
Audit of the Department of Public Safety, Sheriff Division

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 10-06
June 2010



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. Sunrise analyses are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. Health insurance analyses examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. Analyses of proposed special funds and existing trust and revolving funds determine if proposals to establish these funds are existing funds meet legislative criteria.
7. Procurement compliance audits and other procurement-related monitoring assist the Legislature in overseeing government procurement practices.
8. Fiscal accountability reports analyze expenditures by the state Department of Education in various areas.
9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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OVERVIEW

Audit of the Department of Public Safety, Sheriff Division

Report No. 10-06, June 2010

Summary

This is the first audit of the Department of Public Safety, Sheriff Division, by the Office of the Auditor. The audit was requested by the 2009 Legislature in Act 162 and House Concurrent Resolution No. 92, House Draft 1.

Our audit of the Sheriff Division began by focusing on the warrant process and examining the perception that a backlog of more than 50,000 outstanding traffic warrants represented a potential \$20 million in lost revenue to the State. Once fieldwork commenced, however, we found that the multi-million dollar figure associated with unserved traffic warrants was inflated and should be reduced by half. The perceived millions in lost revenue were a misconception as the amount of bail associated with unserved warrants does not equal the money ultimately collected from fines and fees associated with the service of those warrants. For example, in August 2009, deputy sheriffs served and arrested an individual with four outstanding warrants that totaled \$20,250. However, the defendant was unable to post bail or pay the fines assessed by the court and was ordered to perform community service and serve time in jail instead. In this case, despite the existence of the warrants, no money was ever collected on them. However, the backlog of warrants was a red flag that drew our attention to more pressing problems within the Sheriff Division as a whole.

The State Constitution gives the responsibility and power to the State to provide for the safety of its citizens from crimes against persons and property. State law tasks the Department of Public Safety with the responsibility of formulating and implementing state goals and objectives for law enforcement programs. However, our audit found that since the creation of the department in 1989, the Sheriff Division, saddled with an ill-defined role and a lack of mission clarity, has struggled to uphold its expanded law enforcement duties and responsibilities. As the State's law enforcement needs have expanded, confusion over the extent of the State's law enforcement responsibilities has grown. This confusion and uncertainty is the result of vague constitutional language, a broad interpretation of statutory authority, and the consolidation of functions previously deemed incompatible. As a result, the law enforcement responsibilities of the Sheriff Division have expanded beyond the service of process and the security of state buildings to now include drug enforcement, illegal immigration, homeland security, fugitive arrests, criminal investigations, eviction proceedings, and traffic enforcement.

The Sheriff Division is further hampered by ineffective leadership that has resulted in a law enforcement agency that lacks guidance and direction. Since the inception of the Department of Public Safety, a state law enforcement program or strategic plan defining the Sheriff Division's mission and setting boundaries based upon



its capabilities has never been fully developed. Inadequate law enforcement training, issues pertaining to equipment, and an absence of procedures related to the staffing and service of the courts have raised questions regarding the safety of the public, the courts, and the deputy sheriffs themselves. For example, the department began issuing ballistic protective vests to deputy sheriffs in 2004. Based upon the five-year manufacturer's warranty, 69 of the vests needed to be replaced at the end of 2009. Of this number, ten vests had already expired as of May 2009. As of March 2010, none of the 69 vests has been replaced.

In addition, PSD acknowledged that there are not enough deputy sheriffs to carry out its functions at many of the courts. Lacking a formal agreement with the courts, the Sheriff Division is without staffing standards for the safety of the deputy sheriffs, the custodies, and court personnel.

Recommendations and Response

We recommend that the Department of Public Safety perform a risk assessment of each section of the Sheriff Division in the course of developing a comprehensive strategic plan for the division that, at a minimum, meets the requirements of Act 100, SLH 1999. The department should also consider proposing statutory amendments to align with the division's duties and functions as indicated by the risk assessment. We also suggest that the department pursue accreditation for the Sheriff Division from the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), to ensure that proper law enforcement policies and procedures are enacted and followed.

In its response, the department noted that it would address and/or implement solutions to some of the specific problem areas noted, acknowledging that some deficiencies are of long standing. The department indicated that it had concerns regarding the presentation of the findings; however, it did not provide any details to dispute our findings.

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Submitted by

THE AUDITOR
STATE OF HAWAI'I

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Foreword

This is a report on the management audit of the Department of Public Safety, Sheriff Division, as requested by Act 162, Session Laws of Hawai'i 2009, and House Concurrent Resolution No. 92, House Draft 1, of the 2009 legislative session. We conducted the audit pursuant to Section 23-4, Hawai'i Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We wish to express our appreciation for the cooperation and assistance extended to us by the Department of Public Safety, the Hawai'i State Judiciary, the Honolulu Police Department, and others whom we contacted during the course of our audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This audit of the Department of Public Safety, Sheriff Division, was requested by the 2009 Legislature in Act 162, Session Laws of Hawai'i 2009, and House Concurrent Resolution No. 92, House Draft 1. Both the legislation and the resolution, in identical provisions, request the Auditor to conduct a financial audit of the department to determine:

1. The total amount of funds requested by the department to advance its mission and goals and the percentage of such funds allocated to the Sheriff Division;
2. Issues relating to the department's strategic and financial plan, its budgeting process, and its process for forecasting future financial needs; and
3. Any and all matters that the Auditor would normally undertake as necessary and appropriate in a system-wide financial audit.

In addition, the Auditor is requested to conduct a management audit of the department that includes the following issues:

1. How priorities for expenditures within the department are determined;
2. What responsibilities of the Sheriff Division are not adequately achieved due to insufficient resources;
3. The adequacy of the method by which the amount of pay provided to officers in the Sheriff Division is calculated;
4. Any disparities in pay between the officers of the Sheriff Division and other law enforcement officers, particularly county police officers, in the state, bearing in mind the amount of training and responsibilities involved in each area of law enforcement; and
5. An examination and evaluation of alternative administrative structures for law enforcement and corrections functions, including but not limited to:
 - a) Creation of a new executive department for the Sheriff Division;

- b) Placement of the Sheriff Division in a different executive department; and
- c) Functional separation of the Corrections Division and Sheriff Division within the department, with different heads, budgets, and support staff.

Background

Department of Public Safety

The mission of the Department of Public Safety (PSD) is to provide for the safety of the public and state facilities through law enforcement and correctional management. Under the supervision of a single executive, the department is organized into three main divisions: the Administration Division, Corrections Division, and Law Enforcement Division. Each division is headed by a deputy director. Four additional entities are administratively attached to the department: the Hawai'i Paroling Authority, Crime Victims Compensation Commission, Corrections Population Management Commission, and Correction Industries Advisory Committee. The department is funded primarily through state general fund appropriations and also receives federal grant awards. Exhibit 1.1 shows the annual expenditures of each division of the department for fiscal years 2003 through 2008.

**Exhibit 1.1
Annual Expenditures of the Department of Public Safety, FY2003-FY2008**

	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008*
Corrections	\$107,151,712	\$109,230,313	\$112,986,385	\$118,017,667	\$126,678,392	\$198,998,697
Law Enforcement	13,692,109	13,950,110	15,112,769	15,735,425	17,495,628	19,334,675
Administration & Attached Agencies	42,547,451	42,168,168	50,619,215	60,445,029	69,518,170	21,157,619
Total	\$163,391,272	\$165,348,591	\$178,718,369	\$194,198,121	\$213,692,190	\$239,490,991

Source: Department of Public Safety

*In FY2008, the Department of Public Safety transferred costs of out-of-state and federal detention centers from its Administration Division to Corrections Division.

The department currently employs approximately 2,700 staff. Exhibit 1.2 shows the organizational structure of the Department of Public Safety.

The Administration Division oversees the department's expenditures, capital improvement projects, procurement of goods and services, and statewide training program for both uniformed and civilian departmental personnel.

The Corrections Division manages the State's community correctional centers (jails) and correctional facilities (prisons), and provides for the care, custody, control, and educational and reintegration programs for inmates.

The Law Enforcement Division is responsible for preserving the peace. The division protects the public in designated areas, including all state property and facilities, and enforces specific laws and rules for the prevention and control of crime. The division is made up of the Narcotics Enforcement Division and the Sheriff Division.

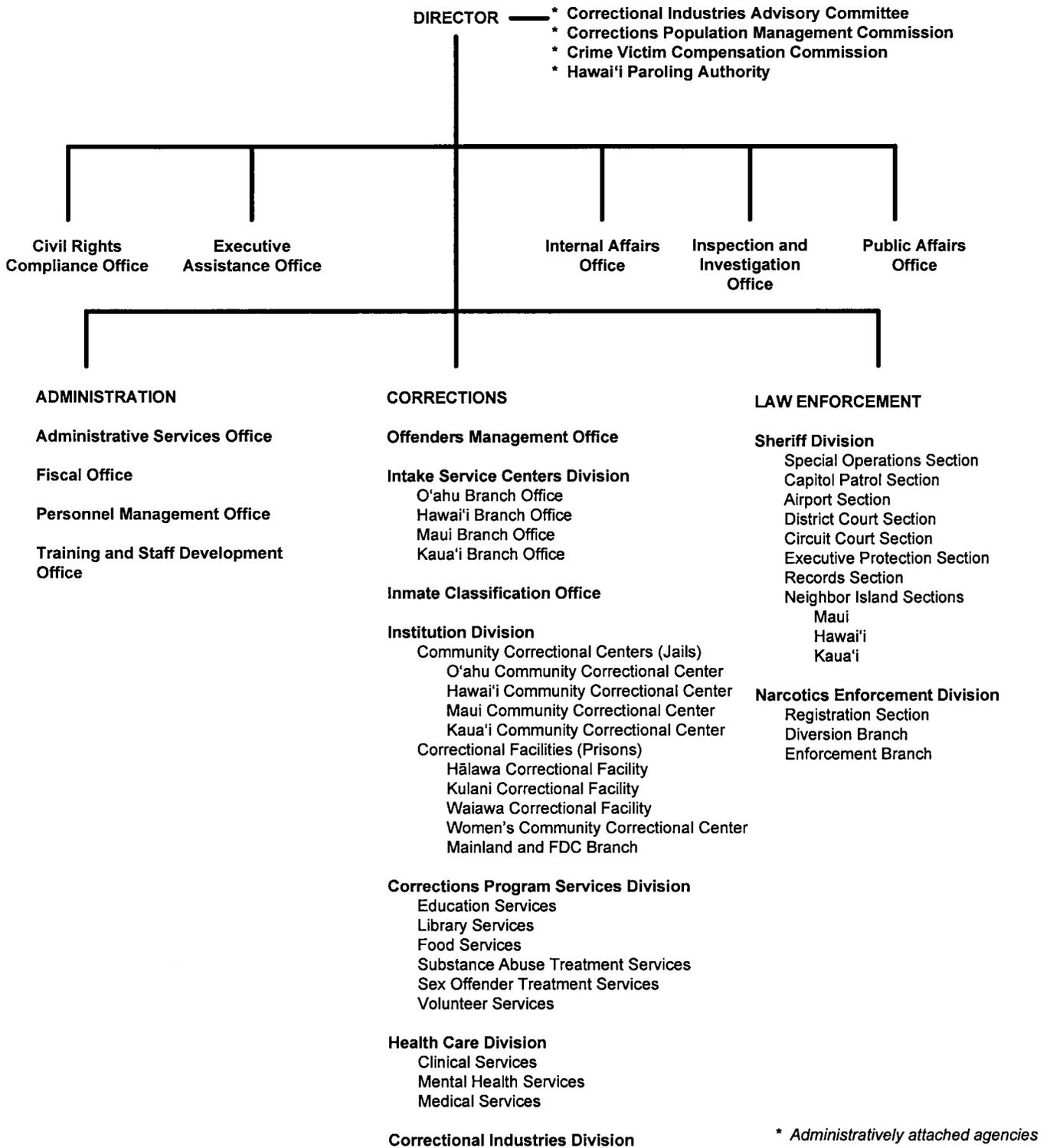
The Sheriff Division

The modern Sheriff Division traces its roots to 1963 when the Legislature created the Office of the Sheriff within the Department of the Attorney General. The sheriff and his deputies were subject to the supervision and control of the attorney general. Duties included the delivery and execution of any order of the court, as well as the performance of other functions as directed by the attorney general. In connection with these responsibilities and through the authorization and direction of the attorney general, sheriffs were granted police powers, including the power of arrest.

In 1975, the Legislature transferred the Office of the Sheriff from the Department of the Attorney General to the Judiciary. This transfer did not change the duties of the sheriffs; rather, it placed them under the authority and direction of the chief justice rather than the attorney general. Under the specific authorization and direction of the chief justice, sheriffs maintained their police powers; and their duties continued to include the service of process and execution of any order of the court.

In 1984, the Office of the Sheriff created a warrants detail and officially took over administering traffic warrants for the island of O'ahu, which included booking and receiving desk operations in which defendants are processed for identification purposes or arrested and processed

Exhibit 1.2 Organization of the Department of Public Safety



Source: Compiled by the Office of the Auditor based on the 2008 Department of Public Safety Annual Report

subsequent to “on-view” arrest and/or an arrest made by legal documents. Later that year, the office began serving grand jury warrants. The Warrants Section of the sheriff’s office has since expanded to encompass parole revocation and probation warrants. Today, the Warrants Section receiving desk operations can book and receive arrestees statewide.

Thereafter, the Legislature passed Act 211, Session Laws of Hawai‘i (SLH) 1989, which transferred the Office of the Sheriff into the newly formed Department of Public Safety. The purpose of the consolidation was to ensure better organization and coordination of public safety functions, allow for standardized training, and establish a “career ladder” for public safety employees. Along with the Office of the Sheriff, the act also transferred into the new Department of Public Safety the Department of Corrections, the State Law Enforcement Office (except for executive security functions and employees), the Narcotics Division of the Department of the Attorney General, and the law enforcement and security functions of the Department of Transportation.

Duties and functions of the Sheriff Division

The mission of the Sheriff Division is to provide general law enforcement services so as to preserve the public peace, protect the rights of persons and property, prevent crime, and detect and arrest law offenders. The Sheriff Division’s goal is to provide for the protection and safety of the people of Hawai‘i through law enforcement/security services at state facilities, lands, harbors and airports, and within the jurisdictional boundaries of the State of Hawai‘i. The division has formulated the following objectives to support achievement of its goal:

1. To serve and protect the public, government officials, and state personnel and property under its jurisdiction by providing law enforcement services which incorporate patrols, surveillance, and educational activities;
2. To protect state judges and judicial proceedings, secure judicial facilities, and safely handle detained persons and provide secure transport for persons in custody; and
3. To execute arrest warrants for the Judiciary and the Hawai‘i Paroling Authority.

State law enforcement officers – that is, deputy sheriffs of the Sheriff Division – have police powers, including the power of arrest. The Sheriff Division is organized into eight sections:

- **The Special Operations Section**’s functions include apprehending fugitives; entering and securing sites where search and arrest warrants are being executed; receipting, recording,

and serving arrest warrants and other legal documents issued by courts; training and maintaining canines to help investigate crimes and detect narcotics or explosives; and transporting persons in criminal custody under strict security measures.

- **The Capitol Patrol Section** provides law enforcement in state facilities including, but not limited to, the Civic Center Complex, judiciary buildings, the State Capitol, Washington Place, the Hawai'i State Hospital and Waimano Hospital, and the State Department of Defense's Hawai'i National Guard Armory.
- **The Airport Section**, pursuant to a memorandum of agreement with the Department of Transportation (DOT), provides law enforcement for the Honolulu International Airport and surrounding areas under the jurisdiction of DOT-Airports, the Kalaeloa Airport, and Dillingham Airfield.
- **The District Court Section** operates two units: a Patrol Unit, which provides security and protective services to all District Court buildings and surrounding property; and a Cellblock Unit, which receives and processes arrestees at court and transports them to appropriate agencies and authorized individuals.
- **The Circuit Court Section** operates three units: the Supreme Court Unit, which provides security for judges, courts, and surrounding property; a Patrol Unit, which provides security and protective services to Circuit Court Judiciary buildings and surrounding property; and a Cellblock Unit, which receives and processes arrestees at court and to the appropriate agencies and authorized individuals.
- **The Executive Protective Section** provides personal protective services to key state officials and other dignitaries as directed by the director of public safety.
- **The Records Section** is the central clearinghouse for the collection, examination, storage, and disposal of all official records, documents, and reports generated and used by the division. This section includes the Receiving Desk Unit, which serves as the central booking and receiving area for processing arrestees by the Sheriff Division and other agencies on O'ahu. For Neighbor Islands, arrestees are processed by the Sheriff Division's deputies at the respective county police departments' receiving desks.
- **Neighbor Island Sections** operate on Maui, whose jurisdiction includes Lāna'i and Moloka'i; the Big Island, both at Hilo and Kona; and on Kaua'i. The primary functions of each Neighbor

Island Section are to provide general law enforcement services; ensure safety and protection of all persons within premises controlled by courts of the island; and assign and control the service of court orders within each respective county.

The state sheriff is the head of the Sheriff Division. The first deputy sheriff serves as supervising officer for the various sections of the division. Both positions are appointed by the director of public safety and are exempt from civil service. Employees of the Sheriff Division are members of the Hawai'i Government Employees Association (HGEA) within bargaining Units 3 and 4. These units include non-supervisory and supervisory employees in white-collar positions. Exhibit 1.3 shows the organizational structure of the Sheriff Division.

Previous Audits

While we have conducted audits on both the Department of Public Safety (PSD) and its Corrections Division in the past, this is the first audit we have undertaken of either the Sheriff Division or the Law Enforcement Division.

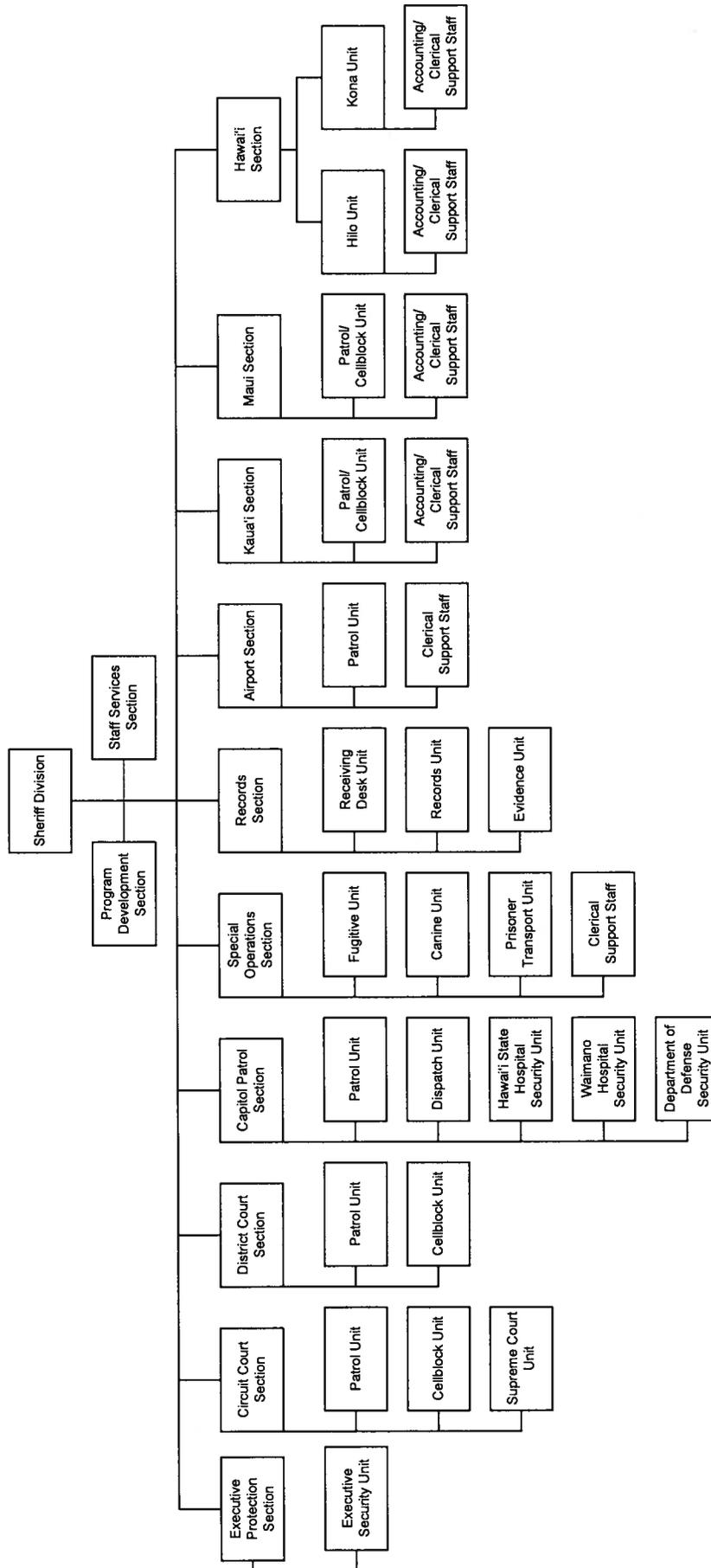
Objectives of the Audit

1. Determine whether the Sheriff Division effectively performs its duties to enable an efficient warrant process.
2. Determine whether the Sheriff Division can effectively accomplish its mission to protect the public safety.
3. Make recommendations as needed.

Scope and Methodology

Act 162, SLH 2009, and House Concurrent Resolution 92, House Draft 1, asked the Auditor to conduct a financial and management audit of the Department of Public Safety, Sheriff Division. This report focuses only on the management of the Sheriff Division. This is for two reasons: one, the department's Administration Division provides fiscal management services for the entire department, and the Administration Division fell outside the scope of our audit work; and two, an annual financial statement audit of the entire department was in progress at the time of this audit. Those findings will be reported separately.

**Exhibit 1.3
Organization of the Department of Public Safety, Sheriff Division**



Source: Department of Public Safety

We were further requested by the Legislature to evaluate issues regarding Sheriff Division officers' pay. Although we recognized there are issues associated with pay, we determined such discussion could not be incorporated into the scope of this audit without negatively impacting our work.

This audit therefore covered the management practices of the department and the Sheriff Division. We focused on present-day operations, but included analyses of information from inception of the department in 1989 to the present.

The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), created in 1979, serves as a credentialing authority through the collaboration of the following law enforcement executive associations:

- International Association of Chiefs of Police;
- National Organization of Black Law Enforcement Executives;
- National Sheriffs' Association; and
- Police Executive Research Forum.

We used CALEA's Standards for Law Enforcement Agencies, 5th Edition as our benchmark for specific evaluation criteria. Both the Honolulu and Maui Police Departments have been accredited by CALEA.

Our audit procedures included: interviews with members of the Department of Public Safety and the Sheriff Division, as well as state administrators; an examination of operating plans, policies, procedures, reports, and other relevant documents and records to assess the Sheriff Division's effectiveness and compliance with pertinent laws; and a review of controls governing personnel management. We also conducted site visits to observe operations and examine equipment used by the division, and we conducted interviews and examined materials related to other law enforcement agencies.

The audit was performed between July 2009 and March 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Chapter 2

Lack of Guidance and Leadership Has Resulted in Defective Law Enforcement

This audit began as an examination of the Sheriff Division's service of warrants for the Judiciary, as there had been reports of a substantial backlog and millions of dollars in unrealized revenue to the State. While we found the magnitude of unrealized revenue to be overstated, numerous inefficiencies within the Sheriff Division's warrant process were discovered. These inefficiencies were not limited to the section serving the warrants; rather, they were symptoms of flaws in the operations and governance of the Sheriff Division as a whole. As such, the focus of our audit shifted to whether the Sheriff Division was able to meet its responsibilities for the State's law enforcement needs.

Although the State has a constitutional responsibility to preserve the public peace and prevent crime, state law does not clearly define how this should be accomplished. In addition, the division has assumed a broad mission which it is unable to fulfill, thus hampering its ability to serve as a capable law enforcement agency. To compound the problem, departmental directors have not satisfied their statutory responsibility to develop the State's law enforcement program. This lack of clearly defined laws and absence of strategic leadership have resulted in concerns regarding the Sheriff Division's ability to protect the public's safety.

Summary of Findings

1. Inefficiencies in the warrant process point to larger problems in the Sheriff Division.
2. Ambiguous laws allow for an expanding law enforcement role that the division struggles to fulfill.
3. Poor leadership has led to a division that may be a risk to the public it is supposed to protect.

Inefficiencies in the Warrant Process Point to Larger Problems in the Sheriff Division

Our audit of the Sheriff Division began by focusing on the warrant process and examining the perception that a backlog of more than 50,000 outstanding traffic warrants represented a potential \$20 million in lost revenue to the State. Once fieldwork commenced, however, we found that the multi-million dollar figure associated with unserved traffic warrants was inflated; the true position amounted to approximately half that amount. The perceived millions in lost revenue were a misconception, because the amount of bail associated with unserved warrants does not equal the money ultimately due from fines and fees associated with the service of those warrants. More importantly, we found deficiencies within the Special Operations Section, which serves warrants, that were symptomatic of larger problems within the Sheriff Division as a whole.

Misconceptions regarding the warrant process created an illusory \$20 million in lost revenue

In early 2006, *The Honolulu Advertiser* reported that 61,500 outstanding bench warrants were “costing the state a potential \$20 million in unpaid fines and fees.” The *Advertiser* further reported that the number of unserved traffic warrants numbered about 51,000 and that the average value of unposted bail bonds and uncollected fines was more than \$400 each. The *Advertiser* concluded that the value of the roughly 51,000 unserved traffic warrants “could rise to as much as \$20.4 million.” Later that year, the Legislature passed Senate Concurrent Resolution 91, which established a task force to examine the backlog of unserved arrest warrants. In December 2006, the task force issued its report; in reference to the \$20 million in unpaid fines and fees it noted that, “The task force is uncertain how this number was derived.”

According to the Judiciary Information Management System (JIMS), the computer-based system used to record traffic warrant information, at the end of fiscal year 2009 there were 54,674 outstanding traffic warrants, representing \$10,248,311 in uncollected bail. Traffic warrant data provided by the Judiciary is shown in Exhibit 2.1.

We conducted interviews with the deputy administrative director of the courts and the court administrator of the Legal Documents branch of the District Court of the First Circuit, and collected data from the Judiciary’s Information Technology and Communications Division, to determine the process by which traffic warrants are issued and fines/fees collected. We learned that judges issue warrants when defendants do not appear in court as scheduled. Bail is then generally set in an amount equal or close to the maximum amount the defendant would be liable for in fines/fees if found guilty. In serious traffic cases, judges may require higher bail amounts for offenses such as multiple infractions, driving under the influence (DUI), or excessive speed violations. When warrants are

Exhibit 2.1**Traffic Warrant Data for Fiscal Years 2003-2009**

Period	Warrants Issued Per Fiscal Year	Warrants Served/ Resolved Per Fiscal Year	Total Number of Warrants Outstanding	Total Amount of Bail Issued for Outstanding Warrants
FY2003	19,253	11,307	70,764	\$9,262,503
FY2004	20,854	12,720	67,544	\$9,807,075
FY2005	21,272	9,302	50,328	\$9,901,219
FY2006	22,823	14,147	52,838	\$10,693,878
FY2007	23,889	15,929	54,104	\$12,855,261
FY2008	21,780	14,932	54,424	\$11,915,161
FY2009	18,971	12,899	54,674	\$10,248,311

Source: Hawai'i State Judiciary

served by law enforcement officers, defendants are arrested and given an opportunity to post bail in order to be released until their court appearance; otherwise, no money is collected, and they are held in custody until their court appearance. If a defendant posts bail, the bail money is held until trial, when a judge determines whether the bail may be used towards the cost of the fine (if the defendant is found guilty). If a defendant fails to again appear in court, bail is forfeited and another warrant issued, usually with a higher bail amount. All fees collected by the Judiciary are deposited into the state general fund.

Although the amount of bail is based on potential fines and fees, the amount actually collected can be less. Discrepancies occur when:

- 1) A judge sets a very high bail due to the seriousness of the charge (and/or likelihood of failure to appear), but the fine is lower than the bail amount set;
- 2) A defendant is found not guilty, and the bail is returned;
- 3) A defendant is unable to pay a fine, so the sentence is converted into community service;
- 4) A defendant is sentenced to jail in lieu of being fined; or
- 5) A fine is waived by a judge.

For example, in August 2009, deputy sheriffs served and arrested an individual with four outstanding warrants, totaling \$20,250. The \$20,250 was reported as "bail issued" by the Judiciary and therefore perceived as potential revenue for the State. Though the warrants were

served, the defendant was unable to post bail, so remained in custody. The defendant was ultimately fined and sentenced to community service and jail time; however, the fines were never paid, so they were sent to a collection agency in December 2009. In this case, the defendant remained in custody until his hearing about a week later, and no money was ever collected.

Although we asked the Judiciary to provide the amount of fines and fees actually collected for the underlying cases on which traffic warrants were served, we were informed that this data is very difficult, if not impossible, to provide for two reasons.

First, a case is not always adjudicated within the same fiscal year as that in which the warrant for it is served. When a warrant is served, the defendant is given the opportunity to post the bail and be released. If the defendant fails to appear in court on the appointed date, the bail is forfeited and a new warrant is issued. In this case, although bail is forfeited, the potential fines and fees for the alleged crime have yet to be ordered. If the new warrant cannot be served or the defendant again fails to appear in court despite service of the new warrant, the fines and fees associated with the underlying case may not be paid in a timely manner, or even at all, if the case is never adjudicated. There is also the possibility that a case will ultimately be dismissed or that judgment will include a non-monetary sentence, such as jail time or community service.

Second, it is difficult for the Judiciary to provide the amount of fines and fees associated with specific traffic warrants because fines and fees are not always paid on time. After a defendant is found guilty and fined, the defendant is granted time to pay. For fines under \$500, defendants have 90 days to pay. For fines over \$500, defendants have 180 days to pay before the fine is turned over to a collection agency. According to a JIMS administrator, under its current contract, the collection agency has two years in which to collect the fine before it is returned to the Judiciary and classified as “uncollectable.” In all, the Judiciary has ten years in which to collect a fine, based on the statute of limitations for court judgments. Because of this potentially lengthy amount of time between when a warrant is served and when fines/fees are actually collected, according to a JIMS administrator it would be almost impossible to identify fines/fees imposed with the warrant(s) associated with their underlying case.

We further found that traffic warrants account for the overwhelming majority of unserved warrants, yet are the lowest priority of warrants served by the Sheriff Division’s Special Operations Section. An actual traffic warrant is provided as Appendix A to this report. The Special Operations Section, which serves grand jury, parole violation, and traffic warrants for O‘ahu, includes 18 deputy sheriffs assigned to serve

warrants, a commanding officer, and four administrative staff. When serving warrants, the deputy sheriffs are divided into nine teams of two each. Since grand jury and parole violation warrants are associated with convicted criminals and felony crimes, these warrants are given highest priority. As such, only two teams are assigned to focus on traffic warrants. The deputy administrative director of the courts told us there are not enough deputy sheriffs to serve all warrants. He believes that until the Sheriff Division receives more deputies, there will always be a backlog of warrants.

The task force established by Senate Concurrent Resolution 91 in 2006 echoed this assertion in its report when it stated, “Even if all of the Task Force’s recommendations are implemented, however, the warrant backlog is expected to grow if the number of law enforcement officers available to serve warrants does not keep pace with the ever-increasing number of outstanding warrants.”

The \$20 million of unrealized revenue associated with outstanding traffic warrants appears to be a misconception. Not only did we find that the amount of fines and fees collected on outstanding warrants is usually less than the original bail amount, but furthermore, generating revenue is not the purpose of the warrant process. According to the deputy administrative director of the courts, the purpose of warrants is to ensure accountability for crimes committed and provide consequences for failing to appear in court, not to generate revenue. Even so, the backlog of warrants was a red flag that drew our attention to more pressing problems within the warrant process.

Operational issues associated with the warrant process point to broader problems within the Sheriff Division

The Sheriff Division’s Special Operations Section is responsible for serving warrants issued by state courts, the Hawai‘i Paroling Authority, and the Intake Service Centers Division, an agency within the Corrections Division responsible for the evaluation, assessment, and supervision of offenders. In our examination of the Special Operations Section, we focused on issues pertaining to the warrant process. According to interviews with deputy sheriffs in the Special Operations and Records sections, a lack of resources has contributed to problems with the warrant process. Examples of this include poor radio system coverage and the relocation of the receiving desk to a maximum security prison.

We were informed by some of the section’s deputy sheriffs, as well as a Sheriff Division dispatcher, that the division’s radio system does not provide adequate coverage around O’ahu, sometimes leaving deputy sheriffs out of contact with fellow officers and their dispatcher. According to CALEA law enforcement standards, the basic function of a communications system is to satisfy the immediate information needs

of a law enforcement agency in the course of its normal daily activities and during emergencies. These standards require that on-duty officers have immediate communications capability to provide a measure of safety and security to themselves, their fellow officers, and the public. According to deputy sheriffs within the Special Operations Section, due to unreliable radio coverage, they have come to rely upon personal cell phones to communicate while on duty. They told us the department does not provide cell phones or reimbursement for job-related personal cell phone use.

Another inefficiency in the warrant process is the location of the receiving desk, which is within the maximum security Hālawā Correctional Facility. The receiving desk is where people who have been served with warrants are booked and processed. In November 2006, the receiving desk for O'ahu was moved from the District Court building in downtown Honolulu to Hālawā prison on what was supposed to be a temporary basis. According to a former sheriff, no other location for the receiving desk was available, nor did funds exist to rent another suitable space.

However, situating a receiving desk inside a maximum security prison causes the process of booking and processing warrants to be overly cumbersome. The rules of penal procedure require that after a warrant arrest is made, the physical warrant must be presented to the defendant upon request as soon as possible. If the warrant cannot be accessed via the electronic bench warrant computer system (which currently handles traffic warrants), it must be retrieved from either the Sheriff Division office at Pier 20 or the Honolulu Police Department (HPD). According to a deputy sheriff in the Special Operations Section, the need to process a defendant in one location and retrieve warrants from another location, miles away, adds at least an hour to the process. Deputy sheriffs are thus kept occupied with administrative work rather than with serving more warrants.

We also found that individuals who wish to turn themselves in (referred to as "TSIs") must do so at the Hālawā Correctional Facility, a practice that may inhibit individuals from voluntarily resolving outstanding warrants. According to deputy sheriffs at the receiving desk, prison inmates and warrant issuees cannot be within sight of each other; therefore, TSIs are not allowed to proceed on foot to the entrance of the receiving desk building, even if escorted by a deputy sheriff. A deputy sheriff at the receiving desk must instead drive down to the main gate of Hālawā, pick up the TSI and drive him or her back to the receiving desk building. The same process must be followed in reverse when a person leaves the receiving desk after posting bail. Since deputy sheriffs at the receiving desk typically only have one vehicle, if it is being used elsewhere, individuals who post bail must wait inside the prison until

the vehicle returns to be transported out of the Hālawā facility. After being released at the main gate, a defendant must arrange his or her own transportation. Due to liability reasons, a deputy sheriff cannot drive a defendant home, or even to a bus stop, despite the fact that the prison is in an industrial area with the nearest bus stop about a 30-minute walk from the main gate.

The strict procedures for entering and exiting the prison facility also require deputy sheriffs to stop at the front gate to check their weapons into storage lockers prior to entering the Hālawā Correctional Facility. Also, if the prison experiences an emergency such that access to and from the facility is restricted, the deputy sheriffs and their custodies must wait at the gate until allowed into or out of the facility. Exhibit 2.2 shows the entrance to Hālawā Correctional Facility.

Exhibit 2.2
Main Gate at the Hālawā Correctional Facility



Source: Office of the Auditor

The problems associated with the receiving desk’s location at a maximum security prison not only impact the Sheriff Division’s Special Operations section and receiving desk personnel, but have other repercussions as well. Since the receiving desk moved from the District Court to the Hālawā Correctional Facility three years ago, the number of TSIs has reportedly decreased. Every person who does not come in voluntarily equates to another warrant that must be served by the deputy sheriffs. In addition, deputy sheriffs from both the Circuit and the District courts maintain that making warrant arrests at the courts is now much more difficult and time consuming. In the Circuit Court, what used to be about a 30 minute process can now take two hours because of the need to transport persons in custody to and from Hālawā for processing.

The problems associated with the warrant process led us to shift our focus to the operations and governance of the Sheriff Division as a whole. These will be discussed in greater detail later in this report.

Ambiguous Laws Allow For an Expanding Law Enforcement Role That the Division Struggles To Fulfill

The Sheriff Division's law enforcement role is expansive and ill-defined

The State Constitution gives responsibility and power to the State to provide for the safety of its citizens from crimes against persons and property. State law tasks the Department of Public Safety (PSD) with the responsibility to formulate and implement state goals and objectives for law enforcement programs. However, our audit found that since the creation of the department in 1989, the Sheriff Division, saddled with an ill-defined role and a lack of mission clarity, has struggled to uphold its expanded law enforcement duties and responsibilities.

According to the Bureau of Justice Statistics, the primary statistical agency of the federal Department of Justice, Hawai'i is the only state that does not have a state police force. In a census of law enforcement agencies conducted by the bureau in 2004, Hawai'i was one of three states identified as not having a sheriff's office. The bureau chose to classify the Hawai'i Department of Public Safety as a "special jurisdiction agency" that primarily provides court-related services, security services for state facilities, and law enforcement services for the Honolulu International Airport. The bureau classifies primary state law enforcement agencies as entities that perform statewide patrol and investigative functions. According to the author of the census, the Department of Public Safety provided the data that was used and accepted the bureau's classification as a "special jurisdiction agency."

Despite this federal classification, the department's 2007 and 2008 annual reports label the Sheriff Division as the State's primary law enforcement agency under the provisions of Chapter 353C, HRS. Also, according to the deputy director of law enforcement, the jurisdiction of the Sheriff Division is statewide, covering every island and extending to the State's nautical boundaries, 12 miles from the shore. This is in addition to the division's responsibilities to protect all persons, property, and buildings under the control of the State, which include, but are not limited to, Honolulu International Airport, all buildings under the jurisdiction of the Judiciary, all state buildings in the Civic Center Complex, and the Hawai'i State Capitol.

As the State's law enforcement needs have expanded, confusion over the extent of the State's law enforcement responsibilities has grown. Additionally, it is uncertain whether the Sheriff Division has the capability to meet these expanded needs. This confusion and uncertainty

is the result of vague constitutional language, a broad interpretation of statutory authority, and the consolidation of functions previously deemed incompatible.

The Constitution’s definition of the State’s law enforcement role is ambiguous

The Hawai‘i Constitution was framed by a constitutional convention under Act 334, Session Laws of Hawai‘i 1949, and adopted on November 7, 1950. Since then, the Constitution has been amended in accordance with proposals adopted by the Legislature or by constitutional convention and ratification by the public. The last constitutional convention, convened on July 5, 1978, reflected a desire for an expanded government role by adding five new sections, one of which covered public safety.

Set in Article IX, entitled “Public Health and Welfare,” the section on public safety provides:

Section 10. The law of the splintered paddle, *mamala-hoe kanawai*, decreed by Kamehameha I - Let every elderly person, woman, and child lie by the roadside in safety - shall be a unique and living symbol of the State’s concern for public safety.

The State shall have the power to provide for the safety of the people from crimes against persons and property.

The inclusion of a constitutional provision relating to the safety of the people was added as a policy statement to address the increasing public concern over the growing crime rate.

By giving constitutional status to this issue, the State’s obligation to protect the public against crimes is unquestioned and in fact mandated. The law explicitly establishes the State’s power to provide for the safety of its people; however, it leaves the implementation of how that power should be exercised open to interpretation.

State laws allow for a broad interpretation of the Sheriff Division’s law enforcement responsibilities

We found that the department’s broad interpretation of the statutes defining the law enforcement responsibilities of the Sheriff Division have resulted in an extensive mission to enforce and prevent violation of all laws and administrative rules of the State. Section 26-14.6, HRS, establishes the Department of Public Safety as an agency within the executive branch responsible for the formulation and implementation of state policies and objectives for the correctional, security, law enforcement, and public safety programs and functions of the State.

According to Section 26-14.6, this responsibility extends to the administration and maintenance of all public and private correctional facilities, the service of process for courts, and the security of state buildings and the people therein and around.

Chapter 353C, HRS, entitled *Public Safety*, similarly assigns responsibility for the formulation and implementation of state goals and objectives for law enforcement programs to the department. However, it goes further than Section 26-14.6 by stating that, in administering the State's law enforcement programs, the director "*may* preserve the public peace, prevent crime, detect and arrest offenders against the law, protect the rights of person and property, and enforce and prevent violation of all laws and administrative rules of the State as the director deems to be necessary or desirable." (Emphasis added) The statute can be interpreted as empowering the department with statewide law enforcement jurisdiction over any and all crimes. *Jurisdiction* refers to political boundaries in which an organization has statutory authority to enforce laws. In addition, Chapter 353C, HRS, empowers public safety and law enforcement officers with full police powers, including the power of arrest.

When the interpretation of a law requires greater clarity, administrative rules are used as agency statements of general or particular applicability to implement or interpret a law or policy. However, the department lacks any administrative rules related specifically to the Sheriff Division. The only administrative rules associated with the Law Enforcement Division of the department, which contains the Sheriff Division, pertain to the Narcotics Enforcement Division. As a result of the department's broad interpretation of Chapter 353C, HRS, the law enforcement responsibilities of the Sheriff Division have expanded beyond the service of process and the security of state buildings to include drug enforcement, illegal immigration, homeland security, fugitive arrests, criminal investigations, eviction proceedings, and traffic enforcement activities. Further, the Sheriff Division has assumed responsibility for carrying out these statewide law enforcement services with fewer than 300 deputy sheriffs. By contrast, the county police departments on the four major islands of O'ahu, Hawai'i, Maui, and Kaua'i have at least 2,868 officers in total.

Act 211, SLH 1989, consolidated corrections and law enforcement into a single department

Intended to better organize and coordinate the State's public safety functions, Act 211, Session Laws of Hawai'i (SLH) 1989, combined the Department of Corrections with the Office of the Sheriff and created the Department of Public Safety. Act 211 also added law enforcement

agencies from the Department of Transportation and the Department of the Attorney General into the new department.

A provision of Act 211 requested the director of the newly formed department to identify other public safety functions that should be transferred into the department. To fulfill this request, the director relied upon the broad definition of public safety provided in the Constitution as criterion to identify public safety functions that should be transferred. As a result of his report, the security functions and employees from four different departments were transferred to the newly formed public safety department. These functions, which went into effect in 1993, included after-hours security for Department of Education schools, security at the State Library System, security at state hospitals, executive security officers from the Department of the Attorney General, and contractual security services for the Department of Human Services.

Act 211 represented an abrupt reversal of the Legislature's position of only two years before, which recognized that moving law enforcement and corrections into one department would create a conflict of interest. In 1987, prior to formation of the Department of Public Safety, the Legislature created the Department of Corrections by removing correctional services from the Department of Social Services and Housing (DSSH). The Legislature determined that the state corrections program had grown too large and complex to remain under the umbrella of DSSH and that in order to "properly address the magnitude of the problems within the state corrections system, a separate department that can provide the focus and continuous attention the system desperately needs is essential."

The Legislature initially sought to transfer the Office of the Sheriff, Capitol Security, and state law enforcement officers from the Department of the Attorney General into the new Department of Corrections. Concerns arose over the potential conflict between the sheriff's responsibility for security and law enforcement and the new department's responsibility for corrections. It was argued that the transfer of law enforcement functions into the Department of Corrections was undesirable because 1) law enforcement functions were highly specialized in nature; 2) the mission of the Department of Corrections would be diluted; and 3) there might be a problem of infringing on county police responsibilities. In addition, it was recommended that Capitol Security and security personnel for other public buildings not be placed into the new department since those needs and activities would be given lower priority within the newer and larger Department of Corrections.

Ultimately, the Legislature agreed that the new Department of Corrections should “start on a small scale” and include primarily the corrections component of the DSSH. Accordingly, state law enforcement functions were not included in the new department, and the legislation was amended to remove state law enforcement officers from the bill. Nevertheless, two years later, the Legislature passed Act 211, SLH 1989, which made a single department, the Department of Public Safety, responsible for both vital functions of the preservation of public safety – law enforcement *and* corrections.

The Sheriff Division is unable to keep up with its expanding role

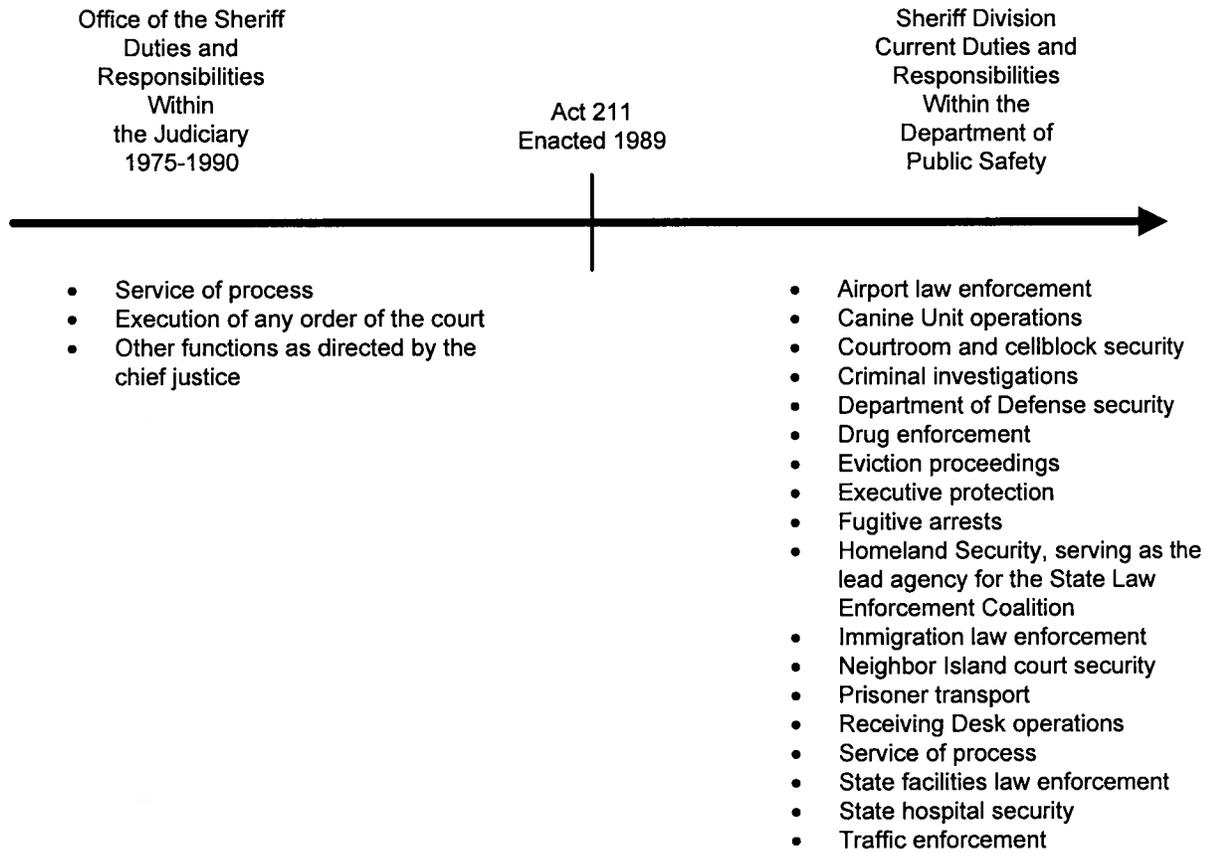
While statutory expansion of law enforcement duties is beyond its control, the department has made its own push to increase its scope of responsibilities. However, the Sheriff Division has not been able to keep up with its expanded law enforcement role regardless of whether the department sought it or not. After only two years of being entrusted with enforcement of the Boating and Ocean Recreation Program, the department was stripped of this responsibility by the Legislature. The division also agreed to provide law enforcement at the State’s airports but has not been able to fulfill all related obligations. Further, the department assumed the role of lead agency in the State Law Enforcement Coalition but has struggled since 2004 to complete a mobile command center vital to this role.

Since Act 211, the department’s law enforcement responsibilities have grown substantially

According to a 2005 Department of Public Safety report to the Legislature, while the goal of Act 211 was to ensure better organization and coordination of public safety functions, the subsequent growth in both law enforcement and corrections responsibilities was not anticipated. In addition to its traditional duties relating to safeguarding the courts and the State Capitol area, the Sheriff Division was also made responsible for protecting all state facilities, securing major entryways into the state, such as the Honolulu International Airport, and working in partnership with county, federal, and military agencies regarding cross-jurisdictional issues. Exhibit 2.3 lists the duties and responsibilities associated with the Sheriff Division before and after Act 211.

At the same time, the Corrections Division has had to cope with the consequences of overcrowding and deteriorating correctional facilities. According to the report, this created a situation in which the department “must attempt to establish resource priorities for each function without adversely impacting the other.” According to the director of public safety, it is a challenge to manage both corrections and law enforcement in the same department since there is no direct correlation between the two functions. He remarked that in the present situation, “Corrections

Exhibit 2.3 Duties and Responsibilities Associated With the Sheriff Division Prior to and Since Act 211



Source: Office of the Auditor

will always be the big dog and get the majority of the money.” As an example, he pointed out that the Hālawā Correctional Facility has as many adult correctional officers as the Sheriff Division has deputy sheriffs statewide. Though he would rather provide resources to the deputy sheriffs instead of prisoners, the director stated that the care and custody of incarcerated persons costs more than the State’s law enforcement tasks and duties. He said that when the State incarcerates someone, the State becomes responsible for feeding, clothing, and providing health care and re-integration programs for that person.

Nonetheless, the state government has a duty to protect the safety of the public. According to the 2005 report by the Department of Public Safety, in response to the events of September 11, 2001 (9/11), the responsibilities of the Sheriff Division greatly expanded. The division

serves in the State Law Enforcement Coalition (SLEC), which was formed to meet the mandates of the federal Homeland Security Act of 2002. The functions of the SLEC include protecting major commodities' lifelines, such as Honolulu Harbor and container handling facilities on Sand Island; implementing guidelines on issues related to weapons of mass destruction, and providing a coordinated response by state law enforcement personnel.

According to the governor's chief of staff, the events of 9/11 made the State aware of its responsibility to provide law enforcement functions to meet the demands of the federal government regarding security. Yet, the growing demand for law enforcement has required additional resources and a commitment by the State to sustain this involvement. The chief of staff recognized that the State cannot match the level of support for law enforcement that the counties provide for their respective police departments. In the 2005 PSD report, the department itself stated that it is seriously under-funded, under-staffed, and under-equipped to carry out its mission. We found that the State's inability to support the growth and demands placed upon the department has compromised the integrity of its functions, especially its law enforcement function.

The department was ill-prepared to accommodate its additional public safety duties

Although Act 211 sought to better organize and coordinate the State's public safety functions, we found that the department has struggled to accommodate its additional duties. As previously mentioned, it appears that the department has interpreted the role of the Sheriff Division as the State's primary law enforcement entity based on Chapter 353C, HRS. In doing so, it has taken on additional public safety responsibilities which may be beyond its ability to support. The department itself recognized this in its 2004 annual report when it stated that although the Sheriff Division continued to take on many additional responsibilities, "Staffing levels and resources have not grown with the rapidly increasing growth of required law enforcement services." Later, in its 2005 report to the Legislature, the department stated that when the Department of Public Safety was created in 1989, no administrative resources were provided with the transfer of personnel from the Judiciary and the Department of the Attorney General.

An example of the department's failure to successfully implement additional public safety duties can be found in the Marine Patrol Unit, which was transferred to the department from the Department of Transportation in 1991, only to be removed from the department in 1996. The Marine Patrol Unit was responsible for the enforcement of

the Department of Land and Natural Resources' (DLNR) Boating and Ocean Recreation Program. Though boating and ocean recreational programs were placed under the jurisdiction of DLNR, law enforcement priorities and utilization of personnel related to the program were set by the Department of Public Safety. Additional responsibilities were later added through agreements with the National Marine Fisheries Services and the federal Drug Enforcement Administration, although no additional positions or funding were added to support these new agreements. In 1992, our office, in Report No. 92-28 entitled *A Review of the Transfer of the Marine Patrol and Potential Transfer of the Division of Conservation and Resources Enforcement*, concluded that the separation of the boating program from its enforcement arm led to poor communication and differing enforcement priorities between the Department of Public Safety and DLNR. By 1995, DLNR charged that a reduction of enforcement presence and delays with responses to requests for enforcement in state boating facilities resulted in a failure of the safety department to adequately provide services to DLNR. In 1996, the Legislature stripped the safety department of its marine patrol duties and placed them with DLNR and the Department of Transportation.

Law enforcement at the airports is funded and directed by DOT

In 1999, the Department of Transportation (DOT)'s Airport Division transferred the responsibility for law enforcement at the Honolulu International Airport from the Honolulu Police Department (HPD) to the Department of Public Safety. The Sheriff Division Airport Section now serves as a 24-hour-a-day, 7-day-a-week law enforcement agency at the Honolulu International Airport, which includes jurisdiction of the surrounding area, Kalaeloa Airport, and Dillingham Air Field. The function of the Airport Section is to protect persons and property and provide security to the airport area. Within this area of jurisdiction, the Sheriff Division responds to many types of crimes ranging from bank robberies, bar fights, and auto thefts to drug cases.

The Airport Section is one of the largest sections of the Sheriff Division, with 49 employees. The section's office is located within the Honolulu International Airport and houses its own dispatch center, holding cell, booking station, weight room, and locker room. We found that the Airport Section operates almost independently of the Sheriff Division generally and that its duties and responsibilities have been determined by a memorandum of understanding (MOU) with the DOT Airport Division. A provision of that MOU specifies that the DOT will provide the funding for vehicles and equipment for the Airport Section. However, the MOU also specifies that funding for the section's equipment can only be used for airport-related operations and only by Sheriff Division personnel

assigned to the Airport Section. In effect, the DOT exercises control over the operations of the Sheriff's Airport Section. According to the MOU, the DOT director:

Shall have control over the general assignment (e.g., location, amount, time, priority etc.) and direction of the PSD deputy sheriffs and shall effect such deployment as deemed necessary or suitable for the operation of the airport. The PSD Director shall retain specific control over the assignment (identification of individual) and supervision of each individual PSD deputy sheriff as the immediate employer but the operation and activities of the PSD deputy sheriffs shall be under the general direction of the DOT Director.

This raises questions regarding the section's autonomy and ability to respond to emergencies outside the airport area.

In addition, we found that PSD has not honored a supplemental MOU with DOT to provide deputy sheriffs to neighbor island airports. Signed in October 2007 by the current PSD director, the MOU requested that four deputy sheriffs be hired and assigned for each neighbor island district airport "as soon as possible." Security functions at neighbor island airports are currently provided by private security companies whose employees are allowed to carry weapons and have arrest powers. As noted by the governor's chief of staff, who also served as the director of transportation when this MOU was signed, the federal government prefers that law enforcement functions be performed by government agencies rather than private entities. When asked why no deputy sheriffs have been provided for these airports, the deputy director of law enforcement said that it is up to the DOT to request those positions, since it has to provide the funding. While the Airport Section may be organizationally attached to the Sheriff Division, it is dependent upon funding from the DOT, and therefore takes its primary direction from that department rather than PSD.

The Sheriff Division's \$600,000 mobile command center is incomplete

The Sheriff Division's purchase of a \$600,000 mobile communication command center in 2004 that is not yet fully operational illustrates the division's inability to fulfill an expanded role it has taken on. The lack of realistic planning even as it pursued federal funding and the leadership of civil defense—related law enforcement has resulted in an incomplete 46-foot trailer after six years.

According to a memorandum of understanding (MOU) for civil defense-related law enforcement activities, the Department of Public Safety is responsible for coordinating, preparing, and implementing state law

enforcement inter-agency security and response plans for all civil defense related law enforcement activities in response to any natural or man-made disaster or emergency. These activities include providing security or protection for the governor, cabinet members, and state buildings or other facilities deemed essential for public health, safety, and welfare. Under the direction of the state Department of Defense, Civil Defense Division, these activities are coordinated through the State Law Enforcement Coalition (SLEC). PSD's 2008 annual report states that the Sheriff Division serves as the lead agency of the SLEC.

The role of the SLEC is to coordinate, prepare, and implement inter-agency plans for all civil defense related law enforcement activities. A primary purpose of the SLEC is to ensure that there is communication and cooperation between different agencies when an emergency arises so that the various law enforcement agencies respond with a coordinated, cohesive response. A state Civil Defense administrator emphasized that maintaining and coordinating communications are critical components of this response plan, necessities that the State has lacked in the past.

The MOU states that to strengthen the capabilities of the SLEC, efforts should be made to provide a statewide land mobile radio/wireless telecommunications systems. To meet this vital need, the Sheriff Division has purchased, and has been developing, a mobile command center since 2004. Funded with federal grants, the mobile command center would provide a remote hub of operations from which emergency teams could coordinate and direct responses to disasters and provide interoperability between the disparate communications systems used by state, federal, and local agencies. The mobile command center, housed in a 46-foot trailer, includes complete environmental controls and state-of-the-art communications and computer systems, along with a conference room which can seat up to ten people. Exhibit 2.4 shows the exterior of the mobile command center.

We found this state-of-the-art mobile command center has a serious flaw, in that it lacks an operable tractor to tow it. After the command center was purchased and equipped, the division did not have enough funding to purchase a new tractor, estimated to cost about \$100,000. Instead, a used tractor unit was purchased "as is" for \$6,000 in early 2008. The used tractor had approximately 700,000 miles on the odometer and required extensive maintenance and repair. It has taken almost a year to obtain an estimate on the repair costs, since the tractor had to be disassembled to allow for an accurate estimate. The estimated cost of repairs is about \$20,000. Emergency tow services would have to be provided should the mobile command center be needed before the tractor is repaired. The Sheriff Division has expended over \$600,000 on the mobile command center already and is currently awaiting additional grant money to fund

Exhibit 2.4

Mobile Command Center of the State Law Enforcement Coalition



Source: Office of the Auditor

a satellite communications system, which would provide continued communications services when all other conventional voice and data communications are rendered inoperable. As a result, six years after its inception, the Sheriff Division's mobile command center is still incomplete.

Poor Leadership Has Led to a Division That May Be a Risk to the Public It Is Supposed To Protect

In addition to an expansive mission allowed by statute, the Sheriff Division is further hampered by ineffective leadership at the departmental level, which has resulted in a law enforcement agency that lacks guidance and direction. Since inception of the Department of Public Safety, a state law enforcement program defining the Sheriff Division's mission and setting boundaries based on its capabilities has never been fully developed. In addition, the governance structure of the department reinforces the director's authority and responsibility. This has resulted in a division that appears to not have the capability to effectively conduct its core function and duty, the protection of the public.

The director has failed to formulate and implement the State's law enforcement program

Although the lack of clarity in state laws and the ill-conceived Act 211 set the stage for the multitude of problems uncovered in our audit, it is the lack of departmental leadership that has most contributed to problems within the Sheriff Division. The director of public safety is responsible for formulating and implementing the goals and objectives of the state law enforcement program. The absence of a state law enforcement program that balances both the priorities and capabilities of the Sheriff Division demonstrates that the direction and guidance provided by the department's leadership has been lacking.

Statutes do not require the director to utilize all law enforcement powers

As previously stated, state law is extremely broad in defining the jurisdiction and responsibilities of the Sheriff Division. However, Section 353C-2, HRS, clearly states that the responsibility for the formulation and implementation of state goals and objectives for law enforcement programs belongs to the director of public safety. According to statute, the director may implement a broad range of powers, including preserving the public peace; preventing crime; detecting and arresting offenders against the law; protecting the rights of persons and property; and enforcing all laws and administrative rules of the State as the director deems necessary or desirable. The director may also provide law enforcement assistance to other state agencies upon request.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO), in its Internal Control-Integrated Framework, emphasizes the importance of management's use of internal controls to provide assurance of the effectiveness and efficiency an organization's operations. "Internal controls" are processes used by an organization's management to provide assurance regarding the achievement of the organization's objectives. According to COSO, "internal controls" as a whole consist of five components. "Control environment" is the foundation for the other internal control components and sets the regulatory tone of an organization.

COSO states that an organization's chief executive is ultimately responsible for setting the "tone at the top," which affects how and whether an organization creates a positive control environment. The "control environment" encompasses the integrity, ethical values, and competence of an organization's people; management's philosophy and operating style; and the way management assigns authority and responsibility, and organizes and develops people. The control environment is influenced by the extent to which individuals recognize they will be held accountable for their actions. Ultimately, the chief executive has responsibility for all activities within an organization.

COSO further emphasizes that the influence of a chief executive cannot be overstated, as the chief executive is responsible for ensuring all internal control components are in place. Although statute gives the director of public safety broad law enforcement powers, it does not require the director to use the full extent of those powers throughout the state. This places responsibility on the director to not only determine the extent of what the Sheriff Division can and should be doing, but more importantly, to prioritize and set limits on those activities based on what the department and the Sheriff Division is *capable* of doing.

The department lacks an adequate strategic plan for law enforcement

To improve effective government operations, the Legislature passed Act 100, SLH 1999 (subsequently referred to as “Act 100”), to require all state government departments and agencies to report their goals, objectives, and policies, and to provide a basis for determining priorities and allocating limited public funds and human resources. The intent of Act 100 was to improve the effectiveness and efficiency of government through the development of goals and objectives that departments and agencies would use to set priorities, guide decision-making, and measure the effectiveness of their programs and services. Act 100 specifically mentioned that strategic planning and the development of goals and objectives were essential for more efficient and productive operations.

Act 100 also required every department and agency of the state to develop and submit an annual report to the Legislature, which included the following:

1. A statement of goals, both short and long term;
2. Objectives and policies stating how each goal can and will be accomplished;
3. An action plan with a timetable indicating how established objectives and policies will be implemented in one, two, and five years; and
4. The process used to measure the performance of the programs and services in meeting goals, objectives, and policies.

According to the director of public safety, the department uses its annual Act 100 report as its strategic plan and to provide guidance over its operations. However, we found that the department’s annual Act 100 report is incomplete and does not fulfill all the requirements of Act 100.

The department's 2009 annual Act 100 report (excerpts of which are included as Appendix B to this report) included the following goals and objectives pertaining to the Sheriff Division:

GOALS:

- To provide for the protection and safety for the people of Hawai'i through law enforcement/security services at State Facilities, Lands, Harbors, Airports, and within the jurisdictional boundaries of the State of Hawai'i.

OBJECTIVES:

- To serve and protect the public, government officials, and State personnel and property under its jurisdiction by providing law enforcement services which incorporate patrols, surveillance, and educational activities;
- To protect State judges and judicial proceedings, secure judicial facilities, and safely handle detained persons; provide secure transport for persons in custody;
- To execute arrest warrants for the Judiciary and the Hawai'i Paroling Authority.

Act 100 calls for a department/agency's objectives to *specifically* set forth how each goal can and will be accomplished. Within the department's annual report, the Sheriff Division's objectives are broad and do not provide any detail as to how the division will accomplish its goal of providing for the protection and safety of the people of Hawai'i. Act 100 also calls for an action plan, with a timetable indicating how established objectives and policies will be implemented in one, two, and five years. While the department has stated its goals and objectives, its report is devoid of any action plans for the Sheriff Division; and with respect to a timetable, simply indicates "ongoing." We examined the department's annual reports from 2007 through 2009 and found that the goals and objectives for the Sheriff Division have remained unchanged for the last three years.

According to *Creating and Implementing Your Strategic Plan*, a strategic plan is a disciplined effort to produce fundamental decisions and actions that shape and guide what an organization is, what it does, and why it does it. The benefits of a strategic plan include increased effectiveness and efficiency, better decision-making, and enhanced organizational capabilities. Identifying goals and objectives is only one phase of the strategic planning process as an organization strives to establish a clear sense of direction.

Other phases include identifying and analyzing strategic issues, developing strategies and action plans, and implementing the strategies. The annual Act 100 report requires this, but the department's report fails to document or disclose these action and implementation plans. Without such components, there is no indication of how the department addresses its issues or assesses whether its goals and objectives have been achieved.

According to Chapter 353C, HRS, the director of public safety is responsible for training, equipping, maintaining, and supervising the department's law enforcement personnel as well as developing and implementing the State's law enforcement programs. When confronted with the many problems we found within the Sheriff Division, the director readily acknowledged their existence. For example, he recognized that the division does not have sufficient staff to carry out its functions at rural courts, nor for the new Kapolei court, which opened earlier this year. The director also stated that the situation on the neighbor islands requires more attention; he stated that those staff there are treated as "second-class citizens" and acknowledged the facilities and conditions that neighbor island sheriffs work with present security and safety risks. According to the director, in-service training in the division is also "woefully inadequate." When asked to discuss the vehicles used by the Sheriff Division, the director similarly acknowledged that "what is needed for the force is woefully lacking." As noted by COSO, the director is responsible for determining the tone at the top within the Sheriff Division. As evidenced below, the lack of remedial action by department leaders puts deputy sheriffs at risk.

Core deficiencies hamper the Sheriff Division's law enforcement abilities

The department's leadership has not only failed to implement an effective state law enforcement strategy, but there are also concerns as to whether the Sheriff Division has the tools to effectively perform its duties and functions. Inadequate law enforcement training, issues pertaining to equipment, and an absence of procedures related to staffing and serving the courts have raised questions regarding safety of the public, the courts, and deputy sheriffs themselves. These inadequacies raise questions regarding the Sheriff Division's ability to fulfill the provisions of Chapter 353C to preserve the public peace and protect the rights of persons and property within the state.

Training policies for the Sheriff Division expose the State to liability risks

We found that in-service training within the Sheriff Division is not consistent. In fact, the Department of Public Safety has halted critical in-service training for the Sheriff Division since November 2008. CALEA standards require all sworn personnel to complete an annual retraining

program, including legal updates regarding new laws, technological improvements, and revisions in agency policy, procedures, rules, and regulations. Deputy sheriffs whom we interviewed stated that law enforcement skills such as firearms and Emergency Vehicle Operator Course (EVOE) training are considered perishable, meaning that unless practiced regularly, these skills degrade over time. Knowledge-based, in-service training is also important to ensure deputy sheriffs stay current with changes in procedures or laws. According to the deputy sheriffs we interviewed, critical recurring training that is lacking includes constitutional law updates, Hawai'i Revised Statutes/Penal Code updates, search and seizure case law updates, traffic enforcement and citation updates, and firearm training scenarios such as "shoot-or-don't-shoot" and active shooter response training.

According to CALEA's standards, training of law enforcement personnel is often cited as one of the most important responsibilities of any law enforcement agency. CALEA states that training serves three purposes:

1. Well-trained officers are better prepared to act decisively and correctly in a broad spectrum of situations;
2. Training results in greater productivity and effectiveness; and
3. Training fosters cooperation and unity of purpose.

According to CALEA's standards, training programs should ensure that an agency's needs are addressed and that there is accountability for all training provided. CALEA standards note that agencies can be held legally accountable for actions of their personnel as well as for failing to provide initial or remedial training to those personnel.

The Training and Staff Development (TSD) Section within the department's Administration Division is responsible for providing all components of training and staff development to departmental staff. Although TSD serves as the department's official training resource, the director of public safety now requires all in-service training to be reviewed and approved by him; this is to ensure that Sheriff Division training is necessary and properly coordinated. Any training conducted without the director's approval can lead to disciplinary action. Exhibit 2.5 shows the memo from the director regarding training.

According to TSD's training administrator, the process for reviewing and approving training requests is dependent on an as yet to be completed training policy; this has effectively put all in-service training requests since November 2008 on hold. Records obtained from TSD reveal that only four law enforcement training classes were provided to the Sheriff Division by TSD during 2009. These four classes were attended by

Exhibit 2.5

Memo from the Director of Public Safety Regarding Training Policy

Inter-Office
MEMORANDUM

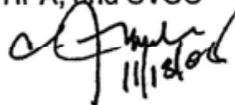
DEPARTMENT OF PUBLIC SAFETY

8T-631

No. 2008-2647

Suspense: _____

November 7, 2008

TO: DAs, BAs, Wardens, SOs, HPA, and CVCC
FROM: Clayton A. Frank, Director 
SUBJECT: In-Service Training

As a reminder and in accordance to Policy ADM.04A.01, all training and staff development "In-Service" training programs in the Department must be reviewed and recommended for my approval. The PSD training advisory committees will be responsible for reviewing their respective training proposals prior to submitting a recommendation for approval. Please refer to the attached list of departmental training that is currently approved.

Effective immediately, any training conducted that is not sanctioned by the Department may lead to disciplinary action.

Should you have any questions regarding this directive, please do not hesitate to contact David Festerling, Deputy Director for Administration, at 587-1251.

Attachment

Source: Department of Public Safety, Sheriff Division

12 deputy sheriffs, or about 4 percent of the over 300 sheriffs within the division. According to the TSD administrator, manpower issues and ongoing budget constraints have prevented TSD from providing more training to the Sheriff Division.

As previously mentioned, law enforcement skills are considered perishable and require proper and consistent training. For example, CALEA standards regarding tactical team training state that members must have ample opportunity to practice their special skills and develop their abilities to function effectively as a team because many of these skills are perishable and should be exercised in order to build and maintain proficiency. TSD's training administrator acknowledged that the Emergency Vehicle Operators Course (EVOC) training is very important and provided during recruit training. He also acknowledged that the department does not have a policy that mandates in-service

training for EVOC. Despite this, he said the Sheriff Division should only allow deputy sheriffs who have undertaken EVOC training to operate divisional vehicles. However, we found there are deputy sheriffs who did not receive EVOC training during recruit class, nor have they received EVOC training since then.

According to the FBI Law Enforcement Bulletin, employer liability and accountability can arise from inadequate training. A government can be held liable for failure to train if:

1. Training is inadequate or deficient;
2. An injury was caused and could have been avoided had the employee been trained under a program that was not deficient; and
3. The inadequate training program is a “policy” of the municipality which is demonstrated when policy-makers knew or should have known about the need for identified training but remained deliberately indifferent to that need.

We found that there are potential liability concerns regarding training within the Sheriff Division. When asked about issues regarding training for the Sheriff Division, the director of public safety acknowledged that in-service training is “woefully inadequate.” On the other hand, adult corrections officers in the Corrections Division are required to have 40 hours of in-service training per year. According to the director, a similar policy has not been applied to the Sheriff Division as the department and its training and staff development program is currently trying to develop a training package for the division which includes a supervisory package. Not only does the current lack of an identified training program expose the department and State to potential liability issues, it does not adhere to nationally accepted law enforcement standards, which emphasize the importance of training for law enforcement personnel.

Equipment issues may put staff and the public at risk

We also found that the department has failed to provide equipment needed by the Sheriff Division to perform its basic duties and functions. For example, the department began issuing ballistic protective vests to deputy sheriffs as a part of their uniform in 2004 through funding provided by federal Department of Homeland Security grants. A directive for wearing the vests was implemented by a former sheriff while the policy was being developed and was reasserted in memos sent by the sheriff in 2006. A formal policy requiring deputy sheriffs to wear vests was implemented in January 2010.

Ballistic vests The ballistic protection vest is comprised of ballistic panels and a carrier which holds the ballistic panels but does not provide any protection itself. The manufacturer provides a five-year warranty from the date of purchase for the ballistic panels, which are designed to stop specific threats depending upon the type of vest. Vests are tested and evaluated according to standards set by the National Institute of Justice, which is the research, development, and evaluation agency of the U.S. Department of Justice. The vests used by deputy sheriffs are classified as Level II vests, which means they are designed to protect against 9 millimeter and .357 caliber bullets. Exhibit 2.6 shows a deputy sheriff wearing a department-issued vest.

Exhibit 2.6
Deputy Sheriff Wearing a Ballistic Protection Vest



Source: Office of the Auditor

According to the Sheriff Division, based on the five-year manufacturer's warranty, 69 vests needed to be replaced at the end of 2009. Of these, ten vests had already expired as of May 2009. As of March 2010, none of the 69 vests have been replaced.

The department's director realizes that the vests are a safety issue and said that the department's intentions are to keep up with the best technology, but funding has been an issue. The deputy director of law enforcement acknowledged the importance of the vests and said, "It is [deputies'] lifeline and gives them a chance at survival because if you're shot in the torso with any modern-day weapon, you're going to die." However, emails from the department's administrative deputy director and the deputy director of law enforcement show that the department's position is that the body armor does not "switch off" its effectiveness when the warranty expires. Exhibit 2.7 shows the email message from the administrative deputy director clarifying the department's position regarding ballistic protection vests.

Exhibit 2.7

Email from the Deputy Director of Administration, Department of Public Safety



David F
Festerling/PSD/StateHiUS

04/01/2009 03:50 PM

To Robin M Nagamine/PSD/StateHiUS

cc James L Propotnick/PSD/StateHiUS@StateHiUS, Roy T Yamamoto/PSD/StateHiUS@StateHiUS, Colleen O Miyasato/PSD/StateHiUS@StateHiUS

Subject Re: Second Chance Warranty Information 

Robin,

We have a copy of the warranty from Larry Myers, however it would help us if we were to get something in writing from Second Chance to confirm PSD's assumptions. This is part of a statement that we were going to send to HGEA and a supporting document from the manufacturer would help us greatly.

I would like to clarify that it is PSD's understanding that the life expectancy of the vest does not expire in five (5) years. According to Second Chance Body Armor, the vest consists of two primary components - the BALLISTIC PANELS, which consists of ballistic panels enclosed by a non-removable protective cover and the removable outer CARRIER. The vest is warranted to be free of defects in material and workmanship for a period of 18 months for the CARRIER and a period of five (5) years for the BALLISTIC PANELS, from the date of purchase. (See attachment below) Although PSD reads this as the body armor does not suddenly "switch off" their effectiveness when the warranty expires, the department is working on replacing vest that have expired warranties.

.....
David F. Festerling, Deputy Director for Administration
Department of Public Safety
919 Ala Moana Blvd., Room #400

Source: Department of Public Safety, Sheriff Division

The Federal Bureau of Investigation (FBI) uses the manufacturer's five year warranty as its benchmark for vest replacement due to concerns for the safety of its agents and liability issues if a vest is used past its warranty period. Once a warranty expires, liability for injuries shifts to the issuing agency should a vest be penetrated by ammunition that the vest was designed to stop. The FBI also employs additional internal controls to monitor and evaluate the effectiveness of vests, such as keeping a database to monitor when vests were issued to each agent, making field firearms instructors aware of any vests that are expired or expiring, and requiring field firearms instructors to conduct annual inspections of vests. The Honolulu Police Department's policy is also to replace vests five years from the manufacture date.

Service vehicles We also found that the purchase and maintenance of the division's service vehicles affect the duties and functions of the division. In this regard, the director acknowledged that "what is needed for the force is woefully lacking." A former sheriff was more descriptive, saying that the division manages to keep its vehicles running with "rubber bands and shoestrings." All law enforcement personnel of the Sheriff Division are authorized to operate motor vehicles to engage in patrol, transport, and response to cases. According to CALEA standards, "patrol" is a primary law enforcement function, which is defined as a generalized function in which officers may be engaged in a variety of activities ranging from traditional response to requests for service to alternate strategies for the delivery of police services. These functions, which entail constant, stop-and-go driving, result in vehicles with high mileage that require regular maintenance. Appendix C provides a current list of the Sheriff Division's service vehicles and their mileage.

We found that the division allows vehicles to be purchased second-hand. As a practice, the division, through the Department of Accounting and General Services' Surplus Property Branch, obtains used federal government vehicles that are approximately five to seven years old and range in mileage from 5,000 to 70,000 miles. In a report to the Legislature dated December 2006, the division reported that 70 percent of its vehicles had 50,000 or more miles and 23 percent had more than 100,000 miles on their odometers. The division also reported that it spent approximately \$48,000 on vehicle repair and maintenance in fiscal year 2006. This included repairs to engines, drive trains, brakes, steering assemblies, and electrical units of second-hand vehicles. The division estimated that, on average, 26 vehicles broke down annually, resulting in additional costs for towing services. The division attributed the high incidence of tows to the age of its vehicles. To compound the problem, there are currently no spare vehicles for use if any vehicles are out of service for maintenance attention.

Furthermore, according to the December 2006 report, the Sheriff Division was developing a vehicle replacement schedule that would rotate approximately one fifth of its fleet every year and continue with this replacement cycle at five-year intervals. This plan would require older vehicles to be traded in or auctioned off to offset the cost of new vehicles. The division’s goal was to reduce its repair and maintenance costs and ultimately save taxpayer dollars and improve the division’s efficiency. Unfortunately, three years later, this plan has yet to materialize. Below is a comparison of the distribution of the division’s vehicle inventory by mileage in December 2006 versus October 2009:

	<u>December 2006</u>	<u>October 2009</u>
Percentage of vehicles with:		
Less than 50,000 miles	30%	29%
Between 50,000 and 100,000 miles	47%	47%
More than 100,000 miles	23%	24%

Without proactive planning to replace its aging vehicles, it appears the Sheriff Division will continue to face increasing maintenance costs. Considering the division’s use of its vehicles to engage in patrol duties, unreliable vehicles will affect the division’s ability to effectively perform its law enforcement functions.

Physical restraints We also found that within the district court cellblock there is a shortage of physical restraints to safely control persons in custody (known as “custodies”) who are brought to court from various correctional facilities and the Honolulu Police Department’s cellblock. Currently, the district court cellblock has enough restraints to secure 55 custodies. According to the Sheriff Division’s internal procedures regarding movement of custodies, it is mandatory to restrain all custodies who are traveling to family and circuit courts, custodies coming from a correctional facility, and anyone who is facing felony charges and/or has multiple court appearances. However, according to a deputy sheriff at the district court cellblock, all custodies coming into the cellblock should be restrained to ensure the safety of deputy sheriffs, the public, and the custodies themselves. We found that on a regular (generally, weekly) basis, the number of custodies entering the cellblock can reach 90 or more at a time, and, on occasion, can exceed 140. On such days, deputy sheriffs are unable to properly restrain everyone and must therefore use a prioritization process by which custodies arriving from Hālawā Correctional Facility, O‘ahu Community Correction Center, and those who have been arrested for felony crimes are shackled first. Custodies brought in for traffic violations or misdemeanor crimes are left unrestrained.

We examined custody logs from the district court cellblock for the month of July 2009 and found that in six of 22 days, or 27 percent of the time, the number of custodies exceeded the number of physical restraints available. At one point when custodies were regularly being brought into court without shackles, the Judiciary felt this placed both judges and the public at risk, so it purchased more physical restraints for the cellblock because the public safety department could not provide the funds. This is a problem recognized both by deputy sheriffs within the cellblock and by members of the Judiciary.

On September 8, 2009, a custody charged with a misdemeanor escaped from a district court courtroom. According to the deputy sheriff in the courtroom at the time, an insufficient number of restraints forced deputy sheriffs to prioritize restraints and put them on custodies arriving from prisons and on persons arrested for felonies. Custodies brought in for traffic violations and misdemeanors were left unrestrained. Although the custody who escaped from court was chased down and subsequently apprehended, this incident highlights the problems associated with the lack of proper equipment to safely restrain custodies in the district court and how it prevents the Sheriff Division from effectively fulfilling its duty to provide protection at the courts.

Manpower issues and lack of a formal written agreement raise concerns regarding the security of courts

One of the Sheriff Division's objectives, as identified in its 2009 Act 100 report, is to "protect state judges and judicial proceedings; secure judicial facilities; and safely handle detained persons." As previously mentioned, Act 211, SLH 1989 removed sheriffs and judiciary security personnel from the Judiciary and placed them within the Department of Public Safety. According to the deputy administrative director of the courts, this transferred responsibility for ensuring the security of courts from the Judiciary to the executive branch's Department of Public Safety.

For law enforcement agencies that have a court security function, CALEA law enforcement standards require written directives which include:

1. A clear description of the agency's role and authority for court security;
2. A clearly defined policy and procedure in court security for agency personnel assigned to the function; and
3. Identification of a position in the agency responsible for the security function.

We found there is no formal written agreement dictating and guiding the Sheriff Division's relationship with the courts. According to the sheriff and the director of public safety, the current working relationship between the Sheriff Division and the Judiciary is based solely on past practices and not on any formal, documented agreement. Past practices are based on a memorandum of agreement (MOA) between the two organizations, which expired at the end of 2003. The MOA provided guidance and direction to the Sheriff Division by documenting some of the specific needs of the Judiciary. For example, in the Honolulu District Court, the Judiciary requested that one deputy sheriff be assigned full-time to areas where domestic violence cases and temporary restraining orders are heard.

According to CALEA, violence, or the threat of violence, has a negative impact on a court's functioning. Accordingly, appropriate levels of security should be present in court facilities to protect the integrity of court procedures, sustain the rights of participants in court procedures, and deter those who would take violent action against the court or participants.

We found that departmental administrators acknowledge the Sheriff Division has manpower issues that affect its ability to effectively perform its duties. The director acknowledged that the Sheriff Division has never been given sufficient personnel to fulfill its duties, and specifically mentioned there is a lack of sufficient staff to carry out Sheriff Division functions at many of the courts. According to the sheriff, the division is "barely staffed" and there is minimal staffing in cellblocks, the warrants team, and the neighbor islands. The deputy director of law enforcement stated:

We are small and spread thin, and the outer islands do what they can with warrants, but I have just enough people to cover the courts and do the transports. Just enough. And in Kona, not enough. And I need one in Maui, I need one in Kaua'i, and I need one in . In fact I need 2 or 3 in Kona.

As we reported above, the Sheriff Division employs over 300 employees who are responsible for providing law enforcement services throughout the state. Of these, 61 are assigned to neighbor island sections. Exhibit 2.8 lists the number of personnel within the Sheriff Division per section.

Exhibit 2.8
Sheriff Division Duty Roster (as of August 2009)

Sheriff Division section	No. personnel
Special Operations (O'ahu)	31
Capitol Patrol (O'ahu)	60
Airport (O'ahu)	47
District Court (O'ahu)	26
Circuit Court (O'ahu)	26
Executive Protection (O'ahu)	17
Records (O'ahu)	9
Maui	22
Kaua'i	11
Hawai'i (Kona and Hilo)	28
<i>The following sections are located on O'ahu and provide services for the Sheriff Division statewide:</i>	
Dispatch	3
Administration	7
Staff Services	6
Task Force	4
Firearms	2
Criminal Investigation Unit	4
<i>Staff Currently on Leave</i>	14
TOTAL	317

Source: Department of Public Safety, Sheriff Division

We visited each of the neighbor island sections and found that aside from an administrative office in Hilo, all sections operate from their respective courthouses. The primary functions of the neighbor island sections are to provide security and protective services to the court buildings, their occupants, and surrounding property, which includes handling the intake, housing, transfer, distribution, and release of custodies. Though the sections sometimes perform additional functions, such as serving eviction notices at state public housing projects and issuing traffic citations, the majority of sheriffs' time is spent servicing the Judiciary.

We also found that inadequate staffing was a concern raised by every neighbor island section. For example, the Kona Unit is currently comprised of only six deputy sheriffs, who are responsible for the security of five courts in the Kona area. These include the main

courthouse at Kona, which houses the Kona District and Circuit Courts; the Kona Family Court, which is approximately seven miles away; the Big Island Drug Court, which is approximately two miles away; and a court in Ka‘u, which is 55 miles – an hour and a half drive – away from the main courthouse.

We examined the unit’s schedule of assignments to evaluate how the six deputy sheriffs are utilized. According to a deputy sheriff assigned to the Kona Unit, assignments are a juggling act based on the scheduling of the courts, since four of the five courtrooms must be manned on a daily basis. This has resulted in situations where deputy sheriffs are alone in court for four out of five days a week. Based on the schedule, on December 15, 2009, we confirmed that the six deputy sheriffs were responsible for manning four separate courts that day. To accomplish this, the deputies had to shift to different courts at various times throughout the day, so that at least two sheriffs were present in each court while in session.

The pattern of six deputies being responsible for four courts is typical in Kona. The exception is when the Ka‘u Rural Court, which usually meets twice a month, is in session; on those days, the deputies are responsible for five courts in a day. During our site visit to Kona in September 2009, we were informed that on that day, one deputy sheriff had been assigned to the Ka‘u courts. The expired MOA between the Sheriff Division and the Judiciary specified that two deputy sheriffs be assigned to the Ka‘u courthouse to provide security when that court was in session. To verify this assignment of a single deputy to Ka‘u was not an isolated incident, we examined the unit’s schedule of assignments for all of December 2009 and found that on both occasions the Ka‘u court was in session, only one deputy sheriff was assigned there to provide security. With backup from fellow sheriffs an hour and half away, the lone deputy in Ka‘u is on his own should an emergency arise.

Staffing issues were also found to exist in the District Court Section’s Cellblock Unit on O‘ahu. The Cellblock Unit is responsible for the secure and safe intake, housing and release of custodies coming to and from the district court. The cellblock unit receives custodies twice daily, from Honolulu Police Department’s central receiving desk and from O‘ahu’s jails and prisons. Cellblock unit staff are responsible for escorting custodies to and from court hearings, securing the cellblock and immediate areas to ensure they are free from contraband and weapons, providing enforcement for any statutory violations, maintaining custody logs and records, and providing for the basic needs of custodies, including food, toilet, and medical services. Exhibit 2.9 shows custodies in the cellblock awaiting hearings.

Exhibit 2.9 Custodies Inside a Honolulu District Court Holding Cellblock



Source: Department of Public Safety, Sheriff Division

In spite of the lack of a formal agreement, the Sheriff Division has developed internal procedures for some of the services it provides to the Judiciary. For example, the District Court Section has internal procedures for establishing roles and responsibilities within the cellblock as well as guidelines governing custody movements to ensure a safe, timely, and consistent method of moving custodies within the Honolulu District Court. These procedures establish specific cellblock roles such as:

- Control room deputy sheriff, whose responsibilities include opening and securing all holding cell doors within the area;
- Processing desk deputy sheriff, whose responsibilities including tracking the status and movement of every custody within the cellblock and courtrooms;
- Property control deputy sheriff, whose responsibilities include documentation and storage of all custodies' property admitted to the district court cellblock; and

- Cellblock deputy sheriff, whose responsibilities include searching, securing, and escorting custodies within the cellblock and courtrooms.

The procedures also establish deputy sheriff to custody ratios, which are important for ensuring the safety of both deputies and custodies. According to standard operating procedures, a deputy sheriff to custody ratio of one-to-one is required for custodies going to circuit and family court and one-to-four for custodies going to arraignment courtrooms. Standard operating procedures also specify that custodies must not be left unattended while being escorted or in a holding cell.

It should also be noted that there are additional holding cells on the various courtroom floors where custodies can remain temporarily while they await their courtroom appearances. When these cells are in use, according to policy, a deputy sheriff must remain in attendance on that floor to supervise the custodies. In addition, we were told that during trials, a deputy sheriff is required to be in the courtroom throughout the proceedings. Through interviews and a district court cellblock report, we were informed that without sufficient manpower, cellblock staff are unable to provide adequate supervision and protection for custodies and cannot follow their own internal policies pertaining to deputy sheriff-to-custody ratios for ensuring safety.

We reviewed custody logs for the month of July 2009 and found that the number of custodies entering the cellblock on a daily basis ranged from 42 to 153, with an average of 62 custodies per day. On average, 84 percent of custodies arrived before noon; only 16 percent arrived after noon. The logs also revealed that on Mondays, especially after a three-day weekend, the number of custodies in the cellblock is significantly higher. Based on our July sample, the average number of custodies passing through the cellblock on a Monday was 106, or 41 percent higher than the daily average.

We also reviewed attendance records for the month of July 2009 and found that on 18 out of 22 days, or 82 percent of the time, there were seven to nine deputy sheriffs on duty; the remaining days had five or six deputies on duty. According to the cellblock sergeant, deputy sheriffs report to their assigned positions each day and the sergeant makes adjustments to fill requirements as needed. Three positions – the control room, processing desk, and property control – must be manned at all times, except when a lack of personnel requires those deputies to assist with custody movement. Remaining deputies oversee the movement of custodies within and between the cellblock and courts.

Cellblock logs show that on Monday, July 27, 2009, 94 custodies arrived from the Honolulu Police Department's receiving desk and the various correctional facilities. Our review of attendance logs showed that six deputy sheriffs and one supervisor were on duty. Of the 94 custodies, 81 arrived at the cellblock by 8:00 a.m. From the morning group of 81 custodies, 15 were scheduled for appearances at family court. According to the cellblock unit's internal procedures, each of these 15 custodies should have been escorted on a one-to-one ratio into family court. According to a court administrator, six courtrooms were in session that day. Although detailed records are not kept, it is questionable whether proper custody ratios and safety were maintained that day, given the number of custodies present and deputy sheriffs on duty.

As previously mentioned, the average number of custodies on Mondays is 41 percent higher than the daily average. The most extreme example we saw in our sample occurred on July 6, 2009, a Monday after the Fourth of July weekend, when 153 custodies passed through the district court cellblock. On that day, 105 custodies arrived at 7:00 a.m., with eight deputy sheriffs on duty. As stated earlier, the cellblock is equipped with physical restraints to secure only 55 custodies. Hence, on the morning of July 6th, only just over half the custodies in the cellblock could be restrained. It should also be noted that assaults on deputy sheriffs by custodies have occurred in the past, and cellblock unit deputies believe that the lack of manpower has created an unsafe working environment. This sentiment was expressed by a deputy sheriff in the District Court Section, who said: "If we go by the book, we cannot do this job properly. We have to do what is necessary.... People won't listen to us until somebody dies."

CALEA law enforcement standards state that effective security of courts is dependent upon the use of agreed-upon written directives and operational plans. When two or more agencies are involved in the security of a court, such as the Judiciary and the Department of Public Safety, a memorandum of agreement is needed to identify and specify the requirements and responsibilities of each. We found that in the absence of such an agreement, the Sheriff Division has been operating without standards for manpower that would provide for the safety of deputy sheriffs, custodies, and persons within the courts. Our observations of the Sheriff Division lead us to agree with departmental administration's assessment that there are manpower issues within the sections responsible for court security. Yet, without written directives or standards, it is difficult to determine the true severity of the situation and whether the courts are adequately protected by the Sheriff Division.

Conclusion

Law enforcement officers shoulder tremendous responsibilities, making it imperative that they receive proper training, equipment, and organizational support. We found that the Sheriff Division has been neglected – it is bereft of leadership and deficient in proper training and equipment. It is an organization that has resigned itself to make do with what it has, putting its faith in the skills and abilities of its staff. When queried about the lack of training provided to deputy sheriffs, the division’s deputy director replied, “Do we get enough training? What’s enough? We find out when you haven’t had enough ... the hard way.”

The State must determine the degree to which it is responsible for public safety and communicate that commitment to the Department of Public Safety. Doing so will allow the director of the department to fulfill his responsibility to develop and implement an effective state law enforcement program that can balance the State’s needs and its capabilities. Presently, the lack of departmental guidance and commitment has resulted in a Sheriff Division that is saddled with responsibilities exceeding its capabilities.

Without a functional state law enforcement or strategic plan, the safety of Hawaii’s public, as well as employees of the Sheriff Division, is potentially at risk. In addition, the Sheriff Division must be fully accredited as a law enforcement agency to ensure that proper law enforcement standards are being met. If these issues are not addressed soon, the administration, department, and State may find out the “hard way” that failure to adequately support the Sheriff Division can have serious and costly repercussions.

Recommendations

The Department of Public Safety, to enact an effective law enforcement program, should:

1. Perform a risk assessment of each section of the Sheriff Division. This risk assessment should focus on:
 - a) The duty or function performed by the deputy sheriffs;
 - b) The necessity of the duty or function performed;
 - c) The risk associated with the duty or function performed;
 - d) The resources, personnel, and equipment needed to adequately perform these functions;

- e) Determining whether the Sheriff Division is capable of performing the duty or function in a manner that properly protects public safety;
 - f) Determining whether the department is capable of supporting and maintaining this function of the Sheriff Division; and
 - g) Engaging the agencies serviced by the Sheriff Division, such as the Judiciary and Department of Transportation, to clearly define interagency duties and responsibilities.
2. Build on the above risk assessment to develop a comprehensive strategic plan for the Sheriff Division that, at a minimum, meets the requirements of Act 100, SLH 1999, and includes:
- a) Reassessing the established division goal(s) based on the risk assessment;
 - b) Developing objectives that are measurable and linked to division goal(s);
 - c) Establishing action plans for each objective, detailing how, by whom, and when each objective will be achieved; and
 - d) Determining how the division will measure the success of each goal and objective.
3. Collaborate with the administration and potentially the Legislature to consider reorganizing and reevaluating the statutes pertaining to the duties and functions of the Sheriff Division, based on the results of the risk assessment. Policy decisions will need to be made to address areas that may be deemed important but beyond the capabilities of the Sheriff Division.
4. Draft administrative rules that clearly determine and define the responsibilities and jurisdiction of the Sheriff Division. In the process of drafting these rules, the department must collaborate with affected agencies as well as county police departments. These rules should include, but not be limited to:
- a) A definition of the division's area of jurisdiction and the functions performed in that area;
 - b) Guidelines on the number of personnel needed to provide adequate coverage for each area of jurisdiction;

- c) Guidelines on mandatory in-service training and equipment maintenance; and
 - d) Guidelines specific to the Judiciary and the division's service of judicial processes.
5. Seek Accreditation for the Sheriff Division from the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), to help ensure that proper law enforcement policies and procedures are enacted and followed. To prepare for these fundamental changes, the Department of Public Safety can enroll the Sheriff Division in the CALEA Recognition Program, which serves as a preliminary step to full accreditation.

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IN THE DISTRICT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII
HONOLULU DIVISION

[REDACTED]

FILED ON:
16-JUL-2009
12:46 PM

STATE OF HAWAII,

vs.

[REDACTED]

Defendant.

) Case ID:
) IDTC-09-043881 (S/AP)
)
) Bench Warrant No.: Q110918709
)
)

Driver License No.:

State of License:

Date of Birth: [REDACTED]

Sex: M

ID: @769989

ARREST
REPORT
NUMBER

COUNT - SECTION / DESCRIPTION
2 - HRS 286-102(b)(1) DRV MOPED W/IMPROPER DL

CITATION
IDTC-09-043881

BENCH WARRANT

THE STATE OF HAWAII:

To any Officer or Sheriff authorized by law to make arrests in the State of Hawai'i:
DEFENDANT, [REDACTED], was released on his/her own recognizance/bail and/or ordered to do one or more of the following: to appear, make payment, or comply with the court's order in accordance with the pending violation(s) indicated above on 08-JUN-2009.

THEREFORE YOU ARE HEREBY COMMANDED to arrest the Defendant, [REDACTED], and bring him/her before the presiding judge of the above-entitled court at:

1111 Alakea Street, Honolulu, HI 96813

Defendant may be admitted to bail set in the amount of **\$250.00**.

UNLESS AUTHORIZED IN WRITING THIS WARRANT MAY NOT BE EXECUTED BETWEEN THE HOURS OF 10:00 P.M. AND 7:00 A.M. ON PREMISES NOT OPEN TO THE PUBLIC.

Dated: 08-JUN-2009

/S/ [REDACTED]
Judge of the Above-Entitled Court



██████████
1DTC-09-043881
BENCH WARRANT

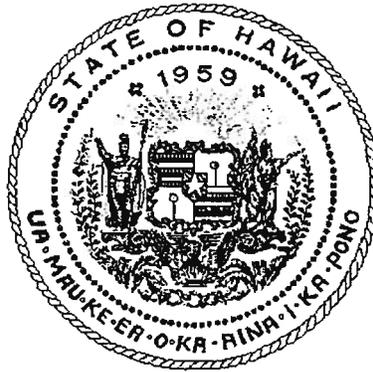
RETURN OF SERVICE

EXECUTED the within Bench Warrant by arresting _____ at
_____ o'clock ____ M. this _____ day of _____ 20 _____,
at _____, Hawai'i.

Police Officer/Sheriff



In accordance with the **Americans with Disabilities Act** if you require an accommodation or assistance, please contact the District Court Administration Office at PHONE NO.(808) 538-5121, FAX (808) 538-5233, or TTY (808) 539-4853 at least ten (10) working days in advance of your hearing or appointment date.



DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2009 LEGISLATURE

ACT 100, PART II, SECTIONS 6 AND 7
SESSION LAWS OF HAWAII 1999

ANNUAL REPORT ON STRATEGIC PLAN, TIMETABLE &
PERFORMANCE MEASURES

December 2008

Note: This document is an excerpt. Only relevant sections have been reproduced.

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REPORT TO THE TWENTY-FIFTH LEGISLATURE
STATE OF HAWAII
2009 REGULAR SESSION

REQUIRING ALL DEPARTMENTS AND AGENCIES TO IDENTIFY
THEIR GOALS, OBJECTIVES, AND POLICIES, TO PROVIDE A
BASIS FOR DETERMINING PRIORITIES AND ALLOCATING
LIMITED PUBLIC FUNDS AND HUMAN RESOURCES

Purpose

This annual report has been prepared in compliance with Sections 6 and 7 of Act 100, Session Laws of Hawaii (SLH) 1999. The purpose of this Act is to require all departments and agencies to identify their goals, objectives, and policies; and to provide a basis for determining priorities and allocating limited public funds and human resources. Specifically, the Act calls for the submission of an annual report to the Legislature twenty days prior to the start of the Regular Session of 2000 and each Regular Session thereafter addressing the following:

- A statement of goals, including what the department or agency hopes to accomplish both short and long term;
- Objectives and policies, specifically setting forth how each goal can and will be accomplished;
- An action plan with a timetable indicating how the established objectives and policies will be implemented in one, two, and five years; and
- The process that the department or agency will use to measure the performance of its program and services in meeting the stated goals, objectives, and policies.

**Department of Public Safety
Sheriff, PSD503
Act 100, Session Laws of Hawaii 1999, Annual Report**

GOALS:

To provide for the protection and safety for the people of Hawaii through law enforcement/security services at State Facilities, Lands, Harbors, Airports, and within the jurisdictional boundaries of the State of Hawaii.

OBJECTIVES:

- To serve and protect the public, government officials, and State personnel and property under its jurisdiction by providing law enforcement services which incorporate patrols, surveillance, and educational activities;
- To protect State judges and judicial proceedings, secure judicial facilities, and safely handle detained persons; provide secure transport for persons in custody;
- To execute arrest warrants for the Judiciary and the Hawaii Paroling Authority.

TIMELINE:

- On-going

MEASURES OF EFFECTIVENESS:

- Average response time for all incidents.
- Percent of grand jury and HPA warrants served.
- Percent of traffic warrants served.
- Percent of threats investigated.

Program Title: Sheriff (PSD 503)

PART II - MEASURES OF EFFECTIVENESS	Fiscal Year 2007-2008			Fiscal Year 2008-2009	
	Planned	Actual	% Difference	Planned	Estimated
1. Average response time for all incidents (minutes)	2	NO DATA	N/A	2	2
2. Percent of grand jury and HPA warrants served	80	100	25%	80	80
3. Percent of traffic warrants served	25	10	-60%	25	25
4. Percent of threats investigated	100	100	0%	100	100

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Appendix C

Sheriff Division Vehicles Sorted by Mileage			
VEHICLE DESCRIPTION	MODEL YEAR	LOCATION	MILEAGE
BUS FORD	96	Administration	301,372
SDN CHEVY 4DR FROM JUD 7/1/90	90	Open Lot - pending	147,981
SDN CHEVY CAPRICE 4DR	93	DCT Patrol	143,094
SUV CHEVY TAHOE	99	Kona Section	133,487
CHEVY SUBURBAN	96	K-9	131,225
SDN FORD CROWN VICTORIA	02	Warrants	126,455
VAN DODGE FROM JUD 7/1/90	90	DCT Cell Block	123,009
P/U TRUCK DODGE RAMCHARGER	91	Maui Section	122,392
CHEVY IMPALA POLICE INTERCEPTOR	01	Administration	118,733
SDN FORD CROWN VICTORIA	99	DCT Patrol	117,189
FORD4DSD	99	Maui Section	117,031
P/UP FORD RANGER	00	DEA	116,769
VAN FORD AEROSTAR	93	Open Lot - pending	109,580
FORD CROWN VICTORIA POLICE INTERCEPTOR	00	Warrants	109,463
FORD TAURUS 4DSD	01	Warrants	104,731
SUV TAHOE	02	K-9	103,537
P/U TRUCK FORD RANGER	02	K-9	101,281
CHEVY IMPALA POLICE INTERCEPTOR	01	Maui Section	100,300
SDN FORD CROWN VICTORIA	02	Warrants	100,130
FORD Crown Victoria	00	Maui Section	98,697
FORD EXPLORER SUV 2WHEEL DR	05	K-9	96,936
SDN FORD CROWN VICTORIA	99	Kona Section	93,068
CHEVY 4DSD	02	Warrants	91,345
SDN FORD CROWN VICTORIA 4DR	95	Capitol Patrol	89,732
VAN DODGE	00	RRF	87,325
FORD TAURUS 4DR SDN	05	Warrants	86,063
SDN CHEVY 4DR FROM JUD 7/1/90	90	Open Lot - pending	85,883
Chevy Passenger Van	04	Administration	84,003
CHEVY 4DSD	02	Warrants	83,813
CHEVY CAPRICE	91	Unk	83,381
CHEVY IMPALA POLICE INTERCEPTOR	01	Executive Protection	81,940
VAN CHEVY (12 PASSENGER)	01	Hilo Section	80,553
FORD 4DSD	97	Receiving	80,263
P/U TRUCK CHEVY 2500	88	Firearms	79,862
P/U TRUCK CHEVY S-10	91	Open Lot - pending	79,013
SDN CHEVY CAPRICE 4DR	92	Open Lot	77,987
VAN CHEVY (12 PASSENGER)	01	CCT Cell Block	77,658
BUICK LESABRE	01	Adminstration - Sheriff	75,000
SDN CHEVY CAPRICE 4DR	92	Warrants	72,342
VAN DODGE	00	RRF	72,191
HUMMER H2	03	Administration	71,731
SDN CHEVY CAPRICE 4DR	92	Capitol Patrol	69,748

FORD 4DSD	02	Administration - First Deputy	65,936
SDN FORD CROWN VICTORIA 4DR	00	Maui Section	64,840
Ford Taurus Station Wagon	94	Records	61,547
VAN DODGE	98	RRF	59,571
SDN FORD CROWN VICTORIA	99	CCT Patrol	59,338
P/U TOYOTA TACOMA	04	Warrants	58,063
FORD TAURUS 4DR SDN	05	Warrants	56,463
FORD CROWN VICTORIA	05	Hilo Section	56,426
SDN CHEVY CAPRICE 4DR	92	Open Lot	55,785
Ford F-250 Pick-up Truck	99	K-9	53,680
SDN FORD CROWN VICTORIA 4DR	04	Hilo Section	53,429
NISSAN MAXIMA	03	DEA	52,464
LINCOLN NAVIGATOR	03	DEA	51,326
SDN FORD CROWN VIC 4 DR	03	Kauai Section	50,413
Ford E350 Passenger Van	08	Maui Section	47,048
FORD ECONOLINE CLUB VAN	05	Hilo Section	44,635
FORD ECONOLINE CLUB VAN	05	Kona Section	44,118
SDN FORD CROWN VICTORIA	99	Kauai Section	36,943
VAN FORD F-150	83	Executive Protection	36,590
FORD POLICE INTERCEPTOR	06	Kauai Section	36,157
SDN FORD CROWN VICTORIA	07	Capitol Patrol	36,001
FORD CROWN VICTORIA	05	Maui Section	35,400
Ford Crown Victoria	2003	Administration	35,343
FORD CROWN VICTORIA	05	Maui Section	32,306
Ford Crown Victoria	2004	Administration	31,319
FORD 4DSD	07	Capitol Patrol	25,406
SDN FORD CROWN VICTORIA	07	Capitol Patrol	25,262
SDN FORD CROWN VICTORIA	07	DCT Patrol	20,011
SDN FORD CROWN VICTORIA	07	CCT Cell Block	17,047
SDN FORD CROWN VICTORIA	07	DCT Cell Block	16,750
VAN CHEVY	03	Kauai Section	15,837
SDN FORD CROWN VICTORIA	07	CCT Patrol	15,525
FORD MUSTANG	UNK	Open Lot	15,369
VAN CARGO FORD	86	RRF	7,565
Chevy Impala	2003	Administration	5,396
VAN CHEVY	95	Administration	4,444
Ford Crown Victoria	09	Hilo Section	2,734
Chevy Passenger Van	03	Administration	
OLDS ALERO 4DSD	02	Administration	
OLDS ALERO	03	CID	
CHEVY SUBURBAN	99	Damaged-warehouse	
SDN FORD CROWN VICTORIA	97	DCT Patrol	
SDN PONTIAC GRAND PRIX 4DR	94	Diamond Head	
SDN CHEVY 4DR FROM JUD 7/1/90	90	Hilo Section - Disposed?	
VAN FORD AEROSTAR	93	K-9 Open Lot	
SDN CHEVY LUMINA 4DR	93	Kauai Section - Disposed?	
SDN DODGE DIPLOMAT FD	85	Open Lot	

CHEVY CELEBRITY	89	Open Lot	
SDN CHEVY CAPRICE 4DR	91	Open Lot - pending	
SUV CHEVYY TAHOE	93	Receiving	
VAN CHEVY FROM JUD 7/1/90	83	TSD-Evoc	
SDN CHEVY CELEBRITY 4DR	89	TSD-Waimano Home	
CHEVY S-10 PU TRUCK	97	Unk	
FORD BRONCO	92	Unk	
CHEVY BLAZER	93	Unk	
CHEVY 4DR SDN	91	Unk	
CHEVY CAPRICE	91	Unk	
CHEVY CELEBRITY	89	Unk	
CHEVY CAPRICE	90	Unk	
FORD TAURUS	93	Unk	
PONTIAC 4DR SDN	94	Unk	
PONTIAC 4DR SDN	94	Unk	
CHEVY VAN	94	Unk	
JEEP CHEROKEE	97	Unk	
CHEVY CAPRICE	90	Unk	
CHEVY CAPRICE	91	Unk	
CHEVY CHEYENNE	1993	Unk	
CHEVY CAPRICE	90	Unk	
CHEVY LUMINA	93	Unk	
TOYOTA TACOMA PKUP TRUCK	98	Warrants	

Note that mileage was not provided by Department of Public Safety for all vehicles.

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Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report on May 24, 2010 to the Department of Public Safety. A copy of the transmittal letter to the department is included as Attachment 1. The department's response, submitted on June 2, 2010, is included in its entirety as Attachment 2.

In its response, the department noted that after reviewing our findings and recommendations, it would address and/or implement solutions to some of the specific problem areas noted. The department raised concerns regarding the presentation of the findings; however, it did not provide any specific details disputing any of our findings. Further, the department acknowledged deficiencies within the Sheriff Division, some of which are long-standing, and described several steps it has or will be taking to address some of the findings. To its credit, the department indicated its commitment to forging ahead in continuing to address and resolve these issues with available resources and funding. The department did remark that, due to time constraints and the scope of the audit, it did not have enough time to conduct a thorough analysis of the findings.

Our audit was conducted in accordance with applicable standards and our findings and conclusions are based on information obtained from the department's documents and management and staff. We stand by the conclusions in our report.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii'i 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

May 24, 2010

COPY

The Honorable Clayton A. Frank
Director
Department of Public Safety
919 Ala Moana Boulevard
Honolulu, Hawaii'i 96814

Dear Mr. Frank:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Audit of the Department of Public Safety, Sheriff Division*. We ask that you telephone us by Wednesday, May 26, 2010, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, June 2, 2010.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

June 1, 2010

RECEIVED

2010 JUN -2 PM 2:24

OFC. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion Higa
State Legislative Auditor
465 South King Street, Suite 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for the opportunity to provide responses to your audit on the Department of Public Safety, Sheriff Division. After reviewing your findings and recommendations, the department and the division will take to heart in addressing and/or implementing some of those specific problem areas noted. However, we are deeply concerned that the manner in which some of the the findings were presented created an unfair assessment and at times incomplete version of what really happens in the Sheriff Division operations and it's affects on the general public and with our staff. A simple follow up with key PSD Administrators may have alleviated and/or clarified issues that were not fully explained.

The Department of Public Safety understands that we have deficiencies in our Sheriff Division, many have been long standing issues that the current administration have over the past 3 years been attempting to address and resolve. We will continue to forge ahead to resolve the issues at hand with the resources and funding we have.

As such, we provide the following responses to some of the findings that were noted in the audit. Please be advised that given the scope of this audit and some of the issues noted, we were not able to fully conduct a thorough analysis of your findings, within the time constaints provided. However, it is our hope that the responses provided will clarify matters of mutual interest and concern.

Sincerely,

Clayton A. Frank
Director

RESPONSE TO THE DRAFT AUDIT OF THE DEPARTMENT OF PUBLIC SAFETY, SHERIFF DIVISION

Warrants:

We agree with some of the findings on the inefficiencies of the warrant process, however we believe that these inefficiencies are due to the separation of our Sheriffs operations. In order for the Sheriffs Division to be operationally effective, we need to consolidate the Sheriffs Division into a centralized location. By consolidating operations (Receiving, Warrants and Sheriffs Administration) in a central location in the County of Honolulu, it would better serve the general public and especially those individuals who have warrants that would like to voluntarily turn themselves in. To support this provision, PSD Administration for the last 2 years has been diligently seeking potential sites and has identified a suitable location in Downtown Honolulu, with the planning, design, and construction currently underway with an anticipated completion of the Sheriffs Headquarters slated for the end of December 2010 and January 2011.

Regarding the issue of poor radio system coverage, we recognize this problem and the Sheriffs Division had purchased a repeater to address the problem. However, due to site permission and construction renovation the placements of the repeaters are being delayed.

Ambiguous Laws:

We agree that over the years the Sheriffs Divisions responsibilities have expanded and previous Directors have recognized this growth without receiving adequate funding to carry out these requirements. For example, the expanding and opening of additional court houses throughout the State, security at other State Agencies (i.e. Tax Depart. Labor Depart. Etc.), coupled with additional special programs (i.e. Judiciary's Hope Program, Drug Court etc) that require the Sheriffs Division to assist have placed additional strain on our Sheriffs manpower.

In order for the Sheriffs Division to carry out its responsibilities, the Public Safety Department Sheriffs Division must be provided the proper funding so that we can provide them with the best equipment and training to do their jobs for the benefit of the general public they are sworn and required to protect.

Mobile Command Post (MC2) date of Completion

For clarification purposes we would like to make it clear that all costs associated with the Mobile Command Post, e.g., the tractor, trailer, communication equipment and repairs, was not done with the utilization of state general funds, but instead, federal Homeland Security funds, as well as Asset Seizure funds, were used to make all purchases, upgrades, and repairs.

The radio communications and electronics for MC2 were both completed in April 2009.

This does not include the satellite communications link, which is not needed at this time and adds cost to its operation. This was indicated in the draft audit.

We would like to note that the MC2 is not utilized like the mobile command centers that HPD and HFD have. The MC2 is a command center that links communications with the county, State, and Federal agencies in the event of a natural disaster, or possible threat to Homeland security and/or special operational purposes. For example, the most recent activation of the MC2 was in February 2010 when the State of Hawai'i were threatened with a Tsunami.

In-Service Training

We found that in-service training within the Sheriff Division is not consistent. In fact, the Department of Public Safety has halted critical in-service training for the Sheriff Division since November 2008.... We found that there are potential liability concerns regarding training with the Sheriff Division. When asked about issues regarding training for the Sheriff Division, the director of public safety acknowledged that in-service training is "woefully inadequate".

For clarification to Exhibit 2.5, the In-Service Training for the Sheriff Division was not 'halted' as stated on page 32 of the report. The purpose of the memo was to remind the "Entire Public Safety Department" that all In-Service Training must be in accordance to Police ADM.04A.01, to ensure that all employees, sworn and civilian receive high-quality, job-related, competency-based training.

PSD agrees that we are responsible for providing training and staff development of departmental staff. However, we are also responsible to ensure that the training provided to the employees is performed through certified instructional courses, by certified instructors. Without certified training courses and instructors, the State would also be liable if an incident was to occur and the training that the employees received were applied and found deficient.

"Public is at Risk"

As to whether the "public is at risk", as stated in the Audit report, we feel that this conclusion is an overstatement of day-to-day reality. The Sheriffs Division is, by law, tasked far beyond the manpower and budget allotted to it, so that the Sheriffs Division has always had to make decisions as to what we could, and could not do with the funding appropriated, without jeopardizing the safety of staff or the general public.

The Sheriffs Division services the courts to the best of our manpower availability and continues to work closely with the individual judges on what we can provide on a daily basis. The Sheriffs also continue to patrol all of the streets within the surrounding Capitol District, Kakaako and the Kewalo Basin Boat Harbor as well the Honolulu

International Airport and surrounding areas.

Also, the Sheriff Division has begun to make improvements by implementing and lowering risk to the public through strategic objectives planning. To achieve this goal, the Sheriffs Division has partnered with local and federal law enforcement agencies, such as State Civil Defense, the Department of Attorney General, Honolulu Police Department, and other Federal agencies, such as the U.S. Marshals and the Drug Enforcement Administration (DEA). This partnering allows the Sheriff Division to develop new thoughts and ideas, to exchange plans, problems, and come up with solutions with their peers.

Furthermore, as a single entity facing a budget crisis, any 'career certification' is costly and manpower consuming. Therefore, PSD will be executing plans to achieve our goals with the use of Asset Forfeiture Funds, by having selected individuals attend the training at the FBI National Academy located in Quantico, Virginia. Attendees will be provided with instruction and facilitation in the areas of leadership, strategic planning, legal issues, labor relations, media relations, social issues, and police programs. Upon the attendees return from training, the Sheriffs Division will set up a revised and ambitious training schedule for all sheriff deputies, thereby ensuring not only a well trained law enforcement agency, but also raising the division to a higher standard.

EVOC Training

With regards to the Emergency Vehicle Operator Course (EVOC), there were two issues that arose which halted this training. The first issue was that the EVOC training that the Sheriff at that time was attempting to conduct, was an EVOC class with vehicles that were not appropriate for this training course. However, once PSD was able to obtain the appropriate type of vehicle, the class proceeded to be taught and was completed.

The second issue with the EVOC training was that the Sheriff's Division wanted to make changes to the curriculum, by making it a pass/fail course. This type of change requires consultation with the union since it will have an affect on the employees and this process is still in negotiation with the union.

Body Armor

The Deputy Director of Law Enforcement acknowledged the importance of the vests and said, "it is [deputies] lifeline and gives them a chance at survival because if you're shot in the torso with any modern day weapon, you're going to die". However, emails from the department's administrative deputy director and the deputy director of law enforcement show that the department's position is that the body armor does not "switch off" its effectiveness when the warranty expires.

The attached email, Exhibit 2.7, was a **draft** response that needed supporting

documentation from the manufacturer. However, subsequent to this email, the Director made the decision to replace all of the body armor, which started the bid process in April 2009. In May 2009, PSD identified General Funds for the replacement of the body armor, but, was unable to utilize the funds for encumbrance due to the statewide fiscal crisis. In November 2009, the Law Enforcement Division was able to find an alternate source of funds and orders for replacement body armor were placed in February 2010. The Audit report also mentioned the following"

The Federal Bureau of Investigation (FBI) uses the manufacturer's five-year warranty as its benchmark for vest replacement due to concerns for the safety of its agents and liability issues if a vest is used past its warranty period. Once a warranty expires, liability for injuries shifts to the issuing agency should a vest be penetrated by ammunition that the vest was designed to stop.

There is no definitive answer to "How long does body armor last?" Studies conducted by the National Institute of Justice (NIJ), who is the research, development and evaluation agency of the U.S. Department of Justice that the FBI comes under, shows that age alone does not cause body armor's ballistic resistance to deteriorate. The care and maintenance of a garment - or the lack thereof - have been shown to have a greater impact than age on the length of service life of a unit of body armor. Armor that is 10 years old and has never been issued may be perfectly acceptable for use, provided that the rated level of protection is still appropriate for the typical threats faced. Conversely, 2-3 year old armor that has been worn regularly and improperly cared for may not be serviceable.

Many body armor manufacturers currently offer a 5-year warranty on the products they sell to criminal justice agencies. NIJ also mentioned in their guide that it is important for agencies to recognize that a manufacturer's warranty should not be interpreted as a benchmark for service life. The warranty exists solely to limit the manufacturer's liability on the product and is not a reflection of the anticipated service life of the product. (Ref., U.S. Department of Justice, National Institute of Justice, Selection and application Guide to Personal Body Armor, JIJ Guide 100-1).

Service Vehicles

We found that the division allows vehicles to be purchased second-hand. As a practice, the division, through the Department of Accounting and General Services Surplus Property Branch, obtains used federal government vehicles that are approximately five to seven years old and range in mileage from 5,000 to 70,000 miles.

PSD's Administration recognized this issue in both the Law Enforcement and Corrections Division. PSD submitted a request in the 2007 Legislative Session for additional funding to start a fleet replacement program. PSD received approximately \$475,000 for vehicle replacements.

During the 2009 Legislative Session, the State of Hawaii was at the beginning of its economic crisis. In order to cut appropriations, PSD offered the State Legislature 50% of the funds (\$234,855) for replacement vehicles. PSD felt that with 50% of the funding, they would still be able to replace vehicles that were in need of replacement. Unfortunately, the Legislature reduced this funding in FY2010 by an additional \$120,000, and \$240,000 for FY2011, thereby leaving PSD with no funds to replace vehicles. The Sheriff's Division made do with what we had.

Reference to CALEA certification

PSD agrees that law enforcement accreditation is a positive step towards professionalism; accreditation involves a dynamic process with far reaching potential. However, it is a costly venture to embark upon. The CALEA accreditation is a long and arduous process that entails considerable manpower, dedication, and cost expenses that the Sheriff's Division does not currently have available.

In the state of California alone, having 58 counties (58 Sheriff Departments), and hundreds of local police departments for most of the towns and cities in California, there are a total of fourteen (14) CALEA certified departments. In the State of Hawaii, out of all the local police departments to include other state police agencies such as DLNR, etc, only HPD and Maui PD are CALEA certified.

Conclusion

The Department of Public Safety knows that we have deficiencies, some of which are long standing and may take time and funding to resolve. We have been tackling as many issues as possible, with the resources that we have and we cannot solve all of the problems immediately and simultaneously. We have already made progress towards improving many serious issues that were identified in this audit, and we do not plan to rest until we have corrected each one.

It is my understanding that our response to your audit findings may be published as an appendix to the final public report. With this in mind, it is unfortunate that given the large scope of this audit and the seriousness of the findings, we were not able to conduct a thorough analysis of your findings. Although we may not be able to address every issue in this written response, be assured that we have already begun and will continue to investigate each point that you have made.