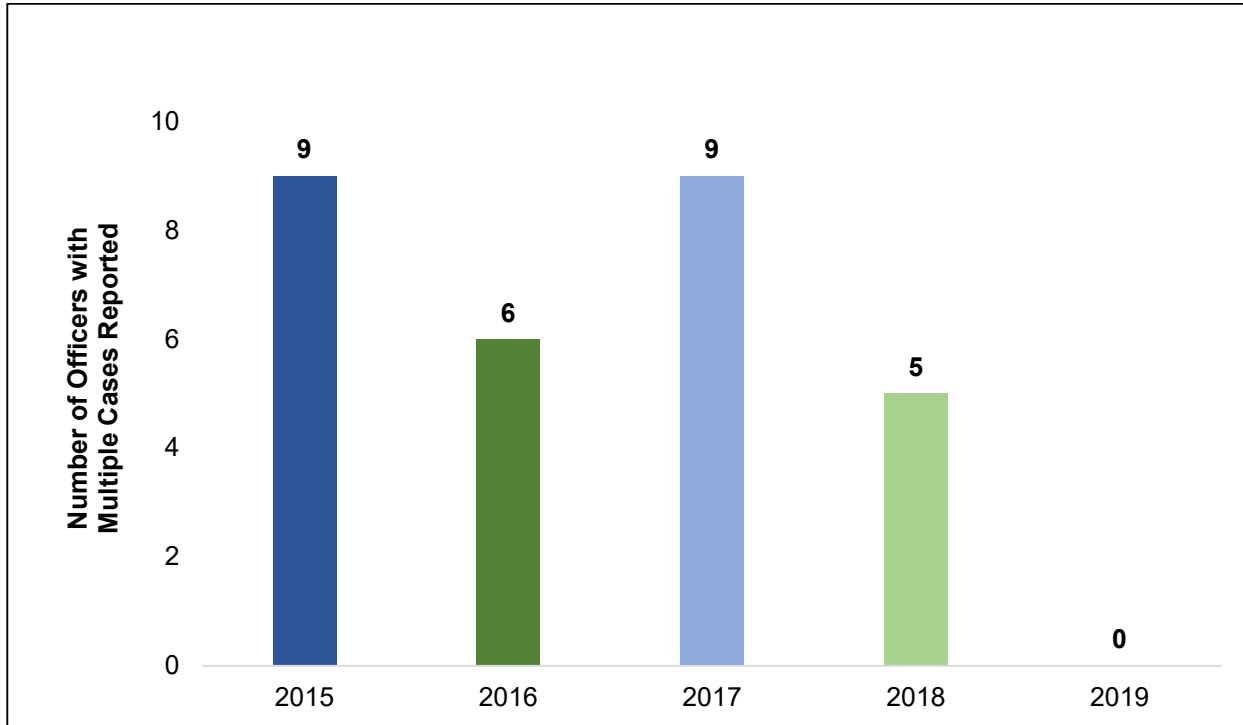


Source: Honolulu Police Department

Number of Officers with Multiple Serious Discipline Cases Declining

We also reviewed disciplinary outcomes for officers with more than one misconduct case reported. We note that the number of officers with multiple cases reported who received suspension and discharge discipline declined from nine to zero in the past three years. In 2019, officers on the report only had one active case of misconduct with a suspension or discharge recommendation. However, we note for years 2015 and 2016, two officers were reported as having five cases and three cases of misconduct each, and final discipline for them was pending the resolution of their grievance of the discharge recommendations. For 2017 and 2018, the officers with multiple cases reported had two cases each. Disciplining officers with multiple cases of misconduct, which require the most severe discipline, declined over the past three years.

Exhibit 2.8
2015-2019 Number of Officers with Multiple Cases Reported



Source: Honolulu Police Department

Resolving Final Discipline for Police Misconduct Through Grievance Can Be a Lengthy Process

As noted above, officer misconduct that receives the most serious discipline recommendation may often involve allegations or findings of criminal conduct. Even if the department’s review identifies and establishes misconduct, including probable criminal conduct, and responds with the most severe discipline in administering the corrective action. Resolving final discipline can be a lengthy process if the officer grieves the disciplinary corrective action implemented.

Department policy indicates that disciplinary actions shall be considered final unless amended by the chief of police or amended in response to an appeal via the Department of Human Resources, or the employee’s collective bargaining grievance procedure. After a disciplinary decision is rendered on a sustained misconduct complaint, corrective action is immediately taken by the department.

As expected with a report on suspension and discharge discipline, the final discipline recommended for the misconduct cases

reported is normally either suspension or discharge. In the past five years, nearly 70 percent of disciplinary actions reported taken were suspensions, and 30 percent recommended discharge for discipline. We further found that:

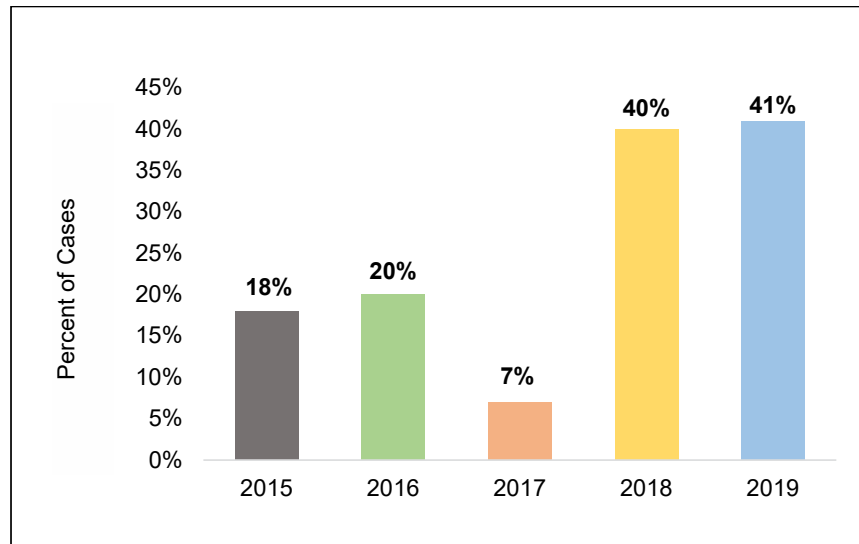
- Final discipline was issued in the same calendar year in only 30 percent of the cases.
- In any given annual report, the chance of a reported case having unresolved discipline was 43 percent.
- Final discipline of cases reported was usually unresolved because the misconduct in reported case occurred in the same calendar year in 62 percent of cases.

Although corrective action is taken immediately, the primary reason for unresolved corrective discipline recommendations was that 44 percent of the suspension and discharge recommendations were grieved by the officer according HPD's collective bargaining agreement with the police union, SHOPO. The collective bargaining agreement provides a progressive process for officers to address their grievance concerns, usually ending in binding arbitration. In the past five years, the status of reported grieved cases were:

- Discharge pending grievance: 22 percent
- Discharge pending arbitration: 12 percent
- Suspension pending grievance: 38 percent
- Suspension pending arbitration: 28 percent

In total, 22 percent of cases had their final discipline reduced from the recommended discipline. Eleven percent had the *type* of final discipline changed, and 11 percent had the *duration* of their suspensions reduced. Over the past two years, there has been a significant increase in final discipline being changed or reduced by the grievance process. The yearly reductions of final discipline by the grievance process are shown in Exhibit 2.9.

Exhibit 2.9
Percentage of Cases where Discipline Issued was Reduced by Grievance Process



Source: Honolulu Police Department

Many disciplinary actions are overturned because they are compared to previous cases, making it hard for departments to respond to changing community expectations of greater accountability or reverse a history of lenient discipline. This can lead to a situation where the department can appear arbitrary and capricious in discipline when they now try to take a harder line on discipline for misconduct.

The department's general standard on disciplinary action is that:

if it is determined that an employee has violated the Standards of Conduct, other directives, or other departmental orders and disciplinary action is to be taken, the following procedure shall be followed: a. unless the situation requires otherwise, prior to taking any disciplinary action, the supervisor shall: 1) review the personnel records of the employee in question; and 2) in all cases, assure himself or herself that the contemplated action is fair, impartial, and consistent with disciplinary actions previously taken in other cases.

It also requires consideration of the officer's work record, and previously taken disciplinary actions in other cases for consistency.

Correction of Misconduct Is Highly Impacted by the Grievance Process

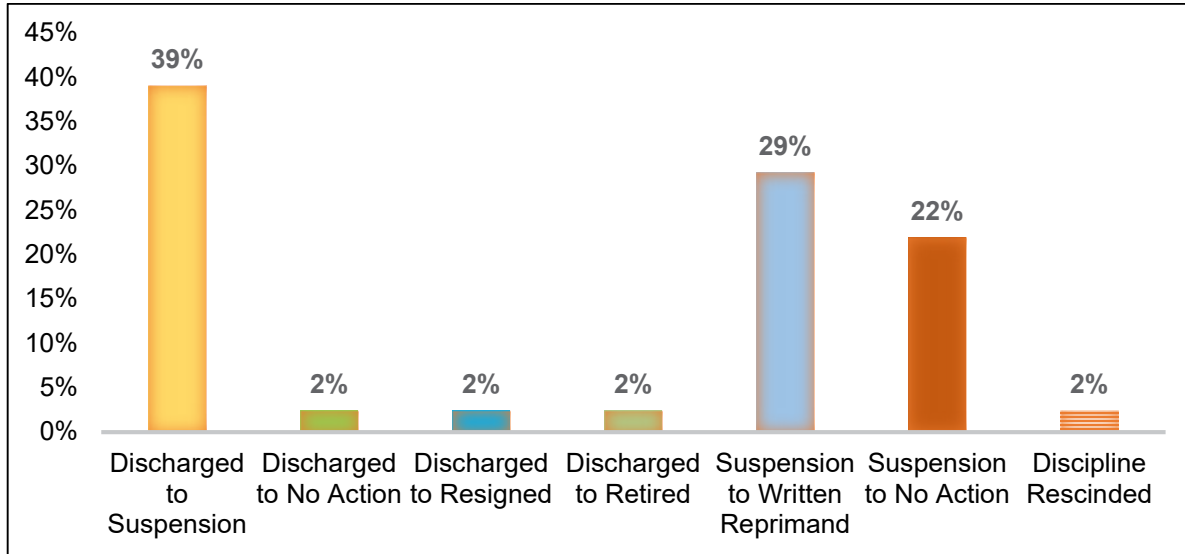
We found that all of the cases in the suspension and discharge reports that were subject to changed or reduced discipline or duration of suspension resulted from of a grievance filed by a disciplined officer. Although the majority of cases sustain the initial discipline implemented as corrective action, substantial changes to type of discipline and length of suspensions may result from the decisions after the grievance process or binding arbitration.

Discipline can be changed or reduced by grievance process

Over the past five years, there were 40 cases with changes to discipline after the grievance process. They include:

- 16 reductions from discharge to suspension, recommendation vacated by arbitrator;
- 12 reductions from suspension to written reprimand, recommendation vacated by arbitrator;
- 9 reductions from suspension to no action, recommendation vacated for evidentiary problems;
- 2 officers with misconduct chose to resign or retire rather than be formally discharged; and
- 1 officer's discipline was rescinded due to additional clarifying evidence.

Exhibit 2.10
2015-2019 Changes to Suspension and Discharge Discipline

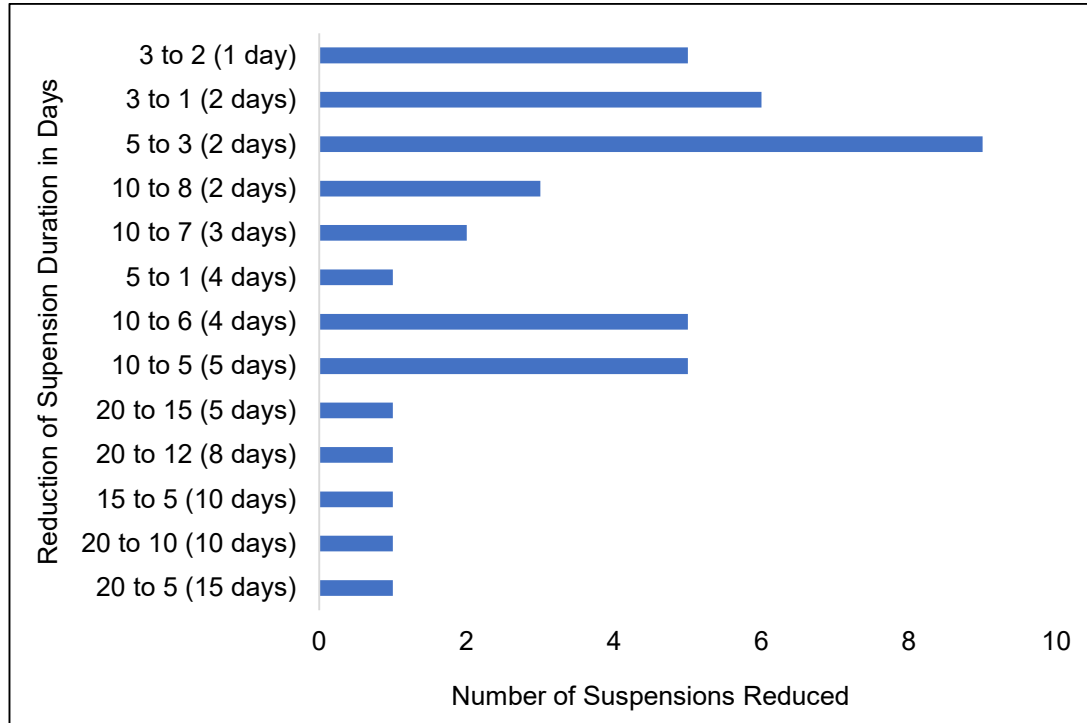


Source: Honolulu Police Department

Successful grievance that reduces or changes discipline taken may send the message that discipline can be reduced rather than to avoid misconduct

Forty-one changes were also made to the durations of suspensions by the grievance process. Durations were reduced on 30 percent of all suspensions issued in the period. The amount of reductions are shown in the following exhibit:

Exhibit 2.11
Recommended Suspension Durations Reduced by Grievance or Arbitration



Source: Honolulu Police Department

After a disciplinary decision is rendered on a sustained misconduct complaint, corrective action is immediately taken by the department. According to collective bargaining, the grievance process cannot be initiated until adverse action (corrective action) is taken against the employee. In other words, by the time an officer is taking part in the grievance process or is in arbitration, the disciplinary action has been taken. For example, when a discharge decision is reversed, the order will also include back pay and other measures to make the officer whole because they have already been subject to corrective action. The grievance process can take a long time to resolve, even when the complaint investigation and review has produced evidence of proven misconduct. The officers and employees have a right to grieve their discipline as provided by the collective bargaining agreement. However, it may have an effect in creating the wrong impression that despite initial findings of misconduct, final discipline can be reduced or changed during the grievance process which may send a

message that penalties and punishment can be lessened rather than misconduct should be avoided.

Misconduct Needs to Be Actively Monitored and Internally Reported, So That Training Can Be Appropriately Adjusted

The department has a thorough system of tracking complaints of misconduct that is part of its complaint investigation and resolution processes. Complaint records contain key information about incidents, whether there was criminal conduct, applicable standards of conduct, evidence and statements, investigation and review information, and disposition and discipline information. Though some of the information is confidential and not usable for management purposes beyond complaint resolution and discipline, the department does not aggregate general information about the nature of common officer conduct complaints for analysis and monitoring. The information is not reported to management so that it can evaluate risk of misconduct and develop appropriate preventive responses to meet these needs.

During our complaint review, we identified the most serious discipline issues, which resulted in suspension or discharge. With better monitoring and reporting, the department would have the ability to develop insights from the information and consider measures to prevent misconduct rather than just punishing officers after-the-fact. By analyzing data and trends, the department could provide appropriate training to address emerging concerns or risks of misconduct. From the data we reviewed, we identified key areas that warrant department attention:

- In the past five years, the department has annually suspended or discharged officers for alleged criminal conduct in at least 27 percent of reported complaints. Failure to aggregate or report this information hampers the department's efforts to take measures to prevent the conduct, to identify factors seem to be causing it, and to develop appropriate training.
- Officers were involved in multiple incidents or had complaints that involved serious activities such as use of force, pursuits, motor vehicle collisions, engaging in harassing or threatening behavior, or assaulting or harassing women.

- Officers were being reviewed for not intervening to prevent misconduct.
- Officers had personal problems related to their domestic life or misuse of intoxicants that contributed to their misconduct.

We asked if the department monitors, reviews, aggregates or analyzes misconduct information (e.g., from its internal reporting, complaints information, police commission complaints, etc.) to make responsive changes to incidents or other events which demonstrate a need for management to prevent misconduct. The department did not provide documentation or data to substantiate pre-emptive action. It also did not provide examples of corrective action at the management level and whether it monitors and analyzes complaint data to assess causes and risks in order to make responsive corrective changes (e.g., policies, procedures, controls, training, etc.) Rather, management provided an anecdotal explanation that the department responds to these situations, even isolated incidents, with appropriate changes including policy and control changes.

As a result, we could not determine if proactive changes were considered or made in the interest of correction and prevention. We believe it is important for the department to consider taking proactive actions to help prevent misconduct, especially since the department receives complaint information from a number of its information sources.

While we acknowledge that the department is responsive to identifying and correcting complaints, those actions are reactive and do not have preventive or corrective value until incidents occur. We found that changes are only made reactively to incidents, and that information is not aggregated and reported to make responsive proactive changes that could result in prevention of misconduct or reduction of complaints. Complaint information is not aggregated and reported to management in a useful way. As a result, the department maintains its *negative reinforcement* approach to managing discipline that relies on identifying and punishing misconduct after it occurs. Instead, the department should consider using complaint and misconduct information to better understand what is contributing to situations which require correction by the most severe of discipline, how widespread the effects of this conduct may be, and how to use this information for awareness and knowledge to make proactive changes to policies, procedures, and controls.

Recommendations

The department should:

1. Consider analyzing complaint and misconduct information to better understand what is contributing to misconduct trends or situations which require correction by the most severe of discipline; how widespread the effects of this conduct may be; and use this information to improve awareness of current risks and management response;
2. Leverage its data and reports from its complaints and discipline processes to develop appropriate policy, management, or supervision changes that may be responsive in preventing common issues of misconduct or complaints; and
3. Review the findings or information from the grievance process to implement appropriate changes to improve its administration of the process and make preventive changes.

Chapter 3

The Honolulu Police Department Has Not Demonstrated Positive Outcomes from Its Training and Early Recognition Programs to Reduce or Prevent Misconduct

Training and early intervention systems are used by police departments to identify, respond to and prevent officer misconduct. The Honolulu Police Department (HPD) is currently in the process of implementing a new training program for ethics and integrity called EPIC (*Ethical Police Is Courageous*), so prevention outcomes regarding misconduct and complaints are currently unknown. The department has not administered its employee early recognition program to work appropriately or maximize its identification and preventive objectives. As a result, the department may not be able to discern early warning signs in troubled officers and appropriately intervene before it turns into serious performance issues or misconduct.

Prevention Outcomes Are Unknown Due to Current Implementation of Training

According to *Police Chief Magazine*, the official publication of the International Association of Police Chiefs, there are three recommended approaches to preventing misconduct and reducing citizen complaints: officer level of education; officer training; and early intervention systems. We reviewed officer training and early intervention systems at the department to evaluate how these contribute to the department's response and prevention of officer misconduct and found that these systems are not effective in preventing misconduct and complaints.

System effectiveness is diminished because information that would be helpful to early intervention or responsive training is not aggregated or reported to management. This is needed to promote understanding about causes related to misconduct, how widespread the effects of the conduct may be, and how to use this information to make proactive changes to policies, procedures, or controls. More importantly, key data can also be used to make changes to training content or intervene with officers to help prevent misconduct prior to incidents occurring. Adjustments to managing misconduct and complaints are currently done on a reactive basis, but information exists that could enable the department to be more effective in preventing officer misconduct.

Training improvement is a key strategic planning objective for the department

Shortly after receiving the appointment, the current police chief advocated a vision of a new beginning for the police department. The vision came on the heels of a major ongoing corruption controversy concerning misconduct by the former chief of police and other members of the department. There were also other publicized domestic violence and criminal incidents involving police officers. One of HPD's priorities was to improve training in the areas of recruit and annual recall training, embracing the guardian mentality of defender and protector, and ethics and integrity. The department's strategic plan lists *improve training* as one of its five main objectives.

In its May 2020 strategic plan update related to *Improve Training*, sub objective 5.4 specifically recommends *Implementing 21st Century Policing Training*. The International Association of Chiefs of Police defines 21st Century policing strategies as best practices designed to help agencies promote crime reduction while building public trust and safeguarding officer well-being. The three department strategies to meet this sub-objective are to:

- Revise and expand ethics and integrity training;
- Embrace the guardian mentality; and
- Expand leadership training.

Although the department has put these strategies in place to improve its training, we decided to review HPD's efforts to improve ethics and integrity training since it had been recently affected by events and misconduct actions of the former chief of police and subordinate officers. The actions called into question how the police department identified, responded to, corrected, and prevented misconduct. It also showed evidence of conflicts of interest, acting criminally while not following key police responsibilities and standards, and not acting in the public interest and trust. Revising or creating responsive ethics and integrity training had the best potential to create initial and continuing awareness about conduct issues, ethics, integrity, and other issues of accountability to prevent misconduct from occurring.

Ethics and integrity training that may have an impact is still being implemented

In order to revise and expand its ethics and integrity training for sworn personnel, the department plans to implement EPIC training by the end of 2020. As part of its strategic plan update to the police commission in September 2020, the department reported that it began implementing EPIC instruction during annual recall training at the beginning of the year. It is now a permanent feature for recruit and annual recall training. As of

June 30, 2020, 1,184 sworn officers have received the training, which is about half of its sworn personnel.

The department also plans to incorporate concepts of the *Guardian Mentality* courses to review and revise course lesson plans, and instruction methods to adopt the mindset through scenario-based training. In its September 2020 update to the police commission, the department reported hiring a training specialist to review current training programs and implement guardian mentality concepts.

The *Guardian Mentality* is a 21st century policing technique designed to teach officers to view themselves as *guardians* instead of *warriors*. Whereas a warrior is a soldier or fighter and implies violence, the guardian is a defender, protector, or keeper, and advocates for the community. This approach takes an overall view that building trusted relationships between the police and the public keep officers safer and makes law enforcement more effective.

The *Guardian Mentality* concept aims to:

- Encourage officers to build relationships in the community;
- Train officers in communication, conflict resolution, and de-escalation;
- Avoid militarization when training your officers;
- Affirm a mindset that values and protects the most vulnerable in your community;
- Treat officers with respect and dignity inside your organization;
- Choose the right language (use positive, non-violent language);
- Leverage reports and data to optimize safety;
- Increase accountability in the department with technology (e.g. body worn cameras); and
- Remind officers that the guardian mindset does not exclude a warrior's skills.

Police training should include ethics and integrity training

Effective training is a recommended best practice solution for reducing officer misconduct. A 2016 Pew Research study which surveyed 8,000 police officers in the United States revealed that training, particularly in key areas such as police use of force, and bias and fairness training, were lacking. The study found that a majority (69 percent) of officers did not believe their department had provided sufficient training to prepare them for police work. According to study participants, a large percent (44 percent) had not received training in de-escalation tactics to avoid unnecessary force, and most (60 percent) had not received any bias and fairness training.

Best practices recommend that ethics and integrity training be integrated into all phases of training—in the academy, during field training, and throughout officers’ careers. *Police Chief Magazine* identified key implementation criteria that would help integrate ethics and integrity into police training. Typical law enforcement academies provide curriculum and training based on a standard approach and provide ideal ways to manage ethical quandaries and everyday encounters. However, the policies and procedures officers follow on the job are specific to their agencies and communities. Although best practices acknowledge that real-life situations are more pragmatic and require recruits to learn to contend with real-life dilemmas and applications of ethical policing, a consistent base of ethics and integrity should be prioritized on all levels within the department.

Specifically, these practices recommend:

1. Ethical training needs to continue into field training.
 - Field training officers have the most influence on an officer’s development, so careful selection of experienced senior officers with good work records contributes to the positive development of new officers.
 - Training must be continued throughout the officer’s careers.
2. Supervisor training is important in influencing the behaviors of their subordinates.
 - Supervisor participation in training can make significant impacts on subordinates, subordinate use of force was significantly reduced when supervisors were also trained.

3. Simulation training can be effective to cover important police issues such as active shooters, ethical decision-making, community policing, implicit bias, and use-of-force encounters.
 - Use of computer systems can track responses to real world scenarios.
 - Use of discussion-based scenarios allows department personnel to work through ethical or other police-oriented scenarios.
 - Role play training can be used to simulate a situation and practice actions taken, allowing for decision points to influence the next stages and final outcome, with opportunities to debrief about correct and incorrect decisions, and provide education to avoid future mistakes.
4. Simulation or scenario-based training can incorporate ethics training.
 - They best work with complex and realistic scenarios.
 - They can include situations to assess the officer's sense of responsibility and integrate accountability.

Examples:

- What if an officer witnesses another officer or a supervisor using excessive force, will they report it?
- What if an officer has knowledge of their partner planting evidence or stealing equipment, will they intervene?

No assessment was made over how ethics and integrity is incorporated in current departmental training

The department does not document how ethics and integrity is incorporated into departmental training. We asked the department to provide information about its training on ethics and integrity, courses offered, and how these topics are approached in courses. While we acknowledge the department recently provided us with some training information after our review was completed, we did not receive any information during our fieldwork review to conduct a full review on the practical way that ethics and integrity is taught at the department. We were unable to assess how ethics and integrity training are incorporated into the department's recruit and annual recall trainings, or how corrective and remedial trainings recommended after officer misconduct is sustained. We were also unable to assess whether

current training results in positive preventive outcomes for the department in reducing officer misconduct or officer complaints.

The department recently hired a training specialist to review its courses and training curriculum for recruits and annual recall training to identify opportunities where *Guardian Mentality* concepts could be incorporated into its training. The department should similarly review its ethics and integrity courses and curriculum for recruits and annual recall training for opportunities to incorporate ethics and integrity into its training. The chief has previously planned that the department's training should be reviewed and revised to incorporate current best practices from law enforcement. This review approach would help the department meet its goal of improving training by revising and expanding its ethics and integrity training, which is consistent with recommended best practices.

The Department Is Pursuing EPIC Training to Reduce Officer Misconduct by Peer Intervention

In October 2019, the department announced that it was implementing the EPIC (*Ethical Police Is Courageous*) training program, which had been developed by the New Orleans Police Department in collaboration with its community partners. EPIC is a peer intervention program that educates and empowers police officers to promote a culture of high-quality and ethical policing and teaches officers how to intervene to stop a wrongful action before it occurs.

After receiving training in New Orleans, Louisiana, HPD police trainers taught the program to 60 recruits, and plans were made for veteran officers to receive two hours of course instruction during their annual recall training. Since the beginning of 2020, EPIC has been incorporated into veteran officer annual recall training. More information about the background of EPIC training is provided in Appendix J.

We reviewed officer misconduct cases where ethics and integrity were compromised including:

- The much-publicized federal civil rights case involving the officer ordering a homeless man to lick a toilet. Several officers were also investigated for not intervening to stop or report the conduct.

- The also publicized criminal case involving the former chief of police and his wife's corruption, along with the criminal conduct of several officers that supported these activities.
- Crime reduction or dispatched responses where officers are involved in a chase and arrest and are later accused of excessive or unnecessary force during or after the arrest, and where the other officers participate in or do not reduce unnecessary force.

EPIC training is intended to address situations like these, particularly ones where nearby officers can intervene to prevent other officers from committing misconduct or encouraging and supporting officers to report misconduct. The outcomes of this training need to be actively monitored and reported to management to assess its effectiveness in reducing officer misconduct and complaints.

Misconduct Needs to Be Actively Monitored and Internally Reported So That Training Can Be Appropriately Adjusted

The department has a thorough system for tracking complaints of misconduct as part of its complaint investigation and resolution processes. Complaint records contain key information about incidents such as, whether there was alleged criminal conduct, violations of applicable standards of conduct, evidence and statements, investigation and review information, and disposition and discipline information. Though some of the information is confidential and not usable for management purposes beyond complaint resolution and discipline, the department does not aggregate general information about the nature of common officer conduct complaints for analysis and monitoring. Report data is not in a format that management can use to assess employee misconduct risk and trends, and establish appropriate training to address priority areas.

During our review, we identified misconduct that had received the most serious discipline, which include suspension or discharge. With better monitoring and reporting, the department would have the ability to develop insights from the information, and could have considered measures to prevent the conduct, including providing appropriate training to address these emerging concerns or risks of misconduct:

- Over the past five years, the department has annually suspended or discharged officers for alleged criminal conduct in at least 27 percent of reported complaints. By not aggregating or reporting this information to

management there is no insight as to whether the department could have taken measures to prevent the conduct, identify what factors seems to be causing it, or to develop appropriate training.

- Officers were involved in multiple incidents or had complaints that involved serious activities such as use of force, pursuits, motor vehicle collisions, engaging in harassing or threatening behavior, or assaulting or harassing women.
- Officers were being reviewed for not intervening to prevent misconduct.
- Officers had personal problems related to their domestic life or misuse of intoxicants that contributed to their misconduct.

We asked if the department monitors, reviews, aggregates or analyzes this kind of misconduct information, makes changes to policies and procedures or initiates actions to prevent misconduct. The department did not provide sufficient documentation to verify that such actions took place. Department management explained that it does respond to these situations, even isolated incidents, with appropriate changes including policy and control changes.

We found that changes are only made reactively to incidents, and that information is not aggregated and reported to make responsive proactive changes that could result in prevention of misconduct or reduction of complaints. Information is not aggregated and reported to management in a way to understand what is contributing to these situations which require correction by the most severe of discipline, how widespread the effects of this conduct may be, and how to use this information for awareness and knowledge to make proactive changes to policies, procedures, controls.

Employee Early Recognition System Is Not Meeting Its Preventive Purposes

According to *Police Chief Magazine*, police agencies have promoted early intervention systems (EIS) or early warning systems as solutions to identify potentially problematic behaviors and ensure officer accountability. These systems provide a means to stay ahead of misconduct issues through proactive measures of early identification and corrective actions. They track individual officer data such as allegations of officer misconduct, use of force

reports, abuse of sick leave, continual poor performance, citizen complaints, civil litigation, and traffic stop data, among myriad other factors.

These systems are also designed to identify officers who hit specific levels or numbers of warnings. Supervisors review the data and warnings to determine if intervention is necessary. If so, intervention then occurs through training, education, supervision, counseling, or discipline. Research has shown that in most departments, it is usually a small number of officers who are responsible for the majority of issues.

Early intervention systems have the potential to influence not only individual officer behavior, but also to impact department training programs, policies, and procedures. Through the EIS, police chiefs and administrators can develop initial and remedial training specific to the needs of their officers, which can reduce officer misconduct and strengthen community-police relations.

**Honolulu Police
Department employee
early recognition system**

The Honolulu Police Department established its *Employee Early Recognition System* (EERS) in December 2000. It is guided by department policy 3.12, which provides guidelines for early recognition and intervention of employees with behavioral problems that may be detrimental to the employee and/or department. The system's stated goal is to keep an employee productive. Its purpose is to identify employees who exhibit a pattern of behavior that signals potential problems, and to establish a means of providing appropriate intervention. The department uses its EERS to intervene in a non-disciplinary way with officers who are having personal or work performance-related issues that are known to contribute to misconduct.

The department regards the early identification of employees as an essential element of an effective personnel management system. The department uses that system to offer appropriate intervention when it is evident that behavioral, medical, or other problems exist and are likely to adversely affect an employee's ability to carry out duties in accordance with departmental rules, regulations, directives, or practices. Division level commanders are given the responsibility for monitoring their employees and taking appropriate action. Appendix J shows the process of the department's employee early recognition system. Detailed information about the process is provided in Appendix K.

The department's accreditation body CALEA requires an early intervention system.

The department has earned national law enforcement accreditation since 2003 from the Commission on Accreditation for Law Enforcement Agencies (CALEA) and was re-accredited in 2018 with a Gold Standard Assessment. One of the CALEA standards is 35.1.9, *Personnel Early Intervention System*, which provides that if an agency has an early intervention system (EIS), it should identify agency employees who may require intervention and specifies:

- definitions of employee behaviors or actions to be included for review;
- threshold or trigger levels to initiate a review of employee actions or behavior;
- a review of identified employees, based on current patterns of collected material, that is approved by the agency CEO or designee;
- agency reporting requirements of conduct and behavior;
- documented annual evaluation of the system;
- the responsibility of supervisors;
- remedial action; and
- intervention options such as a formal employee assistance program, peer counseling, etc.

A law enforcement early intervention system is a personnel management tool designed to identify potential concerns at the earliest possible stage. The system features intervention and support that can re-direct performance and behaviors toward organizational goals. The ideal purpose of an EIS is to provide officers with resources and tools that prevent disciplinary action, and promotes officer safety, satisfaction and wellness. In its implementation commentary, CALEA cautions that the failure of an agency to develop a comprehensive system can lead to the erosion of public confidence in the agency's ability to investigate itself, while putting the public and agency employees at greater risk of danger. This department program must be evaluated annually for the purposes of accreditation.

HPD requires an annual evaluation of the employee early recognition system

Consistent with accreditation requirements, HPD policy 3.12 requires the department to conduct an annual review of the employee early recognition system to address system effectiveness and the need for changes to the system, policy, or other related procedures. The review is conducted by the commanders of the Human Resources Division (HRD) and Professional Standards Office, the police psychologist, and others assigned to the evaluation. We reviewed the previous five annual evaluations of the employee early recognition system. Exhibit 4.1 shows the annual number of early recognition reviews submitted to the human resources division for the years 2015-2019.

**Exhibit 3.1
2015-2019 Completed Employee Early Recognition Reviews Submitted**

<i>Year</i>	<i>Reviews Submitted to Human Resources</i>
2015	5
2016	4
2017	0
2018	2
2019	6
Total Reviews	17

Source: Honolulu Police Department

Cases have been appropriately reviewed and met prescribed timelines

Each of the annual reviews found that the system completed reports in a timely manner and that appropriate reviews and approvals had occurred. Early recognition report distribution revealed that these reports were sent to all divisional commanders in a timely manner. Responses from each division confirmed that these reports are reviewed by appropriate commanders.

Program had difficulty in resolving recurring implementation and reporting accuracy issues

The 2015 review indicated concerns that the count of early recognition behavioral review reports for the year may be

inaccurate. There was confusion over whether early recognition reviews could be initiated when there was concern for potential problems or only in the areas specified in the policy list. The report also found that in some cases, psychological evaluations on an employee's ability to carry out their duties were completed rather than early recognition reviews. Early recognition reviews are used when an officer demonstrates a pattern of problematic behavior that is repetitive, increasing in severity, or occurring in multiple areas of job performance. These behaviors are likely to be corrected via intervention. Comparatively, psychological evaluations are reserved for more serious mental health or psychological impairments that affect an officer's fitness for duty. In this case, medical or other emergency intervention would be more appropriate than a behavioral intervention.

The causes of the problems were identified as:

- The number of reviews reported may not be an accurate count because the policy was vague and did not explicitly state that a copy of each employee behavior review report shall be sent to HRD. The department planned to address this inaccuracy issue by amending the policy to include clarification.
- Although examples are provided for when a review can be done, it was not clear to divisional command staff what actions would trigger a review. According to the policy, a review could be done at any time there was concern with employee behavior or conduct. The department planned to address this by amending the policy.
- The police psychologist noted in a past review (2014) that element commanders were using *fitness for duty* evaluations as an alternative to early recognition reviews. The psychologist received six to seven *fitness for duty* evaluations but could not determine if personnel had undergone an early recognition review prior to being referred for a fitness evaluation. An amendment was planned to the related psychological evaluation policy (3.13) to note and record when early recognition reviews were completed prior to a fitness for duty evaluation. Later police psychologists recommended that an early recognition review always be completed prior to a request for a *fitness for duty* evaluation.

Despite corrective recommendations, the same concerns and problems recurred the next year.

In 2017, despite changing the reporting policy to address accuracy deficiencies, no completed reviews were submitted to the Human Resources Division during the year. The division continued to report inaccurate data of how many employee behavior reviews were conducted by the system because no one was forwarding them to HRD, even with changed reporting requirements.

In 2018, the administrative review board adopted long recommended changes to the early recognition review process that an early recognition behavior review was needed before a *fitness for duty* evaluation. This came after two psychologists raised the concern that *fitness for duty* evaluations were being conducted instead of the employee behavior reviews required for early recognition. As a result, element commanders are directed to use early recognition employee behavior reviews, instead of *fitness for duty* evaluations, as a definitive problem solver for personnel issues.

After noting administrative difficulties in administering the program for three years, the department discovered that the annual review of the early recognition system was not prepared for 2018. An abbreviated, undated report was submitted at the same time as the 2019 report. The report also disclosed that the Human Resources Division received two early recognition reviews in 2018.

In August 2020, the 2019 evaluation reported that HRD received six early recognition behavior review reports during the year. The two recurring implementation issues and reporting problems reported in the previous annual evaluations were reported to have working solutions that ensured that:

- HRD was provided with copies for an accurate count; and
- early recognition behavior reviews were to be used prior to fitness of duty evaluations.

The value of non-disciplinary counseling sessions was highlighted as productive and suggested expanding referrals for employees involved in domestic arguments. In addition to behavior reviews, non-disciplinary counseling could be recommended by commanders for pattern behavior not meeting EERS criteria, as a measure to assist the employee.

Department does not know if its early recognition system is effective

The purpose of an early intervention system is to provide officers with resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness. The intended outcome of the system is to provide officers with support and resources to address problems at their earliest stage. Key components of the early recognition system involve identification, evaluation, intervention, and monitoring by management. We found that the department does not measure the effectiveness of this important program.

The system has not effectively identified officers that might benefit from early intervention

A well-managed system would identify officers who may exhibit behaviors indicative of an underlying issue that may affect job performance. It also provides necessary support and assistance and ultimately prevents disciplinary action or termination.

In its past five annual evaluation reports, the department could not accurately identify how many employees were reviewed for early recognition and intervention, and thus could not report accurately on the use of the system or its effectiveness. We note that it took five years to produce what the department considered to be an accurate count of review reports sent to HRD. However, in our view, a mere count is not sufficient to determine the effectiveness of the system in preventing and intervening early to address employee problems that may ultimately turn into officer complaints, misconduct, risks, and disciplinary actions.

The focus on administrative difficulties in the evaluation reports we reviewed is troubling because it takes an inordinate amount of time to implement simple reporting changes that provide useful program information to management. It is more troubling that these administrative difficulties distract from ensuring that the early recognition system fulfills its main purpose of effectively alerting supervisors and/or commanders of potential problems so that they can best manage their officers' performance and guide or assist them so that disciplinary action does not become necessary. In the current annual evaluations, department management does not receive insight into the system as an effective preventive and rehabilitation tool.

Best practices for early intervention systems require ongoing interaction to identify, remediate and intervene as needed, and monitor potentially problematic behavior. Best practices also recommend that agencies routinely adjust performance standards to conform to ever-changing departmental goals or priorities.

Department management reading the annual evaluation reports receive no information or feedback in key areas such as:

- who were identified for early recognition employee behavior reviews;
- what were the behaviors that needed to be remediated from the list of review triggering criteria;
- were interventions needed for all reviews conducted, and what were the kinds of interventions recommended;
- what monitoring was put in place for individual employees;
- what does monitoring show as potentially widespread problematic behaviors or risks in the department;
- were interventions effective in returning the employee to productivity; and
- what was the fitness for duty status of identified officers?

By implication, some of this information may be found at the element command level, but it has not been reported effectively for management to assess the departmental effectiveness of this policy and program. The department's early recognition system does not currently appear to be managed to identify and produce this kind of information, so that informed evaluation of program effectiveness can be performed to understand its preventive value in avoiding misconduct and discipline.

The early recognition system is not fully realizing its intended purposes

The current EERS system is not being managed to effectively meet its intended purposes of early intervention with employee behavior to promote productivity and prevent future misconduct and discipline. The lack of management information produced about identifying employees for early intervention, the difficulties in establishing a common method of evaluation for early intervention, the lack of reporting, and the absence of monitoring information make it difficult to assess the effectiveness of early employee interventions.

The annual program evaluations also do not currently consider if effectiveness issues, such as analyzing whether the behavior criteria that signals potential problems for early recognition of a

need to intervene, are appropriately set. For the five-year period 2015-2019, there were only 17 early intervention evaluations. Accepting the small numbers of employee reviews at face value calls into question whether there should be such a program or policy at all (apart from complying with accreditation requirements) because the annual review numbers appear small and the impact of the program is unknown but would be equally small. The relatively small numbers may also indicate that criteria may not be appropriately set to have an appropriate preventive and productivity effect.

The National Institute of Justice, the research and development arm of the Department of Justice, funded research to review the effectiveness of early intervention systems in police departments and its results demonstrated that early intervention systems were also effective in reducing citizen complaints and misconduct involving use of force among those officers who were subjected to intervention. The research also found that early intervention systems were effective in re-defining the role of supervisors, and even had the capacity to identify units that had high levels of unacceptable performance.

During our review of officer complaints, we noted that the most serious discipline outcomes reported, which were suspension and discharge discipline, often involved alleged criminal conduct on the part of involved officers. It also identified significant contributions of drug or alcohol addictions, domestic difficulties, and conduct currently highlighted by early recognition criteria, such as multiple complaints, citizen complaints, use of force, motor vehicle collisions, not attending court, work and assignment attendance, and timeliness issues.

In light of the contributions of these factors to misconduct in the most serious discipline cases we reviewed, early recognition systems appear underused as a preventive measure. There is a need for analysis and evaluation on whether current early recognition criteria are set too high or are insensitive for identification and early response. It may also require consideration on whether appropriate department personnel require introductory or refresher training about how to use the system and report to management.

The system may not be appropriately prioritizing areas for early recognition and intervention.

In addition to its informational shortcomings, the current system may not be correctly prioritizing areas for early intervention preventive effect. For example, the department has had well

publicized incidents concerning its officers and domestic violence or abuse in their personal lives. In the 2019 early recognition evaluation report, the police psychologist suggested expanding early recognition referrals to those employees who were involved in known domestic arguments, where abuse had not yet occurred, as an early intervention measure.

This is an appropriate suggestion to reset a current early recognition intervention criterion, a domestic violence allegation, to an earlier point in time where intervention may have prevented the alleged triggering incident from happening. However, the recommendation was not implemented. We note that the current department leadership has prioritized decreasing the number of domestic violence cases involving its personnel by using domestic violence prevention providers and resources to promote information and training about prevention and awareness among its personnel, and using lethality assessment protocols in its officer incident response for preventing lethal harm from occurring.

The department now emphasizes preventing domestic violence crimes and reducing its occurrence among its personnel. It should also consider prioritizing other known areas which fuel complaints and result in serious misconduct.

Early recognition could identify the contribution of supervision to performance problems

The department's policy focuses on individual officer problem behavior and warning indicators. Many early intervention systems similarly restrict their evaluations to line officer performance. Best practices for early intervention systems, including those endorsed by HPD's accreditation body, indicate that agencies should also use such systems to also monitor supervisor performance.

Best practices also indicate that agencies may want to include other performance indicators for supervisors such as meeting deadlines, making appropriate referrals, or identifying when supervisors can be held accountable for their subordinates' behavior. This could provide insight about common supervision deficiencies, how they contribute to misconduct and/or errors, what is causing them, and what kind of changes to policies, procedures, controls, or training would be most appropriate for supervision to reduce misconduct or poor performance.

Recommendations

The department should:

1. Consider reviewing its recruit and annual recall training to find opportunities where ethics and integrity could be incorporated into its training;
2. Leverage its data and reports from its complaints and discipline processes to develop training that may be responsive in preventing common issues of misconduct or complaints;
3. Generate regular reports to management on system performance information, such as:
 - a. who were identified for behavior reviews;
 - b. what were the behaviors that needed to be remediated;
 - c. were interventions needed for all reviews conducted;
 - d. what were the kinds of interventions recommended;
 - e. were interventions effective in returning the employee to productivity;
 - f. what was the fitness for duty status of identified officers;
 - g. what monitoring was put in place; and
 - h. what are potentially problematic behaviors or risks in the department;
4. Consider retraining its supervisory officers on properly implementing the employee early recognition system;
5. Leverage its data and reports from its complaints and discipline processes to add criteria which would improve early recognition and intervention efforts to prevent or avoid future misconduct and poor performance;
6. Review its criteria and areas of concern for early recognition to improve identifying and responding officers for intervention; and
7. Consider applying early recognition to supervisor performance to reduce the contribution of supervisory deficiencies to problematic officer performance.

Chapter 4

Conclusions and Recommendations

Conclusion

The Kealoha controversy and other well-publicized incidents of police officer misconduct have raised many serious questions and issues concerning the Honolulu Police Department's (HPD) ability to identify, respond, correct and prevent misconduct. It also has called into question how a police chief can be held accountable for occupational and personal misconduct. The current chief has prioritized restoring community and organizational trust, increased emphasis on reducing domestic violence in the department, and promoting training that emphasizes ethics, integrity, and guardian mentality. This has resulted in a department that identifies and responds appropriately to misconduct using its existing systems, but it has not fully applied valuable feedback information from its corrective systems to deploy responsive preemptive measures to prevent and avoid misconduct.

As a departmental policy, citizens and department staff are encouraged to report police misconduct for the department to address public concern, correct inappropriate behavior, and uphold the public's trust in the police department. This is a primary way that the police department identifies, responds to and corrects misconduct by its officers. The department has a well-established complaint investigation and resolution process of conducting fair and impartial investigations into allegations of administrative and criminal police misconduct through its Professional Standards Office.

We found that while the complaint investigation and review process of the department is well designed and controlled, the department does not make preventive use of feedback information produced by its review to consider or make responsive, proactive management changes in order to *prevent* misconduct or reduce complaints. Current complaint data and concern information identifies common areas of misconduct, themes, trends, and risks that can be useful to focus training or management intervention.

Training and early intervention systems could be better used by the police department to avoid and prevent officer misconduct. The department currently prioritizes ethics and integrity training in its strategic plan and is in the process of implementing a new training program for ethics and integrity called *EPIC (Ethical Police Is Courageous)*, which emphasizes preventive peer intervention to reduce misconduct. In our review, we noted many situations

where officers were being reviewed for not properly reporting or intervening to prevent misconduct actions.

While it initiates this training program, the department already has significant information from its complaint resolution and discipline process to already develop responsive preventive training. For example, in the past five years, at least 27 percent of the officers recommended for suspension or discharge discipline annually had complaints alleging criminal conduct. Domestic violence, sex assault and driving under the influence were the crimes most often alleged in complaints and recommended for discharge, while assault and harassment were the most often alleged in complaints and recommended for suspension. By not aggregating or reporting this information to management, the department has no insight as to whether it could have taken measures to prevent the conduct, what factors may be causing it, and develop appropriate training.

Information derived from review of officer complaints and discipline outcomes indicates that there is significant contribution of personal misuse of alcohol and drugs, violence against and harassment of women, harassment and threatening behavior in confrontations, as well as other acts in already defined warning behaviors for early recognition of signs of potential for serious misconduct which receives the most serious of discipline. With better monitoring and reporting of this information, the department would have the ability to develop insights from the information and could have considered measures to raise awareness about and potentially prevent the conduct, including providing appropriate training to address these emerging concerns or risks of misconduct.

Although the department has prioritized domestic violence for active management and preventive outcomes, it should also consider prioritizing other known areas which fuel complaints and serious misconduct for early recognition and intervention. The department should also determine appropriate criteria for addressing these problem behaviors before they manifest as or contribute serious misconduct.

Additionally, the department has not administered its employee early recognition program to work appropriately or maximize its identification and preventive objectives. The department does not accurately know how many employees were reviewed for early recognition and intervention, and thus cannot report accurately on the use of the system or its effectiveness. The system also may not effectively identify officers that might benefit from early intervention or produce effectiveness information so that

informed evaluation can be conducted and its preventive value in avoiding misconduct and discipline may be realized.

Recommendations

The department should:

1. Consider analyzing complaint and misconduct information to better understand what is contributing to misconduct trends or situations which require correction by the most severe of discipline; how widespread the effects of this conduct may be; and use this information to improve awareness of current risks and management response;
2. Leverage its data and reports from its complaints and discipline processes to develop appropriate policy, management, or supervision changes that may be responsive in preventing common issues of misconduct or complaints;
3. Leverage its data and reports from its complaints and discipline processes to develop training that may be responsive in preventing common issues of misconduct or complaints;
4. Leverage its data and reports from its complaints and discipline processes to add criteria which would improve early recognition and intervention efforts to prevent or avoid future misconduct and poor performance;
5. Review the findings or information from the grievance process to implement appropriate changes to improve its administration of the process and make preventive changes;
6. Consider reviewing its recruit and annual recall training to find opportunities where ethics and integrity could be incorporated into its training;
7. Generate regular reports to management on employee early recognition system performance information, such as:
 - a. who were identified for behavior reviews;
 - b. what were the behaviors that needed to be remediated;
 - c. were interventions needed for all reviews conducted;
 - d. what were the kinds of interventions recommended;

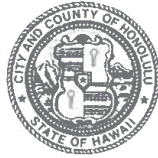
- e. were interventions effective in returning the employee to productivity;
 - f. what was the fitness for duty status of identified officers;
 - g. what monitoring was put in place; and
 - h. what are potentially problematic behaviors or risks in the department;
8. Review its criteria and areas of concern for early recognition to improve identifying and responding officers for intervention;
 9. Consider applying early recognition to supervisor performance to reduce the contribution of supervisory deficiencies to problematic officer performance; and
 10. Consider retraining its supervisory officers on properly implementing the employee early recognition system.

Management Response

In response to a draft of this audit report, the Honolulu Police Department expressed general agreement with the report's findings and recommendations. The department indicated that since our audit work has completed, they are planning to implement changes that will address the issues raised by the audit report. These include formally analyzing and reporting on misconduct information for use in considering changes to policies, training, and programs to address and prevent future misconduct; reviewing its training to find further opportunities where ethics and integrity training can be incorporated, including using simulations of current issues and applying misconduct information; and evaluating its employee early recognition program to address its deficiencies. We are encouraged by the department's initiatives and hope they will result in meaningful improvements for preventing and avoiding future misconduct and complaints, and better utilizing training and early intervention to keep officers productive. We did not make any significant amendments to the audit report as a result of management's response, but we made technical, non-substantive changes for purposes of accuracy, clarity, and style. A copy of management's full response can be found on page 65.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK GALDWELL
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE JNB-SB

December 1, 2020

MEMORANDUM:

TO: Troy Shimasaki, Acting City Auditor
Office of the City Auditor

FROM: Susan Ballard, Chief of Police
Honolulu Police Department

SUBJECT: Audit of the Honolulu Police Department's Policies, Procedures,
and Controls

On behalf of the Honolulu Police Department (HPD), I would like to thank you for the opportunity to provide comments on the *Audit of the Honolulu Police Department's Policies, Procedures, and Controls*, which was conducted pursuant to City Council Resolution 19-255, FD1.

We appreciate the effort put forth by the Office of the City Auditor in conducting this audit. While the impetus of the audit was the Council's concern regarding the *Kealoha* incident, the auditors were asked to review and assess the sufficiency of HPD's existing policies, procedures, and controls regarding misconduct. The HPD has never undergone an audit of this depth and breadth before, and welcomed the insight and recommendations aimed at improving its processes and making it a better department. We were pleased that the audit found that HPD has a well-established, well designed, and well controlled complaint investigation and resolution process of conducting fair and impartial investigations into allegations of administrative and criminal police misconduct. Additionally, we were encouraged that the audit recognized HPD's Standards of Conduct and policies regarding conflicts of interest which are designed to discourage and prohibit officers from having such conflicts or from individually profiting from their role as an officer lest they face disciplinary charges. While we were pleased that the audit acknowledged that HPD is responsive to

Serving and Protecting With Aloha

Mr. Troy Shimasaki, Acting City Auditor
Page 2
December 1, 2020

identifying and correcting complaints, we take to heart their recommendations to consider leveraging complaint and misconduct information for awareness and knowledge to make proactive changes to policies, procedures, and controls. As such, we offer the following responses to the recommendations made by the audit:

As the common theme in Recommendations 1 through 5 centers around the more intentional use and leveraging of complaint and misconduct information to better understand contributing factors to misconduct, identify trends in misconduct, and develop appropriate training, procedural, policy, management, and supervision changes, we address Recommendations 1 through 5 all together in our response below:

Recommendations:

1. *Consider analyzing complaint and misconduct information to better understand what is contributing to misconduct trends or situations which require correction by the most severe of discipline; how widespread the effects of this conduct may be; and use this information to improve awareness of current risks and management response;*
2. *Leverage its data and reports from its complaints and discipline processes to develop appropriate policy, management, or supervision changes that may be responsive in preventing common issues of misconduct or complaints;*
3. *Leverage its data and reports from its complaints and discipline processes to develop training that may be responsive in preventing common issues of misconduct or complaints;*
4. *Leverage its data and reports from its complaints and discipline processes to add criteria which would improve early recognition and intervention efforts to prevent or avoid future misconduct and poor performance;*
5. *Review the findings or information from the grievance process to implement appropriate changes to improve its administration of the process and make preventive changes;*

HPD's Response to Recommendations 1 through 5:

While working on gathering data for this audit, it became clear that the HPD was not taking full advantage of the data we had in our possession regarding discipline and officer misconduct. As the Audit has found, the HPD's "complaint investigation and review process is very well designed and controlled" but we could do better at analyzing

Mr. Troy Shimasaki, Acting City Auditor
Page 3
December 1, 2020

and utilizing misconduct data to implement changes in areas such as training, policy, and supervision in an effort to address and reduce misconduct. Currently, HPD reviews misconduct information and tries to identify general trends. The HPD administration takes action by amending policy and adjusting training as needed based on individual issues as well as general concerning trends. For example, when it appeared that more suspects were using their vehicles in a manner that endangered our officers resulting in officer involved shootings, the department began reviewing its training techniques and policies to address the situation and see if improvements to responses could be made. The HPD sees how a similar, more formal and intentional analysis of misconduct information could be beneficial for the administration and decision making process.

In that vein, the HPD has already implemented changes in this area. The HPD has amended its policy to require the generation of an annual report compiling and summarizing misconduct information for the year, much like the annual Use of Force report. The report will encompass all administrative and criminal complaint data in a calendar year and will be submitted for analysis and review by a committee for the purpose of seeking preventative measures for future employee misconduct. In addition, the HPD is in the process of creating a new unit within the HPD to be staffed by trained civilian analysts who will be charged with gathering and analyzing various data and conducting various audits within the department. This analytical expertise will provide a much needed additional component to the department when considering changes to and development of policies, training, and programs in an effort to address and prevent future misconduct.

6. *Consider reviewing its recruit and annual recall training to find opportunities where ethics and integrity could be incorporated into its training;*

HPD's Response to Recommendation 6:

The HPD Training Academy staff has been tasked with conducting a full review of the curriculum for both recruits and employees to find further opportunities where ethics and integrity can be incorporated. Currently, recruits receive four (4) hours of ethics training while sworn officers receive ethics refresher training every two (2) years via the City's online training system provided to all city employees. Additionally, both sworn and civilian personnel who are promoted to supervisory positions receive supplementary ethics training in their leadership training classes. Drawing from recent events (both nationally and locally), the training staff is in the process of creating simulation training components where employees can put into practice lessons they have learned regarding ethics and integrity. We believe the new misconduct report

Mr. Troy Shimasaki, Acting City Auditor
Page 4
December 1, 2020

described above will provide additional information for the training staff to consider and help identify annual recall training topics for the future.

As a common theme in Recommendations 7 through 10 is the HPD Employee Early Recognition system, we address them all together in our response below:

7. *Generate regular reports to management on employee early recognition system performance information, such as:*
 - a. *who were identified for behavior reviews;*
 - b. *what were the behaviors that needed to be remediated;*
 - c. *were interventions needed for all reviews conducted;*
 - d. *what were the kinds of interventions recommended;*
 - e. *were interventions effective in returning the employee to productivity;*
 - f. *what was the fitness for duty status of identified officers;*
 - g. *what monitoring was put in place; and*
 - h. *what are potentially problematic behavior or risks in the department;*
8. *Review its criteria and areas of concern for early recognition to improve identifying and responding officers for intervention;*
9. *Consider applying early recognition to supervisor performance to reduce the contribution of supervision deficiencies to problematic officer performance; and*
10. *Consider retraining its supervisory officers on properly implementing the employee early recognition system.*

HPD's Response to Recommendations 7 through 10:

The HPD is currently in the process of evaluating and reviewing, our Employee Early Recognition program and implementing changes as suggested by the audit. Training for the command staff on the Employee Early Recognition program is scheduled to start in December 2020. All supervisors will also be receiving training on the program during annual recall training in 2021. While the training will focus supervisors on the current process (e.g. understanding standards and criteria, identifying officers for intervention, implementation of the process, proper documentation, etc.) and their responsibilities as supervisors, we are also evaluating the entire program to incorporate the recommendations of the audit and address any other deficiencies with the program.

Mr. Troy Shimasaki, Acting City Auditor
Page 5
December 1, 2020

Overall, the HPD appreciates the findings of the audit and sees the value in analyzing data as we have already seen how data can paint a fuller picture of possible areas of concern. For example, the audit often cites that “in the past five years, at least 27 percent of the officers recommended for suspension or discharge discipline annually had complaints alleging criminal conduct.” When the HPD looked at the numbers using the tables provided by the audit and annual discipline report given to the legislature it found that “27% of officers recommended for suspension or discharge” in 2017 amounted to 12 officers or less than 1% of the total number of sworn officers in the department. This figure helped provide the administration with perspective in making decisions regarding how to approach and address criminal misconduct.

As another example, the audit reports that in 2019, 347 officers were subjected to corrective action. When the HPD reviewed the cases reported by the audit, it found that of the 347 officers, 5% or 17 officers were subjected to significant disciplinary action (suspension or discharge) while 95% or 330 officers were subjected to written reprimands or non-disciplinary actions for administrative offenses such as overdrawn gas, special duty violations, etc., 17 officers subjected to significant disciplinary action amounts to less than 1% of our entire sworn force (1,850) which gives us a benchmark moving forward.

Thank you again for the recommendations and opportunity to respond. Should you have any questions, please contact me at 723-3848.



Susan Ballard
Chief of Police

APPROVED BY:



Digitally signed by Amemiya, Roy K Jr
Date: 2020.12.01 15:59:16 -10'00'

Roy K. Amemiya, Jr.
Managing Director

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Appendix A

Resolution 19-255



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 19-255

RESOLUTION

REQUESTING THAT THE CITY AUDITOR CONDUCT PERFORMANCE AUDITS OF THE HONOLULU POLICE DEPARTMENT AND DEPARTMENT OF THE PROSECUTING ATTORNEY.

WHEREAS, in the wake of the convictions of Louis and Katherine Kealoha (collectively, "Kealohas") for conspiracy to defraud the United States and four counts of attempted obstruction of an official proceeding in a highly-publicized public corruption case (the "mailbox case"), the City Council ("Council") has grave concerns as to how such abuses of power by the former chief of police and a high-ranking deputy prosecutor were allowed to go on, seemingly unchecked, within the Honolulu Police Department ("HPD") and the Department of the Prosecuting Attorney ("Prosecutor's Office"); and

WHEREAS, in the mailbox case, former Police Chief Louis Kealoha was alleged to have used City and County of Honolulu resources, including police officers from the elite Criminal Intelligence Unit, to investigate the theft of the Kealohas' mailbox, and homicide detectives and undercover officers to follow and arrest Gerard Puana, Katherine Kealoha's uncle, for the mailbox theft; and

WHEREAS, the underlying objective of former Chief Kealoha's criminal activities was apparently to frame Gerard Puana for the theft of the Kealohas' mailbox, a federal crime, in order to discredit him in an ongoing financial dispute involving Katherine Kealoha's grandmother, Florence Puana; and

WHEREAS, it was reported that Katherine Kealoha is alleged to have used her position as a high-ranking deputy prosecuting attorney in charge of the career criminal unit in the Prosecutor's Office to order a former deputy prosecutor, Kaina Awong, to wrongfully pursue a felony conviction against Gerard Puana; and

WHEREAS, in addition to her federal convictions in the mailbox case, it was reported that Katherine Kealoha is alleged to have pursued a pattern of corruption and prosecutorial misconduct by helping friends avoid criminal prosecution, including having a charge of driving under the influence removed and dismissed from the court's docket in May 2015; pressing a DUI and false reporting prosecution against an HPD officer who had previously arrested Katherine Kealoha's friend, a convicted felon who had refused to obey the officer's instructions; and appearing in traffic court to have an excessive speeding citation against her electrician dismissed in 2014; and

WHEREAS, the Council believes that such patterns of corruption, prosecutorial misconduct, retaliation, favoritism, and abuses of power should have been evident to



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 19-255

RESOLUTION

management and personnel within the HPD and Prosecutor's Office long before they were brought to light through the mailbox case and other pending indictments against the Kealohas; and

WHEREAS, it is in the public interest for performance audits to be conducted of HPD and the Prosecutor's Office to review and assess the sufficiency of each department's existing policies, procedures, and controls to prevent similar misconduct, retaliation, favoritism, and abuses of power in the future; to determine whether each department complied with their existing policies, procedures, and controls; and to provide recommended improvements and corrective measures in each department's policies, procedures, and controls so as to minimize future managerial and operational breakdowns; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the City Auditor is requested to conduct performance audits of the Honolulu Police Department and the Department of the Prosecuting Attorney, which should address: 1) whether each department's existing policies, procedures, and controls are sufficient to prevent similar misconduct, retaliation, favoritism, and abuses of power by their respective employees; 2) whether each department complied with their existing policies, procedures, and controls in their internal operations during the time periods reflected in the First and Second Superseding Indictments of the alleged misconduct by Louis Kealoha and Katherine Kealoha; and 3) recommendations as to improvements and corrective measures in each department's policies, procedures, and controls so as to minimize future managerial and operational breakdowns; and

BE IT FURTHER RESOLVED that the audit of the Department of the Prosecuting Attorney should neither interfere with, nor hinder the prosecutorial functions of the department as set forth in the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Charter") Section 8-104.1, which includes prosecuting all offenses that violate the laws of the State and the ordinances and rules and regulations of the City, arresting persons charged with or reasonably suspected of public offenses, and drawing indictments and presenting cases for consideration by the grand jury; and

BE IT FURTHER RESOLVED that the City Auditor is requested to complete the performance audits of the Honolulu Police Department and the Department of the Prosecuting Attorney no later than one calendar year after the adoption of this resolution in accordance with Charter Section 3-114.2; and

BE IT FURTHER RESOLVED that copies of the completed audit reports be filed with the City Clerk as a public record; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 19-255

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor, the Managing Director, the Chief of Police, Acting Prosecuting Attorney, and the City Auditor.

INTRODUCED BY:

[Handwritten Signature]

DATE OF INTRODUCTION:

OCT 3 2019

Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

RESOLUTION 19-255

Introduced: 10/03/19 By: RON MENOR Committee: EXECUTIVE MATTERS AND LEGAL AFFAIRS


Title: RESOLUTION REQUESTING THAT THE CITY AUDITOR CONDUCT PERFORMANCE AUDITS OF THE HONOLULU POLICE DEPARTMENT AND DEPARTMENT OF THE PROSECUTING ATTORNEY.

Voting Legend: * = Aye w/Reservations

		CC-329 MANAHAN – RE-REFERRAL FROM COMMITTEE ON BUDGET TO COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS.
10/22/19	EXECUTIVE MATTERS AND LEGAL AFFAIRS	CR-318 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION. 7 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MENOR, TSUNEYOSHI, WATERS. 2 EXCUSED: MANAHAN, PINE.
11/06/19	COUNCIL	CR-318 AND RESOLUTION 19-255 WERE ADOPTED. 7 AYES: ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, WATERS. 2 ABSENT: ANDERSON, TSUNEYOSHI.

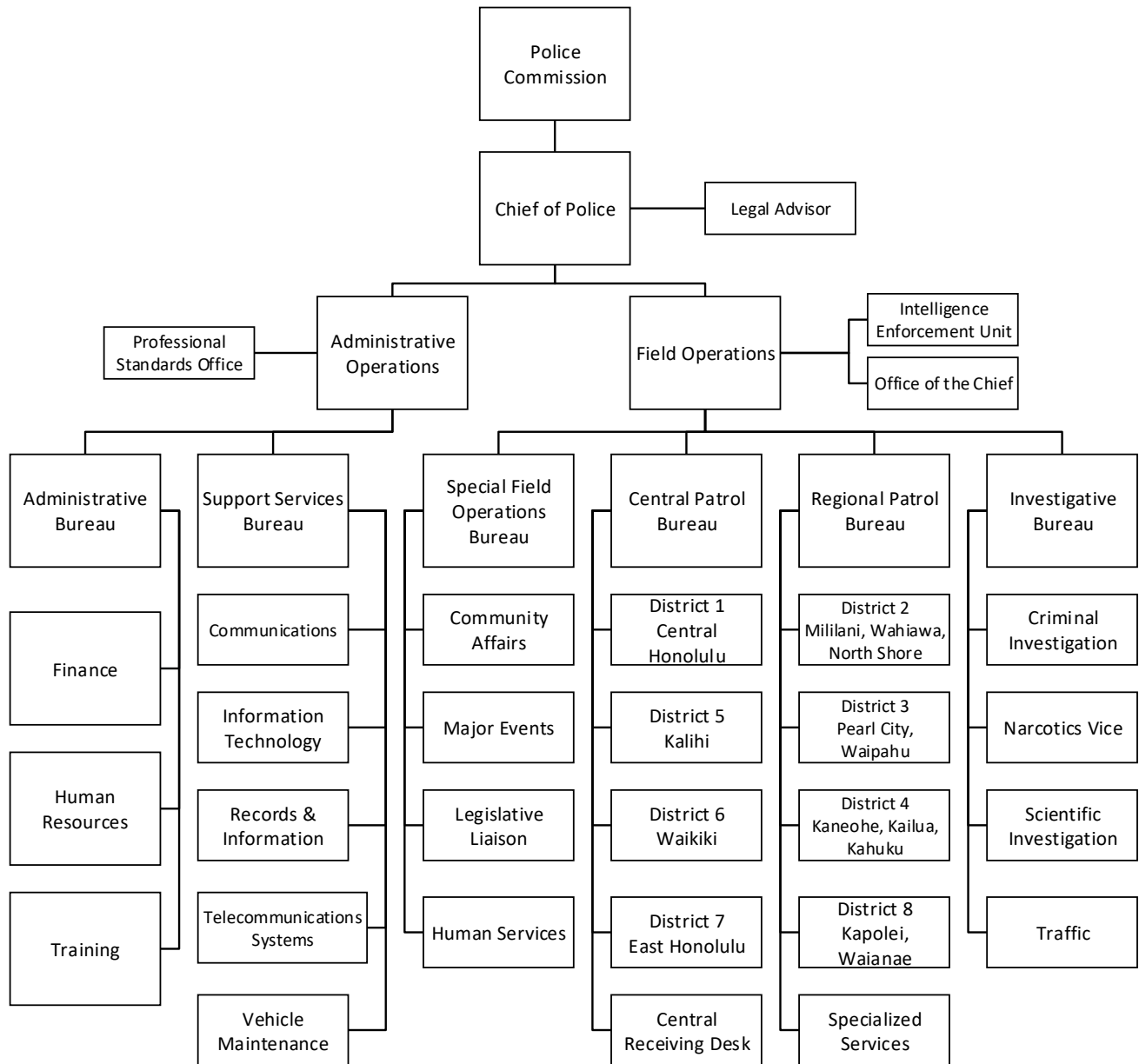
I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


GLEM TAKAHASHI, CITY CLERK


IKAIKA ANDERSON, CHAIR AND PRESIDING OFFICER

Appendix B

Honolulu Police Department Organizational Chart

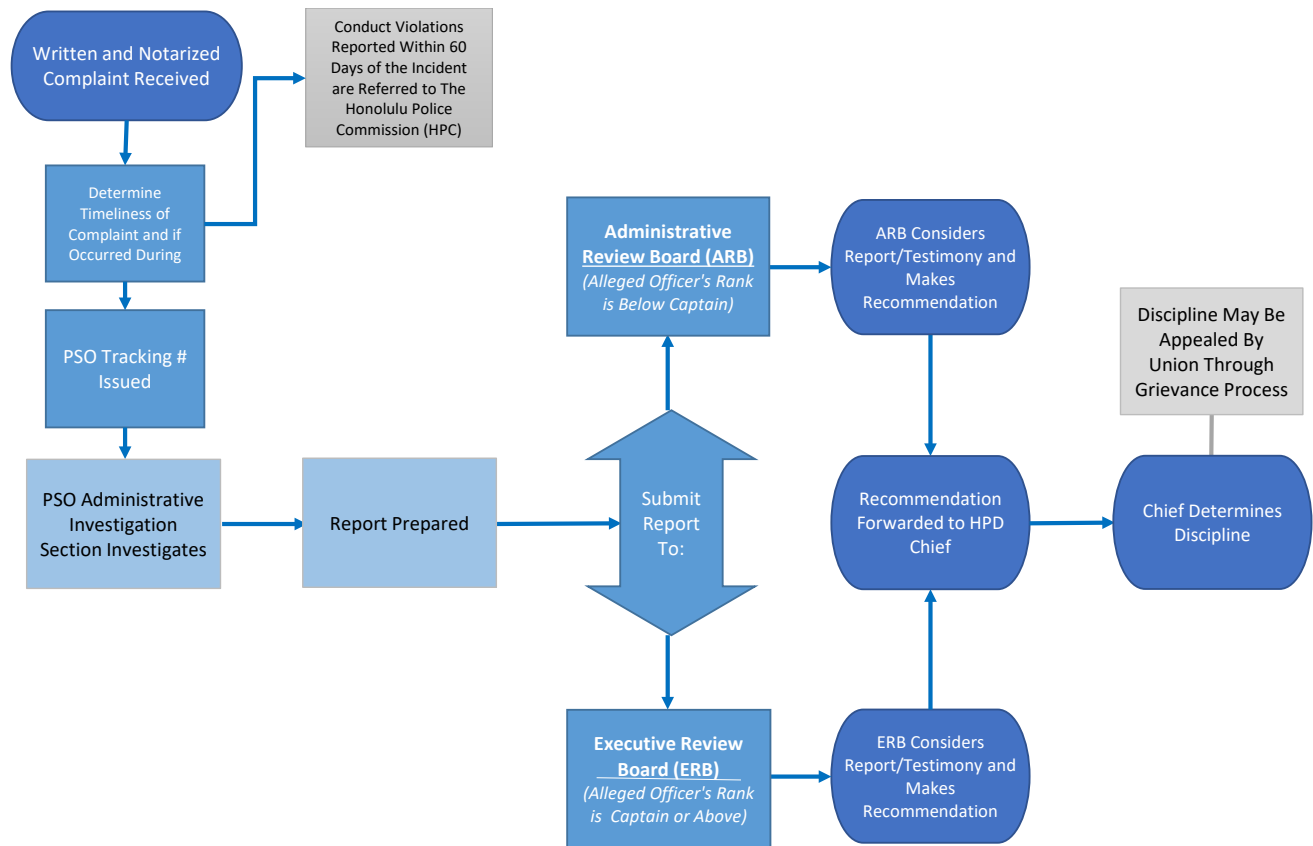


Source: Honolulu Police Department

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Appendix C

HPD Professional Standards Office Administrative Complaint Process

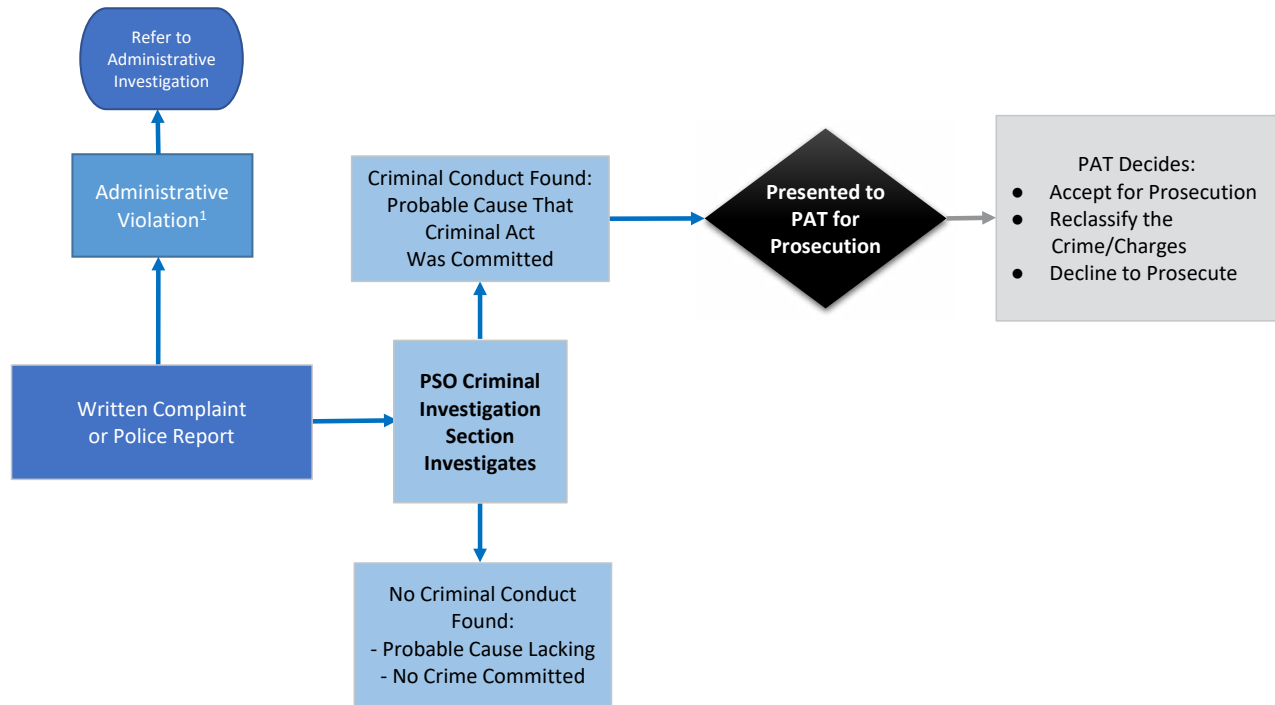


Source: Honolulu Police Department

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Appendix D

HPD Professional Standards Office Criminal Complaint Process



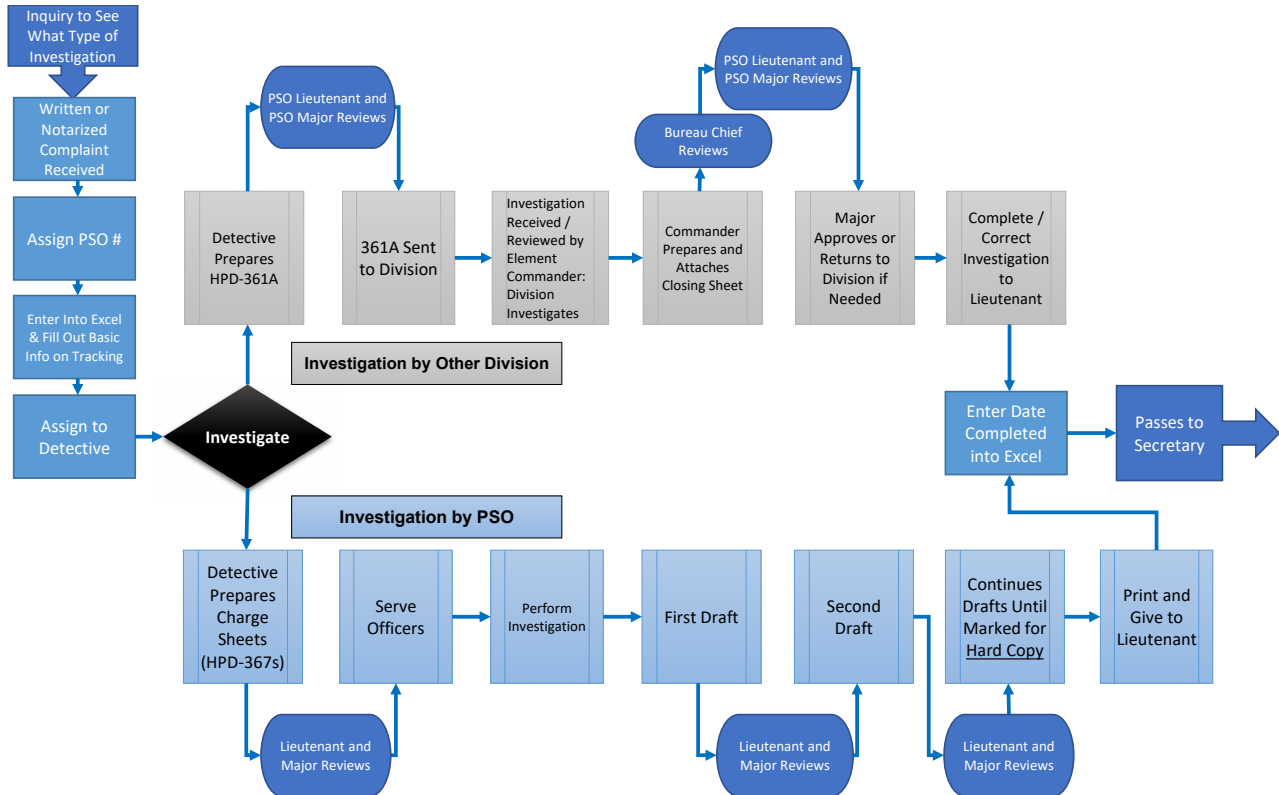
¹ If the criminal complaint/police report contains elements of an administrative violation, a separate independent administrative investigation is opened by the PSO Administrative Investigation Section. An administrative investigation may be initiated at any point during the criminal investigation process. Regardless of the status of the administrative investigation, the criminal investigation and process continues independently.

Source: Honolulu Police Department

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Appendix E

HPD Professional Standards Office Intake and Investigation Process

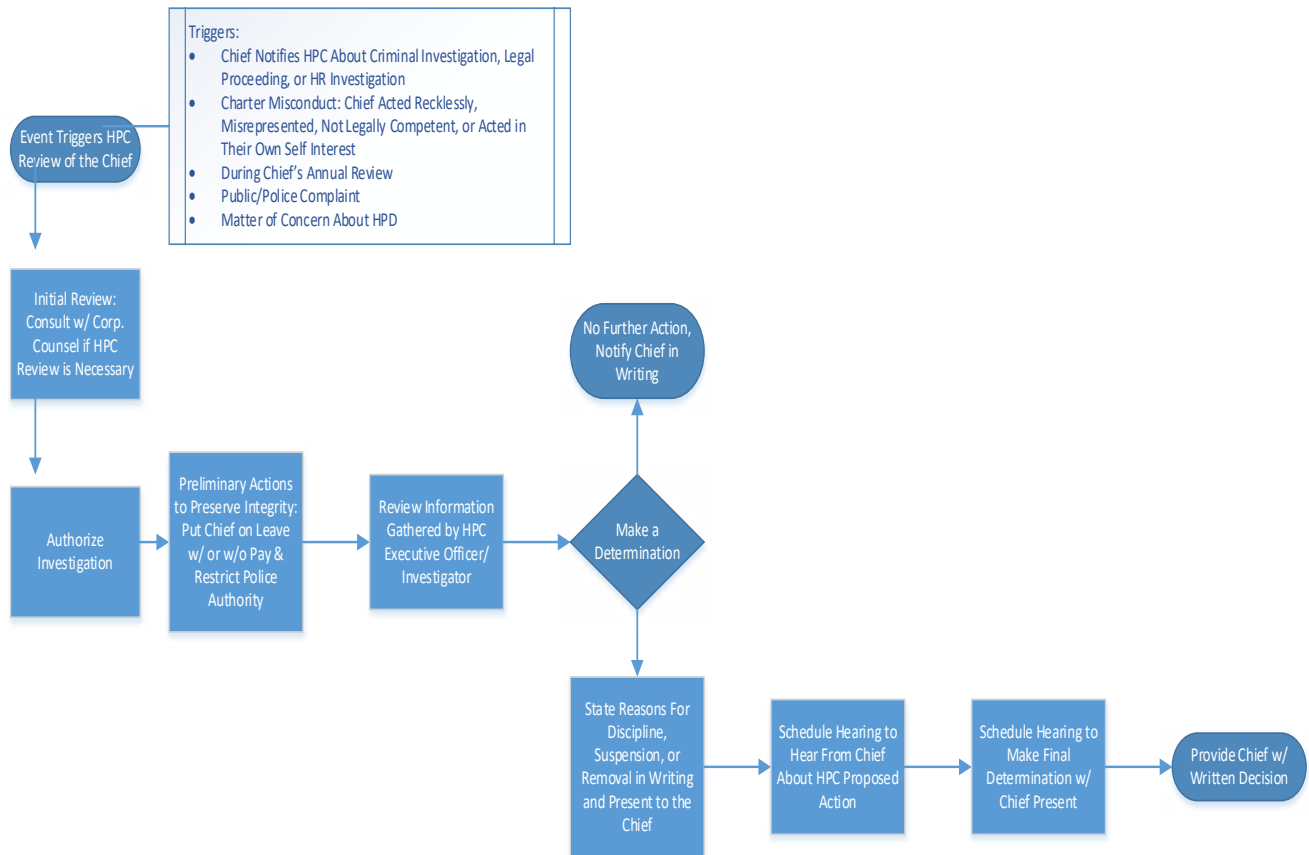


Source: Honolulu Police Department

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Appendix F

Honolulu Police Commission Process to Review the Chief's Conduct



Source: Honolulu Police Department

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Appendix G

Honolulu Police Commission 2019 Guidelines for Personnel Matters Involving the Chief of Police

The commission has developed guidelines for disciplining and removing the police chief

In May 2019, the police commission approved guidelines for personnel matters involving the chief of police. Exercising its revised powers under the charter, the commission developed guidelines to discipline, suspend or remove the chief of police the previous October. This could be for conduct specified in the charter; self-reporting of their involvement in a criminal investigation, a legal proceeding, or accused involvement in a personnel matter; and any information from their annual review, a police department or public complaint, or a matter involving the department. These guidelines would have applied to the situation involving the former police chief, given his involvement in a criminal investigation, and as a material witness in a criminal action.

Chief now must notify the commission about criminal investigations or legal actions concerning them

Under revised guidelines, the chief is now required to notify the commission as soon as possible about any conduct specified in the charter that could result in their removal or suspension, any criminal investigation related to their conduct, any legal action or potential legal action which concerns them, or any personnel action where the police chief is a named respondent. This requirement, if it had been implemented previously, would have applies to the former police chief.

The commission may take preliminary actions in the interest of preserving department integrity

If after initial review, there is a complaint or matter that requires commission action concerning the chief, the commission may take any or all of the following measures necessary to preserve operational integrity of the police department, after consulting with corporation counsel in executive session:

- Authorize the commission's executive officer or designee to investigate the complaint or matter;
 - Place the chief on administrative leave without pay pending investigation;
 - Place the chief on administrative leave with pay; and/or
 - Restrict the chief's police authority (ROPA).

This meeting will be held in executive session, if legal requirements are met, unless the chief requests an open meeting. The measures will be evaluated in open session. To preserve integrity, the chief will be instructed not to contact or retaliate against the complainant and/or witness, and not interfere with the commission's review.

The commission reviews gathered information and makes a determination

If the commission determines a review of the chief's appointment is warranted, the executive officer gathers all relevant information about the complaint, or the commission may procure an investigator to investigate the matter.

The commission meets in executive session to review the information gathered and makes a determination about further commission action:

- If no further action is required after review, the commission will notify the chief in writing.
- If the commission determines the information warrants further action on the chief's appointment:
 - o the commission will prepare a written statement of reasons for discipline, removal, or suspension, and provide it to the chief.
 - o a meeting is set to allow the chief the opportunity to provide reasons why the commission should not take such action. The meeting will be held in executive session or can be held in open meeting upon the chief's request.

The commission may take action to discipline, suspend or remove the chief after a hearing

After the opportunity for the police chief to present reasons why the commission should take no action, the commission may impose discipline, removal or suspension of the chief. The commission's final determination of will be made in writing and provided to the chief.

Appendix H

Complaint Processing and Internal Investigation Criteria Scorecard

<i>Process requirement</i>	<i>Count</i>	<i>Percent</i>	<i>Notes</i>
Complaint investigated?	49/51 36/36 32/32	96% 100% 100%	2017: Two referred to Honolulu Police Commission (HPC)
Within Statute of Limitations/ One Year Administrative Limit?	49/49 36/36 32/32	100% 100% 100%	
Criminal Offense: Timely Notification of Criminal Section?	18/18 17/17 16/16	100% 100% 100%	
Referred to Police Commission (60 days, official capacity)	2017: 2		
In official capacity identified	38/38 25/25 19/19	100% 100% 100%	Four civilian employees were also reviewed for civil service rules violations (4) in 2017. One in 2018.
Not in official capacity identified	9/9 10/10 7/7	100% 100% 100%	2019: official capacity not determined in six pending ARB reviews
Investigation completed within 60 days of complaint	2017: 26/47 2018: 27/32 2019: 15/30	2017: 55% 2018: 84% 2019: 50%	2017: 2 complaints from HPC after time frame 2018: Excludes Four (4) follow-up investigations initiated after time frame 2019: Excludes Two (2) Kealoha associated crimes outside time frame
Internal Complaint Form completed	49/49 36/36 32/32	100% 100% 100%	
Investigation Form completed	49/49 36/36 32/32	100% 100% 100%	
Professional Standards Office (PSO) Tracking Number Assigned	51/51 36/36 32/32	100% 100% 100%	
Subject of investigation Offered Answers Re: Duties and Actions	51/51 34/36 32/32	100% 94% 100%	2018: Two officers did not cooperate
Division Level Commander Checked Investigative Report	51/51 36/36 32/32	100% 100% 100%	
Rank Captain and Above, Executive Review Board (ERB) Decision	2017: 1/2 2019: 1/2	50%	2017: One involved HR, IT policy violations resolved by supervisor with counselling 2019: Former Chief ERB review pending

(Continued)

Process requirement	Count	Percent	Notes
Element Level, Division Commander Decision and Documentation	1/1	100%	2017 complaint
Appearance Requested/Written Reply Submitted (employee – opportunity to be heard)	1/1	100%	2017 complaint
Articles 6-8 Violation, Administrative Review Board (ARB) Decision and Documentation	44/44 36/36 26/32	100% 100% 81%	2019: Six (6) cases are pending ARB/ERB review
Notification Provided/Appearance Requested/Written Reply Submitted (employee – opportunity to be heard)	44/44 36/36 26/26	100% 100% 100%	2019: Six cases are pending ARB/ERB review and scheduling
ARB Recommend Action – Sustained Complaint	24/44 17/36 20/26	55% 47% 77%	
Chief of Police - Discipline	24/24 17/17 20/20	100% 100% 100%	2019: Six cases are pending ARB/ERB review
Termination Recommended – Notice of Pending Termination and Restriction of Police Authority Prepared	2017: 1 2018: 5 2019: 6		2017: One civilian also recommended for discharge 2018: One officer retired
Complaint Resulted in Final Disposition?	49/51 36/36 26/32	96% 100% 81%	2017: Two referred to HPC 2019: Six pending ARB/ERB review
Duration Administrative Investigation: Days	<u>Median</u> 2017: 72 2018: 30 2019: 60 <u>Average</u> 2017: 149 2018: 78 2019: 94		Median has been within 60-day limit (2018-19) HPD has strategic plan goal to reduce average by 20% <u>September 2020</u> HPD reported to HPC: - 120 day baseline (2017) - 90 days (2020), similar to our sample average
Duration ARB Review: Days	<u>Median</u> 2017: 69 2018: 316 2019: 210 <u>Average</u> 2017: 144 2018: 340 2019: 200		2017 sample median was similar to HPD reported baseline. However, median duration of sample reviewed has been much greater in duration lately, although decreasing significantly. HPD has strategic plan goal to reduce average by 10% <u>September 2020</u> HPD reported to HPC: - 64 days baseline (2017) - 49 days (2020)

Source: Sample of Honolulu Police Department Complaint and Investigation Files, 2017-2019

Appendix I

Background on EPIC (Ethical Policing is Courageous) Training

EPIC Training Background

In 2005, after Hurricane Katrina devastated portions of Louisiana's southern coast, the New Orleans Police Department had a crisis of police misconduct including high profile police beatings and unjustified shootings, which led to investigation by the Department of Justice in 2010. That inquiry resulted in a 2013 federal consent decree to overhaul the New Orleans Police Department, including policy changes and efforts to promote greater transparency and civilian oversight of the police force. In response, the police department designed the *EPIC* (Ethical Policing is Courageous) program as a model for reducing police misconduct and changing police culture that promoted *keeping silent and keeping secrets* when people do things wrong. New Orleans police are now trained to step in and stop bad acts when they see their colleagues misbehaving (e.g. assaulting a citizen, lying in a report, planting evidence), or when they see misconduct potentially about to happen.

The goal of the training is to provide officers with tools and strategies to help them prevent overreactions or potential misconduct by fellow officers by using tactics such as discreet passwords or codes that encourage a colleague to calm down, stop what they're doing or let them know that another officer is taking over. In nonemergency situations, *EPIC* teaches officers how to speak to co-workers privately about potential problems, or to ask another trusted colleague to approach a colleague who is engaging in troubling behavior. The program appeals to the natural affinity and deep sense of relationship that officers have with one another.

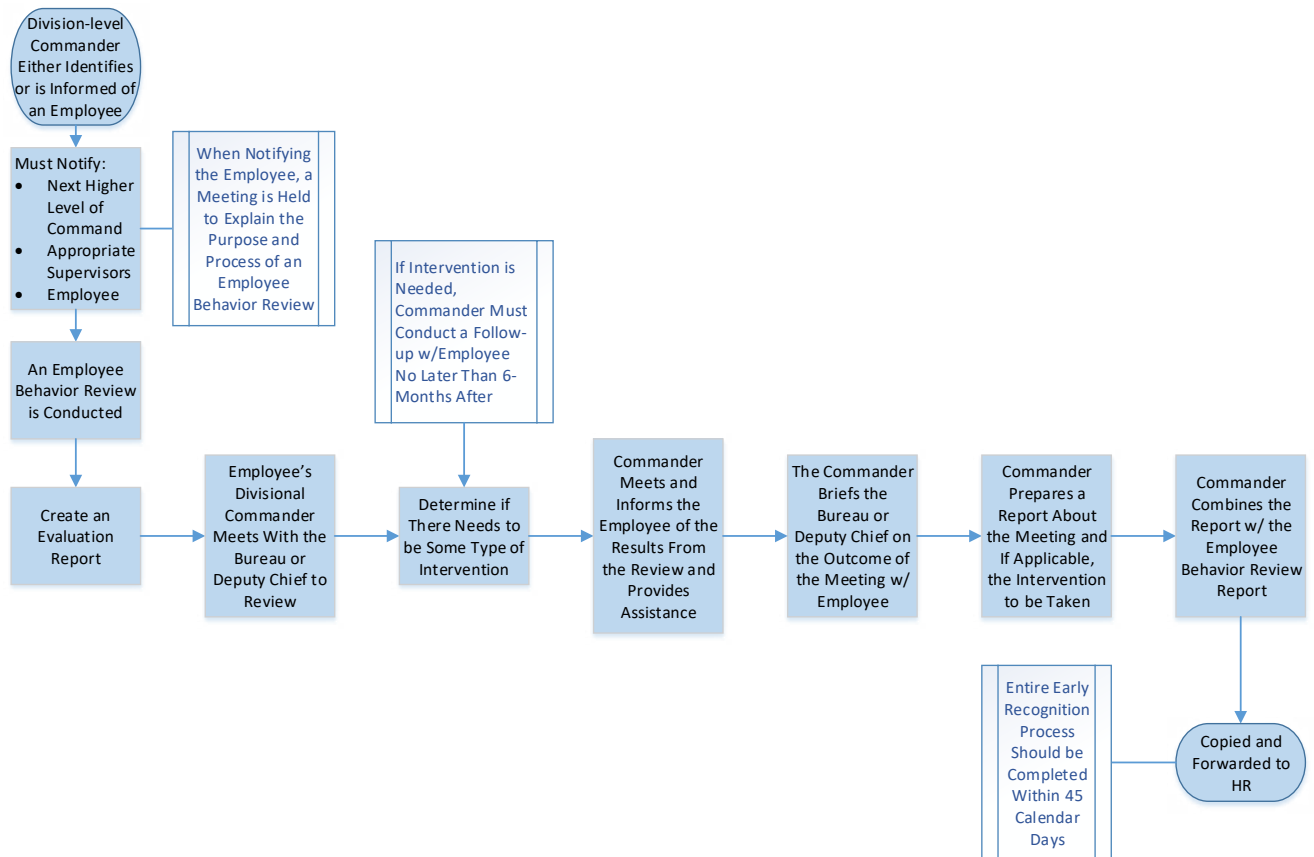
The underlying concept of the training and peer intervention is active bystandership. The idea is that once one bystander steps in, others often follow suit, and the peer pressure keeps the bad act from occurring. This training also helps the officers to overcome their conviction that loyalty to a fellow officer means accepting or joining in whatever he or she is doing, even if it is misconduct. Cultural change in this area can prevent situations where there is hesitation to intervene over expectations of loyalty and support of a fellow officer, and receiving ostracism from fellow officers and superiors, for the perceived disloyalty of an unwanted intervention.

The training has also had the benefit of reducing citizen complaints about the New Orleans Police Department by a significant percentage (13 percent).

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Appendix J

Honolulu Police Department Employee Early Recognition Process



Source: Honolulu Police Department

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Appendix K

HPD Employee Early Recognition Program Process

Honolulu Police Department Employee Early Recognition System

Employees whose behavior signals potential problems are identified

The division-level commander identifies an employee for review under early recognition when the employee displays behavior that signals potential problems in one or more of the following areas:

- Four, numbered Professional Standards Office (PSO) complaints against the employee within the previous 12 months or two within the previous 6 months;
- In the previous 12 months, an employee had:
 - Two sustained, numbered PSO complaints;
 - Three performance deficiencies and/or citizen complaints;
 - An allegation of domestic violence involving the employee as the perpetrator or victim;
 - Two incidents of use of deadly force;
 - Two incidents of use of a firearm outside of training;
 - Three cases of unjustified (unexplained or unexcused) failure to appear in court;
 - Three collisions (avoidable or unavoidable) in city/subsidized vehicles; and/or
 - Recurring absenteeism or tardiness.

The division level commander may also be informed by other department employees through their supervisors. The policy encourages employees at all levels to report to their supervisors any information about other employees whose behavior reflects any of the elements listed above.

Without regard to the employee's chain of command, the other supervisor must notify the employee's division level commander when they identify an employee under these guidelines.

Notifications are made about initiating an early recognition review

When a division-level or higher commander identifies an employee using early recognition guidelines the commander must notify the next higher level of command, any appropriate

supervisors in the employee's chain of command, and the employee. For notification, the division level commander meets with the employee to:

- explain the purpose and process of an employee behavior review;
- discuss the factors leading to the employee behavior review, citing specific examples of questionable/unacceptable behavior; and
- attempt to identify the causes of the conduct that led to the review.

The policy indicates that this meeting is designed to be supportive and informative in nature, and not punitive.

Employee behavior review examines conduct during review period

An employee behavior review is conducted, which includes a detailed examination of the individual's conduct for the time period when the employee exhibited the behavior that triggered the review. An evaluation report is produced which analyzes the following factors:

- Duty assignments during the period covered by the review;
- All recorded complaints;
- Disciplinary actions;
- On-duty vehicular collisions, and may also include off-duty collisions if any trend is suspected or the possibility of alcohol or drug use comes into question;
- Commendations, letters of appreciation, and awards;
- Interviews with prior and present supervisors, to include comments on the employee's productivity prior to and during the period covered by the review;
- Review of special duty prior to and during the period covered by the review;
- Review of sick time usage; and
- Review of overtime worked prior to and during the period covered by the review.

This review is normally conducted by the captain (or second in command at a lower rank) of the employee's division-level element.

Evaluation of report considers need for intervention

After the report is completed, the employee's divisional commander will meet with the bureau chief or deputy chief to review the information and determine if there is a need for intervention. Intervention options include:

- suggestions regarding a specific counseling or therapy program (e.g., one of the established Honolulu Police Department programs);
- training (e.g., firearms, driving, sensitivity, or any other appropriate subject);
- reassignment; and
- request for a psychological fitness-for-duty examination.

The commander meets with the employee again after the review recommends an intervention action. This meeting is intended to inform the employee of the results of the behavior review and provide assistance; and also to:

- inform them of any suggested intervention;
- provide clarification and answer any questions the employee may have regarding the behavior that prompted the review; and
- advise the employee of any departmental resources available to assist him or her

Division commander documents the review and follows up

The division-level commander briefs the bureau or deputy chief on the outcome of the meeting with the employee. The commander prepares a written report about the meeting and, if applicable, the intervention to be taken. This report is combined with the employee behavior review report, and the copies are maintained separately by the Human Resources Division until destroyed due to collective bargaining requirements.

The entire early recognition process (from identification to documentation) should be completed within 45 calendar days. The division-level commander must ensure that the process was completed, and deadlines are met.

If intervention was recommended, the division-level commander conducts a follow-up interview with the employee, no later than six months after to determine whether the employee wants further assistance.

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