

No. 12-17808

IN THE
**United States Court of Appeals
for the Ninth Circuit**

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,

v.

STATE OF HAWAII, ET AL,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor

PETITION FOR REHEARING *EN BANC*

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FRAP 35(b) STATEMENT

In this case, a sharply divided panel struck down a nearly century-old Hawaii statute regulating the open carry of firearms based on a cramped interpretation of the statute that the State itself has rejected. That by itself is enough to warrant *en banc* rehearing, but it is only one of at least three such egregious errors in the panel's opinion that calls for rehearing *en banc*.

First, the panel invalidated Hawaii's law on the ground that it limits open-carry licenses to "security guards" and other individuals whose jobs entail protecting life and property. Add. 51-52. But that is just wrong. By its plain terms, Hawaii Revised Statutes § 134-9 makes open-carry licenses available to *any* otherwise-qualified individual who "sufficiently indicate[s]" an "urgency" or "need" to carry a firearm and who is "engaged in the protection of life and property." Haw. Rev. Stat. § 134-9(a). Moreover, if there was any doubt on the question, the Hawaii Attorney General has removed it by issuing a formal legal opinion that clarifies that the law extends to private individuals as well as security officers, and that advises police chiefs that victims of domestic violence, individuals who face a credible threat of armed robbery or violent crime, and other private persons may be eligible for open-carry licenses. *See* Add. 77-86 (State of Haw., Dep't of the Att'y Gen., Opinion Letter No. 18-1, Availability of Unconcealed-Carry Licenses (Sept. 11, 2018), *available at*

<https://ag.hawaii.gov/wp-content/uploads/2018/09/AG-Opinion-No.-18-1.pdf>).

Rehearing *en banc* is necessary to ensure that Hawaii’s law is evaluated based on an accurate understanding of its meaning.

Second, rehearing *en banc* is warranted because the panel expressly split from the decisions of three other circuits. The Second, Third, and Fourth Circuits have all held that the “core” of the Second Amendment does not include a right to public carry, and have upheld laws indistinguishable from Hawaii’s on that basis. The panel in this case explicitly disagreed with those circuits and struck down Hawaii’s law as a result. If left undisturbed, the panel’s decision will thus deprive States like Hawaii and California of the tools necessary to protect their residents from gun violence that Maryland, New Jersey, and New York have all been found to possess.

Third, the panel opinion openly defies this Court’s recent *en banc* decision in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016). *Peruta* overturned a remarkably similar panel decision—written by the same judge who wrote the majority opinion here—that struck down a California public-carry statute based on a similarly sweeping conception of the Second Amendment. At every turn, the panel majority in this case contradicted the logic and holding of the *en banc* decision in *Peruta*—refusing to consider historical restrictions that *Peruta* found compelling, disregarding cases on which *Peruta* placed significant weight, and

ignoring *Peruta*'s conclusion that a restriction like Hawaii's would survive intermediate scrutiny. Indeed, much of the opinion is a section-by-section copy of the panel opinion that *Peruta* overturned.

Rehearing *en banc* is warranted to correct each of these grave errors, and to avoid the predictably deadly consequences of the panel majority's decision for the millions of residents of States in the Ninth Circuit that have open-carry laws on the books. The panel decision should be vacated, and the case remanded to the District Court so that it can be reassessed based on an accurate understanding of Hawaii law.

BACKGROUND

Hawaii has regulated the public carry of firearms for over 150 years. In 1852, the Hawaii Legislative Council enacted a statute making it a criminal offense for "[a]ny person not authorized by law" to "carry, or be found armed with, any . . . pistol . . . or other deadly weapon . . . unless good cause be shown for having such dangerous weapons." Act of May 25, 1852, § 1, 1852 Haw. Sess. Laws 19, 19. In 1927, the territorial legislature enacted a statute providing that individuals could not carry a "pistol or revolver" in public unless they obtained a license upon showing "good reason to fear an injury to his person or property" or "other proper reason for carrying" a firearm. Act 206, §§ 5, 7, 1927 Haw. Sess. Laws 209, 209-211. The State revised its firearms statute to substantially its present form in 1934

and 1961. *See* Act 26, § 8, 1933-1934 Haw. Sess. Laws Spec. Sess. 35, 39; Act 163, § 1, 1961 Haw. Sess. Laws 215, 215-216.

Today, the law provides that, subject to a number of listed exceptions, an individual may not carry a pistol or revolver in public without a license. Haw. Rev. Stat. §§ 134-26, 134-9(c); *see id.* § 134-27. Section 134-9 provides that chiefs of police may issue a license to carry a *concealed* firearm “[i]n an exceptional case” where an otherwise-qualified individual “shows reason to fear injury to the applicant’s person or property.” *Id.* § 134-9(a). Section 134-9 further states that a chief of police may issue a license to carry an *unconcealed* firearm where “the urgency or the need has been sufficiently indicated” and the applicant is “engaged in the protection of life and property.” *Id.*

In 2012, George Young sued the State of Hawaii, the County of Hawaii, and several State and County officials, contending that the statutory requirement to obtain a carry license violates the Bill of Attainder Clause, the Contracts Clause, the Second Amendment, the Ninth Amendment, and the Privileges and Immunities Clause. D. Ct. Dkt. 1. The District Court dismissed the suit. *Young v. Hawaii*, 911 F. Supp. 2d 972 (D. Haw. 2012). It explained that because Section 134-9 “only appl[ies] to carrying a weapon in public,” it “do[es] not restrict the core protection afforded by the Second Amendment.” *Id.* at 990. Furthermore, it explained that Section 134-9 “do[es] not operate as an outright ban on firearms” in

public, but instead “differentiate[s] between individuals who need to carry a gun for self-defense and those who do not” by authorizing the issuance of carry licenses to any individual who makes “a sufficient showing of urgency or need or fear of injury.” *Id.* at 991. The District Court, like other courts to consider “comparable licensing schemes,” concluded that this law “survive[s] intermediate scrutiny” in light of the government’s “important and substantial interest in safeguarding the public from the inherent dangers of firearms.” *Id.* It also rejected Young’s remaining constitutional claims and held that the claims against the State were barred by sovereign immunity.

A divided panel of this Court reversed.¹ Writing for the majority, Judge O’Scannlain held that the “core” of the Second Amendment includes “the right to carry a firearm openly for self-defense.” Add. 51. The panel majority acknowledged that the text of the Second Amendment “implies” only that the Second Amendment “protect[s] at least some level of carrying in anticipation of conflict outside of the home.” Add. 15; *see* Add. 14-19. The panel thus relied

¹ The panel affirmed the dismissal of the claims against the State on sovereign immunity grounds. The State accordingly moved to intervene pursuant to 28 U.S.C. § 2403(b) for the purpose of defending its statute in *en banc* proceedings, but the panel held that intervention was unnecessary because the State remains a party until the mandate issues. Dkts. 150, 152. In the event that the *en banc* Court disagrees with that conclusion, the State reasserts its request for intervention pursuant to Section 2403(b).

heavily on “nineteenth century judicial interpretations of the right to bear arms” to locate the right it identified. Add. 19. By the panel’s count, five antebellum cases, all from slave states, found a broad right to open carry. Add. 19-23. A larger number of states during the same period *upheld* restrictions on open carry. Add. 24-28. But the panel “set aside” these cases, deeming them of “little instructive value” for a smattering of reasons: because they did not acknowledge an individual right to bear arms, because they interpreted slightly different state constitutional provisions, or because they did not exhibit the degree of “consideration” the panel thought “due.” Add. 25-28.

The panel also disregarded a range of other evidence that did not accord with its interpretation. It acknowledged that since the mid-nineteenth century, many states restricted open carry where individuals could not show “good cause,” but deemed those laws unimportant because the penalties for violating them were generally “minor.” Add. 32-35. Likewise, the panel assigned no weight to the Statute of Northampton, a statute this Court described in *Peruta* as “the foundation for firearms regulation in England,” and viewed as highly instructive in delineating the scope of the Second Amendment. *Peruta*, 824 F.3d at 930. Contrary to *Peruta*, the panel interpreted this law to prohibit the carrying only of “dangerous or unusual weapons” for the purpose of “terroriz[ing]” people, and “decline[d]” to assign that law much weight in interpreting the Second Amendment. Add. 39.

Having found a sweeping right to open carry, the panel concluded that Section 134-9 “amounts to a destruction of th[at] core Second Amendment right.” Add. 51 (internal quotation marks omitted). As the panel read it, Hawaii’s law authorizes only “security guard[s]” and those “similarly employed” to obtain open-carry licenses. *Id.* It rested that interpretation almost exclusively on the fact that, during oral argument, counsel for the County of Hawaii was unable to identify individuals other than security guards to whom that County had issued open-carry licenses. *Id.* Because the Second Amendment “does not protect a right to bear arms only as a security guard,” the panel reasoned, Section 134-9’s open-carry language “violates the core of the Second Amendment and is void.” Add. 52-53.

Judge Clifton dissented. He noted that the panel’s decision “expressed an interpretation of the Second Amendment” that was “very similar” to the one espoused by the vacated *panel* opinion in *Peruta*. Add. 60. Furthermore, Judge Clifton observed that the majority’s opinion exacerbated an “already existing circuit split” as to whether the “core” of the Second Amendment includes a public-carry right, and conflicted with decisions of the Second, Third, and Fourth Circuits upholding statutes that contained virtually indistinguishable “good cause” requirements. Add. 61-62. Judge Clifton also vigorously contested the majority’s interpretation of the historical evidence, explaining that Hawaii’s law should be upheld under intermediate scrutiny. Add. 63-75. In that context, Judge Clifton

correctly noted that “[n]o record has been developed in this case, so a conclusion that the regulation acts as a total ban is unsupported.” Add. 73.

REASONS FOR GRANTING REHEARING *EN BANC*

I. The Panel’s Decision Rests On A Fundamental Misunderstanding Of Hawaii Law.

En banc review is warranted because the panel’s decision rests on an erroneous interpretation of Hawaii’s law. By its plain terms, Section 134-9 authorizes police chiefs to issue open-carry licenses to any otherwise-qualified individual who “sufficiently indicate[s]” the “urgency or the need” for a firearm and “is engaged in the protection of life and property.” Haw. Rev. Stat. § 134-9(a). Travelling far beyond the appropriate role of a federal court, the panel majority announced that the law in fact authorizes open-carry licenses only for “security guards” and other individuals whose job duties entail the protection of life and property. It then invalidated the law on the ground that, so construed, it “amount[ed] to a destruction” of the right to public carry. Add. 51-52.

Federal courts cannot rewrite state laws in this way. The law nowhere says that a person’s *job duties* must involve the protection of life and property. Nor did the State or the County ever espouse such an interpretation of Hawaii law. *See* Oral Arg. Recording at 16:22-17:01 (County’s attorney stating that the statute authorizes open-carry licenses for individuals who are not “security guards”). On the contrary, a straightforward reading of the text makes clear that *any* otherwise-

qualified private individual who can make a sufficient showing of need and who is engaged in the protection of life and property can obtain an open-carry license. For example, a victim of domestic abuse whose abuser has frequently violated a restraining order could demonstrate a “need” for a firearm to “protect[]” her “life and property.”

Moreover, if there was any doubt on this question, the Hawaii Attorney General has put it to rest. In the wake of the panel’s decision, the Attorney General issued a formal legal opinion clarifying that Section 134-9 permits the issuance of open-carry licenses to private individuals, and not just private security officers. *See* Add. 77-86. Furthermore, the Attorney General’s opinion sets forth detailed guidance to police chiefs describing the types of individuals who may qualify under the statutory standard. Add. 82-86. Among other examples, the opinion explains that victims of stalking and domestic violence, attorneys representing threatening clients, and persons responsible for carrying large amounts of cash may all be eligible for open-carry licenses in appropriate circumstances. Add. 84-85.

Under Hawaii law, the Attorney General’s opinion is entitled to substantial weight in delineating the scope of the statute. *In re Robert’s Tours & Transp., Inc.*, 85 P.3d 623, 632 n.15 (Haw. 2004) (explaining that Hawaii Attorney General opinions are “highly instructive” in interpreting state law) (quoting *Kepo’o v.*

Watson, 952 P.2d 379, 387 n.9 (Haw. 1998)). Furthermore, principles of federalism warrant deference to the considered views of the State’s Attorney General in interpreting the State’s own laws, particularly where a contrary interpretation would cast the constitutionality of that law into doubt. *See FTC v. MTK Mktg., Inc.*, 149 F.3d 1036, 1039 (9th Cir. 1998) (California Attorney General’s interpretation of California law “is entitled to deference”). In any event, the Hawaii Attorney General’s opinion is plainly correct; its detailed textual, structural, and historical analysis persuasively forecloses the cramped interpretation adopted by the panel.²

Had the panel properly understood Hawaii law, it would not have held that Section 134-9 “amounts to a destruction” of the right to open-carry. Add. 52. Because that conclusion served as the predicate for the panel’s conclusion that “section 134-9’s limitations on the issuance of open carry licenses violate the Second Amendment,” Add. 59, the Court should grant rehearing, vacate the panel’s decision, and remand the case to the District Court so that it can be reassessed based on an accurate understanding of Hawaii law. *See Betz v. Trainer Wortham & Co., Inc.*, 610 F.3d 1169, 1170-71 (9th Cir. 2010) (explaining that

² If the Court has any doubt as to the meaning of Section 134-9, it may also certify the question of its scope to the Hawaii Supreme Court pursuant to Hawaii Rule of Appellate Procedure 13. *See, e.g., Hancock v. Kulana Partners, LLC*, 692 F. App’x 329 (9th Cir. 2017) (certifying question to Hawaii Supreme Court).

“remand is the better procedure” when an intervening authority “construe[s] the [relevant provision] for the first time”).

II. The Panel’s Decision Creates A Split Between The Ninth Circuit And At Least Three Other Circuits.

Rehearing is also warranted because the panel’s opinion splits from the decisions of at least three other circuits on a question of profound importance: Whether the Second Amendment protects an unqualified right to carry firearms openly outside of the home.

Three circuits have held that it does not. In *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012), the Second Circuit held that a restriction on publicly carrying firearms does not burden a “core” Second Amendment right, and upheld New York’s “good cause” requirement for public carry under intermediate scrutiny. *Id.* at 96, 101. In *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011), the Fourth Circuit held that public carry restrictions are subject only to intermediate scrutiny, and in *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), it applied that holding to sustain a “good cause” restriction on public carry as constitutional. Likewise, in *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), the

Third Circuit held that restrictions on public carry are “presumptively lawful” and upheld New Jersey’s longstanding “good cause” carry limit, as well.³

In contrast, only the D.C. Circuit has held that the Second Amendment protects an unqualified right of public carry. In *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), a sharply divided panel held that the “core” of the Second Amendment includes the right to carry firearms outside the home, and struck down a “good cause” rule virtually indistinguishable from the ones upheld in *Kachalsky*, *Woollard*, and *Drake*. *Id.* at 667. In doing so, the Court expressly acknowledged that it was splitting from these courts, as well as this Court’s *en banc* decision in *Peruta*, which had acknowledged broad historical limits on the right of public carry. *Id.* at 661-664; *see id.* at 669 (Henderson, J., dissenting) (explaining that the majority’s “view of history is with blinders on as it is contradicted by our sister circuits’ extensive review of the same historical record”) (citing *Kachalsky*, *Drake*, *Masciandaro*, and *Peruta*).

Nonetheless, the panel below sided with *Wrenn*, and described itself as “unpersuaded” by the contrary holdings of the Second, Third, and Fourth Circuits. Add. 49-50. Like the D.C. Circuit, the panel held that the right to carry firearms

³ In *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), the Seventh Circuit struck down an Illinois law that operated as a categorical ban on open carry, but indicated that a gun law that “impose[d] reasonable limitations” on public carry like the one upheld in *Kachalsky* would be constitutional. *Id.* at 941-942.

publicly is part of the “core” of the Second Amendment, and should be analyzed under strict scrutiny. Add. 50-51. As Judge Niemeyer has indicated, this rule “would likely foreclose an extraordinary number of regulatory measures” that three other circuits would uphold, “handcuffing lawmakers’ ability to ‘prevent[] armed mayhem’ in public places.” *Masciandaro*, 638 F.3d at 471 (citation omitted).

Rehearing *en banc* is appropriate where a panel establishes a circuit split on a question of such great consequence. *See* Fed. R. App. P. 35(b)(1)(B); *Groves v. Ring Screw Works, Ferndale Fastener Div.*, 498 U.S. 168, 172 n.8 (1990). Indeed, this Court granted rehearing *en banc* the last time a panel of this court—in a remarkably similar opinion authored by the same judge who wrote the panel decision here—issued an outlier interpretation of the Second Amendment. *Peruta*, 824 F.3d 919. Rehearing is warranted here, as well.

III. The Panel Flouted The *En Banc* Court’s Decision in *Peruta*.

Finally, rehearing is warranted because the panel’s decision openly defies the *en banc* Court’s decision in *Peruta*.

Just two years ago, this Court reheard *en banc* and reversed another decision finding a broad Second Amendment right to public carry. In his panel opinion in *Peruta*, Judge O’Scannlain reasoned that the Second Amendment protects a right to carry a firearm in public for self-defense. *See Peruta v. Cty. of San Diego*, 742 F.3d 1144, 1167 (9th Cir. 2014) (*Peruta I*). The panel then struck down California

law limiting concealed-carry licenses to individuals who could show “good cause” on the ground that it amounted to a complete destruction of that right. *Id.* at 1169-70.

This Court granted rehearing *en banc* and reversed. *Peruta*, 824 F.3d 919. It found a strong historical consensus, dating back to 13th-century England, that the right codified in the Second Amendment does not include the right to carry concealed or concealable firearms in public. *Id.* at 929. The *en banc* court explained that the Statute of Northampton, a bedrock English law, had for centuries barred carrying any firearms in public, *id.* at 929-32; that a series of early nineteenth-century cases, including *State v. Buzzard*, 4 Ark. 18 (1842), had upheld restrictions on public carry of firearms, 824 F.3d at 933-936; and that post-Civil War constitutions in states and territories including Texas, West Virginia, and Oklahoma had permitted similar restrictions, *id.* at 936-939. The court found that the sole exception to this historical consensus, *Bliss v. Commonwealth*, 12 Ky. 90 (1822), was of limited probative value because it was later overturned by constitutional amendment and expressly rejected by several other states. 824 F.3d at 935-936.

Although *Peruta* reserved the question whether the Second Amendment protects a right to *open* carry, *see id.* at 942, its reasoning leads inexorably to the conclusion that, at minimum, States have broad latitude to regulate the open carry

of firearms in public. The English laws and several of the cases it cited approved of broad restrictions on public carrying of firearms, open or concealed. *See id.* at 931 (noting that the Statute of Northampton “prohibited . . . the ‘open carrying’ of weapons”); *Buzzard*, 4 Ark. at 19; *English v. State*, 35 Tex. 473, 475-476 (1871). And the Court held that whatever public carry right the Second Amendment might protect, limiting carry to individuals who could show “good cause” was reasonable. 824 F.3d at 942; *see id.* at 942-945 (Graber, J., concurring).

The panel here concluded otherwise by engaging in what can only be called open defiance of *Peruta*. It found, in direct contradiction of the *Peruta* court, that the Statute of Northampton was of little use in construing the Second Amendment, and in any event only prohibited Englishmen from carrying “unusual” arms for the purpose of “terror[izing]” civilians. Add. 39. The panel deemed *State v. Buzzard* and its progeny—the very cases *Peruta* found most probative—as of “little instructive value” because they did not explicitly recognize that the Second Amendment protects an individual right. Add. 24-26. And the panel refused to consider decisions from Texas, West Virginia, and Oklahoma—the same states, once again, on which *Peruta* prominently relied—because their constitutions were supposedly not protective enough of the Second Amendment or their decisions were not well enough reasoned. Add. 26-28. Instead, the panel “beg[a]n” its analysis “with *Bliss v. Commonwealth*,” Add. 19—the decision that *Peruta* deemed

non-probative because a majority of other courts had expressly disagreed with it, and because the voters of Kentucky promptly overturned it by constitutional amendment. 824 F.3d 935-936.

In short, at virtually every turn, the panel contradicted the reasoning of the *en banc* court in *Peruta*. Its opinion does bear a striking resemblance to one precedent, however. Section-by-section, it tracks, often verbatim, the *panel* opinion in *Peruta*. Compare *Peruta I*, 742 F.3d at 1150-66, with Add. 14-32; see Add. 60 (Clifton, J., dissenting) (noting that these decisions are “very similar”). That decision was vacated by a commanding majority of the Court two years ago. It should be vacated again now.

IV. This Case Is Of Enormous Importance.

The importance of this case is beyond dispute. The panel struck down carry restrictions that have been in effect in Hawaii in some form for over 150 years. In doing so, it overruled a sovereign State’s judgment on a matter of the utmost concern to public safety. And it did so on the basis of a severe misunderstanding of state law.

If left in effect, the panel’s decision will have sweeping consequences. Restrictions on the open carry of firearms have been widespread for more than a century. See *Drake*, 724 F.3d at 432-434 (describing long history of public carry restrictions). Numerous States currently have such common-sense restrictions in

place, including California. All of these laws will be imperiled if the panel decision remains in effect and open carry is deemed a “core” Second Amendment right that must be analyzed under strict scrutiny.

The implications for public safety could not be greater. Firearms are a leading cause of death in this country. They have been the source of mass murders in schools, night clubs, and other public places. As common sense suggests, and as numerous studies confirm, States that limit the public carry of firearms have markedly lower rates of gun violence than States that do not. *See* John J. Donohue, Abhay Aneja & Kyle D. Weber, *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis* (Nat’l Bureau of Econ. Research, Working Paper No. 23510, 2018), <http://www.nber.org/papers/w23510>. The Court should grant rehearing *en banc* and reverse this misguided and dangerous decision.

CONCLUSION

For the foregoing reasons, rehearing *en banc* is appropriate. The panel decision should be vacated, and the case remanded to the district court so that it can be reassessed based on an accurate understanding of Hawaii law.

Respectfully submitted,

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**Form 11. Certificate of Compliance Pursuant to
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FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,

v.

STATE OF HAWAII; NEIL
ABERCROMBIE, in his capacity as
Governor of the State of Hawaii;
DAVID MARK LOUIE I, Esquire, in his
capacity as State Attorney General;
COUNTY OF HAWAII, as a sub-agency
of the State of Hawaii; WILLIAM P.
KENOI, in his capacity as Mayor of
the County of Hawaii; HILO COUNTY
POLICE DEPARTMENT, as a sub-
agency of the County of Hawaii;
HARRY S. KUBOJIRI, in his capacity
as Chief of Police; JOHN DOES, 1–
25; JANE DOES, 1–25; DOE
CORPORATIONS, 1–5; DOE ENTITIES,
1–5,

Defendants-Appellees.

No. 12-17808

D.C. No.
1:12-cv-00336-
HG-BMK

OPINION

Appeal from the United States District Court
for the District of Hawaii
Helen W. Gillmor, Senior District Judge, Presiding

Argued and Submitted February 12, 2018
Honolulu, Hawaii

Filed July 24, 2018

Before: Diarmuid F. O'Scannlain, Richard R. Clifton,
and Sandra S. Ikuta, Circuit Judges.

Opinion by Judge O'Scannlain;
Dissent by Judge Clifton

SUMMARY*

Civil Rights

The panel reversed the district court's dismissal of claims brought against the County of Hawaii, dismissed plaintiff's appeal as to the State of Hawaii, and remanded, in plaintiff's 42 U.S.C. § 1983 action alleging that the denial of his application for a handgun license violated his Second Amendment right to carry a loaded firearm in public for self-defense.

The County of Hawaii's Chief of Police denied plaintiff's application to carry a handgun because he failed to satisfy Hawaii's licensing requirements, as set forth in section 134-9 of the Hawaii Revised Statutes. Section 134-9 acts as a limited exception to the State of Hawaii's "Place[s] to Keep" statutes, which generally require that gun owners keep their firearms at their "place of business, residence, or sojourn." H.R.S. §§ 134-23, 134-24, 134-25. The exception allows citizens to obtain a license to carry a loaded handgun in public, either concealed or openly, under certain circumstances. Plaintiff alleged that the County violated the Second Amendment by enforcing against him the State's limitations in section 134-9 on the open carry of firearms to those "engaged in the protection of life and property" and on the concealed carry of firearms to those who can demonstrate an "exceptional case."

The panel acknowledged that while the concealed carry of firearms categorically falls outside Second Amendment

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

protection, *see Peruta v. County of San Diego*, 824 F.3d 919, 939 (2016) (en banc), it was satisfied that the Second Amendment encompasses a right to carry a firearm openly in public for self-defense. Analyzing the text of the Second Amendment and reviewing the relevant history, including founding-era treatises and nineteenth century case law, the panel stated that it was unpersuaded by the County's and the State's argument that the Second Amendment only has force within the home. The panel stated that once identified as an individual right focused on self-defense, the right to bear arms must guarantee *some* right to self-defense in public. The panel held that because Hawaii law restricted plaintiff in exercising the right to carry a firearm openly, it burdened conduct protected by the Second Amendment.

In determining the appropriate level of scrutiny to apply to section 134-9, the panel first held that the right to carry a firearm openly for self-defense falls within the core of the Second Amendment. The panel stated that restricting open carry to those whose job entails protecting life or property necessarily restricts open carry to a small and insulated subset of law-abiding citizens. The panel reasoned that the typical, law-abiding citizen in the State of Hawaii was entirely foreclosed from exercising the core Second Amendment right to bear arms for self-defense. The panel concluded that Hawaii's limitation on the open carry of firearms to those "engaged in the protection of life and property" violated the core of the Second Amendment and was void under any level of scrutiny.

Dissenting, Judge Clifton stated the majority opinion disregarded the fact that states and territories in a variety of regions have long allowed for extensive regulations of and limitations on the public carry of firearms. Judge Clifton wrote that such regulations are presumptively lawful under

District of Columbia v. Heller, 554 U.S. 570 (2008), and do not undercut the core of the Second Amendment. In addition, Judge Clifton stated that the majority opinion misconceived the intermediate scrutiny test, assumed without support in the record that Hawaii's statute operates as a complete ban, and substituted its own judgment about the efficacy of less restrictive regulatory schemes.

COUNSEL

Alan A. Beck (argued), Law Offices of Alan Beck, San Diego, California; Stephen D. Stamboulieh, Stamboulieh Law PLL, Madison, Mississippi; for Plaintiff-Appellant.

D. Kaena Horowitz (argued), County of Hawaii Deputy Corporation Counsel; Laureen L. Martin, County of Hawaii Assistant Corporation Counsel; Office of the Corporation Counsel, Hilo, Hawaii; for Defendants-Appellees County of Hawaii, William P. Kenoi, and Harry S. Kubojiri.

Kimberly Tsumoto Guidry, First Deputy Solicitor General; Robert Tadao Nakatsuji, Deputy Solicitor General; Department of the Attorney General, Honolulu, Hawaii; for Defendant-Appellee and Amicus Curiae State of Hawaii.

No appearance for Defendants-Appellees Neil Abercrombie and David Mark Louie I.

OPINION

O'SCANNLAIN, Circuit Judge:

We must decide whether the Second Amendment encompasses the right of a responsible law-abiding citizen to carry a firearm openly for self-defense outside of the home.

I

A

George Young wishes to carry a firearm publicly for personal self-defense in the State of Hawaii. He twice in 2011 applied for a license to carry a handgun, either concealed or openly. His application was denied each time by the County of Hawaii's Chief of Police, Harry Kubojiri, because Young failed to satisfy the requirements set forth in section 134-9 of the Hawaii Revised Statutes ("H.R.S.").

Section 134-9 acts as a limited exception to the State of Hawaii's "Place[s] to Keep" statutes, which generally require that gun owners keep their firearms at their "place of business, residence, or sojourn." H.R.S. §§ 134-23, 134-24, 134-25. The exception allows citizens to obtain a license to carry a loaded handgun in public, either concealed or openly, under certain circumstances. H.R.S. § 134-9. Respecting concealed carry, section 134-9 provides that "[i]n an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property, the chief of police . . . may grant a license to an applicant . . . to carry a pistol or revolver and ammunition therefor concealed on the person." The chief of police may, under section 134-9, grant a license for the open carry of a loaded handgun only "[w]here the urgency or the need has been sufficiently

indicated” and the applicant “is engaged in the protection of life and property.” The County of Hawaii has promulgated regulations to clarify that open carry is proper only when the license-holder is “in the actual performance of his duties or within the area of his assignment.” Police Dep’t of Cty. of Haw., *Rules and Regulations Governing the Issuance of Licenses* 10 (Oct. 22, 1997).

Absent a license under section 134-9, a person may only transport an unloaded firearm, in an enclosed container, to and from a place of repair, a target range, a licensed dealer, a firearms exhibit, a hunting ground, or a police station, H.R.S. §§ 134-23, 134-24, 134-25, 134-26, 134-27, and may only use those firearms while “actually engaged” in hunting or target shooting, H.R.S. § 134-5.

B

On June 12, 2012, Young filed this suit *pro se* under 42 U.S.C. § 1983 against the State of Hawaii, its then-Governor, Neil Abercrombie, and its then-Attorney General, David Louie (collectively “the State”), as well as the County of Hawaii, its then-Mayor, William Kenoi, the Hilo County Police Department, and its then-Chief of Police, Harry Kubojiri (collectively “the County”). Primarily alleging that denying his application for a handgun license violates his Second Amendment right to carry a loaded firearm in public for self-defense, Young requested, among other things, injunctive and declaratory relief from the enforcement of section 134-9’s licensing requirements.

The State filed a motion to dismiss Young’s claims under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and the County filed a motion to dismiss the claims under Rule 12(b)(6). The district court granted both. As for the State of Hawaii, the district court found Young’s action to be barred

by sovereign immunity. Young’s action against the State officials—while not barred by sovereign immunity under *Ex Parte Young*, 209 U.S. 123 (1908)—was dismissed because the district court found their general oversight of the enforcement of Hawaii’s laws “insufficient to establish a nexus between [such] officials and the alleged violation of [Young’s] civil rights.”

Dismissing Young’s action against the County on the merits, the district court found that section 134-9 “does not implicate activity protected by the Second Amendment,” because that Amendment “establishes only a narrow individual right to keep an operable handgun at home for self-defense.” In the alternative, the district court indicated that it would uphold section 134-9’s open and concealed carry limitations under intermediate scrutiny. As the court reasoned, the State’s “substantial interest in safeguarding the public from the inherent dangers of firearms” was reasonably furthered by policies that “enable[] officials to effectively differentiate between individuals who need to carry a gun for self-defense and those who do not.”

Young timely appealed.¹

¹ Young filed a notice of appeal with respect to the dismissal of his claims against *both* the State and County, but on appeal he makes no arguments to contest the district court’s reasons for dismissing his claims against the State. Believing itself no longer a party to the case, the State has neither filed a response brief nor sought to participate in oral argument. We thus do not review the district court’s judgment in its favor and Young’s appeal against the State accordingly must be dismissed.

The State has, however, filed several briefs as amicus curiae. At oral argument, the County explicitly endorsed the arguments of the State

II

A

Young's argument is straightforward: he asserts that the County has violated the Second Amendment by enforcing against him the State's limitations in section 134-9 on the open carry of firearms to those "engaged in the protection of life and property"² and on the concealed carry of firearms to those who can demonstrate an "exceptional case."³

made as amicus curiae. Thus, when we refer to arguments made by the State they are to be found in its amicus briefs as adopted by the County.

² Young does not address the additional limitation in section 134-9 providing that an open carry license may only be granted "[w]here the urgency or the need has been sufficiently indicated." Nor could we evaluate such a requirement at the motion to dismiss stage, absent evidence showing the stringency of the requirement. Thus, we do not decide whether such requirement violates the Second Amendment.

³ In the district court, Young also argued that section 134-9 violates the Ninth Amendment, the Privileges or Immunities Clause, the Bill of Attainder Clause, and the Contracts Clause. Young has abandoned such claims on appeal.

But Young does raise several new arguments on appeal. He argues that the State of Hawaii's prohibitions on the possession of electric guns (H.R.S. § 134-16), switchblades (H.R.S. § 134-52), and butterfly knives (H.R.S. § 134-53) violate the Second Amendment. He also argues that the prohibition on carrying rifles and shotguns publicly, arising out of section 134-24, violates the Second Amendment. Because Young failed properly to raise these arguments before the district court, we deem such arguments forfeited. *See United States v. Greger*, 716 F.2d 1275, 1277 (9th Cir. 1983).

The County and the State respond that Young’s claim is foreclosed by our en banc decision in *Peruta v. County of San Diego* (*Peruta II*), 824 F.3d 919 (2016) (en banc), which overturned a three-judge panel’s decision striking down a concealed carry licensing regime, *see Peruta v. County of San Diego* (*Peruta I*), 742 F.3d 1144 (9th Cir. 2014).

In *Peruta II*, we considered a challenge to San Diego’s limitations on the concealed carry of handguns outside of the home. 824 F.3d at 924. California law generally prohibits carrying firearms in public, whether concealed or openly. *See* Cal. Penal Code §§ 25400, 25850, 26350. But San Diego County leaves open the opportunity to carry a concealed firearm upon the demonstration of “good cause.” *See Peruta II*, 824 F.3d at 926. Rejecting Peruta’s challenge, our en banc court held that “the Second Amendment right to keep and bear arms does not include, *in any degree*, the right of a member of the general public to carry concealed firearms in public.” *Id.* at 939 (emphasis added). But, as even the dissent acknowledges, our court explicitly left unresolved the question of whether the Second Amendment encompasses a right to open carry. *See id.* (“There may or may not be a Second Amendment right for a member of the general public to carry a firearm openly in public. The Supreme Court has not answered that question, and we do not answer it here.”). Young’s claim therefore picks up where Peruta’s left off and presents an issue of first impression for this circuit: whether the Second Amendment encompasses a right to carry firearms openly in public for self-defense.

Our interpretation of the Second Amendment is guided by the Supreme Court’s decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In *Heller*, the Court invalidated a District of Columbia ban on handgun possession in the home, holding that the Second Amendment guarantees an individual right to keep a handgun in one’s home for self-defense, and rejecting a collective view of the right. *See* 554 U.S. at 635. Because the District of Columbia law had completely banned “the quintessential self-defense weapon” within the home, the Court saw no need to clarify further the scope of the right or the level of scrutiny it demands. *See id.* at 629. “Under any of the standards of scrutiny that [the Court has] applied to enumerated constitutional rights,” such a severe deprivation must fail. *Id.* at 628–29.

In *McDonald*, the Court incorporated the Second Amendment against the States through the Fourteenth Amendment, invalidating a Chicago law that effectively banned handgun possession by residents of the city. 561 U.S. at 750. In determining whether the pre-existing right codified by the Second Amendment was “fundamental to our scheme of ordered liberty,” the Court stressed the centrality of self-defense: “Self-defense is a basic right, recognized by many legal systems from ancient times to the present day” *Id.* at 767. Consequently, the Court held it “clear that this right is ‘deeply rooted in this Nation’s history and tradition,’” thus binding the States alongside the federal government. *Id.* at 768 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)); *see also id.* at 805–06 (Thomas, J., concurring in part and concurring in the judgment) (agreeing that the Second Amendment is “fully applicable to

the States,” but via the Fourteenth Amendment’s Privileges or Immunities Clause).

As was the case in *Peruta II*, we find ourselves navigating waters uncharted by *Heller* and *McDonald*: the degree to which the Second Amendment protects, or does not protect, the carrying of firearms outside of the home.

B

Our circuit, like others, employs a two-step approach to Second Amendment challenges. *See Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014); *see also United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). We first ask “whether the challenged law burdens conduct protected by the Second Amendment.” *Jackson*, 746 F.3d at 960 (quoting *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013)). If so, we must “apply an appropriate level of scrutiny.” *Id.* And because *Heller* makes clear that evaluating restrictions of Second Amendment rights under rational basis review is inappropriate, *see* 554 U.S. at 628 n.27, any means-end scrutiny applied must be some form of heightened scrutiny, such as intermediate or strict scrutiny. Of course, we remain ever mindful not to treat the Second Amendment any differently from other individual constitutional rights. It is not “a second-class right,” *McDonald*, 561 U.S. at 780, nor a “constitutional orphan,” *Silvester v. Becerra*, No. 17-342, 2018 WL 943032, at *8 (U.S. Feb. 20, 2018) (Thomas, J., dissenting from denial of certiorari).

Heller and *McDonald* set the goalposts for our inquiry, which requires determining the scope of the Second Amendment with respect to public carry. We must discern the scope of the Amendment not as it appears to us now, but

“with the scope [it was] understood to have when the people adopted [it].” *Heller*, 554 U.S. at 634–35. Our lodestars are “text and history,” *id.* at 595, because they bear most strongly on what the right was understood to mean, at the time of enactment, to the public. Because “words and phrases were used in their normal and ordinary as distinguished from technical meaning,” *id.* at 576 (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)), our approach is not just a textual one, but also a contextual one. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at xxv (2012) (“Words don’t have intrinsic meanings; the significance of an expression depends on how the interpretive community alive at the time of the text’s adoption understood those words.”). History and convention, therefore, illuminate our understanding of the text.

We are not the first circuit to grapple with how far, and to what extent, the Second Amendment applies outside the home. Two circuits, looking closely at the text and history of the Amendment, have held that the Second Amendment indeed protects a general right to carry firearms in public for self-defense. See *Wrenn v. District of Columbia*, 864 F.3d 650, 665 (D.C. Cir. 2017); *Moore v. Madigan*, 702 F.3d 933, 936–37 (7th Cir. 2012).⁴ Three others have simply assumed the Second Amendment applies outside the home, without

⁴ The Illinois Supreme Court has agreed with the reasoning of *Moore* and subsequently held that the Second Amendment applies outside the home. See *People v. Aguilar*, 2 N.E.3d 321, 327 (Ill. 2013) (“[I]f *Heller* means what it says, and ‘individual self-defense’ is indeed ‘the central component’ of the second amendment right to keep and bear arms, then it would make little sense to restrict that right to the home, as ‘confrontations are not limited to the home.’” (internal citations and brackets omitted) (quoting *Heller*, 554 U.S. at 599 and *Moore*, 702 F.3d at 935–36)).

delving into the historical nature of the right. *See Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013); *Drake v. Filko*, 724 F.3d 426, 431 (3d Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012).

III

A

We start, as we must, with the text. The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. It is apparent from the face of the text that the Amendment protects the right not only to “keep” but also to “bear” arms. The latter verb is central to Young’s challenge.

Heller provides useful guidance. To “bear,” the Court explained, means to “wear” or to “carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Heller*, 554 U.S. at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)). And *Heller* explained that “bear arms” did not solely refer to carrying a weapon as part of a militia. *Id.* at 585. Rather, to “bear” an object means to carry it, and “[w]hen used with ‘arms,’ . . . the term has a meaning that refers to carrying for a particular purpose—confrontation.” *Id.* at 584.

The prospect of confrontation is, of course, not limited to one’s dwelling. *See Wrenn*, 864 F.3d at 657 (“After all, the Amendment’s core lawful purpose is self-defense, and the need for that might arise beyond as well as within the home.” (internal quotations and citations omitted)); *Moore*,

702 F.3d at 941 (“[T]he interest in self-protection is as great outside as inside the home.”). Thus, carrying firearms outside the home fits comfortably within *Heller*’s definition of “bear.”

Indeed, the fact that the Second Amendment protects bearing *as well as* keeping arms implies some level of public carry in case of confrontation. A right to “keep” arms, on its own, necessarily implies a right to carry those arms to some extent. For instance, in order to “keep” arms, one would have to carry them home from the place of purchase and occasionally move them from storage place to storage place. *Cf. Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (holding that the right to possess firearms “implies a corresponding right to acquire and maintain proficiency in their use”). The addition of a separate right to “bear” arms, beyond keeping them, should therefore protect something more than mere carrying incidental to keeping arms. *See* Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 271 (1880) (“[T]o bear arms implies something more than mere keeping.”). Understanding “bear” to protect at least some level of carrying in anticipation of conflict outside of the home provides the necessary gap between “keep” and “bear” to avoid rendering the latter guarantee as mere surplusage. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174 (1803) (“[I]t cannot be presumed that any clause in the constitution is intended to be without effect . . .”).

Heller and *McDonald* suggest a similar understanding of “bear.” *Heller* described the “inherent right of self-defense” as “most acute” within the home, implying that the right exists, perhaps less acutely, outside the home. 554 U.S. at

628.⁵ *McDonald* similarly described the right as “most notabl[e]” within the home, implying the right exists, perhaps less notably, outside the home. 561 U.S. at 780. *Heller* also identified “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings” as presumptively lawful. 554 U.S. at 626. Why bother clarifying the definition of sensitive public places if the Second Amendment did not apply, at all, to *any* public place?⁶

In short, the text of the Amendment, as interpreted by *Heller* and *McDonald*, points toward the conclusion that “bear” implies a right to carry firearms publicly for self-defense.⁷

B

We next consider the writings of “important founding-era legal scholars” to discern the original public

⁵ The Delaware Supreme Court recently adopted this interpretation of *Heller*’s “most acute” language. See *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 651 n.100 (Del. 2017) (“[T]he *Heller* Court’s statement that ‘the need for defense of self, family, and property’ is ‘most acute’ in the home suggests that the need must be *less* acute elsewhere—but nonetheless present.” (quoting *Heller*, 554 U.S. at 628) (internal citation omitted)).

⁶ The State’s amicus brief asks us to stretch this list of presumptively lawful measures to allow all laws “preserving public safety.” This argument borders on the absurd. Surely not all areas of the public are as sensitive as schools or government buildings, nor is it, as the State suggests, a “very small and reasonable step to view virtually the entire public sphere as a ‘sensitive place.’”

⁷ Strangely, the dissent is content to reach a contrary conclusion and effectively to limit the Second Amendment’s protections to within the home without even bothering to grapple with the text of the Amendment.

understanding of the Second Amendment right, because, as *Heller* explains, “[t]hat sort of inquiry is a critical tool of constitutional interpretation.” 554 U.S. at 605; *see also Jackson*, 746 F.3d at 960, 962–63.

Several legal treatises that were in wide circulation throughout the founding era support our textual understanding of “bear arms.” In an early American edition of Blackstone’s *Commentaries on the Laws of England*—indeed, the “most important” edition, as *Heller* points out, *see* 554 U.S. at 594—St. George Tucker, a law professor at the College of William & Mary and former influential Antifederalist, insisted that the right to armed self-defense is the “first law of nature” and that “the right of the people to keep and bear arms” is the “true palladium of liberty.” 1 St. George Tucker, *Blackstone’s Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States; and of the Commonwealth of Virginia* app. n.D. at 300 (Phil., William Young Birch & Abraham Small 1803); *see also McDonald*, 561 U.S. at 769 (treating Tucker’s notes on Blackstone as heavily instructive in interpreting the Second Amendment); *Heller*, 554 U.S. at 606 (same). And in advocating for the prerogative of the Judiciary to strike down unconstitutional statutes, Tucker wrote: “If, for example, congress were to pass a law prohibiting any person from bearing arms, as a means of preventing insurrections, the judicial courts, . . . would be able to pronounce decidedly upon the constitutionality of these means.” Tucker, *supra*, at 289; *see also* Michael P. O’Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of “Bearing Arms” for Self-Defense*, 61 Am. U. L. Rev. 585, 637–38 (2012). Indeed, as Tucker explained, “[i]n many parts of the United States, a man no more thinks, of going out of his house on any occasion, without his rifle or musket in his

hand, than a European fine gentleman without his sword by his side.” Tucker, *supra*, vol. 5, app., n.B, at 19.

Blackstone himself espoused a similarly sacred view on the right to bear arms for Englishmen, which was most notably codified in the 1689 English Declaration of Rights as the right of Protestants to “have Arms for their Defense suitable to their Conditions and as allowed by Law.” Bill of Rights 1689, 1 W. & M., c. 2 (Eng.); *see also Alden v. Maine*, 527 U.S. 706, 715 (1999) (noting that Blackstone’s works “constituted the preeminent authority on English law for the founding generation”). As Blackstone explained, the 1689 Declaration enshrined “the natural right of resistance and self-preservation” and “the right of having and using arms for self-preservation and defence.” 1 William Blackstone, *Commentaries* *144.⁸ It followed from Blackstone’s premise that such a right, the predecessor to our Second Amendment, “was by the time of the founding understood to be an individual right protecting against both *public* and private violence.” *Heller*, 554 U.S. at 594 (emphasis added); *see also* 2 William Blackstone, *Commentaries on the Laws of England* 441 (Edward Christian ed., 1795) (“[E]veryone

⁸ Blackstone was far from alone in viewing the right to self-defense as a natural right, thus “belong[ing] to [all] persons merely in a state of nature, and which every man is intitled to enjoy whether out of society or in it.” 1 WILLIAM BLACKSTONE, *COMMENTARIES* *119. Quite a few scholars and commentators of that era on either side of the Atlantic likewise championed a natural right to defend oneself. *See* Leonard W. Levy, *Origins of the Bill of Rights* 140–41 (2001) (referencing a 1768 article in the prominent colonial newspaper *A Journal of the Times* that described the English right as “a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence”); *see also* David B. Kopel, *The Natural Right of Self-Defense: Heller’s Lesson for the World*, 59 *Syracuse L. Rev.* 235, 242 (2008) (“The Anglo-Americans learned the language of natural rights, including the natural right of self-defense . . .”).

is at liberty to keep or carry a gun, if he does not use it for the [unlawful] destruction of game.”).

C

Following *Heller*’s historical imperative, we next move to nineteenth century judicial interpretations of the right to bear arms, whether as part of the Second Amendment or analogous state constitutional provisions. *See* 554 U.S. at 605 (“We now address how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century.”). As we will soon discover, many of the same nineteenth century cases marshalled in *Heller* to prove that the Second Amendment secures an individual right to self-defense reveal just as persuasively that the Second Amendment must encompass a right to carry a firearm openly outside the home.

1

We begin with *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822), *cited in Heller*, 554 U.S. at 585 n. 9, a decision “especially significant both because it is nearest in time to the founding era and because the state court assumed (just as [*Heller*] does) that the constitutional provision at issue codified a preexisting right.” Nelson Lund, *The Second Amendment, Heller, and Originalist Jurisprudence*, 56 UCLA L. Rev. 1343, 1360 (2009). Interpreting Kentucky’s Second Amendment analogue—providing that “the right of the citizens to bear arms in defense of themselves and the state, shall not be questioned”—the state’s highest court had no doubt that any law restricting the public carry of firearms would “import a restraint on the right of the citizens to bear arms.” *Bliss*, 12 Ky. at 90–92. The court then invalidated a restriction on the concealed carry of weapons, despite the availability of open carry,

reasoning that “whatever restrains the full and complete exercise of [the right to bear arms], though not an entire destruction of it, is forbidden by the explicit language of the constitution.” *See id.* The *Bliss* court’s strict approach to restraints on the *concealed* carry of firearms was an outlier in the Nineteenth Century, *see Peruta II*, 824 F.3d at 935–36, and Kentucky did later amend its constitution to allow the legislature to “pass laws to prevent persons from carrying concealed arms,” Ky. Const. art. XIII, § 25. Nonetheless, the Kentucky constitutional convention left untouched the premise in *Bliss* that the right to bear arms protects *open* carry.

In Tennessee, the state’s highest court offered its interpretation of the right to bear arms eleven years after *Bliss*. *See Simpson v. State*, 13 Tenn. (5 Yer.) 356 (1833), *cited in Heller*, 554 U.S. at 585 n.9. After he was convicted of disturbing the peace by appearing armed in public, Simpson faulted the indictment for failing clearly to require proof of actual violence. *Id.* at 357–58. The high court agreed, because—even assuming that colonial law did not require proof of actual violence to punish colonists for walking with weapons—the Tennessee “constitution ha[d] completely abrogated it.” *Id.* at 360. No such prohibition could survive the state constitution’s grant of “an express power . . . secured to all the free citizens of the state to keep and bear arms for their defence, without any qualification whatever as to their kind or nature.” *Id.* Absent an act of violence, then, Simpson’s indictment for merely carrying firearms could allege no crime tolerable to the constitution of Tennessee. *See id.* at 360–62.

The Alabama Supreme Court joined the chorus seven years later. *See State v. Reid*, 1 Ala. 612 (1840), *cited in Heller*, 554 U.S. at 629. Interpreting the Alabama “right to

bear arms, in defense of []self and the State,” the high court declared that an Alabamian must be permitted *some* means of carrying a weapon in public for self-defense. *Id.* at 615–16. The court ultimately upheld a restriction on “the evil practice of carrying weapons secretly,” citing the legislature’s power “to enact laws in regard to the manner in which arms shall be borne. . . . as may be dictated by the safety of the people and the advancement of public morals.” *Id.* at 616. But the court made clear where that power of the legislature ran dry:

We do not desire to be understood as maintaining, that in regulating the manner of bearing arms, the authority of the Legislature has no other limit than its own discretion. A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional.

See id. at 616–17.

The Georgia Supreme Court embraced precisely that position six years later, making explicit what *Reid* intimated. *See Nunn v. State*, 1 Ga. 243 (1846), *cited in Heller*, 554 U.S. at 612, 626, 629. There, the Georgia high court considered a Second Amendment challenge to a statute creating a misdemeanor for carrying a pistol, either openly or concealed. *Id.* at 246. Starting off with a clear statement of the constitutional guarantee, the court explained: “The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia,

shall not be infringed, curtailed, or broken in upon, in the smallest degree” *Id.* at 251 (emphasis omitted). And with those Second Amendment lines properly set, the court held that Georgia’s statute went too far:

We are of the opinion, then, that so far as the act of 1837 seeks to suppress the practice of carrying certain weapons secretly, that it is valid, inasmuch as it does not deprive the citizen of his natural right of self-defence, or of his constitutional right to keep and bear arms. *But that so much of it, as contains a prohibition against bearing arms openly, is in conflict with the Constitution, and void . . .*

Id. (emphasis added). Critically, we must afford *Nunn*’s understanding of the Second Amendment a good deal of weight, because, as *Heller* explains, “[i]ts opinion perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause.” 554 U.S. at 612; *see also* O’Shea, *supra*, at 627 (“No case, historic or recent, is discussed more prominently or positively in *Heller* than the Georgia Supreme Court’s 1846 decision in *Nunn v. State*.”).

The Louisiana Supreme Court soon followed the course set by Alabama and Georgia. *See State v. Chandler*, 5 La. Ann. 489 (1850), *cited in Heller*, 554 U.S. at 613, 626. The high court first rejected Chandler’s Second Amendment challenge to a Louisiana law prohibiting concealed carry, reasoning that the law was “absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations committed upon unsuspecting persons.” *Id.* at 489–90. But, in precisely the same manner as the *Nunn*

and *Reid* courts, the *Chandler* court drew the line which the legislature could not cross. As the court explained: “[The prohibition on concealed carry] interfered with no man’s right to carry arms . . . ‘in full open view,’ which places men upon an equality. This is the right guaranteed by the Constitution of the United States” *Id.* at 490; *see also Heller*, 554 U.S. at 613 (citing favorably *Chandler*’s holding that “citizens had a right to carry arms openly”).

Thus, each of these nineteenth century cases found instructive by *Heller* when settling the Second Amendment as an individual right to self-defense is just as instructive when evaluating the application of that right outside the home. While nineteenth century legislatures enjoyed latitude to regulate the “manner in which arms shall be borne,” no legislature in these states could, “under the pretence of regulating,” destroy the right to carry firearms in public altogether. *See Reid*, 1 Ala. at 616–17. Accordingly, even though our court has read these cases to exclude *concealed* carry from the Second Amendment’s protections, *see Peruta II*, 824 F.3d at 933–36, the same cases command that the Second Amendment must encompass a right to *open* carry.⁹

⁹ The dissent faults our reliance on decisions from the South, implying that the thorough analysis found in such opinions must have been the product of a “culture where slavery, honor, violence, and the public carrying of weapons were intertwined.” Dissent at 6 (citations and quotations omitted). To say the least, we are puzzled. The dissent overlooks the fact that the Southern cases on which we rely *only arose* because the legislatures in those states had enacted restrictions on the public carry of firearms. Indeed, were it the case that the Southern culture of slavery animated concerns to protect the right to open carry, why would the Georgia legislature have sought to ban open carry in the first place?

We are well aware that there were judicial proponents of a more limited right to bear arms during the nineteenth century.

Most prominent is the Arkansas Supreme Court’s 1842 interpretation of the right in *State v. Buzzard*, 4 Ark. 18 (1842). There, a divided court upheld an Arkansas prohibition on the concealed carry of “any pistol, dirk, butcher or large knife, or a sword in a cane,” but each judge in the splintered majority appeared poised to go much further. Chief Justice Ringo advocated his view that the Second Amendment served as no bar to the Arkansas legislature’s authority to restrict *any* carrying of firearms: “[N]o enactment on this subject, which neither directly nor indirectly so operates as to impair or render inefficient the means provided by the Constitution for the defense of the State, can be adjudged invalid on the ground that it is repugnant to the Constitution.” *Id.* at 27. But Justice Dickinson went even further, writing that the Second Amendment was nothing “but an assertion of that general right of sovereignty belonging to independent nations to regulate their military force,” thus finding *no* individual right within its guarantee. *Id.* at 32; *but see id.* at 34–35 (Lacy, J., dissenting) (viewing the Second Amendment as an individual right to self-defense).

As a more fundamental matter, too, we cannot agree with the dissent’s choice to cast aside Southern cases. *Heller* placed great emphasis on cases from the South, and *Nunn* in particular. We are an inferior court. Can we really, while keeping a straight face, now say that such cases have little persuasive effect in analyzing the contours of the Second Amendment? We think not.

Several nineteenth century courts hewed to *Buzzard*'s approach and upheld restrictions on the public carry of weapons without emphasizing, as did courts in *Nunn*'s camp, the limits of legislative authority. See *Hill v. State*, 53 Ga. 472, 474–75 (1874) (upholding prohibition on carrying weapons “to any court of justice . . . or any place of public worship, or any other public gathering . . . except militia muster grounds”); *English v. State*, 35 Tex. 473, 474 (1871) (upholding prohibition on carrying “pistols, dirks, daggers, slungshots, swordcanes, spears, brass-knuckles and bowie knives”); *State v. Workman*, 14 S.E. 9, 10–12 (W. Va. 1891) (upholding presumption of criminality “when a man is found going around with a revolver, razor, billy, or brass knuckles upon his person”).

Yet, with *Heller* on the books, cases in *Buzzard*'s flock furnish us with little instructive value. That's because *Heller* made clear that the Second Amendment is, and always has been, an individual right centered on self-defense; it has never been a right only to be exercised in connection with a militia. See, e.g., 554 U.S. at 592, 599, 616, 628. And bound as the inferior court that we are, we may only assess whether the right to bear arms extends outside the home *on the understanding* that the right is an individual one centered on self-defense. Thus, *Heller* knocks out the load-bearing bricks in the foundation of cases like *Buzzard*, for those courts only approved broad limitations on the public carry of weapons *because* such limitations in no way detracted from the common defense of the state. See, e.g., *Buzzard*, 4 Ark. at 27 (opinion of Ringo, C.J.) (“The act in question does not, in my judgment, detract anything from the power of the people to defend their free state and the established institutions of the country.”); *Hill*, 53 Ga. at 475 (“In what manner the right to keep and bear these pests of society [dirks, bowie knives, and the like], can encourage or secure

the existence of a militia, and especially of a well regulated militia, I am not able to divine.”); *English*, 35 Tex. at 477 (“The terms dirks, daggers, slungshots, sword-canes, brass-knuckles and bowie knives, belong to no military vocabulary.”); *Workman*, 14 S.E. at 11 (“So, also, in regard to the kind of arms referred to in the amendment, it must be held to refer to the weapons of warfare to be used by the militia . . .”); *see also Wrenn*, 864 F.3d at 658 (reasoning that such cases are “sapped of authority by *Heller*”); *Moore*, 702 F.3d at 941 (regarding “the historical issues as settled by *Heller*”); O’Shea, *supra*, at 653 (same).¹⁰

3

Once we set aside each of those cases that rest on a militia-focused view of the right to bear arms, we find only two cases from the nineteenth century that might be read to allow severe deprivations on open carry.

¹⁰ Not *all* cases with views of the Second Amendment contrary to *Heller* took the *Buzzard* approach, however. Several of such cases protected the right to bear arms in a way that supports, or is at least consistent with, the right to open carry. *See Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 186–87 (1871) (holding that, if a pistol “is adapted to the usual equipment of the soldier,” then a statute that “forbids by its terms the carrying of the weapon publicly or privately, without regard to time or place, or circumstances . . . violates the constitutional right to keep arms.”); *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 160 (1840) (“In the nature of things, if they were not allowed to bear arms openly, they could not bear them in their defence of the State at all.”); *Cockrum v. State*, 24 Tex. 394, 401–03 (1859) (construing the Second Amendment purely as a tyranny-deterring measure, but nevertheless barring the complete prohibition of carrying a bowie-knife, “an exceeding[ly] destructive weapon”).

The first, *State v. Duke*, is an 1874 decision from the Supreme Court of Texas, where the court concluded that the legislature could confine the carry of firearms to certain places, and only when the bearer had reasonable grounds to fear an attack. 42 Tex. 455, 456–59 (1874). Why the departure from the *Nunn* line of cases? One need only take a peek at the Texas constitutional provision that served as the basis for the court’s decision, which provided that “[e]very person shall have the right to keep and bear arms in the lawful defense of himself or the State, *under such regulations as the Legislature may prescribe.*” *See id.* at 458 (emphasis added). While the Second Amendment surely tolerates some degree of regulation, its very substance is not so explicitly limited by such a regulatory caveat. We shouldn’t pencil one in.¹¹

The second case, *Walburn v. Territory*, is a decision from the Supreme Court of the Territory of Oklahoma, coming at the very end of the nineteenth century in 1899. 59 P. 972 (Okla. Terr. 1899) (Mem). Convicted of carrying a revolver on his person, Walburn challenged his conviction on several grounds, one of which being an argument that Oklahoma’s carrying prohibition was “in conflict with the constitution of the United States.” *Id.* at 973. Beyond such a general assertion, however, “[n]o authorities [were] cited in support of this position, nor [was] the proposition very earnestly urged.” *Id.* Accordingly, the court rejected the challenge: “*As at present advised, we are of the opinion that the statute*

¹¹ But “even *Duke*, an outlier which marks perhaps the most restrictive interpretation that any nineteenth-century court gave to the defense-based right to bear arms, implicitly rejected no-carry laws as unconstitutional” when it reasoned that the Texas law “respected the right to carry a pistol openly when needed for self-defense.” O’Shea, *supra*, at 655 (quoting *Duke*, 42 Tex. at 459).

violates none of the inhibitions of the constitution of the United States, and that its provisions are within the police power of the territory.” *Id.* (emphasis added). We see little reason to credit much a decision that explicitly acknowledged a lack of due consideration. *Cf. Heller*, 554 U.S. at 623–24 (rejecting dissent’s reliance on *United States v. Miller*, 307 U.S. 174 (1939), in part because of the incomplete briefing in *Miller* and its lack of a thorough consideration of the history of the Second Amendment).

D

Finally, as did the Court in *Heller*, we turn to the legislative scene following the Civil War. *See* 554 U.S. at 614–16. While considering materials that post-date the Bill of Rights by at least 75 years might stretch the term “*original* public meaning,” *Heller* explains that, “[i]n the aftermath of the Civil War, there was an outpouring of discussion of the Second Amendment in Congress and in public discourse, as people debated whether and how to secure constitutional rights for newly free slaves.” *Id.* at 614. So, although such evidence “do[es] not provide as much insight into [the Second Amendment’s] original meaning as earlier sources,” we nevertheless consider such evidence somewhat instructive on its meaning.¹² *See id.*

¹² This evidence is not more probative when applying the right to state and local governments. While *McDonald* relied extensively on history from the post–Civil War period when deciding whether the right to bear arms is “among those fundamental rights necessary to our system of ordered liberty,” thus *incorporating* it against the States, 561 U.S. at 770–78, *McDonald* also made clear that the *substantive* restrictions the right imposes on states are precisely the same as those imposed on the federal government, *id.* at 785–86; *id.* at 805 (Thomas, J., concurring in part and concurring in the judgment) (agreeing that “the right to keep and

Particularly relevant in this period are the efforts of many Southern states to disarm free blacks after the Civil War by adopting Black Codes, because “[t]hose who opposed these injustices frequently stated that they infringed blacks’ constitutional right to keep and bear arms.” *Heller*, 554 U.S. at 614–16; *see also* Clayton E. Cramer, *The Racist Roots of Gun Control*, 4 Kan. J.L. & Pub. Pol’y 17, 20 (1995) (“The various Black Codes adopted after the Civil War required blacks to obtain a license before carrying or possessing firearms or bowie knives These restrictive gun laws played a part in provoking Republican efforts to get the Fourteenth Amendment passed.”).

The Supreme Court’s infamous decision in *Dred Scott v. Sanford*, 60 U.S. 393 (1857), rendered four years before the first shots were fired at Fort Sumter, would pave the way for such Black Codes to proliferate after the war. *See McDonald*, 561 U.S. at 807–08, 822, 849 (Thomas, J., concurring in part and concurring in the judgment) (looking to *Dred Scott* as necessary context in Civil War era historical analysis). Writing for the Court, Chief Justice Taney—disgracefully—dismissed Dred Scott’s suit for freedom after concluding that blacks had never been a part of the sovereign “people” of the United States and therefore could find no recourse in an Article III court. *See* 60 U.S. at 407. To hold otherwise, Chief Justice Taney wrote, would have “entitled [blacks] to the privileges and immunities of citizens” and thus granted them the rights he felt only whites could enjoy:

bear arms set forth in the Second Amendment [is] ‘fully applicable to the States’” (emphasis added)). Because *Heller* ascribed less weight to evidence from the post-Civil War period when interpreting the Second Amendment’s restrictions on the federal government, 554 U.S. at 614, it necessarily follows that the evidence is less probative when interpreting the Amendment’s restrictions on state and local governments.

“[I]t would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.” *Id.* at 416–17.

Perhaps emboldened by Chief Justice Taney’s opinion, “those who sought to retain the institution of slavery . . . [began] to eliminate more and more of the basic liberties of slaves, free blacks, and white abolitionists.” *See McDonald*, 561 U.S. at 843–44 (Thomas, J., concurring in part and concurring in the judgment). And the pervasive fear of slave rebellions “led Southern legislatures to take particularly vicious aim at the rights of free blacks and slaves to speak or to keep and bear arms for their defense.” *Id.* at 845; *see also* Act of Dec. 23, 1833, § 7, 1833 Ga. Acts 226, 228 (“[I]t shall not be lawful for any free person of colour in this state, to own, use, or carry fire arms of any description whatever.”).

The subsequent Civil War was far from a perfect fix to these problems. Those freedmen who had fought for the Union Army during the war frequently returned home “to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks.” *McDonald*, 561 U.S. at 771; *see also The Freedmen’s Bureau Bill*, N.Y. Evening Post, May 30, 1866, at 2 (“In South Carolina and Florida the freedmen are forbidden to wear or keep arms.”). Emblematic of these efforts was an 1865 law in Mississippi that declared “no freedman, free negro or mulatto . . . shall keep or carry fire-arms of any kind, or any ammunition, dirk or bowie knife.” *McDonald*, 561 U.S. at 771 (quoting Certain Offenses of Freedmen, 1865 Miss. Laws p. 165, § 1, in 1 *Documentary History of Reconstruction* 289 (W. Fleming ed. 1950)). The law was vigorously enforced. As an 1866 letter from Rodney, Mississippi to the Harper’s Weekly

magazine lamented, “[t]he militia of this county have seized every gun and pistol found in the hands of the (so called) freedmen. . . . They claim that the statute laws of Mississippi do not recognize the negro as having any right to carry arms.” *The Labor Question at the South*, Harper’s Weekly, Jan. 13, 1866, at 19. Seeking help from outside of the state, the letter emphasized that such Mississippi laws did “not protect, but insist[ed] upon infringing on their liberties.” *Id.* Worse still, “[w]ithout federal enforcement of the inalienable right to keep and bear arms, . . . militias and mobs were tragically successful in waging a campaign of terror against [newly free slaves].” *McDonald*, 561 U.S. at 856 (Thomas, J., concurring in part and concurring in the judgment).

Such blatant injustices did not continue unnoticed by Congress, which established the Freedmen’s Bureau to aid newly freed blacks still suffering in the Reconstruction South. Working to fulfill its mandate, an 1866 report by the Bureau targeted a Kentucky law that sought to deprive freedmen of their Second Amendment rights: “[T]he civil law [of Kentucky] prohibits the colored man from bearing arms Their arms are taken from them by the civil authorities Thus, the right of the people to keep and bear arms as provided in the Constitution is *infringed*.” *Heller*, 554 U.S. at 614–15 (quoting H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 233, 236). But Kentucky was far from the only state subject to scrutiny; a joint congressional report decried a South Carolina practice of “seizing all fire-arms found in the hands of the freedmen.” *Id.* at 615 (quoting Joint Comm. on Reconstruction, H.R. Rep. No. 30, 39th Cong., 1st Sess., pt. 2, p. 229 (1866) (Proposed Circular of Brigadier General R. Saxton)). The joint report plainly envisioned a right to bear arms outside the home, emphasizing that

freedmen in South Carolina “need [firearms] to kill game for subsistence.” *Id.*

Indeed, even those congressmen who *opposed* federal action to protect the rights of freedmen understood the fundamental constitutional rights at stake. Senator Davis of Kentucky acknowledged, alongside the writ of *habeas corpus*, the right “for every man bearing his arms about him *and* keeping them in his house, his castle, for his own defense,” but argued that congressional action on the matter would usurp the role of Kentucky in caring for its citizens. *See* Cong. Globe, 39th Cong., 1st Sess. 370–71 (1866) (emphasis added), *cited in Heller*, 554 U.S. at 616.

To summarize the history canvassed thus far: the important founding-era treatises, the probative nineteenth century case law, and the post-civil war legislative scene each reveal a single American voice. The right to bear arms must include, at the least, the right to carry a firearm openly for self-defense.

E

But wait! The dissent says we have yet to consider the impact of historical “good cause” restrictions on the scope of the Second Amendment right to carry a firearm in public. According to the dissent, many states heavily restricted the public carry of weapons absent good cause to fear injury to person or property. Dissent at 65–67. A review of the dissent’s evidence compels us to disagree.

Many states during the nineteenth century required people who carried weapons in a disruptive fashion to post a bond (or a “surety”) to ensure their good behavior. *See, e.g., The Revised Statutes of the Commonwealth of Massachusetts* 750 § 16 (Boston, Theron Metcalf & Horace Mann 1836)

(hereinafter Mass. Acts). And to enforce the surety requirement, such states commonly relied on a citizen-complaint mechanism. That is, if an arms carrier gave any observer “reasonable cause to fear an injury, or breach of the peace,” the observer could complain to his local magistrate, who might then require the disruptive carrier “to find sureties for keeping the peace,” generally “for a term not exceeding six months.” *See id.* But if the disruptive carrier *also* had “reasonable cause to fear an assault or other injury,” such person could be excused from posting sureties despite the complaint. *Id.* As an example of the pieces put together, Michigan’s 1846 surety law provided that if any person went armed with an “offensive and dangerous weapon, without reasonable cause to fear an assault or other injury . . . he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace.” *The Revised Statutes of the State of Michigan* 692 § 16 (Detroit, Sanford M. Green 1846).

The dissent erroneously characterizes surety laws as imposing a severe restriction on the public carry of weapons absent good cause to fear injury. And its analysis of the actual historical evidence is, in a word, cursory. While the dissent focuses on the exception to the surety requirement for carriers with a specialized need for self-defense, it ignores the clearly limited scope of the requirement in the first place: only upon a well-founded complaint that the carrier threatened “injury or a breach of the peace” did the good cause exception come into play, “by exempting even the accused” from the burden of paying sureties. *Wrenn*, 864 F.3d at 661. Thus, “[a] showing of special need did not expand carrying for the responsible; it shrank burdens on carrying by the (allegedly) reckless.” *Id.*

Indeed, what is most troubling about the dissent's historical "analysis" is that it reliably quotes the good cause exception to the surety requirements but hardly mentions the limiting citizen-complaint mechanism present in *virtually every single* one of its quoted sources. *See The Statutes of Oregon* 220 § 17 (Oregon, Asahel Bush 1854) (complainant must possess "reasonable cause to fear an injury, or breach of the peace"); *The Revised Statutes of the Territory of Minnesota* 528 § 18 (Saint Paul, James M. Goodhue 1851) (complainant must possess "reasonable cause to fear an injury or breach of the peace"); *The Revised Statutes of the State of Maine* 709 § 16 (Hallowell, Glazier, Masters & Smith 1847) (complainant must possess "cause to fear an injury or breach of the peace"); *Statutes of the Territory of Wisconsin* 381 § 16 (Albany, Packard, Van Benthuyssen & Co. 1839) (complainant must possess "reasonable cause to fear an injury or breach of the peace"); 1836 Mass. Acts 750 § 16 (complainant must possess "reasonable cause to fear an injury, or breach of the peace"). The dissent might wish to set aside the requirements to complain under surety laws, but we suspect those who actually did complain under such laws would hesitate before treating the requirements so lightly. Were a complainant to bring an "unfounded, frivolous or malicious" claim that an arms carrier threatened the public peace, the magistrate would not only dismiss the complaint, but also hold the complainant "answerable to the magistrate and the officer for their fees." *See, e.g.*, 1836 Mass. Acts 749 § 7.¹³

¹³ Only one of the surety laws cited by the dissent lacks explicit reference to the citizen-complaint mechanism. An 1847 Virginia law provided that if any person went armed with "any offensive or dangerous weapon, without reasonable cause to fear an assault or other injury . . . he may be required to find sureties for keeping the peace." *Acts of the*

In any event, even if all arms carriers without good cause had to post sureties (they did not), the laws would not add much to our analysis. *Heller* saw little weight in historical prohibitions that promised only “a small fine and forfeiture of the weapon (or in a few cases a very brief stay in the local jail).” 554 U.S. at 633. Certainly, an obligation to post a surety fits that mold. Like a small fine, sureties are “‘akin to modern penalties for minor public-safety infractions like speeding or jaywalking,’ which makes them (in the Court’s view) poor evidence of limits on the [Second] Amendment’s scope.” *Wrenn*, 864 F.3d at 661 (quoting *Heller*, 554 U.S. at 633–34). In fact, sureties seem to us even less noteworthy than small fines, since a disruptive carrier—once he posted a surety—“could go on carrying without criminal penalty.” *Id.* And if he refrained from breaching the peace, of course, his money posted as a surety would be returned in a matter of months.

All in all, we are unmoved by the dissent’s misguided interpretation of history. While surety laws used the language “reasonable cause,” they bear no resemblance to modern-day good cause requirements to carry a firearm.¹⁴

General Assembly of Virginia 129 § 16 (Richmond, Samuel Shepherd 1848). But the Virginia law doesn’t tell us much about the right of Virginians to carry weapons in public, since it only provided that the arms carrier “may” be required to find sureties, with no clarification. What we do know, however, is that “may” certainly does not mean “shall,” neither today nor in 1847.

¹⁴ Nor are we much persuaded by the remainder of the dissent’s historical evidence. Dissent at 10–12. The dissent is correct, of course, that near the close of the nineteenth century and the beginning of the twentieth century some states began enacting stricter limitations on the public carry of weapons. *See, e.g.*, 1888 Idaho Sess. Laws 23 (prohibiting public carry of weapons within the “confines of any city, town or

F

One more historical misconception to dispel.

The County and the State, apparently seeing little room to quarrel with American history, argue that the English right to carry weapons openly was limited for centuries by the 1328 Statute of Northampton, and that we should incorporate wholesale that understanding of English rights into our Constitution's Second Amendment. Exploring fourteenth century English law books (after a thorough dusting) reveals that the statute allowed no ordinary Englishman to "bring . . . force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." Statute of Northampton 1328, 2 Edw. 3, c. 3 (Eng.).¹⁵ But the statute's effects did not remain in the fourteenth century, as it "would become the foundation for firearms regulation in England for the next several centuries." *Peruta II*, 824 F.3d at 930. Our court has

village"). But it is difficult to ascribe much weight to isolated statutes, with no record of enforcement, that were enacted so distant from the founding. *Cf. Heller*, 554 U.S. at 632 ("[W]e would not stake our interpretation of the Second Amendment upon a single law . . . that contradicts the overwhelming weight of other evidence . . ."). And we are particularly reluctant to rely on such statutes given that it is impossible to discern whether they were enacted with a militia or a self-defense oriented view of the right to bear arms in mind. *See O'Shea, supra*, at 642–43 (noting the popularity of a "hybrid view" of the Second Amendment during the post-Civil War period, where the right was individual but "the chief function of the right . . . was to support civic purposes such as military readiness").

¹⁵ An "affray," derived from the French word "effraier" meaning "to terrify," is an act that disturbs the peace. *See* 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136, ch. 63, § 1 (1716).

interpreted the statute and its enforcement history as consistently prohibiting concealed carry, *see id.* at 932, but we have not until now considered whether it also prohibited open carry.

1

As one would expect, delineating the precise lines within which a fourteenth century English statute was enforced is a difficult task. *See, e.g.,* See Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 Clev. St. L. Rev. 1, 12 (2012). In the immediate period after Parliament enacted the statute, it appears that some English constables were ordered to enforce the statute literally and to arrest all those who dared to “go armed,” without regard for the bearer’s apparent peacefulness. *See* Letter to the Mayor and Bailiffs of York (Jan. 30, 1334), in *Calendar of the Close Rolls*, Edward III, 1333–1337 294 (H.C. Maxwell-Lyte ed. 1898). But not all English constables faced similar orders; for example, Northumberland officers were ordered in 1332 to arrest only “persons riding or going armed *to disturb the peace*.” Letter to the Keeper and Justices of Northumberland (Oct. 28, 1332), in *Calendar of the Close Rolls*, Edward III, 1330–1333 610 (H.C. Maxwell-Lyte ed. 1898) (emphasis added).

Nevertheless, looking only to Chaucer’s fourteenth century England provides little instructive force, particularly because “[c]ommon-law rights developed over time.” *See Wrenn*, 864 F.3d at 660. And over the next few centuries, a narrow interpretation of the statute—like that given to Northumberland constables in 1332—began to dominate the English legal landscape. Writing almost 300 years after the statute was enacted, Serjeant William Hawkins, an English legal commentator praised by Blackstone, explained that “no wearing of Arms is within the meaning of this Statute, unless

it be accompanied with such Circumstances as are apt to terrify the People; from whence it seems clearly to follow, That Persons of Quality are in no Danger of Offending against this Statute by wearing common Weapons.” 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136 § 9 (1716).¹⁶ Hawkins’s narrow interpretation of the statute was in accord with that of the Court of King’s Bench, which clarified that “the meaning of the [Statute of Northampton] was to punish people who go armed *to terrify the King’s subjects*.” *Sir John Knight’s Case*, 87 Eng. Rep. 75, 76, 3 Mod. 117 (K.B. 1686) (emphasis added).¹⁷

¹⁶ Indeed, even some wearing of arms that might have been “apt to terrify the People” fell outside of the statutes prohibitions, as Hawkins explained that one who “arm[ed] himself to suppress Rioters, Rebels, or Enemies” or “upon a Cry made for Arms to keep the Peace” would face no punishment under the statute. *See id.* at § 10.

¹⁷ We disagree with the view that *Sir John Knight’s Case* should only be read for the proposition that government agents were exempt from the statute. *See Charles, supra*, at 28–30. The case reports leave not so much as a hint that Knight’s loyalty to the Crown was the critical issue before the Court of King’s Bench. Indeed, Knight was charged with “goeing with a blunderbus in the streets, *to the terrifyeing his majesties subjects*.” 1 Narcissus Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714* 380 (Oxford Univ. Press 1857) (emphasis added). And contemporaneous reports of his acquittal reported that “sir John Knight, the loyall, was tried at the court of kings bench for a high misdemeanor, in goeing armed up and down with a gun att Bristoll; who being tried by a jury of his own citty, that knew him well, he was acquitted, *not thinking he did it with any ill design*.” *Id.* at 389 (emphasis added); *see also Moore*, 702 F.3d at 936 (interpreting the case in the same manner). After his acquittal, Sir Knight was required to post a bond for good behavior, *Rex v. Knight*, 90 Eng. Rep. 331, Comberbach 41 (1686), a peculiar measure for one supposedly cloaked in government authority.

Of course, an untoward intent to terrorize the local townsfolk was not always needed to face arrest and imprisonment; as Blackstone interpreted the statute—an interpretation credited by *Heller*, 554 U.S. at 627—“going armed, with *dangerous or unusual* weapons, is a crime against the public peace, by terrifying the good people of the land.”⁴ William Blackstone, Commentaries *148–*149 (emphasis added). Indeed, Hawkins wrote that “a Man cannot excuse the wearing such Armour” even “by alledging that such a one threatened him.” Hawkins, *supra*, at 136 § 8. But clearly not *all* weapons can be characterized as “dangerous or unusual,” else *Heller*’s exemption of Second Amendment protection for weapons of that kind would swallow the Amendment’s protections as a whole. *See* 554 U.S. at 627; *Moore*, 702 F.3d at 936 (“[T]he Court cannot have thought *all* guns are ‘dangerous or unusual’ and can be banned, as otherwise there would be no right to keep a handgun in one’s home for self-defense.”).

Consequently, we see little in the more recent historical record to suggest that the Statute of Northampton barred Englishmen from carrying common (not unusual) arms for defense (not terror).

2

More fundamentally, however, we respectfully decline the County’s and the State’s invitation to import English law wholesale into our Second Amendment jurisprudence. While English law is certainly relevant to our historical inquiry because the Second Amendment “codified a *pre-existing* right,” *Heller*, 554 U.S. at 592, our aim here is not merely to discover the rights of the English. Indeed, there is a scholarly consensus that the 1689 English right to have arms was *less protective* than its American counterpart. *See* Jonathan Meltzer, Note, *Open Carry for All: Heller and Our*

Nineteenth-Century Second Amendment, 123 Yale L.J. 1486, 1500 (2014); Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 120–21 (1994). That is because the English right was “not available to the whole population, given that it was restricted to Protestants, and like all written English rights it was held only against the Crown, not Parliament.” *Heller*, 554 U.S. at 593. Accordingly, it only guaranteed the right of Protestants to have arms “as allowed by law.” See Malcom, *supra*, at 121, 162. But not all laws that restricted the right of Englishmen to have arms found a place across the Atlantic. As St. George Tucker observed, it would have been strange to apply in the United States an English law that presumed any gathering of armed men was treasonous, because “the right to bear arms is recognized and secured in the [American] constitution itself.” See Tucker, *supra*, vol. 5, app., n.B, at 19; see also Cooley, *supra*, at 270 (noting that the Second Amendment “was adopted with some modification and enlargement from the English Bill of Rights”); William Rawle, *A View of the Constitution of the United States of America* 126 (2d ed. 1829) (writing that the English right, unlike the Second Amendment, “is allowed more or less sparingly, according to circumstances”).

Thus, instead of stitching into the Second Amendment every odd law that hemmed in the rights of fourteenth century Englishmen, we consider those English laws only to the extent they inform the original public understanding of the Second Amendment. See *Heller*, 554 U.S. at 594 (“By the time of the founding, the right to have arms had become fundamental for English subjects.” (emphasis added)). With our historical inquiry properly framed, the fog encircling the Statute of Northampton’s “true” meaning clears away, for the American understanding and implementation of the

statute was unambiguously consistent with a robust Second Amendment right to open carry.

To the extent the Framers considered the Statute of Northampton as instructive of the pre-existing right to bear arms, they took a narrow view of its prohibitions. *See* Eugene Volokh, *The First and Second Amendments*, 109 Colum. L.Rev. Sidebar 97, 101 (2009). In that vein, Justice James Wilson, a leading drafter of the Constitution, credited Serjeant Hawkins and construed the statute to prohibit arming oneself “with dangerous and unusual weapons, in such a manner, as will naturally diffuse a terroure among the people.” 2 James Wilson, *Collected Works of James Wilson* 654 (Kermit L. Hall & Mark D. Hall eds. 1967); *see also* Volokh, *The First and Second Amendments*, *supra*, at 101 (“American benchbooks for justices of the peace echoed [Wilson’s observation], citing Hawkins . . .”). William Rawle, a prominent member of the Pennsylvania Assembly that ratified the Constitution, likewise cited Hawkins and wrote that the right to bear arms would not rule out a law prohibiting “the carrying of arms abroad by a single individual, attended with circumstances giving [observers] just reason to fear that he purposes to make an unlawful use of them.” Rawle, *supra*, at 126.¹⁸

¹⁸ To the extent that one could read Hawkins as having thought the Statute of Northampton would permit *only* “Persons of Quality” (nobility) to carry weapons, *see* Hawkins, *supra*, at 136 § 9, such a class-based limitation clearly found no place in the United States. Volokh, *The First and Second Amendments*, *supra*, at 101–02. Indeed, neither Justice Wilson nor William Rawle makes any mention of such a limitation when citing Hawkins, nor do any other American sources that we have read. *See* William W. Hening, *The New Virginia Justice, Comprising the Office and Authority of a Justice of the Peace, in the Commonwealth of*

Justice Wilson and William Rawle’s reading of the statute is confirmed by the various state weapons carry regulations throughout the founding era and beyond that were expressly modelled after the Statute of Northampton (“Northampton analogues”). See Eric M. Ruben & Saul Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 Yale L.J. Forum 121, 128–29 (2015) (“[S]everal early American states expressly incorporated versions of the Statute of Northampton into their laws.”). Like the surety laws relied on by the dissent, the state-enacted Northampton analogues only sought to regulate disruptive—or more specifically, terrifying—arms carrying. For example, Massachusetts in 1795 enacted a law authorizing justices of the peace to arrest “all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or go armed offensively, *to the fear or terror of the good citizens*.” 1795 Mass. Acts 436 (emphasis added); see also 1786 Va. Acts 33 (prohibiting going “armed by night [] or by day, in fairs or markets, or in other places, in terror of the Country”).

The North Carolina Supreme Court offered a definitive interpretation of its Northampton analogue in 1843, providing us with the benefit of a more thorough discussion of its elements. *State v. Huntly*, 25 N.C. (3 Ired.) 418 (1843). After holding that firearms fell within the reach of the crime, the court clarified:

[I]t is to be remembered that the carrying of a gun *per se* constitutes no offence. For any lawful purpose—either of business or amusement—the citizen is at perfect liberty

Virginia 18 (1795) (discussing Hawkins’s explanation of the Statute of Northampton without any reference to “Persons of Quality”).

to carry his gun. It is the wicked purpose—and the mischievous result—which essentially constitute the crime. He shall not carry about this or any other weapon of death to terrify and alarm, and in such manner as naturally will terrify and alarm, a peaceful people.

Id. at 422–23. True, the court cited “business or amusement,” instead of self-defense, as examples of lawful purposes, but a moment’s thought refutes the notion that such a list was exhaustive; surely a North Carolinian wasn’t at liberty to carry his rifle only so long as he twirled it in amusement. Rather, it was the “wicked purpose” that “constitute[d] the crime.” *Id.* at 423.

3

We thus disagree with the dissent’s view that carrying a weapon was itself sufficient to face punishment under a state-enacted Northampton analogue. Dissent at 65 n.1. As that argument goes, when the drafters of virtually every single state Northampton analogue criminalized going armed “to the terror” or “in affray” of others, the terror or affray language was just purposive; that is, “terrorizing the public was the consequence of going armed,” so such language was incorporated into the statutes merely to clarify *why* going armed was itself unlawful. *See* Ruben & Cornell, *supra*, at 129–30; Charles, *supra*, at 33.

What an odd way it would be to write a criminal statute! To interpret such language as merely purposive is to remove its operative effect, for if going armed was itself unlawful then clarifying the consequences of going armed adds not an iota of substance to the crime. Of course, “where the text of a clause itself indicates that it does not have operative effect,

such as ‘whereas’ clauses in federal legislation or the Constitution’s preamble, a court has no license to make it do what it was not designed to do.” *Heller*, 554 U.S. at 578 n.3. But it is entirely another endeavor to read language mixed in among operative elements in a criminal statute as merely purposive. *See id.* (“[O]perative provisions should be given effect as operative provisions, and prologues as prologues.”); *Ratzlaf v. United States*, 510 U.S. 135, 140–41 (1994) (counseling “heightened” resistance before treating statutory terms as “words of no consequence . . . when the words describe an element of a criminal offense”). For instance, Maine’s 1821 Northampton analogue authorized the arrest of “all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this State, or such others as may utter any menaces or threatening speeches.” 1821 Me. Laws 285. If riding armed were itself unlawful *because* it terrorized the good citizens of Maine, it strains credulity to suggest that Maine drafters would have felt the need to clarify such reasoning right in the middle of the statute’s operative provisions. Indeed, why only clarify the consequences of riding armed, and no other prohibited conduct?

More troubling, reading the “to the terror” language as merely purposive frequently places a Northampton analogue in conflict with its neighboring criminal provisions. Take a closer look at the Northampton analogue in chapter 97 section 13 of Delaware’s 1852 Revised Statutes, which—in familiar fashion—authorized the arrest of “all who go armed offensively to the terror of the people, or are otherwise disorderly and dangerous.” *Revised Statutes of the State of Delaware, to the Year of Our Lord One Thousand Eight Hundred and Fifty-Two, Inclusive* 333 § 13 (Dover, W.B. Keen 1852). With that provision in mind, turn to Section 30,

where the Delaware Code authorized justices of the peace to “punish any slave . . . who shall, without the special permission of his master, go armed with any dangerous weapon.” *Id.* at 336 § 30. How might one grant another permission to “go armed with any dangerous weapon” if one had no lawful authority to go armed in the first place? Or consider Tennessee’s 1831 Revised Statutes, which, immediately after providing its standard-form Northampton analogue, authorized sheriffs to arrest any person “armed with the intention of committing a riot or affray.” 1 *The Statute Laws of the State of Tennessee, of a Public and General Nature* 10 (Knoxville, John Haywood & Robert L. Cobbs 1831). Why on earth would Tennessee have so limited a sheriff’s authorization to arrest if going armed was itself unlawful?

Thus, utterly confused by how we might read a Northampton analogue to prohibit all arms carry, we feel the better approach with these statutes is to take them at their word: an American, just like an Englishman, could not go armed offensively to the terror of the people. Such a reasonable restriction on public carry is perfectly consistent with a robust right peacefully to carry a firearm in public. In all, then, the various Northampton analogues found in states across the United States confirm that, “whatever Northampton banned on the shores of England,” the American right to carry common weapons openly for self-defense “was not hemmed in by longstanding bans on carrying.” *Wrenn*, 864 F.3d at 660–61.

G

Concluding our analysis of text and review of history, we remain unpersuaded by the County’s and the State’s argument that the Second Amendment only has force within the home. Once identified as an individual right focused on

self-defense, the right to bear arms must guarantee *some* right to self-defense in public. While the concealed carry of firearms categorically falls outside such protection, *see Peruta II*, 824 F.3d at 939, we are satisfied that the Second Amendment encompasses a right to carry a firearm openly in public for self-defense. Because section 134-9 restricts Young in exercising such right to carry a firearm openly, it burdens conduct protected by the Second Amendment.

IV

Accordingly, we must evaluate section 134-9 under “an appropriate level of scrutiny.” *Jackson*, 746 F.3d at 962. In doing so, we consider “(1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law’s burden on the right.” *Id.* at 963 (internal quotations omitted).

We treat this approach as a “sliding scale.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016). On one end, “[a] law that imposes such a severe restriction on [a] core right [of the Amendment] that it ‘amounts to a destruction of the . . . right,’ is unconstitutional under any level of scrutiny.” *Jackson*, 746 F.3d at 961 (quoting *Heller*, 554 U.S. at 629). On the other end of the spectrum, intermediate scrutiny is appropriate if the challenged law “does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right.” *Id.*

A

So, what constitutes the core of the Second Amendment? As we know, the Second Amendment protects the right “to keep and bear arms.” U.S. Const. amend. II. The key inquiry is whether the core of the right encompasses *both* verbs, or only one: keeping *and bearing* arms for self-defense, or,

more narrowly, only keeping arms for self-defense within the home.¹⁹

Heller aids our inquiry but provides no definitive answer. On the one hand, in rejecting the collective view of the right, *Heller* made clear that “self-defense had little to do with the right’s *codification*; it was the *central component* of the right itself.” 554 U.S. at 599 (emphasis in original); *see also id.* at 628 (“[T]he inherent right of self-defense has been central to the Second Amendment right.”). On the other hand, *Heller* noted that “whatever else [the Amendment] leaves to future evaluation, it surely elevates above all other

¹⁹ We disagree with the dissent that our circuit has already determined whether the Second Amendment’s core applies outside the home. Dissent at 14. As underscored by our recent en banc decision in *Teixeira v. County of Alameda*, 873 F.3d 670 (9th Cir. 2017) (en banc), our circuit has not yet decided the extent to which Second Amendment rights—let alone core rights—exist outside of the home. *See id.* at 686 n.19 (“We have not decided the degree to which the Second Amendment protects the right to bear arms outside the home.”).

To the extent that other cases in our circuit might have, in passing, indicated that publicly carrying firearms falls outside the right’s core, the question was not squarely presented in those cases because each dealt with restrictions on keeping arms *within the home*. *See, e.g., Chovan*, 735 F.3d at 1129–30 (evaluating 18 U.S.C. § 922(g)’s prohibition on domestic violence misdemeanants from “possessing firearms for life”). Naturally, then, no such case seriously grappled with the existence of core rights outside the home. Indeed, we doubt our court would have resolved in a sentence or two an issue that the *Wrenn* majority and dissent debated extensively. *See Wrenn*, 864 F.3d at 657–64, 668–69; *see also United States v. Johnson*, 256 F.3d 895, 915 (9th Cir. 2001) (en banc) (Kozinski, J., concurring) (“Of course, not every statement of law in every opinion is binding on later panels. Where it is clear that a statement is made casually and without analysis, where the statement is uttered in passing without due consideration of the alternatives, or where it is merely a prelude to another legal issue that commands the panel’s full attention, it may be appropriate to re-visit the issue in a later case.”).

interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” 554 U.S. at 635. We recognize that several of our sister circuits have interpreted this language to limit the Amendment’s core to the home. *See Drake*, 724 F.3d at 431; *Woollard*, 712 F.3d at 874; *Kachalsky*, 701 F.3d at 93. But we afford little weight to *Heller*’s emphasis on the application of the Second Amendment to the home specifically, for the challenge there exclusively concerned handgun possession in the home. 554 U.S. at 575–76; *see also Drake*, 724 F.3d at 445 (Hardiman, J., dissenting). And in any event, it may very well be the case that within the core of the Amendment, self-defense at home is “most acute.” *Heller*, 554 U.S. at 628.

But much of *Heller*’s reasoning implied a core purpose of self-defense *not* limited to the home. The Court cited “at least seven [state constitutional provisions that] unequivocally protected an individual citizen’s right to self-defense,” which is “strong evidence that that is how the founding generation conceived of the right.” *Id.* at 603. Also without any reference to the home, *Heller* noted that “[a]ntislavery advocates routinely invoked the right to bear arms for self-defense,” *id.* at 609, including Joel Tiffany, who wrote “the right to keep and bear arms, also implies the right to use them if necessary in self defence; without this right to use the guaranty would have hardly been worth the paper it consumed.” *Id.* (quoting Joel Tiffany, *A Treatise on the Unconstitutionality of American Slavery* 117–18 (1849)). Charles Sumner’s famous “Bleeding Kansas” speech, quoted at length in *Heller*, can hardly be read without sensing its vociferous declaration that the Second Amendment’s core reaches self-defense on the American frontier: “Never was this efficient weapon [the rifle] more needed in just self-defense, than now in Kansas, and at least one article in our National Constitution must be blotted out,

before the complete right to it can in any way be impeached.” *Id.* (quoting *The Crime Against Kansas*, May 19–20, 1856, in *American Speeches: Political Oratory From the Revolution to the Civil War* 553, 606–07 (T. Widmer ed. 2006)); *see also McDonald*, 561 U.S. at 775 (“[O]ne of the ‘core purposes of the Civil Rights Act of 1866 and of the Fourteenth Amendment was . . . to ‘affirm the full and equal right of every citizen to self-defense.’” (quoting Akhil Amar, *The Bill of Rights: Creation and Reconstruction* 264–65 (1998))).

Hence, we heed *Heller*’s—and *McDonald*’s—admonition that citizens be allowed to use firearms “for the core lawful purpose of self-defense.” *Heller*, 554 U.S. at 630, *quoted in McDonald*, 561 U.S. at 768; *see also Wrenn*, 864 F.3d at 659 (“Whatever motivated the Amendment, at its core was the right to self-defense.”). While the Amendment’s guarantee of a right to “keep” arms effectuates the core purpose of self-defense within the home, the separate right to “bear” arms protects that core purpose outside the home. Indeed, *Heller* tied together the core rights of keeping and bearing firearms in precisely the same manner. When describing the “[f]ew laws in the history of our Nation [that] have *come close* to the severe restriction of the District’s handgun ban [within the home],” *Heller* pointed to several state statutes that severely restricted the open carrying of firearms *outside the home*. 554 U.S. at 629 (emphasis added) (citing *Reid*, 1 Ala. at 612; *Nunn*, 1 Ga. at 251; *Andrews*, 50 Tenn. at 187).

We are unpersuaded that historical regulation of public carry requires us to remove the right to bear arms from the Second Amendment’s core protection. *See, e.g., Kachalsky*, 701 F.3d at 94; *United States v. Masciandaro*, 638 F.3d 458, 470–71 (4th Cir. 2011). As the D.C. Circuit has explained,

“[t]he rights to keep and to bear, to possess and to carry, are equally important inasmuch as regulations on each must leave alternative channels for both.” *Wrenn*, 864 F.3d at 662. Regulations on public carry tend to “leave alternative channels” for self-defense outside the home, *id.*, because “[w]hen a state bans guns merely in particular places, such as public schools, a person can preserve an undiminished right of self-defense by not entering those places,” *Moore*, 702 F.3d at 940.²⁰ The prevalence of modest regulations on bearing arms, such as a restriction on carrying firearms in a school-zone, does not itself indicate that *bearing* arms is any less protected than *keeping* arms, because the Second Amendment tolerates equally modest restrictions on keeping firearms, such as open surface restrictions in the home. *Wrenn*, 864 F.3d at 663. Thus, historical restrictions on public carry “go to show the scope of the right, not its lack of fundamental character.” *See McDonald*, 561 U.S. at 802.

In sum, we reject a cramped reading of the Second Amendment that renders to “keep” and to “bear” unequal guarantees. *Heller* and *McDonald* describe the core purpose of the Second Amendment as self-defense, *see Heller*, 554 U.S. at 599; *McDonald*, 561 U.S. at 787, and “bear”

²⁰ The dissent mischaracterizes the Seventh Circuit’s decision in *Moore*. According to the dissent, *Moore* did not address whether the “core” of the Second Amendment includes the right to bear arms outside the home. Dissent at 3. That is incorrect. While not discussing the core as explicitly as we do here, *Moore* did make clear that the Second Amendment “confers a right to bear arms for self-defense, *which is as important outside the home as inside.*” 702 F.3d at 942 (emphasis added); *see also id.* at 941 (“[T]he interest in self-protection is as great outside as inside the home.”). And at the very least, *Moore* rejected our dissenting colleague’s attempt “[t]o confine the right to be armed to the home [and thereby] to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*.” *Id.* at 937.

effectuates such core purpose of self-defense in public. We are persuaded, therefore, that the right to carry a firearm openly for self-defense falls within the core of the Second Amendment.

B

We next ask whether section 134-9 “amounts to a destruction” of the core Second Amendment right to carry a firearm openly for self-defense. *Silvester*, 843 F.3d at 821. If so, the law is “unconstitutional under any level of scrutiny.” *Id.*

As previously explained, section 134-9 limits the open carry of firearms to people engaged in the protection of life and property, and even those lucky few may carry firearms only when in the actual course of their duties. Counsel for the County acknowledged as much at oral argument, stating that, to his knowledge, no one other than a security guard—or someone similarly employed—had ever been issued an open carry license.

Restrictions challenged under the Second Amendment must be analyzed with regard to their effect on the typical, law-abiding citizen. *Wrenn*, 864 F.3d at 665 (“[I]f the Amendment is for law-abiding citizens as a rule, then it must secure gun access at least for each typical member of that class.” (emphasis omitted)). That’s because the Second Amendment protects the right of *individuals* to keep and to bear arms, not *groups* of individuals. *See Heller*, 554 U.S. at 595. An individual right that does not apply to the ordinary citizen would be a contradiction in terms; its existence instead would wax and wane with the whims of the ruling majority.

Restricting open carry to those whose job entails protecting life or property necessarily restricts open carry to a small and insulated subset of law-abiding citizens. Just as the Second Amendment does not protect a right to bear arms only in connection with a militia, it surely does not protect a right to bear arms only as a security guard. The typical, law-abiding citizen in the State of Hawaii is therefore entirely foreclosed from exercising the core Second Amendment right to bear arms for self-defense.²¹ It follows that section 134-9 “amounts to a destruction” of a core right, and as such, it is infirm “[u]nder any of the standards of scrutiny.” *See id.* at 628. Thus, we hold that section 134-9’s limitation on the open carry of firearms to those “engaged in the protection of

²¹ We do not address whether, after *Peruta II*, a concealed carry regime could provide a sufficient channel for typical, law-abiding citizens to exercise their right to bear arms for self-defense. *See* 824 F.3d at 927. While the County’s police chief purportedly awaits an “exceptional case” to grant a concealed carry license, section 134-9 is effectively a ban on the concealed carry of firearms. As counsel for the County openly admitted at oral argument, *not a single concealed carry license* has ever been granted by the County. Nor have concealed carry applicants in other counties fared much better: Hawaii counties appear to have issued only *four* concealed carry licenses in the past *eighteen* years. *See* 2000 Haw. Att’y Gen. Reps., *Firearm Registrations in Hawaii, 2000 et seq*; *see also City of Sausalito v. O’Neill*, 386 F.3d 1186, 1223 n.2 (9th Cir. 2004) (“We may take judicial notice of a record of a state agency not subject to reasonable dispute.”). And there is no dearth of applicants. *See, e.g.,* 2016 Haw. Att’y Gen. Rep., *Firearm Registrations in Hawaii, 2016* at 9 (noting all 27 applicants for concealed licenses in the State were denied); 2015 Haw. Att’y Gen. Rep., *Firearm Registrations in Hawaii, 2015* at 9 (noting all 44 applicants for concealed licenses in the State were denied); 2014 Haw. Att’y Gen. Rep., *Firearm Registrations in Hawaii, 2014* at 9 (noting all 21 applicants for concealed licenses in the State were denied). Thus, even if the State and County remain free to accommodate the right to bear arms with concealed carry after *Peruta II*, an issue we do not decide, section 134-9 does not offer a realistic opportunity for a concealed carry license.

life and property” violates the core of the Second Amendment and is void; the County may not constitutionally enforce such a limitation on applicants for open carry licenses.

V

Notwithstanding the fact that section 134-9 eviscerates a core Second Amendment right—and must therefore be unconstitutional—the dissent would uphold the law under intermediate scrutiny. We do not wish to dive into the weeds of intermediate scrutiny, but we feel obligated to note a few aspects of the dissent’s analysis that are patently inconsistent not only with intermediate scrutiny, but with the judicial role itself.

A

As an initial mistake, the dissent chooses to analyze section 134-9 as a “good cause” requirement to carry a firearm in public, similar to those upheld by the Second, Third, and Fourth Circuits. Dissent at 72–73; *see Kachalsky*, 701 F.3d at 101; *Drake*, 724 F.3d at 434; *Woollard*, 712 F.3d at 876. The dissent emphasizes the language of section 134-9 that purportedly authorizes the issuance of a concealed carry license in an “exceptional case.” Yet, to analyze section 134-9 as such, the dissent must shut its eyes to the inconvenient fact that no concealed carry license has ever been granted by the County.

The dissent claims that we lack a factual basis to acknowledge that reality, but the dissent is clearly wrong. The County’s attorney *conceded* at oral argument that no concealed carry license has ever been granted by the County. The dissent gives short shrift to such concession, but it is nothing more than elementary that a party “is bound by

concessions made in its brief or at oral argument.” *Hilao v. Estate of Marcos*, 393 F.3d 987, 993 (9th Cir. 2004). Besides, official (and thus judicially noticeable) reports from the State’s Attorney General confirm what the County concedes: at least since 2000, no concealed carry license has been granted by the County. *See supra*, note 21. And even if some truly “exceptional” person in the County might one day receive a concealed carry license, it would be extraordinary to hold such a purely hypothetical stroke of luck to be sufficient in safeguarding a constitutional right.

The Second, Third, and Fourth Circuits certainly did not make such a leap. Those circuits, quite unlike the dissent, confirmed that the good cause requirements at issue did not disguise an effective ban on the public carry of firearms. As the Second Circuit flatly insisted, “New York’s proper cause requirement does not operate as a complete ban on the possession of handguns in public.” *Kachalsky*, 701 F.3d at 91. Likewise, the Third Circuit observed that New Jersey’s regime provided “clear and specific” standards, “accompanied by specific procedures that provide ‘safeguards against arbitrary official action.’” *Drake*, 724 F.3d at 435 (footnote omitted) (quoting *Siccardi v. State*, 59 N.J. 545, 555 (1971)); *see also Woollard*, 712 F.3d at 869, 881 & n.10 (distinguishing Maryland’s law, which allowed for licenses on a showing of a “good and substantial reason,” from the outright ban invalidated by *Moore*, 702 F.3d at 940). And each of the good cause regimes that were upheld provided for administrative or judicial review of any license denial, *Kachalsky*, 701 F.3d at 87; *Drake*, 724 F.3d at 429; *Woollard*, 712 F.3d at 870, a safeguard conspicuously absent from Hawaii’s laws. Far from supporting the dissent’s argument, then, the reasoning of the Second, Third, and Fourth Circuits suggests that they too

would invalidate a firearms carry regime as restrictive as Hawaii's.

We should also note the perplexing nature of the dissent's reasoning on this point. Suppose the dissent were correct that "[n]o record has been developed in this case" sufficient to discount section 134-9's "exceptional case" avenue. Dissent at 73. Utilizing the lack of such evidence to uphold section 134-9 as a good cause requirement—thus rejecting Young's claim—would plainly be inappropriate at this juncture. Young's action sits at the motion to dismiss stage. Are we now to dismiss claims under Rule 12(b) for a *lack of record evidence*? Of course not!

B

Beyond the dissent's misconception about how section 134-9 operates, its analysis under intermediate scrutiny is utterly unpersuasive.

1

First, and foremost, the dissent chooses to omit one-half of the inquiry. According to the dissent, the only question a court must answer under intermediate scrutiny is whether the government action "promotes a substantial government interest that would be achieved less effectively absent the regulation." Dissent at 74 (quoting *Fyock v. Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015)). That is incomplete, because a court must *also* determine whether the government action "'burden[s] substantially more [protected conduct] than is necessary to further' that interest." *Turner Broad. Sys., Inc. v. F.C.C. (Turner II)*, 520 U.S. 180, 213–14 (1997) (quoting *Turner Broad. Sys., Inc. v. F.C.C. (Turner I)*, 512 U.S. 622, 662 (1994)); *see also Shapero v. Ky. Bar Ass'n*, 486 U.S. 466, 476 (1988) (invalidating a flat ban on

direct-mail solicitation by lawyers because the government could regulate “abuses . . . through far less restrictive and more precise means”). Thus, while intermediate scrutiny surely does not require the government to pursue the *least* restrictive means of achieving an important interest, the substantial overbreadth or impreciseness of a government action must be considered.

Here, however, the dissent simply points out Hawaii’s low firearm death rate and claims victory, at no point seriously analyzing whether the State could reduce gun violence through means considerably more targeted than section 134-9.

2

Confounding the dissent’s erroneous understanding of intermediate scrutiny is its willingness to defer entirely to the State regarding the constitutionality of section 134-9. Dissent at 74–75. The dissent relies on the Supreme Court’s decision in *Turner Broadcasting* to justify its analysis, but in reality the decision undermines the level of deference the dissent would offer.

“Although we do ‘accord substantial deference to the predictive judgments’ of the legislature” when conducting intermediate scrutiny, “the [State] is not thereby ‘insulated from meaningful judicial review.’” *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1259 (D.C. Cir. 2011) (quoting *Turner II*, 520 U.S. at 195 & *Turner I*, 512 U.S. at 666). Quite the contrary, a court must determine whether the legislature has “base[d] its conclusions upon substantial evidence.” *Turner II*, 520 U.S. at 196. Indeed, despite the deference owed, the State bears the burden “affirmatively [to] establish the reasonable fit we require.” *See Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989).

The State and County here offer some empirical studies in support of their argument that section 134-9 is a reasonable means of reducing gun violence, but where does the dissent actually engage with such evidence? It doesn't. Its analysis of the evidence is nothing more than the conclusory assertion that "Hawaii has met its burden by *citing* to significant empirical evidence [apparently two or so pages in its brief is "significant"] and by explaining the logical inferences behind its policy choices." Dissent at 75 (emphasis added).

Mere citation is an inadequate application of intermediate scrutiny, even according deference to the predictive judgment of a legislature, and *Turner Broadcasting* itself shows why. There, the Supreme Court extensively analyzed over the course of *twenty pages* the empirical evidence cited by the government, and only then concluded that the government's "policy [was] grounded on reasonable factual findings supported by evidence that is substantial for a legislative determination." *See Turner II*, 520 U.S. at 196–224. To say that the dissent's treatment of the State's evidence is in any way comparable to the analysis of *Turner Broadcasting* is to omit nearly the entirety of the Court's opinion; the Court did much more than cite-check the government's brief.

The dissent is comfortable letting the State perform its intermediate scrutiny analysis because "[i]t is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments." Dissent at 74 (quoting *Kachalsky*, 701 F.3d at 99). No statement could more clearly indicate where the dissent goes wrong: we are certainly *not* evaluating a mere "policy judgment" but rather determining the scope and application of a *constitutional right*. At bottom, the dissent would have us fundamentally reject

Heller and construe the Second Amendment as nothing more than an illusory promise. While the dissent might think *Heller* was wrongly decided, it is far beyond our power to overrule it.

VI

We do not take lightly the problem of gun violence, which the State of Hawaii “has understandably sought to fight . . . with every legal tool at its disposal.” *Wrenn*, 864 F.3d at 667. We see nothing in our opinion that would prevent the State from *regulating* the right to bear arms, for the Second Amendment leaves the State “a variety of tools for combatting [the problem of gun violence], including some measures regulating handguns.” *Heller*, 554 U.S. at 636.

But, for better or for worse, the Second Amendment does protect a right to carry a firearm in public for self-defense. We would thus flout the Constitution if we were to hold that, “in regulating the manner of bearing arms, the authority of [the State] has no other limit than its own discretion.” *Reid*, 1 Ala. at 616. While many respectable scholars and activists might find virtue in a firearms-carry regime that restricts the right to a privileged few, “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*, 554 U.S. at 636.

Young has indeed stated a claim that section 134-9's limitations on the issuance of open carry licenses violate the Second Amendment.²²

REVERSED as to the County, **DISMISSED** as to the State,²³ and **REMANDED** for further proceedings consistent with this opinion.²⁴

CLIFTON, Circuit Judge, dissenting:

Morris Udall once observed at a congressional committee hearing that “everything has been said but not everyone has said it.” After decades of relative inattention, the Second Amendment has sparked substantial comment in the last forty years. Others have said things that reflect my view. I do not feel the need to repeat them.

²² Because we reverse the district court on Second Amendment grounds, we need not reach Young's due process claim.

²³ The appeal as to the State is dismissed for the reasons discussed in footnote 1.

²⁴ We deal with the pending motions as follows: (1) The County's motion to strike Young's 28(j) letters, ECF No. 20, is **DENIED**; (2) Young's motion to file a supplemental brief, ECF No. 24, is **GRANTED**; (3) Young's motion to strike the State's amicus brief, ECF No. 36, is **DENIED**; (4) Young's motion to take judicial notice, ECF No. 80, is **GRANTED IN PART**, and we take judicial notice of the Hawaii Attorney General's 2014 Firearms Registration Report; (5) Young's second motion to file a supplemental brief, ECF No. 84, is **GRANTED**; (6) The State's motion to file a supplemental amicus brief, ECF No. 92, is **GRANTED**.

Following the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), our court has spoken more than once regarding the reach of the Second Amendment. This case requires us to do so again. One notable decision by our court was *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014) (*Peruta I*). It expressed an interpretation of the Second Amendment and an explanation for that understanding very similar to the majority opinion in this case. This court voted to rehear *Peruta I* en banc, however, and effectively overturned that decision in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc) (*Peruta II*). Our opinion in *Peruta II* contained a lengthy discussion of history relevant to the Second Amendment, including the right to bear arms in old England, colonial America, and in the United States following adoption of the Fourteenth Amendment. It is sufficient for now to say that its assessment was different from that contained in *Peruta I* and in the opinion of the majority here.

The *Peruta II* en banc panel did not opine on the precise question presented in this case, limiting its holding to the conclusion that “the Second Amendment does not preserve or protect a right of a member of the general public to carry concealed firearms in public.” *Id.* at 924. As the majority opinion notes, at 10, that decision left unresolved the question of whether the Second Amendment supports the right of a member of the general public to carry a firearm openly in public.

A majority of the members of the *Peruta II* en banc panel expressed additional views relevant to our current case in a non-precedential fashion, however. In a separate concurring opinion. Judge Graber, joined by two other members of the

panel, fully concurred in the en banc panel's majority opinion but went on to express the view that even if it was assumed that the Second Amendment applied to the carrying of concealed weapons, the restrictions at issue in that case struck "a permissible balance between granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets." *Id.* at 942 (internal quotation omitted). The other four judges on the panel who made up the majority stated that "if we were to reach that question, we would entirely agree with the answer the concurrence provides." *Id.* In sum, seven of the eleven members of that en banc panel expressed views that are inconsistent with the majority opinion in this case.

Other circuit courts have weighed in as well. One other circuit has expressed an opinion that aligns with the majority opinion here: *Wrenn v. District of Columbia*, 864 F.3d 650, 665 (D.C. Cir. 2017). One has decided that the Second Amendment protects the right to carry firearms in public, generally agreeing with the conclusion of the majority here, but it did not describe that right as part of the "core" of the Second Amendment, as the majority has here: *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Three others have reached contrary conclusions: *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), and *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012).

In light of the already existing circuit split, I assume that the Supreme Court will find it appropriate at some point to revisit the reach of the Second Amendment and to speak more precisely to the limits on the authority of state and local governments to impose restrictions on carrying guns in public. In the meantime, this court and our counterparts

elsewhere will do the best we can to sort out the conflicting arguments. I respect the opinion of the majority, but my conclusion is different.

H.R.S. § 134-9 regulates both open carry and concealed carry. Open carry licenses are available to those who are “engaged in the protection of life and property” and “[w]here the urgency or the need has been sufficiently indicated.” Concealed carry licenses are available “[i]n an exceptional case, when an applicant shows reason to fear injury to the applicant’s person or property.” H.R.S. § 134-9.

In my view, this statutory scheme is the same type of “good cause” public carry regulation that the Second, Third, and Fourth Circuits upheld in *Kachalsky*, *Drake*, and *Woollard*, respectively. Good cause licensing schemes, and extensive state regulation of public carry more generally, have a long history in the United States. While explicitly declining to elaborate on specific regulations, the Supreme Court in *Heller* expressly noted that the right secured by the Second Amendment is “not unlimited” and that there were “longstanding prohibitions” that were “presumptively lawful.” *Heller*, 554 U.S. at 626–27 & n. 26. I would hold that Hawaii’s statute is a longstanding, presumptively lawful regulation under *Heller*. At a minimum, the statute survives intermediate scrutiny, as the core of the Second Amendment does not include a general right to publicly carry firearms and there is a reasonable fit between the licensing scheme and Hawaii’s legitimate interest in promoting public safety.

As a result, I respectfully dissent. As promised, I will try not to repeat all that has already been said by other judges. I will limit my comments to a few additional thoughts about the historical record and the application of intermediate scrutiny to the statute at hand.

I. History

The majority opinion's conclusions rest heavily on historical analysis in the vein of the Supreme Court's decisions in *Heller* and *McDonald*. The premise of that approach is that the history of firearms regulations prior to the adoption of the Second Amendment and in the decades that followed that adoption shed light on the right that the founders intended to provide. Much of the analysis offered in the majority opinion repeats what was said in *Peruta I*, despite the en banc rejection of that opinion in *Peruta II*.

The discussion in the majority opinion is incomplete, at best. Throughout our history, states and their predecessor colonies and territories have taken divergent approaches to the regulation of firearms. While some, like the states that the majority cites, have historically allowed for a general right to publicly carry firearms, many others have not. "History and tradition do not speak with one voice here. What history demonstrates is that states often disagreed as to the scope of the right to bear arms, whether the right was embodied in a state constitution or the Second Amendment." *Kachalsky*, 701 F.3d at 91.

The majority opinion supports its conclusion by focusing solely on the laws and decisions from one region, the antebellum South. Take a look at the jurisdictions relied upon by the majority opinion, at 19–23: Kentucky, Tennessee, Alabama, Georgia, and Louisiana. What jumps out is that those were all slave states, and the decisions relied upon by the majority opinion all date from before the Civil War. The majority opinion affirmatively acknowledges, at 28–32, the peculiar pattern of southern states following the Civil War, during the era of Black Codes and efforts to keep firearms out of the hands of former slaves, but it fails to appreciate that the peculiarity did not start in 1865. To

suggest that the approach of the antebellum South reflected a national consensus about the Second Amendment's implications for public carry of firearms is misguided. The cases from the antebellum South relied upon by the majority "did not emerge in a vacuum and do not reflect the full range of American legal history. Rather, they come from a time, place, and culture where slavery, honor, violence, and the public carrying of weapons were intertwined." Eric M. Ruben & Saul Cornell, *Firearm Regionalism and Public Carry*, 125 Yale L.J. F. 121, 125 (2015), <http://www.yalelawjournal.org/forum/firearm-regionalism-and-public-carry>.

A more balanced historical analysis reveals that states have long regulated and limited public carry of firearms and, indeed, have frequently limited public carry to individuals with specific self-defense needs. Hawaii's regulatory framework fits squarely into that long tradition.

There are two legal conclusions to be drawn from a more thorough historical analysis. First, good cause licensing schemes are longstanding and, therefore, are presumptively lawful limitations on public carry of firearms under *Heller*. Second, even if they are not presumptively lawful, the widespread and longstanding nature of such schemes supports the conclusion that a general right to publicly carry firearms is not part of the core of the Second Amendment.

A. An Overview of State Regulation of Public Carry

Other decisions have detailed much of the history of regulations and limitations on public carry, so I need not fully reiterate that history here. I will instead provide only a brief overview of the tradition of regulation of public carry, with reference to the analysis performed by our court and other circuits where appropriate.

As we recognized in our en banc *Peruta II* decision, regulation of public carry has its roots in English law. Dating back to the thirteenth century, England regulated public carry of firearms, including both concealed and concealable weapons. See *Peruta II*, 824 F.3d at 929–32 (citing, *inter alia*, the Statute of Northampton, which prohibited men “to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere” and subsequent laws emphasizing that the Statute prohibited the carrying of concealable weapons).¹ In the colonial period, several colonies “adopted verbatim, or almost verbatim, English law” that limited or banned public carry. *Id.* at 933.

In the late 18th and 19th centuries, states began to develop good cause limitations or otherwise continued to limit public carry. The Second Circuit detailed much of the 19th century history in *Kachalsky*, 701 F.3d at 90–93.

¹ The majority’s analysis of English law and the colonies’ treatment of English law, at 36–45, is also flawed. For example, the majority assumes that historical regulations authorizing the arrest of or criminalizing going armed “to the fear or terror” of the public mean that the person who goes armed must have had the *intent* to terrify the public. See, e.g., Maj. Op. at 42–45. But the majority opinion does not cite adequate authority for that proposition, and there is no consensus that supports such an interpretation. Another equally reasonable interpretation is that these statutes meant that a member of the general public could not go armed because to do so would terrify the people, and the statutes included this language to “highlight[] the importance of the police power in preventing the dangers imposed by public carrying The terminology did not legally require circumstances where carrying of arms was unusual and therefore terrifying. Instead, the act of riding or going armed among the people was deemed terrifying itself and considered a breach against the public peace.” Patrick J. Charles, *The Faces of the Second Amendment Outside the Home*, 60 Clev. St. L. Rev. 1, 33 (2012).

Massachusetts, for example, first adopted a good cause statute in 1836. Its law provided an exception to its limitation on public carry for those with “reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property.” 1836 Mass. Laws 748, 750, ch. 134, § 16. Under this law, any person who went armed without such good cause “may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace.” *Id.* Wisconsin, Oregon, Minnesota, Michigan, Virginia, and Maine adopted similar laws. *See* Act to Prevent the Commission of Crimes, § 16, reprinted in *The Statutes of the Territory of Wisconsin* 379, 381 (1839) (restricting “go[ing] armed with a . . . pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury.”); Proceedings to Prevent Commission of Crimes, ch. 16, § 17, 1853 Or. Laws 220 (restricting any person from going armed with “pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault, injury, or other violence to his person, or to his family or property.”); Of Proceedings to Prevent the Commission of Crime, ch. 193, § 16, reprinted in Thomas M. Cooley, *Compiled Laws of the State of Michigan* 1572 (1857) (restricting any person from going armed with a “pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury”); Of Proceedings to Prevent the Commission of Crimes, 1847 Va. Laws 129, ch. 14, § 16 (restricting “go[ing] armed with any offensive or dangerous weapon without reasonable cause to fear an assault or other injury”); Of Proceedings to Prevent the Commission of Crimes, ch. 112, § 18, Rev. Stat. Minn. 528 (1851) (restricting “go[ing] armed with a . . . pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury.”); Of Proceedings for Prevention of

Crimes, ch. 169, § 16, Rev. Stat. Me. 709 (October 22, 1840) (“Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may . . . be required to find sureties for keeping the peace.”).²

After the Civil War, additional states adopted laws similar to the Massachusetts good cause model. Texas, for example, prohibited “[a]ny person [from] carrying on or about his person” certain weapons, including pistols, but provided an affirmative defense if the defendant could show that he was “in danger of an attack on his person” that was “immediate and pressing.” An Act to Regulate the Keeping and Bearing of Deadly Weapons, ch. 35, §§ 1–2, 1871 Tex. Laws 25 (discussed in *State v. Duke*, 42 Tex. 455 (1874)). Several other states and territories also adopted full open carry bans during this time. *See* An Act Defining and Punishing Certain Offenses Against the Public Peace, § 1, 1889 Ariz. Sess. Laws 16 (prohibiting any person within any settlement from “carry[ing] on or about his person, saddle, or in his saddlebags, any pistol.”); An Act to Prevent the Carrying of Fire Arms and Other Deadly Weapons, ch. 52, § 1, Wyo. Comp. Laws 352 (1876) (declaring that it is unlawful for any resident of or visitor to a city or village to “bear upon his person, concealed or openly, any fire arm or other deadly weapon.”); An Act Regulating the Use and

² The majority considers these types of regulations unpersuasive because of the citizen-complaint mechanism used to enforce some of these laws. *See* Maj. Op. at 33–34. But the point here is that states have long regulated public carry and specifically provided exceptions to their regulations for those with specific self-defense needs. The fact that the public carry regulations may have been triggered by citizen-complaint mechanisms does not change the states’ recognition that public carry may be limited.

Carrying of Deadly Weapons in Idaho Territory, § 1, 1888 Idaho Sess. Laws 23 (declaring that it is unlawful for anyone who is not a state or federal employee on duty “to carry, exhibit or flourish any . . . pistol, gun or other deadly weapons, within the limits or confines of any city, town or village.”); 1881 Kan. Sess. Laws 92, ch. 37, § 23 (“The council shall prohibit and punish the carrying of firearms, or other dangerous or deadly weapons, concealed or otherwise.”).

Numerous states adopted good cause limitations on public carry in the early 20th century. Laws from this time period may also be considered “longstanding” under *Heller*. See *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) (noting that the Supreme Court “considered prohibitions on the possession of firearms by felons to be longstanding although states did not start to enact them until the early 20th century.” (internal quotation marks omitted)). Indeed, Hawaii’s law dates to this time. 1927 Haw. Laws 209, act 206, § 7; see also 1913 N.Y. Laws 1629 (requiring a showing of “proper cause”); *Drake*, 724 F.3d at 432 (explaining that New Jersey’s “justifiable need” standard based on “special danger” for public carry licenses has existed in some form for nearly 90 years, beginning in 1924). Other states imposed other public carry restrictions. Oklahoma, for example, established strict limits on public carry. See Will T. Little et al., *The Statutes of Oklahoma*, 495–96, § 2 (1890) (“It shall be unlawful for any person in this territory of Oklahoma, to carry upon or about his person any pistol, revolver . . . or any other offensive or defensive weapon.”). A more comprehensive review demonstrates that state regulation of public carry has existed throughout United States history, and that there is a long history of regulations similar to Hawaii’s statute.

B. Good Cause Regulations Are Longstanding and Presumptively Lawful

The longstanding and widespread nature of these regulations is determinative as we decide on the constitutionality of Hawaii's regulatory framework. As noted above, the Supreme Court emphasized in *Heller* that nothing in its opinion "should be taken to cast doubt" on the legitimacy of various longstanding limitations on the carry of firearms and that the list of "presumptively lawful regulatory measures" it specifically mentioned did not "purport to be exhaustive." *Heller*, 554 U.S. at 626–27 n. 26.

In *Drake*, the Third Circuit concluded that New Jersey's limitations on public carry to those with a justifiable need to carry a handgun due to "special danger to the applicant's life that cannot be avoided by [other] means" are such longstanding regulations that they join this presumptively lawful list. 724 F.3d at 428, 431–34. Hawaii's limitation on public carry to those with a fear of injury is very similar to New Jersey's regime. Based on the analysis in that decision and the history discussed above, I conclude that Hawaii's scheme should likewise be presumptively lawful under *Heller*.³

³ The majority opinion elects to disregard these enactments because it says it does not know the level of enforcement and cannot discern whether they were enacted "with a militia or a self-defense oriented view of the right to bear arms in mind." Maj. Op. at 35 n. 13. Those explanations do not speak to the point, though. States did in fact adopt these limitations on the carry of firearms, presuming the limitations to be lawful and consistent with the Second Amendment, and they did so long ago, making the restrictions long-established regulatory measures that are presumptively lawful.

C. Public Carry Is Not the Core of the Second Amendment

Even if Hawaii’s regulations were not presumptively lawful, it is plain from the long history of state regulation that a general right to publicly carry firearms is not part of the “core” of the Second Amendment. As the Second Circuit held in *Kachalsky*, “[t]he historical prevalence of the regulation of firearms in public demonstrates that while the Second Amendment’s core concerns are strongest inside hearth and home, states have long recognized a countervailing and competing set of concerns with regard to handgun ownership and use in public. . . . Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case.” *Kachalsky*, 701 F.3d at 96.

The majority opinion is simply incorrect when it concludes, at 32, that “the important founding-era treatises, the probative nineteenth century case law, and the post-civil war legislative scene each reveal a single American voice.” As demonstrated by the discussion above, there was no single voice on this question, as there is not today.

The majority’s assertion that our court has not yet concluded that the core of the Second Amendment is focused on self-defense in protection of hearth and home is also incorrect. We have repeatedly made statements to that effect. *See Jackson v. Cty. of San Francisco*, 746 F.3d 953, 963–64 (9th Cir. 2014) (“On its face, section 4512 implicates the core because it applies to law-abiding citizens, and imposes restrictions on the use of handguns within the home. . . . Having to retrieve handguns from locked containers or removing trigger locks makes it more difficult ‘for citizens to use them for the core lawful purpose of self-defense’ in

the home.” (quoting *Heller*, 554 U.S. at 630)); *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (“*Heller* tells us that the core of the Second Amendment is ‘the right of law-abiding, responsible citizens to use arms in defense of hearth and home.’” (quoting *Heller*, 554 U.S. at 635)); *Bauer v. Becerra*, 858 F.3d 1216, 1222 (9th Cir. 2017) (“*Heller* identified the core of the Second Amendment as the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” (internal quotation marks omitted)). It is true that “[w]e have not decided the degree to which the Second Amendment protects the right to bear arms outside the home.” See *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 686 n. 19 (9th Cir. 2017) (en banc). But despite the majority opinion’s assertion, Maj. Op. at 47 n. 19, *Teixeira* did not say that we have not mapped the “core” of the Second Amendment. The cases cited above have spoken to that subject.

Many of the other circuits have defined the core of the Second Amendment as our prior cases have. See *Drake*, 724 F.3d at 431 (stating that “the individual right to bear arms for the purpose of self-defense” in the home is “the ‘core’ of the right as identified by *Heller*.”); *Kachalsky*, 701 F.3d at 89, 94 (“*Heller* explains that the ‘core’ protection of the Second Amendment is the ‘right of law-abiding, responsible citizens to use arms in defense of hearth and home.’” (quoting *Heller*, 554 U.S. at 634–35)); *United States v. Masciandaro*, 638 F.3d 458, 467 (4th Cir. 2011) (“[T]here now exists a clearly-defined fundamental right to possess firearms for self-defense within the home.”); *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) (“If Second Amendment rights apply outside the home, we believe they would be measured by the traditional test of intermediate scrutiny.”); *Nat’l Rifle Ass’n of America, Inc. v. ATFE*, 700 F.3d 185, 193 (5th Cir. 2012) (“The [*Heller*]

Court invalidated the laws because they violated the central right that the Second Amendment was intended to protect—that is, the ‘right of law-abiding, *responsible* citizens to use arms in defense of hearth and home.’” (quoting *Heller*, 554 U.S. at 635) (emphasis in original)). I am thus joined by most of the other circuits that have spoken to the question in defining the core of the Second Amendment as defense of hearth and home. My understanding is firmly grounded in the long history of allowing substantial state regulation of public carry.

II. Intermediate Scrutiny

Because I conclude that Hawaii’s regulatory framework does not “impose[] such a severe restriction on the fundamental right of self defense of the home that it amounts to a destruction of the Second Amendment right,” the most demanding level of review that can be applied to Hawaii’s regulatory framework is intermediate scrutiny. *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016). It appears to me that there is a reasonable fit between Hawaii’s public carry regulations and its unquestionably legitimate goal of promoting public safety so that Hawaii’s statute would pass constitutional muster. Given the stage of the case and the direction of the majority, it does not seem worthwhile to try to launch a complete intermediate scrutiny analysis at this point. I note, however, that the majority opinion makes some critical errors in declining to consider that analysis.

First, Hawaii does provide an alternative mode of access to publicly carry firearms for self-defense. As we stated in *Jackson*, “firearm regulations which leave open alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not.” 746 F.3d at 961. Under Hawaii’s law, citizens may obtain a concealed carry permit if they can show reason to

fear injury. They thus are not “entirely foreclosed” from obtaining a permit to bear arms in public for self-defense, as asserted in the majority opinion, at 52. Moreover, the majority opinion’s assessment, at 52 n. 21, that “section 134-9 does not offer a realistic opportunity for a concealed carry license” lacks support in the record. No record has been developed in this case, so a conclusion that the regulation acts as a total ban is unsupported. It may be, as stated at oral argument, that no concealed carry permit has been issued by the County, but we have no information whatsoever about the applicants for concealed carry permits, let alone enough information to support a finding that those applicants would have been eligible for a permit even if Hawaii had a “shall-issue” regime. Under our precedent, the fact that Hawaii may provide an alternative channel for public carry should weigh in favor of finding that the law withstands constitutional scrutiny.⁴

⁴ This point speaks to a broader problem with the majority’s analysis. Throughout its opinion, the majority attempts to focus only on whether the Second Amendment protects a right to open carry, based on an erroneous assumption that any other analysis is foreclosed by our decision in *Peruta II*. I do not agree with this approach, and its artificiality becomes clear when we move to the intermediate scrutiny analysis. *Peruta II* specifically declined to decide not only whether the Second Amendment protects open carry, but also whether it protects “a right of a member of the general public to carry firearms in public.” *Peruta II*, 824 F.3d at 927. In applying intermediate scrutiny, the majority opinion specifically states, at 49 n. 16, that it does not address whether “a concealed carry regime could provide a sufficient channel for typical, law-abiding citizens to exercise their right to bear arms for self-defense.” But this is illogical. The existence of alternative access to public carry for self-defense in the form of concealed carry is unquestionably relevant in an intermediate scrutiny analysis. Nothing in *Peruta II* said otherwise. If we apply intermediate scrutiny, we must consider the statute as a whole, rather than pretending that Hawaii has instituted a complete ban on public carry, both open and concealed.

Second, the majority's decision to pick apart the various studies cited by the state ignores the Supreme Court's dictate to "accord substantial deference to the predictive judgments" of the state legislature. *Turner Broadcasting Sys., Inc. v. F.C.C.*, 520 U.S. 180, 195 (1997) (internal quotation marks omitted). As the Second Circuit stated in *Kachalsky*, "[i]t is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments." *Kachalsky*, 701 F.3d at 99; *see also Drake*, 724 F.3d at 439 (noting that "conflicting empirical evidence . . . does not suggest, let alone compel, a conclusion that the 'fit' between [a state's] individualized, tailored approach and public safety is not 'reasonable.'"). The test is not whether the state has provided flawless empirical analysis that is immune to dispute to support its reasonable conclusion that the regulatory measures promote public safety. That limiting public carry of firearms may have a positive effect on public safety is hardly a illogical proposition. Many other states appear to have reached similar conclusions, and so have most other nations.

Although the majority may not like the outcomes of those studies, and may even disagree with their approaches, intermediate scrutiny does not allow us to dismiss statutes based on our own policy views or disagreements with aspects of the analyses cited. In an intermediate scrutiny analysis, Hawaii is not required to show that its regulatory scheme "is the least restrictive means of achieving its interest" in public safety, but rather need only show that the scheme "promotes a substantial government interest that would be achieved less effectively absent the regulation." *Fyock v. Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015) (internal quotation marks omitted).

Hawaii has met its burden by citing to significant empirical evidence and by explaining the logical inferences behind its policy choices. *See IMS Health Inc. v. Ayotte*, 550 F.3d 42, 55 (1st Cir. 2008) (abrogated on other grounds by *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011) (explaining that under intermediate scrutiny states are “allowed to justify speech restrictions by reference to studies and anecdotes” and “history, consensus, and simple common sense” (internal quotation marks omitted)). As other circuits have held in *Kachalsky*, *Drake*, and *Woollard*, and as a majority of the judges on our en banc panel indicated in *Peruta II*, there is a reasonable fit between good cause limitations on public carry licenses and public safety. *See Kachalsky*, 701 F.3d at 96–100; *Drake*, 724 F.3d at 439–40; *Woollard*, 712 F.3d at 878–82; *Peruta II*, 824 F.3d at 942.

Hawaii has a very low firearm death rate as compared to other states: 4.5 deaths per 100,000 total population. *See* National Center for Health Statistics, Firearm Mortality by State, https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm. There are undoubtedly many factors that lead to that result, but we should not ignore the evidence that Hawaii has been highly successful in limiting firearm deaths and promoting public safety. Hawaii has shown that there is a reasonable fit between its statutory scheme and public safety, and the state’s decision is owed deference. Any conclusion otherwise disregards our proper role in an intermediate scrutiny analysis.

III. Conclusion

The majority opinion goes astray in several respects. Most obviously, the majority opinion has disregarded the fact that states and territories in a variety of regions have long allowed for extensive regulations of and limitations on

the public carry of firearms. Many have taken the approach that Hawaii has taken for almost a century. Such regulations are presumptively lawful under *Heller* and do not undercut the core of the Second Amendment. In addition, the majority opinion misconceives the intermediate scrutiny test, assumes without support in the record that Hawaii's statute operates as a complete ban, and substitutes its own judgment about the efficacy of less restrictive regulatory schemes. This approach is in conflict with Supreme Court precedent, our own decisions, and decisions by other circuits.

I respectfully dissent.

DAVID Y. IGE
GOVERNOR



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September 11, 2018

The Honorable Douglas S. Chin
Lieutenant Governor
State of Hawaii
State Capitol, Executive Chambers
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Lieutenant Governor Chin:

Re: Availability of Unconcealed-Carry Licenses

This letter responds to your request for a formal legal opinion clarifying the authority of chiefs of police to issue licenses permitting the unconcealed carry of firearms.

Your inquiry arises from ongoing litigation challenging the constitutionality of a portion of section 134-9, Hawaii Revised Statutes (HRS), which provides that "[w]here the urgency or the need has been sufficiently indicated, the respective chief of police" may issue a license authorizing an otherwise-qualified applicant who "is engaged in the protection of life and property" to carry an unconcealed firearm within the county. In *Young v. Hawaii*, a divided panel of the Ninth Circuit construed this provision as "[r]estricting open carry to those whose job entails protecting life or property," such as "security guard[s]." 896 F.3d 1044, 1071 (9th Cir. 2018). The panel held that, so construed, the unconcealed-carry provision violates the Second Amendment. *Id.* Both the County of Hawaii and the State of Hawaii have announced that they intend to seek panel rehearing or rehearing en banc of that decision.

For the reasons set forth below, we advise that the *Young* panel's construction of section 134-9, HRS, is overly restrictive. By its plain text, section 134-9 does not limit unconcealed-carry

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licenses to persons whose job entails the protection of life and property, but authorizes the issuance of such licenses to anyone "engaged in the protection of life and property" who demonstrates a sufficient "urgency" or "need" to carry a weapon. Furthermore, without attempting to set forth a comprehensive list of eligible recipients, we advise that a private individual would likely satisfy the statutory criteria for an unconcealed-carry license where he or she identifies a need for protection that significantly exceeds that held by an ordinary law-abiding citizen, and otherwise satisfies the statutory requirements for possessing and carrying a firearm.

I. QUESTIONS PRESENTED AND SHORT ANSWERS.

1. Does section 134-9, HRS, limit the issuance of unconcealed-carry licenses to private security officers and other individuals whose jobs entail protecting life and property?

SHORT ANSWER: No. Section 134-9, HRS, authorizes the issuance of unconcealed-carry licenses to any qualified individual who demonstrates a sufficient "urgency" or "need" to carry a firearm and is "engaged in the protection of life and property."

2. What standards should chiefs of police apply in adjudicating applications for unconcealed-carry licenses?

SHORT ANSWER: An applicant must satisfy four criteria to obtain an unconcealed-carry license: He or she must (1) meet the objective qualifications for possessing and carrying a firearm; (2) demonstrate a sufficient need to carry a firearm for the purpose of protecting life and property; (3) be of good moral character; and (4) present no other reason justifying the discretionary denial of a license. To satisfy these requirements, an applicant must demonstrate, among other things, that he or she has a need for protection that substantially exceeds that held by ordinary law-abiding citizens.

II. BACKGROUND.

Hawai'i has imposed limits on the public carry of firearms for over 150 years. In 1852, the Legislative Council enacted a statute making it a criminal offense for "[a]ny person not authorized by law" to "carry, or be found armed with, any . . . pistol . . . or other deadly weapon . . . unless good cause be shown for having such dangerous weapons." 1852 Haw. Sess. Laws Act of May 25, 1852, § 1 at 19; see *Republic of Hawaii v. Clark*, 10 Haw. 585, 587-88 (1897). In 1927, the territorial legislature enacted a statute, modeled on the Uniform Firearms Act, that required individuals to obtain a license in order to "carry a

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pistol or revolver," and provided that individuals could obtain such a license upon showing "good reason to fear an injury to his person or property" or "other proper reason for carrying" a firearm. 1927 Haw. Sess. Laws Act 206, §§ 5, 7 at 209; see S. Stand. Comm. Rep. No. 322, in 1927 Senate Journal, at 1023. In 1934 and 1961, the Legislature amended the statute to substantially its present form. See 1933 (Special Sess.) Haw. Sess. Laws Act 26, § 8 at 39 (Jan. 9, 1934); 1961 Haw. Sess. Laws Act 163, § 1 at 215 (July 8, 1961).

Today, Hawai'i law provides that, subject to a number of exceptions, "[a]ll firearms shall be confined to the possessor's place of business, residence, or sojourn." HRS §§ 134-23, 134-24, 134-25. It is generally unlawful "for any person on any public highway to carry on the person, or to have in the person's possession, or to carry in a vehicle any firearm loaded with ammunition." HRS § 134-26; see HRS § 134-9(c). Members of the armed forces, mail carriers, and persons employed by the State or its subdivisions are exempt from this limit "while in the performance of their respective duties." HRS § 134-11(a). Individuals may also carry lawfully acquired firearms "while actually engaged in hunting or target shooting." HRS § 134-5(a); see HRS § 134-5(c).

In addition, individuals may lawfully carry a pistol or revolver within a county if they obtain a license from the county's chief of police. HRS § 134-9. Section 134-9, HRS, authorizes police chiefs to issue two types of carry licenses. A chief of police may issue a *concealed-carry* license "[i]n an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property" and satisfies certain age, citizenship, and other statutory requirements. HRS § 134-9(a)-(b). A chief of police may also grant a *unconcealed-carry* license to a qualified applicant "[w]here the urgency or the need has been sufficiently indicated," the applicant "is engaged in the protection of life and property," and the applicant is "of good moral character." HRS § 134-9(a).

III. ANALYSIS.

A. Section 134-9, HRS, Does Not Limit Unconcealed-Carry Licenses To Private Security Officers.

We advise that section 134-9, HRS, does not limit the issuance of unconcealed-carry licenses to individuals whose jobs entail protecting life and property. The plain text of the statute, the legislative history, and the applicable case law all support this conclusion.

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Our analysis begins with the statute's text. See *Del Monte Fresh Produce (Hawaii), Inc. v. Int'l Longshore & Warehouse Union, Local 142, AFL-CIO*, 112 Hawai'i 489, 499, 146 P.3d 1066, 1076 (2006). As relevant, section 134-9, HRS, imposes two requirements that an otherwise qualified applicant must satisfy in order to obtain an unconcealed-carry license: the applicant must (1) "sufficiently indicate[]" "the urgency or the need" to carry an unconcealed firearm, and (2) be "engaged in the protection of life and property." HRS § 134-9(a).

It is plain that the first of these requirements does not limit unconcealed-carry licenses to private security officers. A private individual, no less than a security guard, may identify an "urgen[t]" or compelling "need" to carry an unconcealed firearm. Indeed, the statute's use of the disjunctive phrase "the urgency or the need" indicates that the Legislature intended to permit the issuance of unconcealed-carry licenses for multiple reasons. Construing the statute to authorize such licenses for one reason only -- that the applicant's job duties require a firearm -- would contravene that textual choice.

Nor does the requirement that an applicant be "engaged in the protection of life and property" limit unconcealed-carry licenses to private security officers. The words "engage in" mean simply "to do or take part in something." Merriam Webster's Dictionary (2018). In ordinary usage, an individual may "take part in" an activity even though his job duties do not require it. See *Sierra Club v. Castle & Cooke Homes Hawai'i, Inc.*, 132 Hawai'i 184, 191-92, 320 P.3d 849, 856-57 (2013) ("Under general principles of statutory construction, courts give words their ordinary meaning unless something in the statute requires a different interpretation." (citation omitted)). And other provisions of the statute use the words "engaged in" to refer to non-professional activities in this way. Section 134-5(c), HRS, authorizes a person to "carry unconcealed and use a lawfully acquired pistol or revolver while actually *engaged in* hunting game mammals." HRS § 134-5(c) (emphasis added). Likewise, sections 134-3 and 134-5(a), HRS, authorize the use or carrying of firearms while "engage[d] in" hunting or target shooting. HRS §§ 134-3(a)(3), 134-5(a).

Furthermore, when the Legislature wished to limit firearms to individuals engaged in the performance of their professional duties, it expressly said so. Section 134-11(a), HRS, authorizes a variety of officers to carry firearms "while in the performance of their respective duties." HRS § 134-11(a)(2), (4)-(5). Similarly, section 134-31, HRS, requires individuals to obtain a license in order to "engage in *the business* to sell and manufacture firearms." HRS § 134-31 (emphasis added). The

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Legislature notably did not include similar language in section 134-9, HRS, and it would be improper in our view to read such limits implicitly into the statute's text.

The legislative history of section 134-9, HRS, reinforces this interpretation. For several decades prior to 1961, section 134-9 only authorized chiefs of police to issue *concealed*-carry licenses. See 1933 (Special Sess.) Haw. Sess. Laws Act 26, §8 at 39. In 1961, the Legislature amended the statute to authorize the issuance of *unconcealed*-carry licenses, as well. 1961 Haw. Sess. Laws Act 163, § 1 at 215. In the committee report accompanying that amendment, the Senate Judiciary Committee explained that this change was "designed to extend the permit provisions to those employed as guards or watchman *and/or to persons engaged in the protection of life and property* and to further authorize such licensees to carry the described firearms unconcealed on their persons." S. Stand. Comm. Rep. No. 558, in 1961 Senate Journal, at 874 (emphasis added). This report thus makes clear that the drafters intended to reach not only "those employed as guards or watchman" but, more broadly, any "persons engaged in the protection of life and property." Although "guards" and "watchm[e]n" may have been the principal persons the Legislature had in mind, legislation is not limited to the principal mischief it is designed to address, and that is particularly so where the drafters expressly contemplated it would extend more broadly.

The limited case law discussing section 134-9, HRS, and analogous statutes is also consistent with our understanding. To our knowledge, prior to the Ninth Circuit panel decision in *Young*, no court suggested that section 134-9 limits open-carry licenses to private security officers. To the contrary, in *Baker v. Kealoha*, the District Court for the District of Hawai'i observed that section 134-9 "provides for exceptions in cases where an individual demonstrates an urgency or need for protection in public places." 2012 WL 12886818, at *18 (D. Haw. Apr. 30, 2012), *vacated and remanded on other grounds*, 679 F. App'x 625 (9th Cir. 2017). Moreover, courts and agencies in other states have construed comparable statutes -- which likewise permit issuance of carry licenses upon a showing of adequate "need" or "cause" -- to authorize licenses for private individuals, and not just professional security guards and the like. See, e.g., *Woollard v. Gallagher*, 712 F.3d 865, 870 (4th Cir. 2013) (Maryland); *Drake v. Filko*, 724 F.3d 426, 428 (3d Cir. 2013) (New Jersey); *Kachalsky v. County of Westchester*, 701 F.3d 81, 86-87 (2d Cir. 2012) (New York).

Nor does past practice justify a different conclusion. The *Young* panel placed substantial weight on the premise that, to its knowledge, "no one other than a security guard -- or someone

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similarly employed -- ha[s] ever been issued an open carry license." 896 F.3d at 1070. But even if that premise were correct, a practice of that kind would not justify adopting a reading that the statute's text cannot bear. Moreover, there is little evidence in the court record to back up the panel's assertion. Although the Department of the Attorney General has published statistics on firearm license applications, those reports date back only to the year 2000 -- 39 years after the statute was enacted, and nearly 150 years after the first restriction on public carry was imposed. See Dep't of Attorney Gen., Crime Prevention & Justice Assistance Div., *Research & Statistics Branch*, <http://ag.hawaii.gov/cpja/rs/> (last visited Sept. 10, 2018) (collecting reports). And those reports, starting in 2004, state only the number of private individuals who applied for (and were granted or denied) a *concealed*-carry license; they do not state the number of private individuals who applied for (and were granted or denied) an *unconcealed*-carry license. What is more, out of the handful of instances before 2004 in which the reports state simply that private individuals applied for "carry license[s]," without specifying that the license was for *concealed*- or *unconcealed*-carry, individuals were granted such licenses in two cases. See Dep't of Attorney Gen., *Firearm Registrations in Hawaii, 2001*, at 7, <http://ag.hawaii.gov/cpja/files/2013/01/Firearms-Registration-2001.pdf> (last visited Sept. 10, 2018).

In short, the plain text of the statute does not limit unconcealed-carry licenses to individuals employed as private security officers. And other indicia of statutory meaning support that straightforward reading. Accordingly, we advise that private individuals as well as security officers are eligible to obtain licenses to carry unconcealed firearms under section 134-9, HRS.

B. Standards For Adjudicating Unconcealed-Carry Applications.

You have also asked us to clarify the standards that police chiefs should apply in adjudicating applications for unconcealed-carry licenses. By its text, section 134-9, HRS, establishes four basic criteria that an applicant must satisfy to obtain an unconcealed-carry license: An applicant must (1) meet the objective qualifications for possessing and carrying a firearm; (2) demonstrate a sufficient need to carry a firearm in order to protect life and property; (3) be of good moral character; and

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(4) present no other reason that justifies the exercise of discretion to deny a license. We consider each of these criteria in turn below.

1. Objective Qualifications.

As an initial matter, section 134-9, HRS, requires every applicant for an unconcealed-carry license to meet three objective qualifications. Every applicant must (1) be "a citizen of the United States," (2) be "of the age of twenty-one years or more," and (3) not be "prohibited under section 134-7 from the ownership or possession of a firearm." HRS § 134-9(a). Section 134-7, HRS, further provides that an individual may not own, possess, or control a firearm if he is barred from possessing a firearm by federal law, is a fugitive from justice, or fails to satisfy the statute's other prerequisites. HRS § 134-7; see 18 U.S.C. § 922(g)(1)-(9), (n) (listing federal requirements).

An application for an unconcealed-carry license must therefore be denied if the applicant fails to satisfy any of these objective criteria. And the statute specifies, in part, the procedures a police chief or his designated representative must follow prior to making that determination. It states that such officials "shall perform an inquiry on [the] applicant by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases where the applicant is not a citizen of the United States, before any determination to grant a license is made." HRS § 134-9(a).

2. Sufficient Need To Carry A Firearm.

Section 134-9, HRS, further requires that each applicant must "sufficiently indicate[]" that he or she has an "urgency" or "need" to carry a firearm and is "engaged in the protection of life and property." *Id.* As we have explained, this language does not limit carry licenses to private security officers. See *supra* section III.A. Case law from other states is instructive, however, in discerning what it does require. Courts interpreting virtually identical laws have held that "a simple desire to carry a weapon is not enough" to satisfy their substantive requirements. *Kachalsky*, 701 F.3d at 86-87. "Nor is living or being employed in a 'high crime area[.]'" *Id.* at 87. Rather, an applicant typically must demonstrate that he or she has a need to carry a firearm for protection that substantially exceeds the need possessed by ordinary law-abiding citizens. See *Drake*, 724 F.3d at 428 & n.2; *Woollard*, 712 F.3d at 870; *Kachalsky*, 701 F.3d at 86-87.

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In our view, a similar standard is appropriate in interpreting section 134-9, HRS. Section 134-9 requires that an applicant "sufficiently" demonstrate an "urgency" or "need" to carry a firearm -- all words that connote an immediate, pressing, and heightened interest in carrying a firearm. Furthermore, the applicant must be "*engaged in the protection of life and property*," language that requires that the individual be actively "tak[ing] part in" such protection, not merely exhibit a generalized concern for safety. Particularly given that Hawaii's modern firearm laws were designed to mirror the uniform firearm laws adopted by many other states, see S. Stand. Comm. Rep. No. 322, in 1927 Senate Journal, at 1023, we therefore believe that much the same standard adopted by those states is appropriate in interpreting section 134-9. This provision, we conclude, requires applicants for an unconcealed-carry license to demonstrate that they have a need to carry a firearm for protection that substantially exceeds the need possessed by ordinary law-abiding citizens.

Without attempting to offer an exhaustive list of applicants who could satisfy this standard, we believe that the following illustrative examples could present a sufficient urgency or need for protection under the statute:

- (a) A person who has suffered serious domestic abuse from a former partner who has violated previous protective orders;
- (b) A victim of stalking who has received credible threats of death or serious bodily harm from his or her stalker;
- (c) A political activist who has received credible threats of death or serious bodily harm due to his or her political activity;
- (d) A witness to a crime who has received credible threats, or is testifying against an organization known to use violence to intimidate witnesses;
- (e) A person who faces heightened risk of attack or violence due to his or her profession, such as a private security officer, a psychiatrist or physician with an obsessive or threatening patient, an attorney with a former client or opposing party who has made credible threats of death or serious bodily harm, a business owner with a violent former employee who has made credible threats of death or serious bodily harm,

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an entertainer with an obsessive fan who has made credible threats of death or serious bodily harm and engaged in stalking; or a person who faces a high risk of armed robbery because his or her job requires stocking ATMs or otherwise transporting large quantities of cash.

3. Good Moral Character.

An applicant for an unconcealed-carry license must also be a person "of good moral character." HRS § 134-9. As courts in other jurisdictions have concluded, we think it plain that a person does not demonstrate "good moral character" where there is reliable and credible evidence that, if issued a license, the applicant may create a risk to public safety. See *Caputo v. Kelly*, 117 A.D.3d 644, 644 (N.Y. App. Div. 2014); *Hider v. Chief of Police, City of Portland*, 628 A.2d 158, 161 (Maine 1993). That is, we advise that a chief of police should deny an application when the applicant exhibits specific and articulable indicia that the applicant poses a heightened risk to public safety. Such indicia could include, but are not limited to:

- (a) Recent incidents of alleged domestic violence, even if not leading to charges or the issuance of a protective order;
- (b) Recent incidents of careless handling or storage of a firearm, especially if involving children;
- (c) Recent incidents of alcohol or drug abuse, especially involving violence, even when not leading to criminal charges or mental health treatment;
- (d) Other recent violent conduct, even if not resulting in criminal charges or serious injury.

4. No Other Reasons That Justify The Exercise Of Discretion To Deny A License.

Finally, section 134-9, HRS, provides that where an applicant satisfies the statute's express requirements, "the respective chief of police may grant" an unconcealed-carry license. HRS § 134-9(a) (emphasis added). Accordingly, we advise that chiefs of police may exercise reasonable discretion to deny licenses to otherwise-qualified applicants, but that discretion may not be exercised in an arbitrary or capricious manner. Chiefs of police should exercise their discretion to


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deny unconcealed-carry licenses to qualified applicants only where an applicant's characteristics or circumstances render the applicant unsuitable to carry an unconcealed firearm for reasons not captured by the express statutory requirements. Discretion may not be used to effectively nullify the authorization for unconcealed-carry licenses contained in section 134-9. Nor may discretion be used to impose categorical restrictions on unconcealed-carry licenses -- such as limiting them to private security officers -- that the Legislature did not enact. When a chief of police denies a firearm for discretionary reasons, he or she should document the reasons and report them to the Attorney General as provided in section 134-14, HRS.

IV. CONCLUSION.

We advise that section 134-9, HRS, does not limit unconcealed-carry licenses to private security officers. Furthermore, we advise police chiefs to administer the statute's requirements in accordance with the standards set forth in this Opinion.

Very truly yours,



Russell A. Suzuki
Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, I filed the foregoing Petition for Rehearing *En Banc* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Neal K. Katyal
Neal K. Katyal

Case No. 12-17808
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,

v.

STATE OF HAWAI'I, ET AL.,
Defendants-Appellees

On Appeal from the United States District Court
for the District of Hawai'i, Case No. 1:12-cv-00336-HG-BMK
Honorable District Judge Helen Gillmor

**BRIEF OF *AMICI CURIAE* CITY AND COUNTY OF
HONOLULU, COUNTY OF KAUA'I, AND COUNTY OF MAUI
IN SUPPORT OF PETITION FOR REHEARING *EN BANC***

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I. STATEMENT OF *AMICI CURIAE* PER RULE 29(a)(4)(D)-(E)

Amici curiae are the City and County of Honolulu, the County of Kaua‘i, and the County of Maui (“the Counties”), which submit this brief in support of the petition for rehearing *en banc* filed on September 14, 2018 (Dkt. No. 155).

The Counties have an interest in this case because, if the erroneous panel majority opinion stands, the result will be the deadly proliferation of guns on the Counties’ streets and in other public places. The Counties also have an interest in explaining how they interpret and apply Hawai‘i laws regulating licenses to carry firearms, including open-carry licenses. The panel majority misunderstood and misstated County practices and procedures, which are explained below and in the accompanying declarations of Susan Ballard, the Chief of the Honolulu Police Department (“Ballard Decl.”); Michael M. Contrades, the Acting Chief of the Kaua‘i Police Department (“Contrades Decl.”); and Tivoli Faaumu, the Chief of the Maui Police Department (“Faaumu Decl.”).¹

Increasing the number of people carrying guns in public without any particular reason for doing so will needlessly endanger the lives of the Counties’ citizens, especially their police officers. The panel majority’s insistence that the

¹ This brief was not authored, in whole or in part, by any party’s counsel. No party, counsel, or other person—other than *amici curiae* and their counsel—contributed money intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

Second Amendment somehow *requires* this deadly result—regardless of public safety, the will of the people of Hawai‘i, the separation of powers, and principles of federalism—calls to mind Justice Jackson’s warning against the rigid assumption that “all local attempts to maintain order are impairments of the liberty of the citizen.” *Terminiello v. City of Chicago*, 337 U.S. 1, 37 (1949) (Jackson, J., dissenting). “The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.” *Id.*

II. ARGUMENT

A. The Counties do not limit open (or concealed) carry to security guards.

Setting aside, for the moment, the first part of the panel majority’s opinion—in which it picks cherries from the orchards of history to feed spurious notions this Court already rejected, *en banc*, in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (*Peruta II*)²—an essential premise of the majority opinion is that

² As the dissent in this case noted, this Court’s *en banc* “opinion in *Peruta II* contained a lengthy discussion of history relevant to the Second Amendment, including the right to bear arms in old England, colonial America, and in the United States following adoption of the Fourteenth Amendment. It is sufficient for now to say that its assessment was different from that contained in” Judge O’Scannlain’s opinion for the majority in *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2016) (*Peruta I*), which he largely repeated—despite *Peruta II*—in his opinion for “the majority here.” *Young v. Hawaii*, 896 F.3d 1044, 1075 (9th Cir. 2018) (Clifton, J., dissenting).

section 134-9 of the Hawai‘i Revised Statutes (HRS) restricts “open carry to those whose job entails protecting life or property,” such as security guards. 896 F.3d at 1071. The majority’s premise is wrong, both as a matter of law, and of fact.

The Hawai‘i Attorney General has explained that, as a matter of law, HRS section 134-9 does *not* “limit the issuance of unconcealed-carry licenses to private security officers and other individuals whose jobs entail protecting life and property.” State of Haw., Dep’t of the Att’y Gen., Opinion Letter No. 18-1, *Availability of Unconcealed-Carry Licenses* (Sept. 11, 2018), available at <https://ag.hawaii.gov/wp-content/uploads/2018/09/AG-Opinion-No.-18-1.pdf>, and at Pet. Add. 77-86 (hereinafter Op. No. 18-1) at 2. On the contrary, HRS section 134-9 “authorizes the issuance of unconcealed-carry licenses to any qualified individual who demonstrates a sufficient ‘urgency’ or ‘need’ to carry a firearm and is ‘engaged in the protection of life and property.’” *Id.* Regardless of occupation, an applicant may obtain an open-carry license if he or she (1) meets the objective qualifications for possessing and carrying a firearm; (2) demonstrates a sufficient need to carry a firearm for the purpose of protecting life and property; (3) is of good moral character; and (4) presents no other reason justifying the discretionary denial of a license. *Id.* “To satisfy these requirements, an applicant must demonstrate, among other things, that he or she has a need for protection that

substantially exceeds that held by ordinary law-abiding citizens.” *Id.*; *see generally id.* at 1-10.

As a matter of fact, the Attorney General’s interpretation of HRS section 134-9 comports with the Counties’ past and current practice. *See* Ballard Decl. ¶¶ 5-6; Contrades Decl. ¶¶ 3-10; Faaumu Decl. ¶ 8. As Chief Contrades of the Kaua‘i Police Department explains, “law-abiding citizens with a legitimate need to carry a handgun have been able to obtain a permit under the current system, which strikes a proper balance between ensuring access to handgun permits for those who need them while preventing a greater-than-necessary proliferation of handguns in public places—which,” as discussed below, and as Chief Contrades further explains, “increases risks to public safety.” Contrades Decl. ¶ 10; *see also id.* ¶¶ 11-17; Section B, *infra*. “If an applicant meets the express statutory requirements set forth in section 134-9, the Department will issue a carry permit, regardless of the applicant’s occupation, provided that no case-specific reason warrants the exercise of discretion to deny a permit.” Contrades Decl. ¶ 8.

For example, in 2006 and 2013, the Kaua‘i Police Department issued concealed-carry permits to citizens who were not security guards and whose jobs did not entail protecting life or property. *Id.* ¶ 9. Those citizens “demonstrated, through their applications, that they had an immediate, pressing and heightened interest in carrying a firearm, and were accordingly issued concealed-carry

permits.” *Id.* Thus, the majority’s unfounded assertion that citizens of Hawai‘i are “entirely foreclosed” from bearing arms for self-defense, 896 F.3d at 1071, is factually incorrect. People other than security guards have been able to demonstrate the need for, and thus obtain, permits to carry guns. Although those permits were for concealed rather than open carry, the dissent rightly observed that “firearm regulations which leave open alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not.” *Id.* at 1081 (Clifton, J., dissenting) (quoting *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 961 (9th Cir. 2014)).

In any event, if an applicant were to request a permit for open rather than concealed carry, and if that applicant were to satisfy the statutory requirements for an open-carry permit as discussed above and in the Attorney General’s opinion, “such a permit would be issued” by the Kaua‘i Police Department, “regardless of the applicant’s occupation, provided that no case-specific reason warrants the exercise of discretion to deny a permit.” Contrades Decl. ¶ 9. Likewise, the Honolulu Police Department “does not deny open carry permits solely on the basis that the applicant is not a security guard or similarly employed in a job that entails protecting life and property.” Ballard Decl. ¶ 5. On the contrary, as Chief Ballard explains, the Honolulu Police Department “reviews each application individually to determine whether, given the circumstances, a permit is warranted under Section

134-9 of the Hawaii Revised Statutes.” *Id.* In making that determination, the Honolulu Police Department applies the same interpretation of the statute as set forth in the Attorney General’s opinion. *Id.* ¶ 6; *see also* Op. No. 18-1. The same is true of the Maui Police Department. *See* Faaumu Decl. ¶ 8.

B. The panel majority opinion, if it stands, will jeopardize public safety.

As the Chiefs of Police of Honolulu, Kaua‘i, and Maui explain in their declarations, the panel majority’s decision “is of great concern” to Hawai‘i law enforcement officials. Faaumu Decl. ¶ 9; *see also* Ballard Decl. ¶¶ 3, 7-11; Contrades Decl. ¶¶ 3, 10-17. Hawai‘i’s gun-control measures have been highly effective, whereas if Hawai‘i can no longer limit open-carry permits to individuals with a good and substantial reason to have them, gun violence in Hawai‘i will increase, and police officers’ jobs will harder to perform and more dangerous. *See* Contrades Decl. ¶¶ 3, 10-17; Faaumu Decl. ¶¶ 9-12; Ballard Decl. ¶¶ 3, 7-11.

In 2016, the Centers for Disease Control and Prevention (“CDC”) ranked Hawai‘i fourth lowest in the United States for firearm-related deaths, with a total of 66 firearm-related deaths in that year, for a firearm death rate of 4.5 deaths per 100,000 total population. *See* Contrades Decl. ¶ 11; https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm. Massachusetts had the lowest firearm death rate (3.4 deaths per 100,000, 242 total), followed by Rhode Island (4.1, 49) and New York (4.4, 900). *See id.* The

states with the highest firearm death rates were Alaska (23.3, 177), Alabama (21.5, 1,046), Louisiana (21.3, 987), and Mississippi (19.9, 587). *See id.*; *see also* Faaumu Decl. ¶ 10 (“Statistical information shows that Hawaii has one of the lowest rates for deaths related to firearms in the country. This is especially true in Maui County, where firearm related violence is uncommon.”).

Honolulu, in particular, “has a low rate of violent crime compared to other big cities.” Ballard Decl. ¶ 7. As Chief Ballard notes, moreover, the “community as a whole is satisfied with the current gun legislation and the way applications are scrutinized, which strikes an appropriate balance between citizens’ Second Amendment rights,” which Chief Ballard recognizes and respects, “and protecting public safety by minimizing the proliferation of guns in public places.” *Id.* If, on the other hand, the Honolulu Police Department were required to “issue open carry permits to applicants who have no special need for such protection, police officers will be likely to face greater danger because they will encounter more armed individuals. An officer trying to issue a traffic citation, for example, has far more to fear if the driver is armed.” *Id.* ¶ 8. In fact, “any time guns are a factor in an interaction between officers and citizens, the risk of fatalities tends to increase.” *Id.* ¶ 9. And the same is true of interactions between citizens. *Id.* The “presence of one or more guns in any dispute increases the chances that dispute will become deadly. Even when an armed individual is attempting to aid police, that fact may

not be immediately obvious to or verifiable by the officer, with potentially tragic consequences.” *Id.* As Chief Ballard concludes, a “requirement to issue open carry permits to people who have no special need for them is likely to make citizens and police officers less safe and, at the very least, will make it much more difficult for the HPD to carry out its mission of serving and protecting with aloha.” *Id.* ¶ 11.³

Indeed, statistical analysis indicates that issuing carry permits to people who have no special need for them results in “substantial increases in violent crime.” John J. Donohue, Abhay Aneja & Kyle D. Weber, *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis* 4 (Nat’l Bureau of Econ. Research, Working Paper No. 23510, 2018), <http://www.nber.org/papers/w23510>. And, statistics aside, decades of experience in law enforcement tells Chief Contrades, for example, that if the Kaua‘i Police Department could no longer limit open and concealed-carry permits to individuals with a good and substantial reason to have

³ The official mission of the Honolulu Police Department is “[s]erving and protecting with aloha.” [http://www.honolulupd.org/departments/index.php](http://www.honolulu.honolulupd.org/departments/index.php); *see also* Ballard Decl. ¶ 3. As the Hawai‘i Legislature has explained, “aloha” is “more than a word of greeting or farewell or a salutation,” but also “means mutual regard and affection and extends warmth in caring with no obligation in return,” expressing “the essence of relationships in which each person is important to every other person for collective existence.” HRS § 5-7.5. Hawai‘i officials are statutorily required to act with aloha in “exercising their power on behalf of the people and in fulfillment of their responsibilities, obligations and service to the people.” *Id.*

them, gun violence would increase, and his “officers’ jobs would become harder and more dangerous.” Contrades Decl. ¶ 12; *see also* Faaumu Decl. ¶¶ 9-12; Ballard Decl. ¶¶ 8-11.

As Chief Contrades explains, increasing the number of handguns carried publicly “would increase the availability of guns to criminals,” particularly because the police “know from experience that these criminals often target people they know have handguns *precisely because* they possess handguns, which criminals cannot lawfully obtain.” Contrades Decl. ¶ 13. The police often investigate homicides and robberies in which “one, if not the primary, goal of the attacker was to deprive the victim of his handgun or other weapons. Obtaining handguns and ammunition is also one of the main reasons why police officers’ homes and vehicles have sometimes been targeted for robberies and break-ins.” *Id.*; *see also* Ballard Decl. ¶ 10 (“[A]n increase in the number of guns that may be lawfully carried in public is likely to result in an increase in the number of gun thefts, and thus an increase in the number of guns in the hands of criminals.”).

Although many people believe that they will be able to maintain possession of their handgun in a confrontation with a criminal attacker, “that is often not the case, especially in instances of surprise attacks.” Contrades Decl. ¶ 14. Police officers are trained “in maintaining possession and control of their firearms during a confrontation,” and are also issued “specially designed holsters with latches that

prevent an attacker from removing the firearm from its holster.” *Id.* This “training and special equipment is essential to the safe handling of guns,” whereas civilian training “cannot adequately prepare most people to use and protect handguns in tense situations such as being under attack by criminals. In surprise attacks, it is highly unlikely that less-well-trained individuals would be able to successfully use a handgun to defend themselves.” *Id.*

Furthermore, allowing guns “on the streets in the hands of people without good and substantial reason to carry them would increase significantly the likelihood that basic confrontations between individuals would turn deadly.” *Id.*

¶ 15. Most assaults in the County of Kaua‘i, for example, arise from “petty disputes between otherwise law-abiding citizens. In the midst of these petty disputes, tempers flare and violence can erupt even in the absence of lethal weapons. The presence of a handgun in an altercation, however petty, greatly increases the likelihood that it will escalate into potentially lethal violence.” *Id.*; *see also* Faaumu Decl. ¶ 11; Ballard Decl. ¶ 9.

Even law-abiding citizens who intend to help police may, if armed, “hamper police efforts in confrontations with criminals with potentially tragic consequences.” Contrades Decl. ¶ 16. As Chief Contrades explains, in a confrontation between a police officer and a criminal, “an additional person bearing a gun might cause confusion as to which side of the confrontation the

person is on, which could lead to hesitation by the police officer and the potential for innocent victims, including the permit holder, innocent bystanders, and police officers.” *Id.* This kind of problem “already occurs with existing permit holders, and would become far more common if permits were not limited to people with good and substantial reason to carry a handgun in public.” *Id.* And “police officers who spot someone carrying a handgun [must] choose between creating a potential disturbance by unholstering their own weapon or potentially putting their safety at risk by approaching the carrier without drawing their weapon.” *Id.* ¶ 17. Finally, police officers “would also have a harder time identifying potential security risks if more people without good and substantial reason to carry a handgun were able to do so, making it more difficult to respond when necessary.” *Id.*; *see also* Faaumu Decl. ¶ 12 (“In addition to creating a safety concern for the public, additional firearms on the streets for people who have no special need for that protection will also create a greater danger to our officers.”).

In short, the panel majority opinion, if allowed to stand, will needlessly jeopardize public safety. This, standing alone, should compel *en banc* review.

C. The panel majority erred in applying strict scrutiny.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized that longstanding restrictions on carrying firearms may be “presumptively lawful,” and certainly are not subject to strict scrutiny. *Id.* at 627

n.26. As the dissent in this case rightly concluded, HRS section 134-9 is “a longstanding, presumptively lawful regulation under *Heller*. At a minimum, the statute survives intermediate scrutiny, as the core of the Second Amendment does not include a general right to publicly carry firearms and there is a reasonable fit between the licensing scheme and Hawaii’s legitimate interest in promoting public safety.” 896 F.3d at 1076 (Clifton, J., dissenting). That conclusion is further supported by the declarations of Chiefs Ballard, Contrades, and Faaumu, which, as discussed above, demonstrate in detail the reasonable fit between HRS section 134-9, as interpreted and applied by the Counties, and the Counties’ indisputably valid interest in public safety. *See* Ballard Decl. ¶¶ 1-11; Contrades Decl. ¶¶ 1-17; Faaumu Decl. ¶¶ 1-12.

The panel majority, however, insisted on strict scrutiny in its zeal to impose its will on Hawai‘i without regard for the reasonableness of Hawai‘i’s proven methods for promoting and preserving public safety. *See* 896 F.3d at 1068-71. But the panel majority’s application of strict scrutiny cannot be reconciled with this Court’s *en banc* opinion in *Peruta II*, which recognized that “[e]ven if we assume that the Second Amendment applies” to restrictions on carrying firearms in public, such restrictions are subject to “*intermediate scrutiny*,” and survive such scrutiny if they promote ““a substantial government interest that would be achieved less effectively absent the regulation.”” 824 F.3d at 942 (emphasis added)

(quoting, and explicitly agreeing with, Judge Graber’s concurrence, which, in turn, agreed with “[t]hree of our sister circuits [that] have upheld similar restrictions under intermediate scrutiny,” *id.* (Graber, J., concurring)); *see also, e.g., Silvester v. Harris*, 843 F.3d 816, 823 (9th Cir. 2016) (finding “near unanimity in the post-*Heller* case law that when considering regulations that fall within the scope of the Second Amendment, intermediate scrutiny is appropriate”); *Drake v. Filko*, 724 F.3d 426, 436 (3d Cir. 2013) (applying intermediate scrutiny because, if the Second Amendment “protects the right to carry a handgun outside the home for self-defense at all, that right is not part of the core of the Amendment”) (citation omitted); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) (holding that “intermediate scrutiny applies ‘to laws that burden [any] right to keep and bear arms outside of the home’”) (quoting *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011)); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012) (“Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case.”).

It is also worth noting that the panel majority only arrived at its decision to apply strict scrutiny by presuming to “afford little weight to *Heller*’s emphasis on the application of the Second Amendment to the home specifically.” 896 F.3d at 1069. There is no excuse, however, for affording such little weight to something

the *Heller* Court clearly assigned great weight. Under *Heller*, the Second Amendment “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” 554 U.S. at 635. The principle that the right of self-defense is far stronger inside the home than out on the streets is ancient. Blackstone, for example, commented that “every man’s home is looked upon by the law to be his castle of defense and asylum, wherein he should suffer no violence.” 3 William Blackstone, Commentaries *288. That is still true. In Hawai‘i, for example, a person under attack is “not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be.” HRS § 703-304(5)(b). In public, however, the use of deadly force is not justifiable if the person “knows that he can avoid the necessity of using such force with complete safety by retreating.” *Id.*

Consistent with this ancient principle that the right of self-defense is at its zenith in the home—and consistent with other authorities too numerous to discuss here—the dissent rightly concluded that “the core of the Second Amendment is focused on self-defense in protection of hearth and home,” not on “a general right to publicly carry firearms.” 896 F.3d at 1080 (Clifton, J., dissenting). Because the majority’s decision necessarily relies on its erroneous conclusion to the contrary, the Court should review that decision *en banc*, as it did in *Peruta II*.

III. CONCLUSION

Thus, the Court should grant the petition for rehearing *en banc*.

CERTIFICATE OF COMPLIANCE

This brief complies with the length limit of Ninth Circuit Rule 29-2(c)(2) because it contains 3,807 words.

Dated: September 24, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief and accompanying declarations with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 24, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Dan Jackson

DAN JACKSON

No. 12-17808

**In the United States Court of Appeals
for the Ninth Circuit**

GEORGE YOUNG
Plaintiff-Appellant,

v.

STATE OF HAWAII, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII No. 1:12-cv-00336-HG-BMK
DISTRICT JUDGE HELEN GILLMOR

**BRIEF OF *AMICUS CURIAE* EVERYTOWN FOR GUN SAFETY
IN SUPPORT OF REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Amicus Everytown for Gun Safety has no parent corporations. It has no stock, and hence, no publicly held company owns 10% or more of its stock.

/s/ *Deepak Gupta*

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*¹

The importance of this appeal is hard to overstate. By a two-to-one vote, a panel of this Court has called into question the ability of state and local officials to protect their communities against gun violence. In so doing, the panel majority has openly defied this Court’s en banc decision in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016), and pulled this Circuit into disagreement with the Second, Third, and Fourth Circuits on an important question of constitutional law and a vital matter of public safety. And the panel did all this based on an improperly cramped interpretation of the state law at issue—one that is at odds with the State’s own authoritative interpretation. For all these reasons, as the State and County of Hawaii’s petition compellingly explains, the panel’s decision cries out for en banc review.

Amicus curiae Everytown for Gun Safety—the nation’s largest gun-violence-prevention organization—files this brief to emphasize one of the ways in which the panel went astray: its erroneous account of the seven-century Anglo-American history of public-carry regulations recognized by the en banc Court in *Peruta*.

The panel’s historical analysis cannot be reconciled with this Court’s decision in *Peruta* and diverges from the historical methodology mandated by the

¹ All parties consent to the filing of this brief, and no counsel for any party authored it in whole or part. Apart from *amicus curiae*, no person contributed money intended to fund the brief’s preparation and submission.

Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In finding that the Constitution protects an expansive right to carry firearms in public, the panel minimized the importance of the centuries-old English tradition of broadly restricting public carry relied on by *Peruta*. Instead, the panel placed great weight on 19th-century state-court decisions from the slaveholding South that *Peruta* found to be outliers. That defiance is reason enough to grant rehearing en banc. In contrast to the panel's telling, what the history actually shows is that, from our nation's founding to its reconstruction, many states and cities enacted laws that carried forward the English tradition of broadly prohibiting carrying or requiring good cause to carry a firearm in public.

For this reason, as well as those set forth in the petition, this Court should grant rehearing en banc and remand this case to the district court for further adjudication in light of the Hawaii Attorney General's recent guidance on the proper interpretation of Hawaii's nearly century-old public-carry law.²

² If this Court decides instead to consider this case en banc on the merits, Everytown agrees with the position taken by the State of California, in its petition for initial hearing en banc in *Flanagan v. Becerra*, 18-55717 (9th Cir. Sept. 21, 2018), that this Court should hear both *Young* and *Flanagan* together.

ARGUMENT

THE PANEL’S HISTORICAL ANALYSIS OPENLY DEFIES THIS COURT’S EN BANC PRECEDENT, DIVERGES FROM SUPREME COURT PRECEDENT, AND IS MANIFESTLY WRONG.

The question in these cases is not whether the Second Amendment—which, under *Heller*, protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home,” 554 U.S. at 635—applies outside the home. Rather, it is whether Hawaii’s nearly century-old public-carry regime—as properly interpreted, and with due deference to the Attorney General’s recent opinion letter—is consistent with the Amendment’s historical protections. To answer that question, this Court uses “a two-step approach,” first asking whether the law “burdens conduct protected by the Second Amendment” and then, if it does, “apply[ing] an appropriate level of scrutiny.” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014).

A. The panel’s wayward historical methodology.

In conducting its inquiry under the first of these two steps, the panel’s historical methodology diverged sharply from the Supreme Court’s decision in *Heller* and openly defied this Court’s en banc precedent in *Peruta*. As an initial matter, the panel did so by minimizing the value of the English historical tradition on the theory that the American right applied more broadly than the traditional English right. *See* Panel Op. 1065 (“[W]e respectfully decline [] to import English

law wholesale into our Second Amendment jurisprudence.”). This approach is inconsistent with the Supreme Court’s reliance on English history in *Heller*, which concluded that “the Second Amendment was not intended to lay down a ‘novel principl[e]’ but rather codified a right ‘inherited from our English ancestors.’” *Heller*, 557 U.S. at 599 (citing *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897)). More specifically, the panel’s rejection of the English history with respect to the regulation of public carry is inconsistent with the importance that this Court’s en banc decision placed on the English history in *Peruta*, which devoted over 2,000 words to the subject—from the thirteenth-century proclamations of Edward I to the English Bill of Rights in the leadup to the American Revolution. *Peruta*, 824 F.3d at 929–32. Rather than squarely address this history, the panel instead looked primarily to early American Southern case law to assess the scope of the Second Amendment. Panel Op. 1055–57.

The panel also differed markedly from *Peruta* and *Heller* in its assessment of several important nineteenth-century cases that reject a broad right to carry firearms in public. The panel simply deemed these cases irrelevant because they rested in part on a connection between the right to bear arms and “the common defense of the state,” whereas *Heller* held that the right “always has been an individual right centered on self-defense.” Panel Op. 1058 (“[W]ith *Heller* on the books”, they “furnish us with little instructive value.”). But that approach is directly

inconsistent with both *Peruta* and *Heller*, each of which cited these cases as evidence of the original public understanding of the right. Compare *Heller*, 557 U.S. at 627 (citing *English v. State*, 35 Tex. 473 (1871)) with Panel Opp. 1057–58 (rejecting *English* as irrelevant); compare *Peruta*, 824 F.3d at 934, 938 (citing *State v. Buzzard*, 4 Ark. 18 (1842), *English v. State*, 35 Tex. 473 (1871); and *State v. Workman*, 35 W.Va. 367 (1891)) with Panel Opp. 1057–58 (rejecting each of these cases as irrelevant). Only by taking this important line of cases off the table was the panel able to clear a path to its preferred reading of the history.

More broadly, the panel’s decision to ignore each of these decisions is inconsistent with the historical methodology compelled by *Heller*. See *Heller*, 557 U.S. at 576 (holding that the Second Amendment, which is interpreted as “known to ordinary citizens in the founding generation,” codified a “pre-existing right.”). If the panel had been engaged in mere weighing of precedent, its disregard of certain traditions inconsistent with *Heller* might have been an appropriate exercise. But the historical analysis compelled by *Heller*, and adopted by this Court in *Peruta*, is not a search for the line of case law that best predicted *Heller*. Rather, it is a search for how the public—“ordinary citizens in the founding generation”—understood the right at the time that the Bill of Rights was ratified. Dismissing the relevance of this line of cases in assessing the public understanding of the Second Amendment—

based on inconsistencies with a case decided 150 years afterwards—is anachronistic and inconsistent with any sensible search for original public understanding.

Indeed, the nineteenth-century cases dismissed by the panel are at least as relevant as the cases on which the panel actually relied—cases directly inconsistent with the Supreme Court’s modern Second Amendment jurisprudence. *See* Panel Op. 1055–56 (citing *Bliss v. State*, 12 Ky. (2 Litt.) 90 (1822)). In *Bliss*, for example, the Kentucky Supreme Court struck down the state’s concealed-carry ban on the broad theory that any law that “restrains the full and complete exercise” of the right is unconstitutional. *See Bliss*, 12 Ky. (2 Litt.) at 91. But this view of the right was directly contradicted by *Heller*’s recognition that the “majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” *Heller*, 554 U.S. at 626; *see also Peruta*, 824 F.3d at 935–36 (discussing the limited value of the *Bliss* decision given its inconsistency with *Heller*, the case law of other states, and its quick reversal by the people of Kentucky via a constitutional amendment).

B. The panel’s erroneous historical conclusions.

Even apart from its divergences from precedent on historical methodology, the panel decision warrants en banc review because it simply got the history wrong. As the en banc Court recognized in *Peruta*, history actually shows a widespread and

longstanding tradition of stringent regulation of the use and possession of firearms in public. *Peruta*, 824 F.3d at 929–39. *Amicus* Everytown exhaustively surveyed this history in its brief to the en banc Court in that case. See *Br. of Everytown for Gun Safety as Amicus Curiae in Peruta* (filed Apr. 30, 2015), *available at* <https://every.tw/2xBKYXU> (describing the seven-century Anglo-American tradition of public-carry regulations). Given the limited space available here, we offer a brief summary.

Going back at least as far as the thirteenth century, English law broadly limited the carrying of weapons in public. This culminated with the Statute of Northampton, first enacted in 1328, which trained its prohibition on “fairs,” “markets,” and other populous places, 2 Edw. 3, 258, ch. 3 (1328), while a royal declaration from a century later specifically directed “the mayor and sheriffs of London” to enforce the prohibition against “any man of whatsoever estate or condition [who] go[es] armed within the city and suburbs.” 3 *Calendar of the Close Rolls, Henry IV* 485 (Jan. 30, 1409). One century later, Queen Elizabeth spoke of the need to focus enforcement in the areas where the “great multitude of people do live, reside, and trav[el].” Charles, *The Faces of the Second Amendment Outside the Home*, 60 Clev. St. L. Rev. 1, 21 (2012); see *Peruta*, 824 F.3d at 929–32 (recounting history of English public-carry prohibitions).

By the late 17th century, William and Mary enshrined the right to have arms in the Declaration of Rights, later codified in the English Bill of Rights in 1689. This right—which “has long been understood to be the predecessor to our Second Amendment,” *Heller*, 554 U.S. at 593—ensured that subjects “may have arms for their defence suitable to their conditions, and as allowed by law.” 1 W. & M. st. 2. ch. 2. As Blackstone later wrote, this right was understood to be subject to “due restrictions,” one of which was Northampton’s prohibition on public carry, which remained in effect *after* the right to bear arms was codified in 1689. *See* 4 Blackstone, *Commentaries on the Laws of England* 144, 148–49 (1769); *Rex v. Edward Mullins*, (K.B. 1751), <https://goo.gl/oeSAhR> (reporting a conviction under the statute in 1751).

Around the same time that the English Bill of Rights was adopted, America began its own long history of regulation. The first step was a 1686 New Jersey law that prohibited carrying arms in public in order to prevent to prevent the “great fear and quarrels” induced by “several persons wearing swords, daggers, pistols,” and “other unusual or unlawful weapons.” 1686 N.J. Laws 289, 289-90, ch. 9. Massachusetts and New Hampshire followed suit before the end of the century. 1694 Mass. Laws 12, no. 6; 1699 N.H. Laws 1.

From 1795 to 1870, at least twelve states and the District of Columbia incorporated a broad Northampton-style public-carry prohibition into their laws at some point. *See* Everytown Br. in *Peruta*, at 18–21. By 1890, New Mexico,

Wyoming, Idaho, Kansas, and Arizona had all enacted laws broadly prohibiting public carry in cities, towns, and villages. *Id.* at 19–20. And numerous local governments imposed similar restrictions around the same time—from New Haven to Nashville, Dallas to Los Angeles, and even in Wild West towns like Dodge City and Tombstone. *Id.* at 20–21.³

This wide-ranging history of regulations similar to Hawaii’s further supports the constitutionality of Hawaii’s law, as properly interpreted, and the need for en banc review by this Court.

CONCLUSION

The petition for rehearing en banc should be granted.

Respectfully submitted,

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³ Much of the latest historical scholarship on this history of public-carry regulation occurred after the briefing in this case was completed. *See* Repository of Historical Gun Laws, Duke University School of Law, <https://law.duke.edu/gunlaws> (online database of historical firearms regulations published in 2017). En banc review would give this Court—or the district court, in the event of vacatur and remand—the opportunity to consider the scope of the right with the benefit of the latest scholarship.

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CERTIFICATE OF COMPLIANCE WITH RULE 29-2(c)(2)

I hereby certify that my word processing program, Microsoft Word, counted 2,109 words in the foregoing amicus brief, exclusive of the portions excluded by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14 point Baskerville font.

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, I electronically filed the foregoing Brief of *Amicus Curiae* Everytown for Gun Safety in Support of Rehearing En Banc with the Clerk of the Court of the U.S. Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

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No. 12-17808

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,

v.

STATE OF HAWAII, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court for the
District of Hawaii, No. 12-CV-0336 (Gillmor, J.)

**BRIEF OF *AMICUS CURIAE* GIFFORDS LAW CENTER TO PREVENT
GUN VIOLENCE IN SUPPORT OF APPELLEES AND REHEARING**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a), Giffords Law Center to Prevent Gun Violence states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit, national policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives. Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement, and citizens who seek to make their communities safer from gun violence, and has a strong interest in supporting laws regulating the public possession of firearms and laws that require a showing of good cause for a license to carry a firearm. As an *amicus*, Giffords Law Center has provided informed analysis in a variety of firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc).¹

BACKGROUND AND SUMMARY OF ARGUMENT

Among the 50 states, Hawaii and California have among the lowest rates of gun death, ranking 47th and 43rd, respectively.² A rigorous body of social science

¹ *Amicus* affirms, pursuant to Fed. R. App. P. 29, that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission. All parties to this action have granted consent for *amicus* to file this brief. *Id.*; Ninth Cir. R. 29-2.

² *Annual Gun Law Scorecard*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/scorecard/>.

evidence, bolstered with new and updated research from within the past year, supports the conclusion that strong public carry permitting laws like those enacted in Hawaii and California are significant factors in reducing violent crime and homicide rates. Three other federal circuit courts have concluded that similar public carry permitting laws are constitutional under the Second Amendment. And in *Peruta*, 824 F.3d 919, this Court sitting *en banc* reached a similar conclusion with respect to California's concealed carry regulations.

Nonetheless, on July 24, 2018, a divided three-judge panel struck down Hawaii's statute providing for issuance of permits to openly carry loaded firearms to those "engaged in the protection of life and property." In concluding that the law violated the Second Amendment, the panel majority incorrectly interpreted it as "[r]estricting open carry to those *whose job entails* protecting life or property." Panel Op. at 52 (emphasis added). The panel majority further concluded, for the first time in this Circuit, that the right to carry a loaded, openly visible firearm in public is a "core" Second Amendment right that cannot be meaningfully regulated in the manner provided for in Hawaii's permitting statute. *Id.* at 49-50. By a two-to-one vote, the panel elevated the right to openly carry loaded firearms in public places to equal footing with the right to have a firearm for self-defense in one's home.

The majority's analysis to arrive at this reading of the Second Amendment flouts the Supreme Court's guidance in *Heller*, 554 U.S. at 576-636, espouses an unduly restrictive reading of Hawaii's requirements for ordinary law-abiding citizens to obtain an open carry license, and invites confusion and uncertainty into a domain where courts should defer to states' evidence-based legislative judgments. The issue at stake here is one of exceptional importance, potentially resulting in many more gun deaths and injuries annually: whether states within the Ninth Circuit are prohibited from requiring those seeking to openly carry loaded firearms on public streets to show any urgency or need to do so.

For the reasons stated in Hawaii's *en banc* petition and in light of the recently issued opinion from the Hawaii Attorney General,³ the panel decision should be vacated and the case remanded for application of binding circuit precedent and development of the record on how Hawaii has interpreted and applied its open-carry law. Should the Court decline to vacate and remand, *en banc* consideration is warranted to align this Circuit's jurisprudence with the decisions of the majority of other federal appellate courts on the exceptionally important issue of public carry.⁴

³ Brief for Petitioners-Appellees at 9, *Young v. Hawaii*, No. 12-17808 (9th Cir. Sept. 14, 2018), ECF No. 155.

⁴ Should *en banc* consideration be granted here, *amicus* urges the Court to grant the State of California's petition for initial *en banc* hearing in *Flanagan v. Becerra*,

ARGUMENT

I. In Light of Serious Factual and Legal Errors by the Panel Majority, the Court Should Vacate the Panel Opinion and Remand.

Hawaii generally prohibits the public carrying of loaded firearms without a license,⁵ and, like 26 other states, it restricts the carrying of openly visible, loaded firearms by civilians.⁶ In particular, Hawaii limits open-carry licenses to persons “engaged in the protection of life and property,” a requirement the panel majority interpreted to restrict eligibility to applicants who must carry a firearm as part of their job duties.⁷ As explained in Petitioners’ Brief, the Hawaii Attorney General has clarified that the panel majority’s rigid interpretation of Hawaii’s licensing

No. 18-55717, which involves the same exceptionally important issue presented here. *See* Appellees’ Petition for Initial Hearing En Banc, *Flanagan, et al. v. Becerra*, No. 18-55717 (9th Cir. Sept. 21, 2018), ECF No. 12. It would serve the interests of both circuit uniformity and judicial economy for the *en banc* court to consider this case together with *Flanagan*.

⁵ *See* H.R.S. § 134. A person without a license may, however, carry an unloaded firearm publicly for purposes of hunting or target practice or to transport it to a firearms exhibit, licensed firearms dealer, place of repair, or police station. H.R.S. §§ 134-23, 134-24, 134-25, 134-26, 134-27.

⁶ *Open Carry*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/open-carry/>.

⁷ Hawaii’s licensing statute actually provides: “[w]here the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is . . . engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted.” H.R.S. 0134-0009.

requirements was incorrect.⁸ The panel majority's invalidation of Hawaii's licensing regime, therefore, relied on a complete misunderstanding of Hawaii's law. As such, its opinion should be vacated and the case remanded for further development of the factual record.

Remand is also appropriate here in light of methodological errors by the panel majority that are contrary to the approach applied by both the Supreme Court and this Court. In concluding that public carry of loaded firearms is a "core" right subject to categorical invalidation under any standard of scrutiny, the panel stated that it was "unpersuaded [by] historical regulation of public carry." Panel Op. at 49. But in analyzing firearms regulation, both the Supreme Court and this Circuit have given due weight to historical regulation, and have distinguished carefully among different forms of regulation.

In *Heller*, 554 U.S. 570, the Supreme Court stated that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. Sitting *en banc* in *Peruta*, this Court concluded that concealed-carry prohibitions are constitutional based on *Heller*'s guidance. *Peruta*, 824 F.3d at 936 (citing *Heller*, 554 U.S. at 626 ("[T]he majority of the 19th-century courts to consider the

⁸ Brief for Petitioner-Appellee at 9, *Young v. Hawaii*, No. 12-17808 (9th Cir. Sept. 14, 2018), ECF No. 155.

question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment.”)). In so doing, the Court, like the Supreme Court in *Heller*, did not suggest that states must then allow all citizens to openly carry firearms—a practice that is in many ways far more disruptive to public safety. *See Heller*, 554 U.S. at 595 (“[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation.”). To reach that decision, the Court interpreted the Second Amendment in view of the Statute of Northampton, an English law dating back to the Fourteenth Century that prohibited the open carrying of weapons. *Peruta*, 824 F.3d at 931.⁹ This Court “found nothing in the historical record suggesting that the law in the American colonies with respect to concealed weapons differed significantly from the law in England.” *Peruta*, 824 F.3d at 933.

To reach its conclusion that the Second Amendment protects an expansive open-carry right, the panel majority expressly rejected the Statute of Northampton as a basis for interpreting the Second Amendment. Panel Op. at 36. This wholesale rejection of the origins of the Second Amendment is inconsistent with

⁹ The Statute of Northampton provided that “no Man great nor small . . . be so hardy to come before the King’s Justices, or other of the King’s Ministers doing their office, with force and arms . . . nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere . . .” 2 Edw. 3, c. 3 (1328).

Peruta. And the panel majority declined to afford weight to the decisions of most nineteenth-century courts (referenced in *Heller*) upholding laws prohibiting the public carry of firearms under the Second Amendment, setting aside the very historical sources *Peruta* credited as authoritative.¹⁰

The panel decision, moreover, fails to identify any alternative sources from which the meaning of our Second Amendment right may derive. Because “the Second Amendment was not intended to lay down a ‘novel principl[e]’ but rather codified a right ‘inherited from our English Ancestors,’” *Heller*, 554 U.S. at 600 (internal citation omitted), the panel opinion moves beyond the holding in *Heller* in ways that decision cannot support. *See also id.* at 592 (citing *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) (“This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.”)).

The panel majority’s expansion of the Second Amendment right beyond that recognized in *Heller* and its rejection of the historical sources from which *Heller*

¹⁰ *See, e.g., Fife v. State*, 31 Ark. 455 (1876) (characterizing a carrying prohibition as a lawful “exercise of the police power of the State without any infringement of the constitutional right”); *State v. Workman*, 14 S.E. 9, 10-12 (W. Va. 1891); *Ex parte Thomas*, 97 P. 260, 262 (Okla. 1908) (“Practically all of the states under constitutional provisions similar to ours have held that acts of the Legislatures against the carrying of weapons concealed did not conflict with such constitutional provision denying infringement of the right to bear arms, but were a valid exercise of the police power of the state.”).

held the Second Amendment derives are particularly troublesome in light of new historical research that has emerged since *Peruta* was decided. This research indicates that the founding-era understanding of the phrase “bear arms” overwhelmingly referred to soldiers collectively wielding weapons in military service, not to individual civilians carrying guns in public as they went about daily life. The field of corpus linguistics has enhanced historical and linguistic research techniques by allowing researchers to analyze vast quantities of newly digitized historical texts. Applying this new approach to a data set containing more than 100,000 texts and billions of words, Josh Blackman and James C. Phillips observe that, “applying corpus linguistics to the Second Amendment” reveals that the “overwhelming majority of instances” in which the phrase “bear arms” was used in the founding era involved the military context, not civilians carrying guns for self-defense.¹¹ Professor Dennis Baron conducted a similar analysis and found that “[n]on-military uses of ‘bear arms’ are not just rare—they’re almost non-existent.”¹² Baron concludes that the military use of the phrase is the most natural

¹¹ Josh Blackman & James C. Phillips, *Corpus Linguistics and the Second Amendment*, HARV. L. REV. BLOG (Aug. 7, 2018), <https://blog.harvardlawreview.org/corpus-linguistics-and-the-second-amendment/>.

¹² Dennis Baron, *Antonin Scalia was wrong about the meaning of ‘bear arms,’* WASH. POST. (May 21, 2018), https://www.washingtonpost.com/opinions/antonin-scalia-was-wrong-about-the-meaning-of-bear-arms/2018/05/21/9243ac66-5d11-11e8-b2b8-08a538d9dbd6_story.html?utm_term=.59773d1eff7d.

reading, since “[b]ear arms’ has never worked comfortably with the language of personal self-defense, hunting or target practice.” *Id.*¹³ This recent linguistics research confirms that civilians carrying loaded firearms in public for self-defense was not recognized as a “core” right at the founding. It counsels at least a degree of caution in expanding the right recognized in *Heller*, caution entirely lacking from the panel majority’s analysis.

The panel majority’s determination that the Second Amendment protects carrying openly visible firearms outside the home to the same extent as it protects home possession disregards *Heller*’s careful distinctions between home possession and public carry. Its failure to give weight to historical regulation of public carry is inconsistent with the Supreme Court’s careful examination of the historical evidence in *Heller* and this Court’s *en banc* decision in *Peruta*. And its conclusions are based on an understanding of the regulatory regime that fundamentally misconstrues Hawaii’s law. For all these reasons, the panel

¹³ Law professor and historian Alison LaCroix has conducted similar research and concluded that “[r]ecent advances in theoretical and computational linguistics, as well as vast new corpora of American and English usage” “demonstrates that the language of the Second Amendment points toward a more collective interpretation of the right of gun ownership,” explaining that “consulting actual historical sources suggests that the context of the Second Amendment had more to do with militias and magazines than with solo householders molding bullets over their hearths.” See Alison L. LaCroix, *Historical Semantics and the Meaning of the Second Amendment*, THE PANORAMA (Aug. 3, 2018), <http://thepanorama.shear.org/2018/08/03/historical-semantics-and-the-meaning-of-the-second-amendment/>.

majority's opinion should be vacated and the case remanded for application of the proper legal standards to an accurate factual record.

Should the Court decline to vacate and remand, however, *en banc* rehearing on the merits is warranted, together with initial *en banc* hearing of *Flanagan v. Becerra* (see note 4, *supra*), for the reasons set forth below.

II. *En Banc* Rehearing Is Warranted Because the Panel Decision Creates an Irreconcilable Conflict with the Second, Third, and Fourth Circuits on a Question of Exceptional Importance.

A. The Panel Decision Conflicts with the Second, Third, and Fourth Circuits on the “Core” Right Protected by the Second Amendment.

The panel majority's opinion diverges from three other federal circuits on an exceptionally important question: the extent to which the public carry of loaded firearms is a “core” constitutional right, and whether states can regulate and restrict public carry consistent with the Second Amendment. Three other circuits have determined that public carry, which directly endangers other people, does not lie at the core of the Second Amendment's protections. *Drake v. Filko*, 724 F.3d 426

(3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012).¹⁴

The approach of these circuits is correct. In *Kachalsky*, *Woollard*, and *Drake*, the Second, Fourth, and Third Circuits upheld state statutes requiring handgun owners demonstrate: a “special need for protection” in order to carry their weapons openly, *Kachalsky*, 701 F.3d at 84; a “good-and-substantial-reason . . . such as a finding that the permit is necessary as a reasonable precaution against apprehended danger,” *Woollard*, 712 F.3d at 869; or “the urgent necessity for self-protection . . . that cannot be avoided by means other than by issuance of a permit to carry a handgun.” *Drake*, 724 F.3d at 428.

Those opinions found that premising the right to publicly carry loaded firearms on an applicant’s showing of a heightened need for self-protection was “presumptively lawful” because the “core” protection of the Second Amendment is the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Kachalsky*, 701 F.3d at 89, 93; *see id.* at 94 (citing *Heller*, 554 U.S. at 628); *Woollard*, 712 F.3d at 874-876 (declining to apply strict scrutiny to firearms regulations “outside the home” where “firearm rights have always been more

¹⁴ With little analysis, one circuit has found that public carry is part of the “core” of the Second Amendment. *See Wrenn v. District of Columbia*, 864 F.3d 650, 667 (D.C. Cir. 2017) (striking down “good reason” law limiting issuance of concealed-carry licenses to those with a special need for self-defense).

limited’’) (citing *United States v. Masciandaro*, 638 F.3d 458, 470-71 (4th Cir. 2011)); *Drake*, 724 F.3d at 436 (agreeing with district court that “[i]f the Second Amendment protects the right to carry a handgun outside the home for self-defense at all, that right is not part of the core of the Amendment’’).

As this Court’s sister circuits have recognized, when it comes to guns in public, where exercising self-defense rights can and does inevitably endanger others, it is appropriate to apply heightened scrutiny to test the state’s public safety justifications rather than striking down strong public carry laws as categorically unconstitutional. *See, e.g., Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) (concluding that intermediate, rather than strict scrutiny, is appropriate for a law regulating public carry because “[t]he risk inherent in firearms and other weapons distinguishes the Second Amendment right from other fundamental rights” that “can be exercised without creating a direct risk to others’’). The great weight of authority confirms that where “laws [] burden [any] right to keep and bear arms outside the home[,]” intermediate scrutiny applies. *Masciandaro*, 683 F.3d at 470-71; *see also Kachalsky*, 701 F.3d at 96 (“Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case.’’). Particularly in light of the important public safety concerns at stake, the panel majority’s departure from the approach of other federal courts in applying

intermediate scrutiny to the public carry statute in this case warrants rehearing *en banc*.

B. Application of the Proper Level of Scrutiny Is Particularly Important in Light of New Social Science Evidence Confirming the Exceptional Importance of Strong Public Carry Regulations in Safeguarding Public Safety.

By characterizing the right to carry a firearm openly for self-defense as a “core” Second Amendment right, the approach of the panel majority would categorically invalidate any regulations burdening the right to “self-defense” wherever they apply, despite the near consensus of other circuits to uphold public carry regulations as constitutional for striking an appropriate balance between self-defense and public safety. If the panel’s decision stands, it will bind subsequent panels considering the constitutionality of other public carry regulations—like the California restrictions at issue in *Flanagan*. But such regulations should be analyzed with reference to the compelling public safety justifications that support them—not evaluated under the erroneous standard and absolute open-carry right announced by the panel majority.

Application of the appropriate intermediate scrutiny in this case is especially important in light of new social science evidence that reveals the important public safety interests served by public carry regulation. The courts that have assumed, without explicitly holding, that the Second Amendment applies outside of the home have held that strong public carry regulations “nonetheless withstand[]

intermediate scrutiny” in light of their importance to public safety. *Drake*, 724 F.3d at 440; *Kachalsky*, 701 F.3d at 101, 98 (upholding New York’s one-hundred-year-old law “limiting handgun possession in public to those who show a special need for self-protection” under intermediate scrutiny because it is “substantially related to New York’s interests in public safety and crime prevention”). Under intermediate scrutiny, restricting the right to public carry to those that establish they are “engaged in the protection of life and property” furthers the important objective of protecting Hawaiian residents against firearm violence, while reasonably allowing citizens to exercise their right to self-defense.

Where a regulation does not “amount[] to a destruction” of, or severely burden the “core” of the Second Amendment right, *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 961 (9th Cir. 2014) (quoting *Heller*, 554 U.S. at 629), the regulation will be upheld under intermediate scrutiny if “the government’s stated objective . . . [is] significant, substantial, or important” and there is “a ‘reasonable fit’ between the challenged regulation and the asserted objective.” *Silvester v. Harris*, 843 F.3d 816, 821-22 (9th Cir. 2016) (quoting *United States v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013)). Given the overwhelming empirical evidence establishing a direct causal relationship between permissive right-to-carry laws and firearm violence, there is a “reasonable fit” between Hawaii’s licensing regime and the “important” objective of protecting public safety and preventing crime.

Recent social science research supports the conclusion that unrestricted carry of firearms leads to increased violent crime and homicides. A 2018 study led by Professor John J. Donohue concluded that right-to-carry (“RTC”) states experienced a 13-15% increase in violent crime rates as compared to violent crime rates prior to passage of RTC laws.¹⁵ Most troubling, this analysis found “statistically significant evidence of increases in murder.” *Id.* at 27. The Donohue study looked at 33 states that adopted RTC laws between 1981 and 2007. The study found that RTC laws increased violent crime by “increasing the likelihood a generally law-abiding citizen will commit a crime,” in addition to “facilitat[ing] the criminal conduct of those who generally have a criminal intent.” *Id.* at 6. This research demonstrates that RTC laws “encourage[] hostile confrontations” for permit holders, are exploited by “criminal gangs,” “furnish[] more than 100,000 guns per year to criminals” because of increased gun theft, encourage criminals to “arm themselves more frequently,” and “complicate the job of police” since “efforts to get guns off the street . . . are less feasible when carrying guns is presumptively legal.” *Id.* at 8-16. The Donohue study found “the longer the RTC law is in effect . . . the greater the cost in terms of increased violent crime,” which

¹⁵ John D. Donohue, et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, NAT’L BUREAU OF ECON. RESEARCH, Working Paper No. 23510 (2018), <http://www.nber.org/papers/w23510>.

refutes the notion that RTC laws reduce violent crime. *Id.* at 48-49. Significantly, the impacts of RTC laws on violent crime “were uniform”: “states that passed RTC laws experienced 13-15 percent higher aggregate violent crime rates than their synthetic controls after ten years.” *Id.* at 63. As the Donohue study notes, this finding is consistent with previous research finding that “RTC laws increased murder by 15.5 percent for the eight states that adopted RTC laws” from 1999 to 2010.¹⁶ In another recent study, a team of researchers led by Professor Michael Siegel compared the number of murders in RTC states and “may issue” states like Hawaii and California. They found that RTC laws increase firearm and handgun murders, but do not increase non-gun murders.¹⁷

Scholarly research also indicates that the panel majority’s decision would make it more difficult for police officers to protect the public. As Professor Geoffrey Corn has observed, “open carry laws fundamentally alter” a police officer’s ability to seize individuals who are wielding loaded firearms in public, “leaving the officer to speculate whether the individual is lawfully entitled to carry

¹⁶ *Id.* at 31 (citing Paul R. Zimmerman, *The deterrence of crime through private security efforts: Theory and evidence*, 37 INT’L REV. L. & ECON. 66 (2014)).

¹⁷ Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 AM. J. PUB. HEALTH 1923, 1923-1929 (2017).

the weapon or the weapon is an indication of potential criminal misconduct.”¹⁸

“Open carry laws present [a police] officer with a genuine Catch-22: her authority to temporarily seize the individuals in possession and/or their firearm is contingent on some indication of wrongdoing, but the lawful authority to carry the weapon openly indicates that her observation upon arrival at the scene cannot satisfy that requirement.” *Id.* Further, refusal to cooperate with an officer in open-carry situations does not provide “good cause” for a seizure or arrest if open carry is deemed a core constitutional right. Corn observes that “the volatility of a situation will be exacerbated when police are unable to determine who should and who should not be armed, or when the lawfully armed citizen believes, perhaps justifiably, that police are exceeding their authority to demand cooperation.” *Id.* Thus, empirical evidence and common sense confirm that licensing regimes like Hawaii’s are vital to reducing firearm violence.

CONCLUSION

The panel majority’s reliance on an incorrect interpretation of Hawaii’s law, its disregard of the historical sources recognized as authoritative in *Heller* and *Peruta*, and its novel and unprecedented holding that the right to carry a loaded firearm openly for self-defense falls within the “core” of the Second Amendment

¹⁸ Geoffrey Corn, *Open-carry opens up series of constitutional issues for cops*, THE HILL (Sept. 23, 2016), <https://thehill.com/blogs/pundits-blog/civil-rights/297480-why-police-interactions-in-open-carry-states-are-so>.

will lead lower courts and states into dangerous and uncharted territory. The Court should vacate the panel decision and remand.

In the alternative, in light of the exceptional importance of the issue presented here, *en banc* consideration of this case with *Flanagan* would be the most efficient way to resolve these critical issues, address the panel opinion's radical departure from the majority view of the circuits, and ensure uniformity within this Circuit's jurisprudence.

Dated: September 24, 2018

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 4,193 words, excluding the parts of the brief exempted by Federal rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, I electronically filed the foregoing Brief of *Amicus Curiae* Giffords Center to Prevent Gun Violence in Support of the Petition of Defendants-Appellees for Rehearing En Banc with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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No. 12-17808

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAII, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor

**BRIEF OF NEW JERSEY, CALIFORNIA, CONNECTICUT, DELAWARE,
ILLINOIS, IOWA, MASSACHUSETTS, MARYLAND, OREGON, RHODE
ISLAND, VIRGINIA, AND THE DISTRICT OF COLUMBIA IN SUPPORT
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IDENTITY OF AMICI CURIAE

Amici States, New Jersey, California, Connecticut, Delaware, Illinois, Iowa, Massachusetts, Maryland, Oregon, Rhode Island, Virginia, and the District of Columbia, have an interest in defending their ability to protect their residents from gun violence. Working to tailor their public-carry regimes to fit those safety needs, many of the amici have required applicants for public-carry licenses to show an individualized safety need to carry a weapon in public in light of the available evidence that “right-to-carry” laws—which allow for widespread public carrying of firearms—substantially increase gun-related violence in the public sphere. The panel’s decision in this case, however, second-guesses those legislative decisions on these public safety questions. Whether this Court ultimately decides to defer to the predictive judgments of State legislatures or to instead override their careful determinations thus affects each State.

States also have an interest in defending their longstanding laws. As the U.S. Supreme Court made clear, the longstanding nature of a statute is part and parcel of the Second Amendment inquiry—and laws with a particularly impressive historical pedigree are presumptively lawful. So amici have an interest in explaining why this enduring approach to public carry withstands constitutional scrutiny.

SUMMARY OF ARGUMENT

Hawaii's careful scheme to govern the public carrying of firearms, like laws in other States, is plainly constitutional. Statutes like this one reflect a centuries-old approach to advancing States' interests in public safety. In holding otherwise, the panel disagreed with other circuits that have considered the question, split with an en banc opinion of this Court, and undermined a key tenet of federalism—the right of each State to protect its residents and its law enforcement officers. This Court should rehear this case to correct this erroneous and far-reaching decision.¹

I. States have an obligation to protect their residents from the scourge of gun violence. To advance that compelling interest, States have a variety of tools at their disposal. One approach is to limit the situations in which a person can carry a firearm in public, whether concealed or carried openly. Hawaii chose that approach in light of the evidence confirming that public carry undermines public safety, and its law does not offend the Second Amendment. While the Constitution prevents States from adopting certain laws, it affords States significant leeway within those boundaries to place limits on public carry. As Judge Clifton explained in dissent, legislatures—not courts—are best suited to decide how to keep residents safe. That

¹ Amici States also support California's pending petition for initial hearing en banc in *Flanagan v. Becerra*, No. 18-55717. As California explains, consideration of both cases en banc will enable this Court to consider the same constitutional issue on a more developed record and in two different practical contexts.

is why the majority of this Court’s sister circuits upheld similar laws, and why a majority of this Court already reached that conclusion in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc) (*Peruta II*).

II. There is another, independently sufficient basis to uphold the State’s law—its historical pedigree. Longstanding restrictions on firearm possession, this Court has held, are presumptively lawful under the Second Amendment. State laws limiting public carry—including outright bans—were common in the nineteenth century, and Hawaii’s regime dates back over a century. Such laws thus boast a lineage even more impressive than those the Court identified as “longstanding” and “presumptively lawful” in *District of Columbia v. Heller*, 554 U.S. 570 (2008). Other circuits have upheld analogous laws on this ground too, and the reasoning of *Peruta II* should have compelled that result here. Because the panel rejected *Peruta II*’s historical analysis, this Court should rehear this case en banc.

ARGUMENT

I. HAWAII’S LAW OFFERS A REASONABLE APPROACH TO PROMOTING PUBLIC SAFETY.

One of a State’s primary obligations, and thus one of its most compelling interests, is to ensure the public safety of its residents. Indeed, “[i]t is ‘self-evident’ that [a State’s] interests in promoting public safety and reducing violent crime are substantial and important government interests,” as are its “interests in reducing the harm and lethality of gun injuries in general ... and in particular as against law

enforcement officers.” *Fyock v. City of Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015); *see also Drake v. Filko*, 724 F.3d 426, 437 (3d Cir. 2013) (explaining that a State has “a significant, substantial and important interest in protecting its citizens’ safety”), *cert. denied*, 134 S. Ct. 2134 (2014); *Woollard v. Gallagher*, 712 F.3d 865, 877 (4th Cir.) (finding that “protecting public safety and preventing crime ... are substantial governmental interests”), *cert. denied*, 571 U.S. 952 (2013).

The legislature’s chosen solution to this problem must, of course, still fit the problem States are trying to solve—and Hawaii’s law undoubtedly does. As other circuits have explained, “studies and data demonstrat[e] that widespread access to handguns in public increases the likelihood that felonies will result in death and fundamentally alters the safety and character of public spaces.” *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 99 (2d Cir. 2012), *cert. denied*, 569 U.S. 918 (2013); *see also Woollard*, 712 F.3d at 879 (agreeing that “limiting the public carrying of handguns protects citizens and inhibits crime by, *inter alia*: [d]ecreasing the availability of handguns to criminals via theft [and] [l]essening the likelihood that basic confrontations between individuals would turn deadly”). This is unsurprising: “[i]ncidents such as bar fights and road rage that now often end with people upset, but not lethally wounded, take on deadly implications when handguns are involved.” *Woollard*, 712 F.3d at 879 (citation omitted); *see also Add. 74* (Clifton, J., dissenting) (“That limiting public carry of firearms may have a positive effect

on public safety is hardly a illogical proposition. Many other states appear to have reached similar conclusions, and so have most other nations.”). These courts also recognized that right-to-carry regimes add to the risks law enforcement face: “[i]f the number of legal handguns on the streets increased significantly, officers would have no choice but to take extra precautions ... effectively treating encounters between police and the community that now are routine, friendly, and trusting, as high-risk stops.” *Woollard*, 712 F.3d at 880 (citation omitted).

Recent studies only confirm these courts’ assessments of the evidence. As a study earlier this year concluded, “the weight of the evidence ... best supports the view that the adoption of [right-to-carry] laws substantially raises overall violent crime in the ten years after adoption.” John Donohue et al., *Right-to-Carry Laws & Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, & a State-Level Synthetic Controls Analysis* 63 (Nat’l Bureau of Econ. Research, Working Paper No. 23510, Jan. 2018); *see also, e.g.*, Abhay Aneja et al., *The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy* 80-81 (Nat’l Bureau of Econ. Research Working Paper No. 18294, 2014) (determining that right-to-carry laws lead to an increase in aggravated assaults, rapes, and robberies). “There is not even the slightest hint in the data that [right-to-carry] laws reduce violent crime.” Donohue, *Right-to-Carry Laws*, *supra*, at 63.

To be sure, not every State has balanced these interests in the same way, and not every State has chosen to adopt this licensing scheme. But that is the very point of federalism. *McDonald v. City of Chicago*, 561 U.S. 742 (2010), establishes that the Second Amendment “creates individual rights that can be asserted against state and local governments,” but that decision does not “define the entire scope of the Second Amendment—to take all questions about which weapons are appropriate for self-defense out of the people’s hands.” *Friedman v. Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015). Instead, “[t]he central role of representative democracy is no less part of the Constitution than is the Second Amendment: when there is no definitive constitutional rule, matters are left to the legislative process.” *Id.* That is because “the Constitution establishes a federal republic where local differences are cherished as elements of liberty, rather than eliminated in a search for national uniformity.” *Id.* Although no State can trammel on the rights that *McDonald* set forth, *McDonald* “does not foreclose all possibility of experimentation. Within the limits [it] establishe[s] ... federalism and diversity still have a claim.” *Id.*; *see also New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (describing as one of the “happy incidents of the federal system” that States may “serve as a laboratory” for policies that fit their local needs, and concluding that the “[d]enial [by the courts] of the right to experiment may be fraught with serious consequences to the [n]ation”).

That means States are free to canvass the evidence and make the tough calls about how to protect residents from gun violence. As Judge Wilkinson recently explained, it is not possible “to draw from the profound ambiguities of the Second Amendment an invitation to courts to preempt this most volatile of political subjects and arrogate to themselves decisions that have been historically assigned to other, more democratic, actors.” *Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017) (Wilkinson, J., concurring); *see also District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) (“We are aware of the problem of handgun violence in this country, and ... [t]he Constitution leaves ... a variety of tools for combating that problem....”). That concern has never mattered more than it does today: “To say in the wake of so many mass shootings in so many localities across this country that the people themselves are now to be rendered newly powerless, that all they can do is stand by and watch as federal courts design their destiny—this would deliver a body blow to democracy as we have known it since the very founding of this nation.” *Kolbe*, 849 F.3d at 150 (Wilkinson, J., concurring).

In sum, no State is *required* to protect residents from the dangers of public carry, but every State is *permitted* to do so under the Second Amendment. And that is precisely what most other circuits have found when upholding public-carry laws. *See Kachalsky*, 701 F.3d at 98 (“Restricting handgun possession in public to those who have a reason to possess the weapon for a lawful purpose is substantially

related to New York’s interests in public safety and crime prevention.”); *Drake*, 724 F.3d at 437 (upholding New Jersey’s law given the legislature’s “predictive judgment ... that limiting the issuance of permits to carry a handgun in public to only those who can show a ‘justifiable need’ will further its substantial interest in public safety”); *Woollard*, 712 F.3d at 880 (“We are convinced by the State’s evidence that there is a reasonable fit between the good-and-substantial-reason requirement and Maryland’s objectives of protecting public safety and preventing crime.”); *see also* Add. 72 (Clifton, J., dissenting) (relying on these decisions to find that “there is a reasonable fit between Hawaii’s public-carry regulations and its unquestionably legitimate goal of promoting public safety”).

This Court’s analysis in *Peruta II* makes clear how far the panel majority has gone astray. Although the en banc majority focused on the history of concealed-carry regulation, Judge Graber wrote a concurrence discussing whether a public-carry regime could survive intermediate scrutiny. Speaking for three judges, she explained that such statutes are constitutional because they “strike a permissible balance between ‘granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets.’” *Peruta II*, 824 F.3d at 942 (Graber, J., concurring) (citation omitted). Critically, “[t]he other four judges on the panel who made up the majority stated that ‘if we were to reach that question, we would entirely agree with the answer the

concurrence provides.” Add. 61 (Clifton, J., dissenting) (quoting *Peruta II*, 824 F.3d at 942 (majority op.)). In short, “seven of the eleven members of that en banc panel expressed views that are inconsistent with the majority opinion in this case.” *Id.*; see also Add. 75 (“As other circuits have held in *Kachalsky*, *Drake*, and *Woollard*, and as a majority of the judges on our en banc panel indicated in *Peruta II*, there is a reasonable fit between good cause limitations on public carry licenses and public safety.”). In coming to the contrary result, the panel disregarded this Court’s own conclusions.

And this happened for one simple reason—the panel “substitute[d] its own judgment about the efficacy” of Hawaii’s open-carry law for the State legislature’s determinations. Add. 76 (Clifton, J., dissenting). That deviation from the well-established practice of deferring to legislatures’ safety judgments was unwarranted. The “Supreme Court has long granted deference to legislative findings regarding matters that are beyond the competence of courts,” *Kachalsky*, 701 F.3d at 97, and has made clear that in those areas, courts must accord “substantial deference to the predictive judgments” of legislatures, *Peruta II*, 824 F.3d at 945 (quoting *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 195 (1997)). That makes sense: “In the context of firearm regulation, the legislature is ‘far better equipped than the judiciary’ to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks.” *Kachalsky*,

701 F.3d at 97 (citation omitted). After all, “assessing the risks and benefits of handgun possession and shaping a licensing scheme to maximize the competing public-policy objectives ... is precisely the type of discretionary judgment that officials in the legislative and executive branches of state government regularly make.” *Id.* at 99. As Judge Clifton put the point, “[a]lthough the [panel] majority may not like the outcomes of [the] studies” on which Hawaii has relied, it had no authority “to dismiss statutes based on [its] own policy views or disagreements with aspects of the analyses cited.” Add. 74. This Court must rehear this case to correct that central error. No matter whether a judge would come to the same conclusions as Hawaii, the State’s choice was plainly supportable.

II. HAWAII’S LAW PASSES CONSTITUTIONAL MUSTER IN LIGHT OF ITS HISTORICAL PEDIGREE.

Under *Heller*, a law’s historical pedigree offers an independently sufficient reason to uphold it against a Second Amendment challenge. That leads inexorably to one result here—Hawaii’s longstanding law is constitutional.

There is little doubt that the historical pedigree of the law matters. Indeed, as *Heller* established, the longstanding nature of a law can be a sufficient (though not necessary) reason to decide that it withstands Second Amendment scrutiny. *Heller* held “that the rights guaranteed by the Second Amendment were ‘not unlimited,’” *Heller*, 554 U.S. at 626; to the contrary, the Court found that “‘longstanding’ restrictions” on carrying and possessing firearms are “‘presumptively lawful.”” *Id.*

at 626, 627 n.26. Put simply, these “longstanding prohibitions” are “understood to be outside the scope of the Second Amendment.” *Fyock*, 779 F.3d at 996. Nor does that historical analysis stop at the ratification of the Second Amendment—*Heller* itself had looked to “nineteenth-century state laws as evidence of ‘longstanding’ firearms restrictions.” *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009). The issue is thus whether open-carry statutes like Hawaii’s law are “presumptively lawful, longstanding licensing provision[s].” *Drake*, 724 F.3d at 432.

To understand why that inquiry calls for affirming Hawaii’s law, start with the long history of such laws. This Court is not writing on a blank slate—as Judge Clifton noted, and as Hawaii highlights in its petition, *Peruta II* walked through the history of laws regulating the public carrying of weapons. *See* Add. 63 (Clifton, J., dissenting) (“Much of the analysis offered in the majority opinion repeats what was said in *Peruta I*, despite the en banc rejection of that opinion in *Peruta II*.”).² In short, *Peruta II* explained that, “[d]ating back to the thirteenth century, England regulated public carry of firearms, including both concealed *and* concealable

² *Peruta II* hardly stands alone in its conclusions. As other circuits have explained, “[f]irearms have always been more heavily regulated in the public sphere.” *Drake*, 724 F.3d at 430 n.5; *see also, e.g., Kachalsky*, 701 F.3d at 96 (concluding that “our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public”); *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir.) (explaining that “outside the home, firearms rights have always been more limited because public safety interests often outweigh individual interests”), *cert. denied*, 565 U.S. 1058 (2011).

weapons.” *Id.* (emphasis added) (citing *Peruta II*, 824 F.3d at 929-32). To borrow a few examples from *Peruta II*’s analysis, in 1328, under Edward III, Parliament enacted the Statute of Northampton, stating that no one could “go nor ride armed by night nor by day.” 824 F.3d at 930. This statute, which *Peruta II* called “the foundation for firearms regulation in England for the next several centuries,” *id.*, was not limited to concealed carry; it banned the public carrying of firearms more generally. Indeed, in 1594, Elizabeth I issued a proclamation confirming that the Statute of Northampton prohibited the “open carrying” of weapons. *Id.* at 931; Add. 65 (Clifton, J., dissenting) (agreeing that “subsequent laws emphasiz[ed] that the Statute prohibited the carrying of concealable weapons”). It was not the only English law to do so; in 1541, Parliament enacted a law forbidding “owning or carrying concealable (not merely concealed) weapons.” *Peruta II*, 824 F.3d at 931.

There is a similarly long history of public-carry regulations in the United States, dating back to the seventeenth and eighteenth centuries. *See Peruta II*, 824 F.3d at 933-37; *see also, e.g.*, Eric M. Ruben & Saul Cornell, *Firearm Regionalism & Public Carry: Placing Southern Antebellum Case Law in Context*, 125 Yale L.J. Forum 121, 129 n.43 (2015). Many states still limited public carry after passage of the Second and Fourteenth Amendments. During the nineteenth century, as the Second Circuit has explained, myriad “states enacted laws banning ... concealable weapons ... whether carried openly or concealed.” *Kachalsky*, 701 F.3d at 95-96.

And, as this Court in *Peruta II* already laid out, multiple state courts had “upheld prohibitions against carrying concealable (not just concealed) weapons in the years following the adoption of the Fourteenth Amendment.” 824 F.3d at 937.³

The same is true for the particular licensing standards on which Hawaii and other States now rely. These laws “do[] not go as far as some of the historical bans on public carrying; rather, [they] limit[] the opportunity for public carrying to those who can demonstrate” a need to do so. *Drake*, 723 F.3d at 433. Yet they boast an impressive pedigree—“[n]umerous states adopted good cause limitations on public carry in the early 20th century.” Add. 68 (Clifton, J., dissenting). Hawaii is a perfect example. In 1852, Hawaii enacted a statute that made it a crime for “[a]ny person not authorized by law” to “carry, or be found armed with, any ... pistol ... or other deadly weapon ... unless good cause be shown for having such dangerous weapons.” Act of May 25, 1852, § 1. In 1927, Hawaii’s territorial legislature enacted a licensing regime for public carry. *See* 1927 Haw. Sess. Laws Act 206, § 5-7. In 1934, Hawaii barred public carrying of firearms except in an “exceptional case, when the applicant shows good reason to fear injury to his person or

³ The panel disputed that conclusion by focusing “on the laws and decisions from one region, the antebellum South.” Add. 63 (Clifton, J., dissenting). But *Peruta II* rejected the idea that “the approach of the antebellum South reflected a national consensus about the Second Amendment’s implications.” Add. 64. The “more balanced historical analysis” in *Peruta II* instead “reveals that states have long regulated and limited public carry of firearms and, indeed, have frequently limited public carry to individuals with specific self-defense needs.” *Id.*

property.” 1933 (Special Sess.) Haw. Sess. Laws Act 26, § 6 & 8 (Jan. 9, 1934). And in 1961, a mere two years after the State’s admission to the union, Hawaii adopted an open-carry regime that permitted an applicant to receive a permit to carry a firearm only when he could show the “urgency of the need” and that he “is engaged in the protection of life and property,” 1961 Haw. Sess. Laws Act 163, §1—essentially the same as the standard today. The same is true of other state licensing laws.⁴ New York’s “legislative judgment concerning handgun possession in public was made one-hundred years ago,” in 1913, when it “limit[ed] handgun possession in public to those showing proper cause.” *Kachalsky*, 701 F.3d at 97. So too New Jersey, which has maintained a similar standard for resolving public-carry applications since 1924. *See Drake*, 724 F.3d at 432. It is clear these statutes are of particularly longstanding provenance.

No wonder, then, that other circuits have relied on similar history to uphold analogous state laws. The Second Circuit was explicit: “There is a longstanding tradition of states regulating firearm possession and use in public because of the dangers posed to public safety.” *Kachalsky*, 701 F.3d at 94-95. Given “the history and tradition of firearm regulation,” that court “decline[d] Plaintiffs’ invitation to

⁴ Indeed, other states set the precedent for Hawaii’s law in the nineteenth century, limiting public carry to individuals who had a “reasonable cause” to fear assault—a group that included Maine, Massachusetts, Michigan, Minnesota, Oregon, Pennsylvania, Texas, Virginia, Wisconsin, and West Virginia. *See Add.* 65-68 (Clifton, J., dissenting) (citing, *inter alia*, *Kachalsky*, 701 F.3d at 90-93).

strike down New York’s one-hundred-year-old law and call into question the state’s traditional authority to extensively regulate handgun possession in public.” *Id.* at 101. And the Third Circuit was, if anything, even more direct, determining that “the requirement that applicants demonstrate a ‘justifiable need’ to publicly carry a handgun for self-defense is a presumptively lawful, longstanding licensing provision [because it] has existed in New Jersey in some form for nearly 90 years.” *Drake*, 724 F.3d at 432. That is appropriate in light of Supreme Court precedent—*Heller*, after all, described other laws that dated from the early twentieth century as longstanding and thus presumptively lawful. *See* Add. 68 (Clifton, J., dissenting). The panel in this case should have reached the same result.

The panel’s decision thus “disregarded the fact that states and territories in a variety of regions have long allowed for extensive regulations of and limitations on the public carry of firearms.” Add. 75 (Clifton, J., dissenting). Because Hawaii’s licensing regime is longstanding under *Heller*, this Court should rehear the case en banc to render a decision in line with *Kachalsky*, *Drake*, and *Peruta II*.

CONCLUSION

Because the panel impermissibly substituted its own judgment for that of the Hawaii legislature on a public safety issue, and rejected the State’s longstanding approach to firearm safety as a result, this Court should grant Appellees’ petition for rehearing en banc and ultimately affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Circuit Rule 29-2, the foregoing amicus brief in support of a petition for rehearing en banc:

1. Contains 3,802 words; and
2. Has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type, which complies with Fed. R. App. P. 32 (a)(4)-(6).

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

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U.S. COURT OF APPEALS CASE NO. 12-17808

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GEORGE K. YOUNG, JR.
Plaintiff and Appellant,

v.

STATE OF HAWAII, et al.
Defendants and Appellees,

and

**AMICUS CURIAE BRIEF OF SAN DIEGO COUNTY GUN
OWNERS POLITICAL ACTION COMMITTEE IN OPPOSITION
TO THE PETITION FOR REHEARING**

On Appeal from the United States District Court
for the District of Hawaii
District Court No. 12-00336-HG-BMK (Hon. Helen Gillmor)

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CORPORATE DISCLOSURE STATEMENT

San Diego County Gun Owners is a political action committee and not incorporated. Thus, pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a), San Diego County Gun Owners Political Action Committee has no parent corporations. It has no stock, and hence, no publically held company owns 10% or more of its stock.

November 16, 2018

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STATEMENT OF INTEREST¹

The San Diego County Gun Owners Political Action Committee (SDCGO) is a diverse and inclusive 1,300-plus member political organization. SDCGO is dedicated to preserving and restoring citizens' gun rights. It has developed a strong, permanent foundation that focuses on changing the face of gun ownership and use by working with volunteers on state and local activities and outreach. Since its beginning in 2015, SDCGO has profoundly influenced and advanced policies protecting the Second Amendment.

SDCGO's primary focus is on expanding and restoring Second Amendment rights within San Diego County and in California due to an aggressive and largely successful legislative and regulatory effort to significantly limit or eliminate the firearms industry and the ownership and use of firearms at the California state, county, and municipal levels. These laws and regulations in California as a whole prohibit the average citizen from carrying a firearm either *openly* or *concealed* in public. See *Young v. Hawaii*, 896 F.3d 1044, 1050 (9th Cir. 2018) (pet. for reh'g en banc, filed Sept. 9, 2018) (panel opinion).

SDCGO advocated the right to carry a *concealed* firearm in public in San Diego during the pendency of the *Peruta* decision (*Peruta v. County of San Diego*,

¹ All parties consent to the filing off this brief. No counsel for any party authored this brief in whole or in part. No person, other than *amicus curiae*, contributed money intended to fund the brief's preparation and submission.

824 F.3d 919 (9th Cir. 2016) (en banc) (*Peruta II*), which overturned a three-judge panel's decision striking down a *concealed* carry licensing statute (*Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014) (*Peruta I*). However, in the State of Hawaii, there is still hope that outright bans will be stricken, as in this case, because it is a violation of the Second Amendment. Hawaii Revised Statute section 134-9 prohibits anyone but essentially security guards from obtaining carry permits and only when the permit holder is “in the actual performance of his duties or within the area of his assignment.” *Young*, 896 F.3d at 1070-1071. The statute operates as an outright ban on an average citizen's right to carry firearms in public for self-defense.

INTRODUCTION

The majority panel in *Young* correctly held “the right to bear arms must guarantee *some* right to self-defense in public.” *Young*, 896 F.3d at 1068 (emphasis in original). This holding is wholly consistent with the Supreme Court decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and “open carry” was not addressed by the Ninth Circuit in its en banc decision in *Peruta II*.

As noted by the majority panel, *Peruta II*, 824 F.3d at 924, considered a challenge to San Diego's limitations on *concealed* carry of firearms outside of the home, and the en banc court held “the Second Amendment right to keep and bear

arms does not include, in any degree, the right of a member of the general public to carry *concealed* firearms in public.” *Id.* at 939 (emphasis added.)

Glossed over by Appellees and in amicus curiae briefs, however, is the fact that the *Peruta II* court expressly left open the question of whether the Second Amendment encompasses a right to open carry. See *id.* (“There may or may not be a Second Amendment right for a member of the general public to carry a firearm openly in public. The Supreme Court has not answered that question, and we do not answer it here.”) The majority panel properly resolved this question, holding the Second Amendment encompasses a right to carry firearms openly in public for self-defense. *Young*, 896 F.3d at 1068, 1074.

Appellees and amicus briefs misconstrue the text and history of the Second Amendment and seek to extend *Peruta II* to an issue that court did not answer; and, in doing so, they improperly conflate *open* carry and *concealed* carry in an attempt to blindly apply *Peruta II*’s prohibition on *concealed* carry to the right to carry firearms in public *in any form* for self-defense. Appellees’ petition for rehearing lacks merit and should be denied.

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ARGUMENT

A. Rehearing Should be Denied Because the Majority Panel Properly Applied a Textual and Historical Analysis Consistent with Supreme Court Precedent.

The majority panel opinion applied the established two-step approach to Second Amendment challenges. *Young*, 896 F.3d at 1051. Guided by *Heller* and *McDonald*, the panel determined the scope of the Second Amendment with regard to open carry by discerning the scope not as it appeared to the panel “now,” but “with the scope [it was] understood to have when the people adopted [it],” citing *Heller*, 554 U.S. at 634-35. The panel followed the two “lodstars” — text and history — because they “bear most strongly on what the right was understood to mean, at the time of enactment, to the public. *Young*, 896 F.3d at 1051. Indeed, the panel used the *same* text and historical analysis set forth in *Heller*, considering: (i) the text of the Second Amendment; (ii) the English right to keep and bear arms; (iii) the writings of important founding-era legal scholars; (iv) nineteenth century judicial interpretations; and (v) the legislative setting following the Civil War. *Young*, 896 F.3d at 1052-1068. Appellees contend the panel opinion abandons the analysis in *Peruta II*. See Pet. 2-3, 13-16. Appellees are wrong.

B. The Second Amendment Text Firmly Establishes the Right of Law-Abiding Citizens to Carry Firearms Outside of the Home.

The majority panel opinion properly analyzed the text of the Second Amendment, and determined it supports at least some right to carry a firearm

publicly for self-defense. Indeed, as confirmed by the panel, to deny this right outside the home would negate “the central component” of the Second Amendment to keep and bear arms, quoting *Heller*, 554 U.S. at 599 and *Moore v. Madigan*, 702 F.3d 933, 936-937. See *Young*, 896 F.3d at 1053, fn. 4. However, like the dissent in the panel opinion, Appellees argue for a contrary conclusion that would limit the Second Amendment’s reach to within the home only — without grappling with the text of the Second Amendment itself. See Pet. 8-18.

The Second Amendment explicitly protects not only the right to “keep” but also to “bear” arms. According to *Heller*, to “bear” means to “wear” or to “carry... upon the person or in the clothing or in a pocket, for the purpose... of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Young*, 896 F.3d at 1052, quoting *Heller*, 554 U.S. at 584. *Heller* also clarified that to “bear arms” did not solely refer to carrying a weapon as part of a militia, but rather to “bear” for “a particular purpose — confrontation.” *Id.* at 584-585. Unquestionably, as the panel noted, confrontation is not limited to one’s home or place of business, but can occur at any time, in any place in private or public. *Young*, 896 F.3d at 1052, citing *Wrenn*, 864 F.3d at 657, and *Moore*, 702 F.3d at 941 (“self-protection is as great outside as inside the home.”)

Importantly, the panel opinion is not the first to address to what extent the Second Amendment applies outside the home, and the panel cited the D.C. Circuit’s

opinion in *Wrenn v. District of Columbia*, 864 F.3d 933, 936-937 (7th Cir. 2012), the Seventh Circuit’s opinion in *Moore*, 702 F.3d 933, 936-937, and the Illinois Supreme Court’s decision in *People v. Aguilar*, 2 N.E.3d 321, 327 — all of which relied on *Heller*, 554 U.S. at 599. Thus, the majority panel opinion is hardly “misguided” or “dangerous.” See Pet. 17. Further, as noted in *Heller*, it makes “little sense” to restrict the right to keep and bear arms to just the home, as “confrontations are not limited to the home.” *Heller*, 554 U.S. at 599.

Significantly, both *Heller* and *McDonald* provide a similar understanding of the term “bear.” *Heller* described the “inherent right of self-defense” as “most acute” within the home, suggesting that the right to bear arms for self-defense exists, but perhaps less so, outside the home. *Heller*, 554 U.S. at 628. Accordingly, the right to defense of self, family, and property is “most acute” in the home, but it does not stop there. It may be less acute elsewhere, but self-defense is not limited to the borders of a home. *Young*, 896 F.3d at 1051-1052.²

Heller also cited laws “forbidding the carrying of firearms in sensitive places such as schools and government buildings” as presumptively lawful. See *Young*, 896 F.3d at 1053. As persuasively noted in the panel opinion, this, of course, *necessarily*

² See Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1515 (2009)

requires there to be *non-sensitive* places where this right is still protected. The entire public sphere cannot possibly be considered a sensitive place. *Id.*

Also unavailing is Appellees' overreliance on the Second Circuit decision in *Kachalsky v. County of Westchester* 701 F.3d 81 (2d Cir. 2012). In upholding a concealed carry licensing scheme, the court left open the idea of an open carry right when it stated that a faithful reading of *Heller* "suggests... that the Amendment must have *some* application in the very different context of the public possession of firearms." *Kachalsky*, 701 F.3d at 89.

C. Historical Analysis of the Second Amendment and the Open Carry of Firearms —the Statute of Northampton and English Common Law.

Appellees' petition and supporting amicus briefs place great emphasis on the English Statute of Northampton, 2 Edw. III c. 3 (1328), claiming it "broadly limited the carrying of weapons in public." See Amicus Curiae Br., *Everytown for Gun Safety* at 7 (*Everytown*). This claims oversimplifies the statute's meaning and enforcement.

The Statute of Northampton states that no person shall "come before the King's justices,...with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere...." Statute of Northampton 1328, 2 Edw. 3, c. (Eng.). But, *Everytown* departs from the activities *actually*

prohibited by the statute, namely — to use force and arms *to terrorize the people*.³

The panel opinion addressed this statute in detail, explaining that although it may have been enforced literally immediately after its enactment, enforcement became directed toward prohibiting *disturbing the peace*. See *Young*, 896 F.3d at 1063-1064. Quoting Serjeant William Hawkins, the panel opinion states:

[N]o wearing of Arms is within the meaning of this Statute, unless it be accompanied with such Circumstances as are apt to terrify the People; from whence it seems clearly to follow, That Persons of Quality are in no Danger of Offending against this Statute by wearing common Weapons.

Id., at 1064.⁴

Moreover, the panel opinion correctly referenced Blackstone's interpretation of the statute, also cited in *Heller*, 554 U.S. at 627, to mean “going armed, with *dangerous or unusual weapons*, is a crime against the public peace....” *Young*, 896 F.3d at 1064 (emphasis added.) The panel opinion correctly points out that the qualification, as to “dangerous and unusual weapons,” infers that not all weapons were prohibited from being carried. *Id.* Thus, as pointed out by the panel, the more recent historic record suggests that the Statute of Northampton only barred

³ See e.g., Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins Of an Anglo-American Right*, 104-105; and David B. Kopel, *The Second Amendment in the Nineteenth Century*, 1998 BYU L. Rev. 1359, 1532 and fn. 724.

⁴ See 1 William Hawkins, *A Treatise of the Pleas of the Crown*, ch. 163, § 9, at 135, 136 (1716).

Englishmen from carrying dangerous or unusual weapons (not common arms) for terror (not self-defense.)⁵

Notably, the *Peruta II* court provides a detailed accounting of English law as far back as 1299. It refers to the Statute of Northampton and the various orders, proclamations, and statutes subsequently enacted. However, many of the subsequent laws after the enactment of such statute addressed either *concealed carry* or the *types of firearms* prohibited from being carried; not a broad prohibition on the right to carry *all arms*. See *Peruta II* 824 F.3d at 929-932 (finding only that English law “prohibited carrying *concealed*” arms in public) (Emphasis in original). Thus, when reviewing early English laws and their application to *open carry*, the historical record supports the longstanding right to open carry arms. See *Young*, 896 F.3d at 929-932.

D. Early Legal Scholars.

Relying on *Heller*, 554 U.S. at 605, the panel opinion next considered the writings of “founding-era legal scholars” to discern the rights afforded by the Second

⁵ This interpretation is also supported by the decisions in *Rex v. Knight* 3 Mod. 117, 87 Eng. Re. 75, 76 (K.B. 1686) ([t]he Chief Justice said[] that the meaning of the statute... was to punish people who go armed *to terrify the king’s subjects*); *Rex v. Dewhurst*, 1 State Trials, N.S. 529, 601-02 (1820) (“A man has a clear right to protect himself when he is going singly or in a small party upon the road where he is traveling or going for the ordinary purpose of business.”); and *Rex v. Smith*, 2 Ir. Rep. 190, 204 (K.B. 1914) (holding the Statute of Northampton did not apply to one who peaceably walked down a public road with a loaded revolver, because the offense was “to ride or go armed without lawful occasion in *terrem populi*.”)

Amendment because that “sort of inquiry is a critical tool of constitutional interpretation.” *Young*, 896 F.3d at 1054-1055. For example, William Blackstone’s *Commentaries on the Laws of England* were relied on in *Heller* and “constituted the preeminent authority on English law of the founding generation.” *Id.* 554 U.S. at 593-94 (quoting *Alden v. Maine*, 527 U.S. 706, 715 (1999)). Additionally, the writings of St. George Tucker, America’s first Blackstone scholar, were considered and found to support an individual right to self-defense. The panel opinion correctly considered these founding-era sources, which state that the right to armed self-defense is the “first law of nature” and that “the right of the people to keep and bear arms” is the “true palladium of liberty.” *Young*, 896 F.3d at 1053. Accordingly, the right to keep and bear arms is an individual right of self-defense, and necessarily includes the ability to openly carry firearms in public. *Id.* at 1053-1054.

**E. Nineteenth Century Case Law Firmly Establishes
The Second Amendment Right to Open Carry.**

The Supreme Court in *Heller* and *McDonald*, and this Court in *Peruta II*, relied heavily on early nineteenth-century case law to determine the extent of Second Amendment protections. The panel opinion followed suit. *Young*, 896 F.3d at 1055-1061. When considering whether the Second Amendment includes the right to carry a firearm openly for self-defense, these cases are high in number and uniform in their interpretation. Simply, the cases confirm that the Second Amendment right to bear arms must include, at a minimum, the right to carry a firearm openly for self-defense.

The panel opinion properly applied the *Heller* and *Peruta II* early case law analysis to hold that the Second Amendment protects the right to open carry a firearm for self-defense. *Id.*

As noted, Appellees attempt to dismiss these early cases by conflating *concealed* carry and *open* carry. For example, Appellees ask this Court to dismiss the significance of *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822), cited in *Heller*, with regard to the *open* carry of firearms in the same way that it did in *Peruta II* for *concealed* carry of firearms. See Pet. 14 (asserting, among other things, that the case was later overturned by constitutional amendment). Not so fast.

Though Kentucky later amended its constitution to allow its legislature to “pass laws to prevent persons from carrying *concealed* arms,” Kentucky “left untouched” the premise in *Bliss* that the right to bear arms protects *open* carry. See *Young*, 896 F.3d at 1055.

The same interpretation applied in *Bliss* was used by the Tennessee Supreme Court in *Simpson v. State*, 13 Tenn. (5 Yer.) 356 (1833) eleven years later.⁶ As noted in the panel opinion, in *Simpson*, the Tennessee court acknowledged that a colonial law-based crime — which originated from English law — was abrogated by the Tennessee Constitution, which granted “an express power ... secured to a free

⁶ The analysis of *State v. Mitchell*, (Ind. 1833) 3 Blackf. 229, 229 was excluded from this analysis due to its one sentence opinion that only addresses *concealed* carry. However, nothing in this decision prohibits *open* carry.

citizens of the state to keep and to bear arms for their common defence, without qualification whatever as to their kind or nature.” See *Young*, 896 F.3d at 1055. Thus, the two cases nearest in time to the founding era, which addressed the right to keep and bear arms — *Bliss* and *Simpson* — both acknowledged the broad protection afforded to *open* carry.

Further, the panel opinion referenced *State v. Reid*, 1 Ala. 612 (1840), cited in *Heller*, in which the Alabama Supreme Court declared that an Alabamian must be permitted some means of carrying a firearm in public for self-defense. The court in *State v. Reid* explicitly held carrying firearms *openly* was wholly protected:

Under the provision of our constitution, we incline to the opinion that the *Legislature cannot inhibit the citizen from bearing arms openly*, because it authorizes him to bear them for the purposes of defending himself and the State, and it is only when carried openly, that they can be efficiently used for defence.

Id., *State v. Reid* at 619 (emphasis added).

In *State v. Chandler* 5 La. Ann. 489, 490 (1850), the Court agreed, holding that the right to carry openly “is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations.”

Moreover, the Georgia Supreme Court in *Nunn v. State* 1 Ga. 243, 251 (1846), found that a concealed weapons ban did not “deprive the citizen of his *natural* right

of self-defense, or of his constitutional right to bear arms. But that so much of it, as contains a prohibition against bearing arms *openly*, is in conflict with the Constitution, and *void....*” (Emphasis added in original). These cases clearly embody the understanding of the right to self-defense as requiring the visible carrying of weapons that would prevent unexpected, unmanly violence.

Using the reasoning in *Heller*, and as applied in *Peruta II*, the panel opinion surveyed the nineteenth century case law that limited *concealed* carry, and correctly determined that those *same* cases “command” that the Second Amendment must encompass the right to *open* carry. See *Young*, 896 F.3d at 1055-1062.

F. The Panel Opinion is Consistent with the *Peruta II* Analysis of the Legislative Setting after the Civil War.

The panel opinion correctly addresses Post-Civil War considerations and properly applied the analysis used in *Peruta II*. *Young*, 896 F.3d at 1059-1061. That analysis “follow[s] [Heller’s] lead with respect to the Fourteenth Amendment” and discussed decisions after its adoption. See *Peruta II* 824 F.3d at 936-39.

First, referring to the post-Civil War state constitutions analyzed by this Court in *Peruta II*, five state constitutions prohibited only *concealed* carry, not *open* carry.⁷ *Id.*, at 936-37. Additionally, six other states granted their legislative bodies the broad

⁷ See State constitutions of North Carolina, Colorado, Louisiana, Montana, and Mississippi.

authority to regulate the manner in which arms could be carried. *Id.*, at 937.⁸ However, for the post-Civil War period between 1865 and 1965, 16 states *did not* provide broad authority to the legislatures,⁹ in comparison the six cited in *Peruta II*. Of the 16, only five restricted only concealed carry. Moreover, considering all state constitutions, 38 states do not place broad authority on their legislatures to regulate carrying firearms; 10 permit the regulation of *only concealed carry*; only 7 provide broad authority on the manner of carrying arms, and 6 state constitutions have no provisions.¹⁰ Thus, the clear majority of state constitutions have permitted *open* carry.

G. The Panel Properly Rejected Certain Post-Civil War Cases and Other Laws.

In the years following adoption of the 14th Amendment, two states courts and one territorial court upheld restrictions on *concealed* arms. *Young*, 896 F.3d at 1058-59. But these decisions cannot be said to have upheld prohibitions or restrictions on the carrying of *all* arms, especially open carry. Further, the panel opinion correctly considered the implications of these courts' Second Amendment interpretations. The courts did not acknowledge an individual right to keep and bear

⁸ See State constitutions of Georgia, Texas, Tennessee, Florida, Idaho, Utah.

⁹ Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms*, 11 Tex. Rev. of L. & Pol. 191 (2006).

¹⁰ *Id.*

arms under the Second Amendment; instead, they rest on a militia-focused view of that right, which was already rejected in *Heller*, 554 U.S. at 585.

When considering such cases, the panel opinion took these considerations into account and applied the current understanding that the Second Amendment right is an individual one. *Young*, 896 F.3d at 1057-59. This is the major flaw in the cases relied on by Appellees.¹¹ The fundamental reasoning for each such decision has been held to be invalid. Thus, how can their conclusions be afforded any significant authority?

Additionally, the panel opinion addresses the mischaracterization of surety laws as equivalent to “good cause” restrictions on the right to carry firearms in public. *Young*, 896 F.3d at 1061-1063. These laws do not operate similar to current good cause restrictions, which require “good cause” *before* the right can be exercised. Thus, as noted correctly by the panel opinion, “[w]hile surety laws used the language “reasonable cause,” they bear no resemblance to modern-day good cause requirements to carry a firearm. *Young*, 896 F.3d at 1062-1063.

CONCLUSION

The panel opinion correctly applied the textual and historical analysis used in *Heller* and *Peruta II*. This analysis shows while the majority of the nineteenth

¹¹See *State v. Buzzard*, 4 Ark. 18 (1842); *English v. State*, 35 Tex. 473 (1871); *State v. Workman*, 35 W.Va. 367 (1891).

century courts held that prohibitions on *concealed carry* of firearms were lawful under the Second Amendment, these same courts have overwhelmingly permitted *open carry*. From 1822 to 1850, eight states faced challenges to states' statutes limiting the right to carry.¹² Six of those states, while restricting the right to *concealed carry*, explicitly permitted *open carry* and held that bans on *open carry* would violate the Second Amendment right to keep and bear arms.¹³ One state acknowledged Second Amendment protections for both *concealed* and *open carry*.¹⁴ Only one court provided nearly no limits on a legislature's ability to restrict the carrying of arms.¹⁵

The panel opinion also properly applied the Post-Civil War analysis used in *McDonald* and *Peruta II*. Most post-Civil War state constitutions and case law that have considered the right to bear arms under both the Second Amendment and various state constitutions, have included a right to carry firearms openly in public. As such, the panel opinion's textual and historical analysis is correct. Because

¹² *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822); *State v. Buzzard*, 4 Ark. 18 (1842); *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833); *State v. Reid*, 1 Ala. 612 (1840); *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840); *Nunn v State*, 1 Ga. 243 (1846); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Huntly*, 25 N.C. (3 Ired.) 418 (1843).

¹³ *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833); *State v. Reid*, 1 Ala. 612 (1840); *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840); *Nunn v State*, 1 Ga. 243 (1846); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Huntly*, 25 N.C. (3 Ired.) 418 (1843).

¹⁴ *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822)

¹⁵ *State v. Buzzard*, 4 Ark. 18 (1842)

Hawaii Revised Statutes section 134-9 restricts Plaintiff from exercising his right to carry a firearm openly, it burdens conduct protected by the Second Amendment and is void.

Considering the historical analysis as applied to open carry, the panel opinion is correct that open carry for self-defense is a core Second Amendment right. *Young*, 896 F.3d at 1068-1070. Historical regulation centered on *concealed carry* not *open carry*. As such, these regulations do not remove the right to open carry for self-defense from the Second Amendment's core protection.

Clearly, section 134-9 amounts to a destruction of this core right, as all but a handful of people have *ever received* a license to carry *in the entire state of Hawaii*. The panel was correct to apply a categorical approach holding section 134-9 unconstitutional “[u]nder any of the standards of scrutiny” because Hawaiian citizens are “entirely foreclosed from exercising the core Second Amendment right to bear arms for self-defense” in public. *Young*, 896 F.3d at 1070-1071. Regardless, the panel opinion's intermediate scrutiny analysis removes all doubt. *Young*, 896 F.3d at 1071-1073. Hawaii's effective ban on *open carry* is a violation of the Second Amendment.

November 16, 2018

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CERTIFICATE OF COMPLIANCE WITH RULE 29-2(c)(2)

I hereby certify this brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 4,184 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the requirements of Federal Rule of Appellate Procedure 32(a)(5) and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

November 16, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, I electronically filed the foregoing Amicus Curiae Brief of San Diego County Gun Owners Political Action Committee in Opposition of the Petition for Rehearing with the Clerk of the Court by using the CM/ECF system. I certify that the participants of this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

November 16, 2018

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12-17808

**IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT**

GEORGE YOUNG, Jr,
Plaintiff/Appellant,

v..

STATE OF HAWAII, *et. al.*
Defendants/Appellees.

On Appeal From The United States District Court
For The District of Hawaii
Case No. 12-00336 HG BMK
The Honorable Helen W. Gillmor

**BRIEF OF BEHALF OF THE HAWAI'I RIFLE ASSOCIATION AS
AMICUS CURIAE IN OPPOSITION TO *EN BANC* REHEARING**

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CORPORATE DISCLOSURE STATEMENT

Amicus Hawaii Rifle Association has no parent corporations. It has no stock, and hence, no publicly held company owns 10% or more of its stock.

s/Richard L. Holcomb
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FRAP RULE 29 STATEMENTS

The Hawaii Rifle Association (“the HRA”) is a Fraternal Beneficiary Society, organized pursuant to 26 U.S.C. § 501(c)(8). The HRA boasts more than 1,000 members in the State of Hawai‘i. Its mission is “to protect [its members’] Second Amendment Right to Keep and Bear Arms, and protect Hawai‘i’s hunting and shooting traditions.” HRA is affiliated with the National Rifle Association and works to protect Hawai‘i’s local rights to keep and bear arms, primarily at the state and local level.

The HRA’s members, which consist of responsible and law-abiding gun owners, overwhelmingly support Appellant Young’s cause.

This brief is filed with the consent of all parties.¹ FRAP, Rule 29(a)(2).

ARGUMENT

Citizens of Hawai‘i have an acute need for a viable means of self-defense.

Appellant Young’s permit for a handgun for the purpose of self-defense was twice denied for failing to meet the requirements of the limited exception to Hawai‘i’s ban on bearing firearms. *Young v. Hawaii*, 896 F.3d 1044, 1048 (2018). These unexplained and unreviewable denials are routine throughout the State of

¹ Counsel for neither party authored this brief in whole or in part. No party or party’s counsel contributed money intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief. FRAP, Rule 29(a)(4)(E).

Hawai‘i despite the United States Supreme Court’s 2008 decision styled *District of Columbia v. Heller*, 554 U.S. 570 (2008). See *Baker v. Kealoha*, No. CV 11-00528 ACK-KSC, 2012 WL 12886818, at *2 (D. Haw. Apr. 30, 2012), *vacated and remanded*, 564 F. App’x 903 (9th Cir. 2014), *opinion vacated on reh’g*, 679 F. App’x 625 (9th Cir. 2017), and *vacated and remanded*, 679 F. App’x 625 (9th Cir. 2017) (permit denied in letter stating “[w]e do not believe that the reasons you have provided constitute sufficient justification to issue you a permit. Therefore your application has been denied.”). Due to these routine denials, citizens of Hawai‘i are left unable to exercise their Second Amendment right to bear firearms for self-defense.

The need to bear firearms for self-defense is particularly acute on the sparsely populated island of Hawai‘i, the island where Mr. Young resides. According to U.S. census data, as of 2016 approximately 1.5 million people live in the State of Hawai‘i but only 198,681 of those resided on Hawai‘i island. Thus, the largest land mass in the state (by far)² supports approximately 13% of the state’s population.

Despite its rural nature, the island of Hawai‘i is hardly immune from crime. Although crime decreased from 2007 to 2016, reported *violent* crimes increased

² Hawai‘i island consists of 4,028 square miles. By comparison, the second largest island, Maui, consists of only 727 square miles.

16.3% from 2015 to 2016.³ In its Annual Report for fiscal year 2015-2016 (the last such report available online) the Hawai‘i Police Department describes in detail 18 “particularly noteworthy” violent crimes that were investigated. Appendix, pp. 20-23. Highlights of these cases include: ten murders, three of which involved apparent eyewitnesses;⁴ a domestic assault where the victim was shot in the thigh, a police officer was shot, and the suspect barricaded himself in a residence; a rash of burglaries involving more than 60 felonies; a vehicle containing several occupants being shot at by another vehicle behind the victims; 3 police killings, one involving a prison escapee; and a case where a man was arrested but subsequently released after shooting another man who appeared at the arrestee’s house with a baseball bat.

Drug abuse is also rampant on Hawai‘i island. During the same time period, vice officers recovered more than 11 pounds of crystal meth, 600 grams of heroin, almost 110 grams of cocaine, and almost 1800 illegal prescription pills, staggering amounts considering that less than 200,000 people live on the Island of Hawai‘i.

³ The HRA cites 2016 data as the 2017 report is apparently unpublished as of this drafting. The Hawai‘i Attorney General’s 2016 “A Review of Hawai‘i Crime Reports” is attached in the Appendix to this Brief.

⁴ In one of these cases, witnesses refused to testify against the suspect and the suspect was released (however, the report states that the suspect was imprisoned for other charges). In another which occurred at a popular surfing location, a vehicle with damage from gunfire dropped a victim off at the hospital. At least one of these murders remains unsolved. Appendix, pp. 20-23.

Appendix, p. 26. The link between illicit drug abuse and crime is well-established.⁵

The need for self-defense is not unique to the rural population on the Island of Hawai‘i. According to the state’s Attorney General, 69.7% of the state’s population live on Oahu, which comprises the City and County of Honolulu. Appendix, p. 96. Corresponding percentages of the state’s total crime also happen on Oahu. *Id.* at 96-97. The violent crimes committed on Oahu include 31 murders in 2015 and 2016. *Id.* at 101. Knives were used in 37.5% of these murders (the same percentage as firearms) while weaponless murders and those involving blunt instruments and hands and fists account for the remainder. *Id.* From 2015 to 2016, rapes increased 14.9%. *Id.* at 102. A total of 827 robberies are recorded for 2016, the vast majority of which were “strong-arm” weaponless robberies. *Id.* at 103. A total of 1,129 aggravated assaults occurred on Oahu, the vast majority of which were committed without weapons or with knives and blunt instruments. *Id.* at 104.

According to Honolulu’s Department of the City Auditor’s 2017 Service Efforts and Accomplishment Report, attached in Appendix at pp. 249-53, police response times averaged 7.37 minutes in 2017. The HRA submits that, even assuming an opportunity to call 911, 7.37 minutes is more than ample time for a violent crime to occur. And, on the Island of Hawai‘i, the sparse population

⁵ See e.g., U.S. Dept. of Justice, NCJ-149286 (Sept. 1994), available online at: <https://www.bjs.gov/content/pub/pdf/DRRC.PDF>

necessarily affects the number of police available to cover large geographic areas. Hence, emergency response times are expected to be slower than that of a densely populated urban area such as Honolulu.⁶

Threats throughout the state do not originate solely from humans. Feral pigs are rampant throughout the state. Of late, the pigs are less excluded to wilderness areas as sightings in residential areas increase. Appendix, pp. 254-56. Not only are the pigs destructive to citizens' property, but also pose a danger to life and limb when confronted.

Moreover, Hawai'i is highly susceptible to natural disasters such as hurricanes and volcanic eruptions. Recently, Kilauea erupted on the Island of Hawai'i resulting in looting, squatting and even allegations of houses being burned by squatters. Appendix, pp. 257-60. According to the article, the Hawaii County Civil Defense Administrator "did not offer any immediate, specific suggestions for residents" affected by this looting and squatting. *Id.*

Also, Hawai'i residents were affected by the infamous nationally publicized false missile alert. At that time, Honolulu's 911 call center was overwhelmed with

⁶ In response to a public survey in 2013, the Hawai'i Police Department acknowledged its need to improve officer visibility and police response time. Apparently, these issues were raised frequently by the survey participants and the Hawai'i Police Department's response can be found on their website at: <http://www.hawaiipolice.com/frequently-asked-questions-2013>.

5,000 calls. Appendix, pp. 261-62. Accordingly, victims of crime could not access 911 during that time. *Id.*

The HRA members and other Hawai‘i citizens are rightfully concerned with their ability to defend themselves. Yet, those citizens are unable to defend themselves under Hawai‘i’s current procedure of allowing the chiefs of police to arbitrarily deny open and concealed carry permits. While qualified Hawai‘i residents can, for the most part, keep firearms in their home, the purposes behind the Second Amendment’s guarantees cannot be accomplished within the confines of the home.

***The constitutionally protected purposes which are secured
by the Second Amendment cannot all be accomplished within the home.***

The *Heller* Court identified key purposes for which the Second Amendment was codified. For example, the core of the Second Amendment is to effectuate the inalienable right to self-defense, which “was by the time of the founding understood to be an individual right protecting against both *public* and private violence.” *Heller*, 554 U.S. at 592, 594 (emphasis added). And, “self-defense has to take place wherever [a] person happens to be.” *United States v. Masciandaro*, 638 F.3d 458, 468 (4th Cir. 2011) (Niemeyer, J., concurring) (*quoting* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. REV. 1443, 1515-18 (2009)).

Further, when rejecting the suggested definition of bear that would limit the term to only a military application, the *Heller* Court stated “[t]he prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it *even more important for self-defense and hunting*.” *Heller*, 554 U.S. at 599. Clearly, neither hunting nor militia training can be accomplished within the confines of the home.

Because these key purposes for the very existence of the Second Amendment simply cannot be accomplished within the confines of a home, it is not surprising that various District Courts have also that the right extends beyond the home. *United States v. Richard Timothy Weaver, et. al.*, No. 2:09-cr-00222, 2010 WL 1633318 at *4 (S.D. W. Va. March 7, 2012) (unpublished) (“Confining the right to the home would unduly eliminate such purposes from the scope of the Second Amendment’s guarantee.”); *Woollard, v. Sheridan*, 863 F.Supp.2d 462, 470-71 (D. Md. 2012), *rev’d on other grounds, Woollard v. Gallagher*, 712 F.3d 865 (9th Cir. 2014) (“neither hunting nor militia training is a household activity, and ‘self defense has to take place wherever [a] person happens to be.’”); *Bateman v. Perdue*, 881 F.Supp.2d 709, 714 (E.D.N.C. 2012) (“Although considerable uncertainty exists regarding the scope of the Second Amendment right to keep and bear arms, it undoubtedly is not limited to the confines of the home.”).

The key purposes for which the Second Amendment exists, *i.e.*, militia, hunting and self-defense, cannot be accomplished within the home. Accordingly, the Second Amendment cannot be held to extinguish at the threshold of the front door.

Instead, the Second Amendment specifically protects the right “to keep *and* bear arms.” U.S. const. amend. II. Other Amendments within the Bill of Rights use similar language in guaranteeing one or more right or facet of the same right. For example, the Sixth Amendment guarantees the right to a “speedy and public trial.” U.S. Const. amend. VI. That clause is understood to guarantee both a speedy *and* a public trial. The Eighth Amendment protects people from “cruel and unusual punishment.” U.S. Const. amend. VIII. That clause is also understood to prohibit both cruel punishments *and* unusual punishments. Like the Sixth and the Eighth Amendments, the Second Amendment refers to two distinct concepts – the keeping of arms and the bearing of arms. *See Heller*, 554 U.S. at 584 (the Second Amendment’s “words and phrases were used in their normal and ordinary as distinguished from technical meaning.”).

Should this Court continue to limit the holding of *Heller* to apply only to keeping arms within the confines of one’s home, the right to bear arms would be completely abrogated. Clearly that was neither the intent of the framers nor of the *Heller* majority.

The HRA does not suggest that Hawaii cannot regulate the bearing of arms and prevent the bearing of firearms in sensitive places, such as schools and government buildings. Such regulations are entirely consistent with the Second Amendment. However, what is in effect an absolute bar, where the only exception is at the whim of one government official with no means to review that official's decision, should not pass constitutional muster.

Hawai'i's permitting scheme prohibits the bearing of handguns.

Under Hawaii law, otherwise law-abiding citizens face severe criminal punishments for:

- Possessing or exercising control of a loaded firearm, Haw. Rev. Stat. § 134-23;
 - Transporting an unloaded firearm to any places other than: a place of repair, a target range, a licensed dealer's place of business, a firearms show or exhibit, a place of formal hunter or firearm use training or instruction, or a police station, Haw. Rev. Stat. § 134-23;
 - Transporting an unloaded firearm outside an enclosed container, Haw. Rev. Stat. § 134-25;
 - Storing a weapon in a personal vehicle, Haw. Rev. Stat. § 134-25;
- Transporting a firearm on a public highway, Haw. Rev. Stat. § 134-26;

- Transporting ammunition outside of an enclosed container or to any place other than those also specifically defined in Section 134-23, *supra.*, Haw. Rev. Stat. § 134-27; and
- Keeping or bearing (in any place and for any purpose) any number of protected non-lethal weapons. Haw. Rev. Stat. §§ 134-16, 51.3.

Arguably, the statutes could be construed to criminalize bearing a firearm within one's own home. Haw. Rev. Stat. § 134-24 (dictates that a firearm must be *confined*, a term which is not defined, to a possessor's residence or sojourn, and further makes the carrying or possession of a firearm other than a pistol a class C felony without any exception for carrying within the home); Haw. Rev. Stat § 134-25 (prohibits possession or carrying of pistols outside of an enclosed container, under penalty of a class B felony, again with no exception for carrying within the home). Also, the statutes seem to prohibit (or at least fail to authorize) using a handgun for proficiency training such as target practice. Haw. Rev. Stat. § 134-5 (which authorizes a person to carry and use *only* a *rifle* or *shotgun* when engaged in target shooting, but *not* a pistol or handgun).⁷

These prohibitions, read singularly or combined, constitute clear substantial burdens on the citizens' right to bear arms. Indeed, citizens are wholly prohibited from carrying arms for the purposes of self-defense and from even keeping

⁷ The *amicus* concedes that there are no known criminal prosecutions based on these statutory interpretations.

firearms within their homes in a manner whereby the arm would be ready and available for self-defense. And, in the case of non-lethal weapons, citizens may not even keep those arms.

The only exception to these complete prohibitions is the illusory licensing statute codified at Section 134-9. Yet, that statute provides no meaningful vehicle that would adequately allow citizens to exercise their Second Amendment rights.

These prohibitions *sub judice* clearly run afoul of the holding of *Heller*. See *Heller*, 554 U.S. at 629 (quoting *State v. Reid*, 1 Ala. 612, 616-17 (1840) for the proposition that “[a] statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense, would be clearly unconstitutional.”).

The scope of these prohibitions are not only problematic because they plainly run afoul of the applicants’ fundamental constitutional rights but also because, under Hawai‘i’s statutory scheme, a single government agent has unfettered discretion to arbitrarily deny the only permit available that would permit the citizen to exercise those rights. Such is precisely what happened here and in *Baker, infra*.

These broad prohibitions are exacerbated by the fact that the one law enforcement official is vested with absolute discretion in determining whether a

permit allowing the open or concealed carrying of firearms is permitted in any given case.

Hawaii's licensing procedure violates due process.

Section 134-9(a) of the Hawaii Revised Statutes states:

In an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property, the chief of police of the appropriate county may grant a license to an applicant who is a citizen of the United States of the age of twenty-one years or more or to a duly accredited official representative of a foreign nation of the age of twenty-one years or more to carry a pistol or revolver and ammunition therefor concealed on the person within the county where the license is granted. Where the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is a citizen of the United States of the age of twenty-one years or more, is engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted. ...

The text of the due process clause –“nor shall any State deprive any person of life, liberty, or property without due process of law” requires procedural safeguards to accompany substantive choices. U.S. Const. amend. XIV. Section 134-9 of the Hawaii Revised Statutes (the permit statute) is the only means by which a law-abiding citizen could exercise his or her Second Amendment right to bear arms.

“It is settled by a long line of recent decisions of this Court that an ordinance which . . . makes the peaceful enjoyment of freedoms which the Constitution

guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.” *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958) (citations omitted); *see also FW/PBS v. City of Dallas*, 493 U.S. 215, 226 (1990) (plurality opinion); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969). “While prior restraints are not unconstitutional per se, any system of prior restraint comes to the courts bearing a heavy presumption against its constitutional validity.” *Clark v. City of Lakewood*, 259 F.3d 996, 1005 (9th Cir. 2001) (citations omitted).

Here, the statutory presumption that only citizens who establish that theirs is an “exceptional case” is a prior restraint. Worse, pursuant to Section 134-9 of the Hawai‘i Revised Statutes, the chief of police has the sole discretion to determine whether an “exceptional case” exists with little or no statutory guidance. There is no opportunity for an applicant to participate, be heard, or advocate his or position during the decision-making process. The chief also determine whether an applicant “appears suitable.”

In addition to establishing a presumptively unconstitutional prior restraint, the language of the statute also formulates an unconstitutional undue burden.⁸ As

⁸ “A finding of an undue burden is shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a

noted above, Section 134-9 of the Hawai‘i Revised Statutes requires applicants to satisfy the chief of police that theirs is an “exceptional case.” There is no guidance for an applicant or the chief to ascertain what constitutes an “exceptional case.” Instead, the statute leaves that decision to the sole discretion of the chief. Obviously, this discretion can be (and, moreover, has been in this case and others) exercised arbitrarily.

The purpose and effect of this “exceptional case” requirement is to place a substantial obstacle in the path of applicants. Indeed, this requirement shifts the paradigm from the presumption that citizens are permitted to exercise their constitutional rights to a presumption that such is forbidden. "And a statute, which while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path [of exercising a right] ... cannot be considered a permissible means of serving its legitimate ends." *Casey*, 505 U.S. at 877.

Even if it were somehow determined that it is permissible to require an applicant to satisfy the Chief of Police that “exceptional circumstances” exist or that the applicant “appears suitable” before a permit is issued, as currently required by Section 134-9, the statute would still violate due process. When analyzing

person seeking the exercise of a fundamental liberty.” *Planned Parent Hood of Southern Pennsylvania v. Casey*, 505 U.S. 833, 877 (1992).

procedural due process the court should apply the three factor test articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

There, the Supreme Court stated that in order to determine the adequacy of due process, the following should be considered: “[t]he private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.*

Under the current Hawaii statutory scheme law-abiding citizens’ liberty and property interests are routinely unduly restricted. The risk of continued deprivation of the interest is great. Pursuant to Section 134-9 of the Hawai‘i Revised Statutes, the chief’s decision is absolute and final. Because Section 134-9 allows the exercise of a fundamental constitutional right, *i.e.*, the right to bear arms, only in “exceptional cases,” which is determined solely by the Chief of Police without any guidance or restraint in the decision-making process whatsoever, an undue and, therefore, unconstitutional burden is imposed. The first prong weighs in favor of upholding the panel’s decision.

Second, despite this clear deprivation of liberty and property resulting from the denial of application of qualified applicants, the aggrieved applicant has no

opportunity to seek judicial, appellate or even administrative review of the chief's decision. The chief's decision, no matter how seemingly unfair, unfounded, or unexplained is final. And, the Chief is not even required to disclose the reasons for denying the application. This, alone, should render the statutory scheme unconstitutional. *See Largent v. Texas*, 318 U.S. 418, 422 (1943) (striking ordinance allowing speech permit where mayor "deems it proper or advisable"); *Louisiana v. United States*, 380 U.S. 145, 153 (1965) ("The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws . . . which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar"); *Berger v. City of Seattle*, 569 F.3d 1029, 1042 n. 9 (9th Cir. 2009) (*en banc*) ("Rules that grant licensing officials undue discretion are not constitutional.").

Recently, the First Circuit distinguished Hawaii's statutory scheme from that of Boston and Brookline Massachusetts. In upholding the Boston and Brookline's regulations on bearing arms, the First Circuit found:

[n]or do the Boston and Brookline policies result in a total ban on the right to public carriage of firearms. In this respect, the policies coalesce with the Massachusetts statute to form a regime that is markedly less restrictive than the regimes found unconstitutional by the Seventh and Ninth Circuits. The Illinois ban on public carriage struck down by the Seventh Circuit did not give the slightest recognition to the heightened need of some individuals to arm themselves for self-protection, *see Moore*, 702 F.3d at 940 (noting that "[n]ot even Massachusetts has so flat a ban as Illinois"), and the Hawaii law struck down by the Ninth Circuit created a regime under

which not a single unrestricted license for public carriage had ever been issued, *see Young*, 896 F.3d at 1071 n.21. The Ninth Circuit took pains to distinguish the Hawaii law from laws in which the ‘good cause’ standard ‘did not disguise an effective ban on the public carry of firearms.’ *Id.* at 1072.

The Massachusetts regime is more akin to those regimes upheld in the Second, Third, and Fourth Circuits. *See Drake*, 724 F.3d at 428-29, 439-40; *Woollard*, 712 F.3d at 868-70, 882; *Kachalsky*, 701 F.3d at 85-87, 101. Those regimes — like the regime at issue here — ‘provided for administrative or judicial review of any license denial, . . . a safeguard conspicuously absent from Hawaii's laws.’

Gould v. Morgan, ___ F.3d ___, 2018 wl 5728640 (1st Cir. Nov. 2, 2018). The second prong of *Matthews* also weighs in favor of finding that Hawaii’s statutory scheme violates due process.

Finally, it is difficult to imagine a scenario where the government would be unduly burdened by its citizens exercising their fundamental constitutional rights. It is even more difficult to imagine any government burden justifying an effective absolute ban on this exercise of fundamental rights. It is unfathomable that the government would be overburdened by adopting a transparent permitting process that would provide judicial review for aggrieved applicants.

CONCLUSION

The citizens of Hawai‘i deserve, at minimum, an articulable standard to strive to meet in order to gain access to their constitutional right to bear arms. This Court should deny the *en banc* petition and panel’s decision should control.

Respectfully Submitted,

DATED: Honolulu, Hawai'i; November 19, 2018.

s/Richard L. Holcomb

Richard L. Holcomb (HI Bar No. 9177)

on behalf of the *Amicus Curiae*

Hawaii Rifle Association

**CERTIFICATE OF COMPLIANCE TYPE-VOLUME LIMITATIONS,
TYPEFACE REQUIREMENTS,
AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Circuit Rule 29-2(c)(2) because this brief contains 4,116 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionately spaced typeface using Microsoft Word 2016 in 14 point Times New Roman font.

s/ Richard L. Holcomb
Richard L. Holcomb

Dated: November 19, 2018

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically filed the foregoing Brief of *Amicus Curiae* Hawaii Rifle Association in Opposition to *En Banc* Rehearing with the Clerk of the Court of the U.S. Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

s/Richard L. Holcomb
Richard L. Holcomb

Dated: November 19, 2018

APPENDIX

Annual Report Fiscal Year 2015–2016



**Hawai'i Police Department
County of Hawai'i**

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Mission Statement

The employees of the Hawai'i Police Department are committed to preserving the Spirit of Aloha. We will work cooperatively with the community to enforce the laws, preserve peace, and provide a safe environment.

Vision Statement

The Hawai'i Police Department is committed to providing the highest quality of police service and forming partnerships with the community to achieve public satisfaction making the Big Island a safe place to live, visit, and conduct business.

Core Values

- ▶ Integrity
- ▶ Professionalism
- ▶ Compassion
- ▶ Teamwork
- ▶ Community Satisfaction

Police Department County of Hawai'i

2015–2016 Annual Report

Hawai'i County Police Commission
County of Hawai'i
Aupuni Center
101 Pauahi Street, Suite 9
Hilo, Hawai'i 96720

Dear Commissioners:

In Fiscal Year 2015–2016, as in previous years, the Hawai'i Police Department followed its mission to work cooperatively with the community to enforce the laws, preserve peace and provide a safe environment.

On November 21, 2015, we earned renewal of our accreditation status, maintaining the Hawai'i Police Department as part of an elite group of law enforcement agencies accredited by the Commission on Accreditation for Law Enforcement Agencies Inc. (CALEA®). This was our first reassessment since initial accreditation in 2012.

Our officers faced numerous challenges this year, as murders and attempted murders increased from previous years and detectives worked tirelessly to solve those crimes. Of the 10 murders and 19 attempted murders committed, detectives had already solved 26 by the end of the fiscal year.

Also this year, our officers continued providing "Active Shooter" information to the public to help individuals learn how to increase their survivability should they encounter an active shooter or other type of active violent incident. Plans moved forward for additional presentations into the 2016–2017 fiscal year. Community interactions like these, in conjunction with Community Policing operations throughout the island, help us stay in touch with the needs and concerns of our community.

On May 16, a memorial wall dedicated to Hawai'i Island officers killed in the line of duty was unveiled during a Police Week ceremony at the South Hilo police station. The monument honors the four Hawai'i Police Department officers killed in the line of duty since 1918: Manuel Cadinha (1918), William "Red" Oili (1936), Ronald "Shige" Jitchaku (1990) and Kenneth Keliipio (1997). The monument was the brainchild of Jitchaku's sister, Momi Cazimero, who said her mission to create it began with the loss of her brother on May 7, 1990.

I am honored to oversee the men and women of the Hawai'i Police Department as we continue to develop partnerships with the community so we can work together to keep you safe.

Sincerely,

HARRY S. KUBOJIRI
POLICE CHIEF
HAWAI'I POLICE DEPARTMENT



Harry S. Kubojiri
Police Chief
Hawai'i Police Department

Hawai'i County Police Commission

The Honorable Harry Kim
Mayor, County of Hawai'i
25 Aupuni Street
Hilo, Hawai'i 96720



Guy Schutte
Chair
Hawai'i County
Police Commission

Dear Mayor Kim:

During the year, the Hawai'i Police Commission held its monthly meetings in Hilo, Kona, and Waimea in order to accommodate the public.

We had the privilege of attending various community functions, including monthly police commanders meetings, recruit graduation and police week ceremonies. We attended the State of Hawai'i Police Commissioners' Conference, where we learned about issues facing police departments today and were able to discuss common interests and concerns of civilian oversight. We attended the Hawai'i State Law Enforcement Association Conference, where we learned about current issues facing law enforcement and honored the law enforcement officers of the year.

We are committed to our duties of civilian oversight and service to the people of Hawai'i County. It has been an honor to serve as Police Commissioners.

Sincerely,

GUY SCHUTTE
CHAIR

HAWAII COUNTY POLICE COMMISSION

Hawai'i County Police Commission

Top row—Keith Morioka, Arthur Buckman, Robert Gomes Sr., Peter Hendricks, Guy Schutte

Bottom row—Secretary Josie Pelayo, John Bertsch, Peggy Hilton



Nine Big Island residents serve on the Hawai'i County Police Commission. The mayor appoints one member from each district and each appointment is subject to confirmation by the Hawai'i County Council.

The commission's most important responsibilities, as delineated in the Hawai'i County Charter, are to appoint and remove the police chief at its sole discretion, confirm the chief's appointment of a deputy chief, and consider public complaints against the department or any of its members and then submit findings to the chief.

According to the County Charter, the commission's other functions are to:

- ▶ Adopt rules it may consider necessary for the conduct of its business and regulation of the matters committed to its charge, and review the rules and regulations of the department
- ▶ Review the department's annual budget prepared by the police chief and make recommendations thereon to the managing director and mayor
- ▶ Submit an annual report to the mayor and

the County Council

- ▶ Advise the police chief on police-community relations
- ▶ Hire personnel necessary to carry out its functions
- ▶ Evaluate at least annually the performance of the police chief and submit a report to the mayor, managing director and County Council

During Fiscal Year 2015–2016, the Police Commission members were:

- ▶ Council District 1—Peter Hendricks
- ▶ Council District 2—Peggy Hilton
- ▶ Council District 3—Keith Morioka
- ▶ Council District 4—(vacant)
- ▶ Council District 5—Arthur Buckman
- ▶ Council District 6—Robert Gomes Sr.
- ▶ Council District 7—Jak Hu
- ▶ Council District 8—John M. Bertsch
- ▶ Council District 9—Guy Schutte

Special Response Team (SRT)



Lieutenant Thomas Shopay, Special Response Team commander, sits in the driver's seat as Sergeant Greg Yamada pops his head out of the hatch of one of SRT's specialized vehicles.

The mission of the Special Response Team is to support the Hawai'i Police Department and any other requesting law enforcement agencies with a response to critical incidents, such as hostage situations, barricade situations, sniper situations, high-risk warrant service and special assignments. The team also provides security for visiting dignitaries.

The Special Response Team consists of specially selected officers who train extensively throughout the year to ensure operational readiness. SRT includes a crisis negotiation team that receives special training to develop communication skills that are necessary for defusing volatile situations.

SRT's incident commander, tactical team, crisis negotiation team and support personnel conduct scenario training multiple times a

year at different locations throughout Hawai'i Island to ensure operational readiness.

From July 2015 through June 2016, the Special Response Team responded to five special assignments, two barricaded situations, and one hostage situation and provided three security details.

The Special Response Team is also tasked with managing the department's conducted electrical weapon program, firearms instructor program, patrol rifle program, all hazards training, rapid response to active threats training, and annual use-of-force review. In addition, SRT provides training to recruit officers in basic tactics and active shooter response along with participating in community outreach programs on various topics.

From its inception through June 2016, SRT responded to 157 incidents.

Community Policing

Commanders: Area I, Lieutenant Robert Fujitake/ Area II, Sergeant Roylen Valera

The Hawai'i Police Department continues to expand and improve its Community Policing partnerships with community, neighborhood and business organizations. These partnerships help the police department with preventing crime, reducing the fear of crime, arresting those who commit crimes and providing a safe environment through the use of proactive problem-solving techniques, enhanced community awareness and increased community and neighborhood involvement.

At the end of Fiscal Year 2015–2016, the Community Policing Unit had 36 authorized positions island wide, including a supervising sergeant in Area II and a lieutenant in Area I. Of those, 27 positions were allocated for community police officers, six for school resource officers and one for a civilian clerk.

The Community Policing Section falls under the Patrol commander and is tasked with supporting Patrol as well as the other investigative units in the Police Department. Among other responsibilities, community police officers monitor and track crime trends and participate in “details” or units, formed for specific types of investigations, such as arsons, burglaries, abandoned vehicles and special enforcement.

Community Policing officers maintain regular communication with community, neighborhood and business leaders and organizations to address not only criminal and traffic issues, but also social issues, such as homelessness and parks and recreation safety. These officers offer communities a variety of crime prevention methods and presentations, community and youth beneficial events, and

traffic safety and enforcement. Besides the continual establishment of Neighborhood Watches, community police officers continue to coordinate other government and private agencies together with community and business groups to pursue the mission of safe neighborhoods and communities.

Community Policing bike patrols in downtown Hilo, Banyan Drive, Pāhoa Town, Kailua Village and Ali'i Drive have proven very effective in addressing street-level crimes, public nuisance complaints, special community events, recurring problems and property crimes. Bike patrols provide officers with the advantage of speed, stealth and surveillance for liquor violations, drug use and traffic enforcement. The improved presence further increases safety for our island's visitors and residents.

School resource officers assigned to intermediate schools build positive relationships with students while providing law-related counseling, law-related education and law enforcement. As one of their education components, school resource officers provide Drug Abuse Resistance Education classes during the year, ending with a D.A.R.E. Day Celebration for all D.A.R.E. graduates in Kona and Hilo filled with local celebrities, food and fellowship. The main message of the day is to “continue to make good choices.”

In Fiscal Year 2015–2016, school resource officers provided D.A.R.E. information to approximately 2,500 students in grades 5–8 through 16 elementary and intermediate schools in Hawai'i County

The Community Policing Section provides a variety of activities for youth throughout

the year with the Hawai‘i Isle Police Activities League program, targeting children and families who may be “at risk” because of their family status or because of legal involvement. These HI-PAL activities are provided and designed to teach and steer youth toward healthy and legal choices. Officers schedule activities during periods when school is not in session.

Through events such as the HI-PAL East Hawai‘i Elementary and Intermediate Basketball League, HI-PAL Winter Classic, “Click It or Ticket” basketball clinics and tournaments, and Girls Volleyball League, HI-PAL in East Hawai‘i has attracted more than 800 student athletes, 453 of them identified as “at risk” youth, to their events.

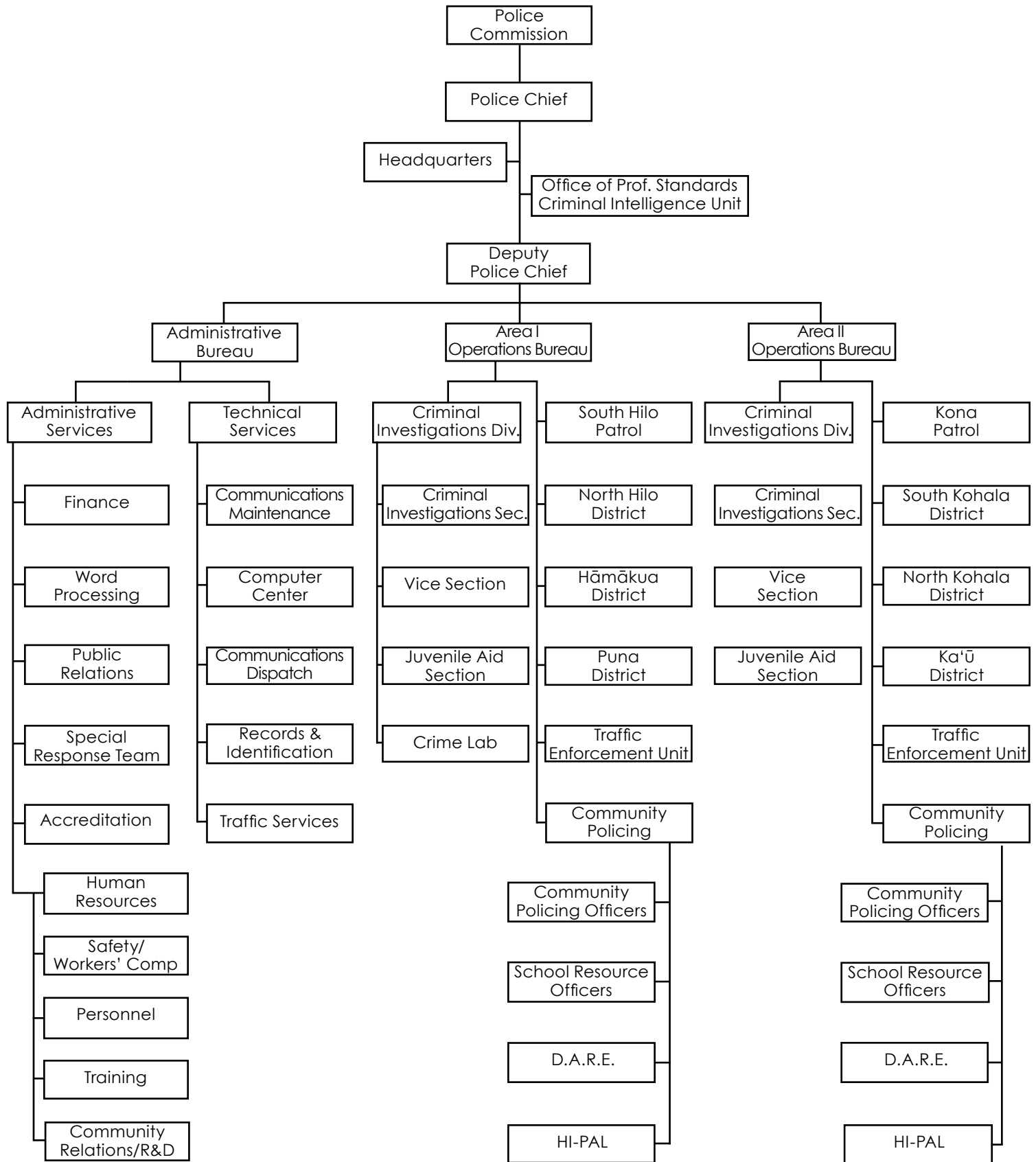
Other notable Community Policing/HI-PAL activities included:

- ▶ Merrie Monarch Festival
- ▶ Downtown Hilo Ho‘olaulea
- ▶ July 4th festivities
- ▶ Big Island triathlon
- ▶ Hawai‘i National Guard Youth Challenge – presentations and beautification projects
- ▶ Boy Scouts of America—Aloha Council
- ▶ Kokua Pāhoa
- ▶ Project IMPACT
- ▶ Kurtistown Family Fun Day
- ▶ Mountain View Family Fun Day
- ▶ Kea‘au Family Fun Day
- ▶ Chronic Homeless Intervention and Rehabilitation program
- ▶ Hope Services
- ▶ Laupāhoehoe music festival
- ▶ Kona Independence Day parade
- ▶ Kona Christmas Day parade
- ▶ Graffiti paint-over projects and beautification projects
- ▶ Sign-waving projects
- ▶ Child passenger safety seat checks and clinics
- ▶ VASH meetings and activities
- ▶ Halloween safety presentations
- ▶ Police station tours for schools
- ▶ Beach sweeps Ali‘i Drive / county parks
- ▶ Abandoned vehicle beautification projects
- ▶ “Shop with a Cop” project
- ▶ Kona “Adopt-a-Highway” project
- ▶ Hope Services backpack and school supplies drive
- ▶ Thanksgiving feeding the homeless event
- ▶ Big Island Substance Abuse Counseling cooperative efforts events
- ▶ CTAP—Community Traffic Awareness Program
- ▶ CPTED—Crime Prevention through Environmental Design
- ▶ Keiki Health Festival
- ▶ Freedom Hawai‘i summer program
- ▶ Homeless outreach partnership
- ▶ Community organization meetings
- ▶ Fall recess activity programs
- ▶ Winter recess activity programs
- ▶ Holiday crafts
- ▶ Back to School Pool Bash
- ▶ Spring Break activity programs
- ▶ Food and nutrition activities
- ▶ Summer activity programs

During Fiscal Year 2015–2016, Community Policing officers worked in partnership with the following groups, resulting in the following outcomes:

Groups	Outcomes
16 Department of Education elementary and intermediate schools	DARE classes provided by SROs to about 2,500 students in grades 5–8
Kokua Pāhoā, Puna Action Team, Neighborhood Place of Puna, QLCC, Prosecutor's Office	Continued participation (started by the Weed and Seed project) by stepped-up police enforcement, bike patrol and joining with various neighborhood groups in activities such as Springtime Jam and a wrestling clinic/drug presentation for 100+ kids
Hawai'i National Guard	Youth Challenge—career presentation/mentor
HI-PAL, Department of Parks and Recreation	Click It or Ticket Basketball Tournaments, Elementary and Intermediate Basketball League, Winter Basketball Classic
Downtown Improvement Association, Hawai'i County Planning Department, Friends of Downtown Hilo	Continued work with "Envision Downtown Hilo 2025"
Boy Scouts of America—Aloha Council	Safety and fingerprinting merit badges, training of more than 100 scouts
Public and private schools	Anti-bullying presentations
Drug Court, Juvenile Drug Court, Veterans Court	Police Department liaison
NFL Pro Bowl	Football clinic at Kea'au High School
HI-PAL, Hope Chapel	Annual HI-PAL/Hope Chapel 3-on-3 Basketball Tournament in Kona
Neighborhood Place of Puna	School supply giveaway
Kailua Village–Business Improvement District	Continued partnership to step up police projects of downtown business areas of Kailua-Kona
HELCO	Toys for Tots
Kona Traffic Safety Meeting	Opportunity for concerned community members to meet with county and state officials about traffic safety concerns
Multi-Disciplinary Team	Focus on continued problems in the downtown area of Kailua-Kona and in East Hawai'i
Chronic Homelessness Intervention and Rehabilitation Project	Mayor's appointed team to focus on chronic homelessness island wide
Kupuna Awareness Program	Educate senior citizens/crime prevention

Hawai'i Police Department Organization Chart



Commanders



Paul Ferreira
Deputy Police Chief



Marshall Kanehailua
Assistant Chief
Administration



Henry Tavares
Assistant Chief
Area I Operations



Paul Kealoha
Assistant Chief
Area II Operations



Samuel Thomas
Major
Administrative Services
Division



James O'Connor
Major
Technical Services
Division



Randy Apele
Major
Operations Bureau
Area I



Mitchell Kanehailua
Major
Operations Bureau
Area II

Office of Professional Standards/ Criminal Intelligence Unit

Commander: Captain Kenneth Bugado

The Office of Professional Standards (OPS) and Criminal Intelligence Unit (CIU) report directly to the police chief.

Office of Professional Standards (OPS)

Office of Professional Standards Mission Statement

The mission of The Office of Professional Standards is to protect and serve the public, the employee and the department through fair, thorough and proactive investigations of alleged misconduct, while preserving the spirit of aloha.

The primary responsibility of the Office of Professional Standards, formerly known as the Internal Affairs Unit, is to ensure the integrity of the Hawai'i Police Department by performing fair and thorough investigations of alleged misconduct by its employees. The Office of Professional Standards conducts investigations of complaints brought directly to the attention of the department or through the Hawai'i Police Commission.

The Office of Professional Standards conducts quality control and compliance inspections of department areas, property, vehicles, personnel and issued equipment. The unit also assists administration personnel in conducting the department's drug

testing program.

The Office of Professional Standards includes two selected detectives assigned to Police Headquarters. The unit falls under the command of a captain, who reports to the Office of the Chief.

During Fiscal Year 2015–2016, the Office of Professional Standards conducted 17 administrative investigations, 55 internal inquiries into actions by Police Department personnel and provided 36 in-service training sessions to employees. The Office of Professional Standards also conducted 31 quality control and compliance inspections of various elements of the department to prevent abuse, misuse, fraud and waste of department resources.

Criminal Intelligence Unit (CIU)

The mission of the Criminal Intelligence Unit is to collect, evaluate, analyze, and disseminate intelligence data regarding criminal and terrorist activity to aid the Hawai'i Police Department in a proactive approach of enforcing laws, preserving peace and providing a safe environment.

The Criminal Intelligence Unit consists of two detectives and four officers assigned to Police Headquarters, equally divided among the Hilo and Kona stations. The unit is commanded by a captain, who reports directly to the Office of the Chief.

The Criminal Intelligence Unit gathers information from all sources in a manner consistent with the law in support of efforts to provide intelligence on the existence, identities and capabilities of criminal suspects and enterprises. The unit also conducts background investigations on applicants seeking employment with the Hawai'i Police Department and criminal history checks of other county, state and federal agencies.

The Criminal Intelligence Unit is part of the Inter-County Criminal Intelligence Unit, which includes the intelligence units of the Honolulu Police Department, Maui Police

Department and Kauai Police Department.

The Criminal Intelligence Unit is a member of the Law Enforcement Intelligence Unit, which is composed of law enforcement agencies in the United States, Canada and Australia.

The Criminal Intelligence Unit is also part of the Joint Terrorism Task Force, whose mission is to partner with the FBI to maximize cooperation and to create a cohesive unit capable of addressing the most complex terrorism investigations.

In addition, the Criminal Intelligence Unit is part of the U.S. Marshal's Service Hawai'i Fugitive Task Force, whose mission is to investigate and arrest—as part of a joint law enforcement operation—persons who have active state and federal felony warrants for their arrest.

During Fiscal Year 2015–2016, the Criminal Intelligence Unit submitted 361 intelligence reports, conducted 327 criminal history checks, provided 144 in-service training sessions and provided intelligence information, which, in whole or in part, led to the initiation of 124 criminal investigations.

Administrative Bureau

Commander—Assistant Chief Marshall Kanehailua

The Administrative Bureau is divided into two divisions: Administrative Services and Technical Services. A police major heads each one.

Administrative Services Division

Commander: Major Samuel Thomas

The Administrative Services Division includes the Accreditation Section, the Finance Section, the Word Processing Center, the Human Resources Section, the Training Section, the Community Relations Section, the Public Relations Section and the Special Response Team.

The **Accreditation Section** is responsible for maintaining accreditation for the Hawai'i Police Department. The staff consists of one lieutenant, who is the accreditation manager, two sergeants and a clerk. In November 2015 the Hawai'i Police Department received its second accreditation award. The award indicates that the department has been abiding by the established 469 accreditation standards, which are nationally and internationally recognized by the Commission on Accreditation for Law Enforcement Agencies (CALEA®). The department continues to establish policies and practices that better serve the community, allow for cooperative efforts with other resources, and provide professional guidance for law enforcement personnel, taking public service to a higher standard. The next assessment will take place in July 2019.

The **Finance Section** is responsible for payroll, accounts payable, officers' gas and oil accounts, special duty work, inventory and other finance-related tasks.

The **Word Processing Center** is responsible for transcribing all narrative police reports that sworn personnel dictate into an internet/web-based Dictation Enterprise Platform system. The system was implemented in September 2010, replacing an aged and outdated on-site digital recording system.

Throughout the 2015–2016 fiscal year, the Word Processing Center managed to keep up with the high workload through hard work and perseverance even with staff shortages due to separations of service, promotions and/or transfers. The dictated reports transcribed by the Word Processing Center are routed via the Records Management System for officers' approval and timely prosecution.

The transcribed reports become the official documents that detail the Police Department's criminal investigations. The Word Processing Center consists of one clerical services supervisor, one assistant clerical supervisor and 13 clerks. In Fiscal Year 2015–2016, nearly 30,000 reports were transcribed, totaling more than 265,000 minutes and 2,205,394 completed lines of dictation.

The **Human Resources Section**, in cooperation with the Hawai'i County Department of Human Resources, conducted various open and internal recruitments for sworn and civilian vacancies, resulting in the hiring of 22

police officer recruits, five clerk III positions, five school crossing guards, four police radio dispatchers, two custodian/groundskeepers, one storeroom clerk, one police evidence custodian, one radio technician I and one police operations clerk. Internally, there were 18 temporary promotions to police officer III, one temporary promotion to police investigative operations clerk, 12 promotions to police sergeant/detective, two promotions to supervising police radio dispatcher, and one promotion each to police lieutenant, firearms registration clerk, senior clerk-stenographer, senior account clerk, senior police records clerk and traffic safety coordinator. Additionally, there was one inter-governmental movement in of a police officer II and one inter-departmental promotion of an information systems analyst IV.

During Fiscal Year 2015–2016, the **Training Section** conducted training for the 83rd Police Recruit Class, which began with 19 police officers. The department also began the 84th Police Recruit Class, which began with 22 police officers. The department continues to provide training that will provide a foundation for officers to address various situations effectively and professionally. Some of the training classes include dealing with mental health issues, “Aloha in Difficult Times” and “Cultural Diversity.” Recruit officers receive a wide variety of field training

while riding along with and being evaluated by field training officers. Field training includes the practical application of criminal investigations, principles of police patrol, interview and interrogation, constitutional and citizens’ rights, federal, state and county statutes, and other topics pertinent to law enforcement. During the 2015–2016 fiscal year, the Police Department provided 60,660 hours of instruction and training to its sworn police officers and civilian employees.

The **Community Relations Section** is responsible for maintaining programs to help the community and increase its awareness of police operations, including station tours for civic groups, students, parents and out-of-town visitors as well as managing requests for speakers on police-related subjects for community groups, scouts and schools.

The **Public Relations Section** is responsible for maintaining the department’s website, responding to inquiries from the news media, producing the cable access television program “Hawai‘i Island’s Most Wanted” and publishing the department’s annual report and employee newsletter. In Fiscal Year 2015–2016, the department published 667 media releases to the department’s website and through the Nixle service that allows the public to receive text messages, emails or both directly from the Police Department.

Technical Services Division

Commander: Major James O'Connor

The Technical Services Division is in charge of the Communications Dispatch Center, Communications Maintenance Section, Computer Center, Records and Identification Section and Traffic Services Section.

During the 2015–2016 fiscal year, the **Communications/Dispatch Center** received 214,566 9-1-1 calls, a 6.8 percent decrease over the previous fiscal year (230,113 calls), with 12.6 percent of them transferred to the Hawai‘i Fire Department. All requests

for police service are recorded, logged and assigned by Dispatch personnel using a computer-aided dispatch system with six to seven dispatchers on shift at any given time.

The Dispatch Center documented 233,793 calls for service during this fiscal year, a 4.2 percent increase over the previous year. On the average, about 68 percent of the calls received were from wireless phones.

The Dispatch Center fulfills requests for 9-1-1 and other audio recordings and information for the Office of the Prosecuting Attorney, officer and internal investigations, as well as the general public. During this fiscal year, the Center completed 656 requests for such information compared with 534 the prior year, a 23 percent increase.

The implementation of the new upgraded and modern CAD/RMS/Mobile system from Spillman Technologies took place this past year with a target to “go live” in October 2016. Upgrades and implementation of Next Generation 9-1-1 has also been ongoing, which includes the addition of “Text to 9-1-1” capabilities. The trial of “Text to 9-1-1” was almost complete at the end of the fiscal year and was expected to be launched statewide officially in the second half of 2016.

The **Communications Maintenance Section** is responsible for maintenance and repair of all county-owned radio sites. This includes towers, shelters, microwave radios, repeaters, base radios, mobile radios and handheld portable radios.

The Communications Maintenance Section installs and maintains all radio and emergency warning equipment in the Police Department’s fleet and subsidized vehicles. During Fiscal Year 2015–2016, the Communications Maintenance Section completed 88 installations of radio, siren and warning lights in Police Department vehicles.

The Radio Shop crew has installed 214 radios in department vehicles to accommodate the radio system upgrade. The Radio Shop crew assisted the Public Works Department by responding to repeater outage at Iolehaehae and installing radios in four Highway Maintenance Division vehicles.

The Communications Maintenance Section repaired 38 Civil Defense sirens and performed preventive maintenance on an additional 25 sirens. The Radio Shop repaired and remounted emergency warning lights on a Civil Defense vehicle.

The Communications Maintenance Section conducted 57 preventive maintenance inspections of district stations and 65 radio sites inspections/preventive maintenance visits during Fiscal Year 2015–2016.

The **Computer Center** is responsible for interconnectivity between all police stations and substations, installing and maintaining computer equipment, installing and troubleshooting software systems and providing technical assistance for varying computer issues. During Fiscal Year 2015–2016, the Computer Center deployed new mobile data terminals, completed the deployment of desktop computer systems, and began work on replacing the electronic record management system, computer-aided dispatch and field-based reporting systems. The Computer Center responded to approximately 3,100 calls, a reduced number from the previous fiscal year, thanks to the initiation of e-mail response.

The **Records and Identification Section** has several internal subsections (Records, Identification, Firearms and Evidence) with a variety of responsibilities. The overall responsibilities of the entire section are maintaining police records, conducting evidence fingerprint examinations, processing

subpoenas and court documents, compiling and disseminating statistical information, and processing firearm permit applications and registrations—including thorough background checks on each individual applying for a long gun or handgun permit.

In Fiscal Year 2015–2016, the Records Section processed requests for 5,194 copies of criminal reports and 5,100 copies of accident reports. The Firearms Section issued 4,096 firearms permits and registered 9,798 firearms. The Identification Section processed 17,669 court documents and 6,307 fingerprints. The Evidence Section processed 6,123 photo receipts and 9,883 property receipts.

During Fiscal Year 2015–2016, the Hawai‘i Police Department requested reimbursement of \$407,632 in federal grant funds—which the **Traffic Services Section** oversees—for

traffic enforcement and equipment purchases to improve traffic safety.

Police continued efforts to make Hawai‘i Island roadways safer by using the grant funds to pay for overtime for checkpoints and other enforcement projects aimed at reducing injuries and deaths in motor vehicle crashes by increasing seat belt use rates, apprehending impaired drivers, and enforcing laws pertaining to distracted drivers, speed regulations and “outlaw” road racing.

Other Traffic Services Section highlights include:

- ▶ 91 road closure permits issued
- ▶ 202 violation letters sent out to motorists
- ▶ 44 school crossing guard checks conducted
- ▶ 719 abandoned vehicle cases were routed to the Department of Environmental Management.

Operations Bureaus

Area I—East Hawai‘i

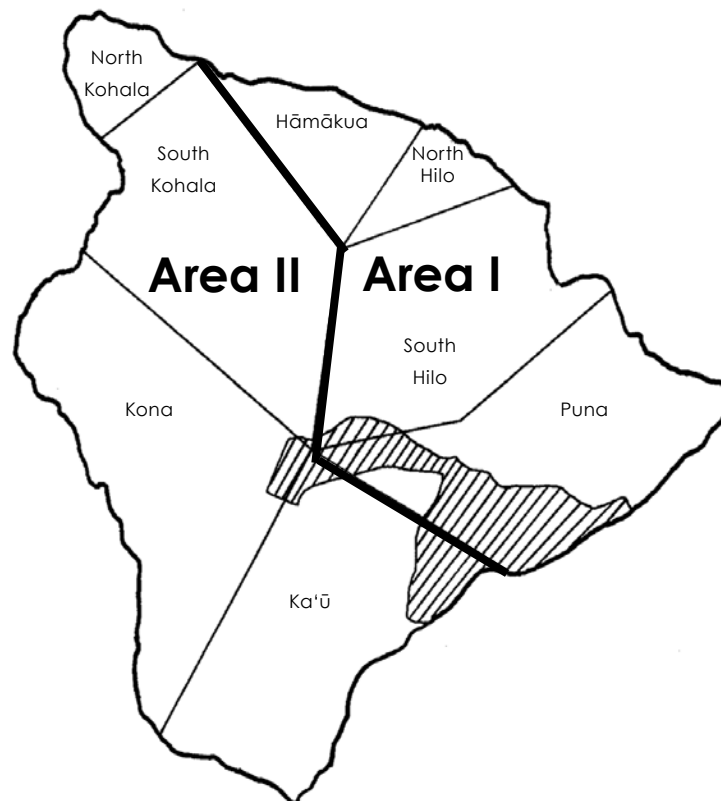
Commanders: Assistant Chief Henry Tavares • Major Randy Apele

The Area I Operations Bureau includes investigative and patrol operations in East Hawai‘i. Its districts include Hāmākua, North Hilo, South Hilo and Puna—an area encompassing 1,685 square miles. A captain heads each of the four patrol districts.

Area II—West Hawai‘i

Commanders: Assistant Chief Paul Kealoha • Major Mitchell Kanehailua

The Area II Operations Bureau includes investigative and patrol operations in West Hawai‘i. The 2,345 square-mile area includes the districts of North Kohala, South Kohala, Kona and Ka‘ū, each headed by a captain.



Criminal Investigations Divisions

Commanders: Area I—Captain Robert Wagner • Area II—Captain Chad Basque

The Police Department's investigative operations fall under the Criminal Investigations Divisions—one in Area I and one in Area II.

CID commanders oversee the operations of

the Criminal Investigations Section, Juvenile Aid Section and Vice Section with operations in both Area I and Area II.

Area I also includes the Crime Lab in Hilo.

Criminal Investigations Sections (CIS)

Commanders: Area I—Lieutenant Gregory Esteban • Area II—Lieutenant Gerald Wike

Criminal Investigations Section detectives investigate felony cases in the South Hilo, Puna, North Hilo and Hāmākua Districts. During Fiscal Year 2015–2016, Area I CIS investigated 1,777 crimes. Of those, 544 were burglaries, 259 were thefts and 415 were financial crimes. In comparison with the previous fiscal year, this represents a 26.0 percent decrease in the number of burglaries investigated, a 16.2 percent decrease in thefts and a 26.1 percent increase in financial crimes. The overall solution rate in Area I was 66.9 percent.

Area I detectives investigated eight murder cases and 14 attempted murder cases. At the close of the fiscal year, 12 of those had been solved.

Area II Criminal Investigations Section detectives investigate felony cases in the South Kohala, North Kohala, Kona and Kaʻū districts. During the Fiscal Year 2015–2016, Area II CIS investigated 970 crimes. Of those, 285 were burglaries, 88 were thefts, and 331 were financial crimes. In comparison with the previous fiscal year, this represents a 20 percent increase in burglaries, a .005 percent decrease in thefts, and a 14.9 percent increase in financial crimes. The overall clearance rate

in Area II was 67 percent.

During this fiscal year, Area II detectives investigated two murders, and five attempted murder cases. Six of these cases were solved by the end of the fiscal year and one remained under investigation.

Among the many cases investigated in 2016 by the Criminal Investigations Section, the following were particularly noteworthy:

► On the night of July 13, 2015, police responded to a report of a domestic disturbance at a home in Halaula, North Kohala. As officers approached the house, a gunshot was fired striking one of the officers in the forearm. A woman who ran from the house had been shot in her thigh by her boyfriend, who barricaded himself in the house. The Hawai'i Police Department's Special Response Team responded and encountered gunshots fired at them from the house. Following a lengthy standoff, officers arrested the 37-year-old man the following day. Detectives with the Area II Criminal Investigations Section executed a search warrant at the home and recovered a rifle. Detectives later charged the man with 22 offenses, including three counts of attempted first-degree murder and one count

of attempted second-degree murder.

- ▶ In August 2015, a 49-year-old woman was found dead in a driveway of a Downtown Hilo business with apparent stab wounds. In addition to witnesses' accounts, video footage was recovered. A 35-year-old man who had recently moved to Hawai'i Island was arrested and charged with second-degree murder.
- ▶ In August 2015, police responded to a call of screaming from a home in lower Puna. Officers discovered the body of a 63-year-old woman outside her house with stab wounds. Investigation led to the victim's 40-year-old son being identified as her assailant. He was arrested and charged with second-degree murder.
- ▶ In November 2015, officers responded to a neighborhood in the Hilo area to a reported unresponsive man. A 49-year-old Hilo man was found with an apparent head injury. The victim was transferred to an Oahu hospital, where he died from his injuries. Witnesses identified a 31-year-old Puna man as having been involved in a confrontation with the victim. He was charged with second-degree murder.
- ▶ In November 2015, police responded to a weapons incident in Hilo and discovered a 39-year-old Hilo man with apparent gunshot wounds. He was taken to the hospital, where he died. The investigation led to the arrest of a 34-year-old Hilo man who was charged with second-degree murder and firearms offenses.
- ▶ Detectives with the Area II Criminal Investigations Section initiated a criminal conspiracy investigation as a result of a rash of burglaries and unlawful entries into motor vehicles occurring in the Kona District between September 2015 and March 2016. The investigation involved the theft of personal confidential information and production of fraudulent documents that were used to commit financial crimes. Detectives working with special agents from the U.S. Secret Service arrested seven men and two women during the investigation. Three of the men were referred for federal prosecution, while the remaining four men and two women were referred for state prosecution of more than 60 felonies.
- ▶ In December 2015, police responded to a call from a 38-year-old Puna man who, along with two of his co-workers, had been driving on the Daniel K. Inouye Highway when their vehicle was shot at by the occupants of a vehicle following them. The victims were not injured but their vehicle was disabled by the gunfire. As the fiscal year concluded, no one had been arrested in that case, which remained under investigation.
- ▶ In January of 2016, police responded to a shooting in the upper Waiākea Uka area. Police learned that during a confrontation, a firearm had been discharged but no one at the home was injured and a vehicle was seen fleeing the area. A short while later, police responded to a report of a shooting victim in an abandoned vehicle on the Daniel K. Inouye Highway. Police discovered the body a 25-year-old man with apparent gunshot wounds. A 42-year-old Kona man, identified as the victim's uncle, was arrested and charged with second-degree murder and firearms offenses.
- ▶ In January 2016, while investigating a missing person case, police learned that the missing man had been murdered after they located his decomposing remains, and his death was ruled a homicide. A 34-year-old

Hilo man was arrested and charged with second-degree murder but was released on that charge after witnesses declined to testify. The same suspect was **sentenced to prison for an unrelated crime.**

- ▶ In January 2016, police responded to a popular surfing spot in Hilo to reports of gunfire. At the same time, police at the hospital overheard a call about a shooting victim who had been dropped off by a motorist. Officers followed and stopped a 29-year-old Hilo man whose vehicle had damage from gunfire, and he disclosed that he had dropped off a 31-year-old Oahu man at the hospital after the man had been shot during a confrontation at the surfing spot. A 43-year-old Hilo man was one of the suspects identified, and he was charged with attempted second-degree murder and firearms offenses.
- ▶ In February 2016, while police were searching for a 39-year-old Kona man wanted on an outstanding arrest warrant, they spotted the suspect in a drive-through line at a fast food restaurant in Hilo. When approached, the wanted man attempted to run over a police officer and was shot and killed by another officer. A female passenger also was shot but she survived.
- ▶ In February 2016, police were conducting a search for an escapee and learned that he was in a vehicle that was being operated by a female acquaintance in the parking lot of a shopping center in Hilo. When police conducted a traffic stop on the vehicle, the wanted man emerged from the vehicle and fired at officers, who returned fire. The fugitive was taken to a hospital, where he died. The woman, who was not injured, was arrested and charged with hindering prosecution.
- ▶ On March 31, police responded to a home

in Kalaoa, North Kona, for a report of a woman with a gunshot wound. Officers found the woman unresponsive with a fatal gunshot wound to her head. A 70-year-old man was arrested at the scene on suspicion of second-degree murder. Detectives from the Area II Criminal Investigations Section, assisted by evidence specialists from the Hawai'i Police Department's Crime Lab, continued the investigation. Following the evaluation of evidence recovered at the scene, the man was released from custody pending further investigation. As a result of evidence obtained during the investigation and during an autopsy, and after conferring with the Office of the Prosecuting Attorney, the case was reclassified from murder to suicide on May 20 and then closed.

- ▶ In March 2016, police responded to a call of a shooting in Lower Puna, where officers discovered the body of a 56-year-old Puna man outside a house with gunshot wounds. Investigation determined that the gunshot victim had gone to the house with a bat to confront the homeowner. The homeowner, a 72-year-old Puna man, was arrested for second-degree murder. After detectives conferred with prosecutors, he was released from custody.
- ▶ In March 2016, police responded to Waipio Valley to a report of a body in a valley river. The body of a 49-year-old valley resident was examined and his death was ruled a homicide. At the end of the fiscal year, no one had been arrested in that case, which remained active.
- ▶ In April 2016, a grand jury indicted a Hilo couple for second-degree murder in the death of their son. The nearly 20-year-old case had initially been investigated as a missing person case. Both parents,

a 45-year-old man and his 46-year-old wife, were taken into custody pending their trial.

► In May 2016, police responded to a call from a man who reported that intruders had entered his Pāhoa house and shot his wife. Responding officers observed a vehicle leaving the driveway. When stopping it, they identified a 49-year-old Pāhoa man as the driver. He was arrested after a firearm was observed in his vehicle. Police noticed blood on the rear bumper of the vehicle and, when they looked further, discovered the body of a woman with head wounds. Officers checked the man's house, where they

discovered the bodies of a 5-year-old boy and a 7-year-old girl with apparent gunshot wounds. The victims were identified as the wife and children of the suspect. He was charged with first- and second-degree murder and firearms offenses.

► In June 2016, a police officer responded to a Hilo home and encountered a 25-year-old man armed with a knife and an unleashed vicious dog. After numerous orders to relinquish the knife and restrain his dog failed, the man charged toward the officer, resulting in the officer discharging his service weapon, killing both the man and the dog.

Juvenile Aid Sections (JAS)

Commanders: Area I—Lieutenant Lucille Melemai /Area II—Lieutenant Gilbert Gaspar

The Juvenile Aid Sections (JAS) are primarily responsible for the investigation of sexual assaults of adults and minors, domestic violence and other family-related crimes, and internet crimes involving child exploitation. They also investigate runaways, truants, curfew violators and juveniles involved in serious crimes.

The Juvenile Aid Sections in Area I and Area II are each divided into three specialized units: the Sex Crimes Unit, the Domestic Violence Unit and the General Detail Unit. JAS personnel receive training in domestic violence and sexual assaults, including sexual assaults involving children. Sexual assault nurse examiners are available to assist detectives in conducting forensic examinations on victims of sexual assault.

JAS collaborated with the Missing Child Center of Hawai'i to obtain a replacement canine named "Falcon" due to the retirement

of "Katie." The collaboration included training an officer in Area I, assisted by a sergeant, to become a canine handler. The Area II Juvenile Aid Section General Detail Unit also has an officer trained as a canine handler. Their primary duties are to assist in locating missing children and Alzheimer's patients, although they also may be called upon to trail criminal suspects.

During the 2015–2016 fiscal year, Area I JAS investigated 634 cases—of which 290 were reports of sexual assaults and 90 were reports of domestic violence. This is in addition to 229 investigations of juveniles involved in serious crimes and status offenses (such as runaway, truancy, protective and placement services, and curfew violations), 25 other offenses related to sexual assault, domestic violence, juvenile offenses or personal-assist type of investigations, and 61 miscellaneous public bulletin reports investigated by the

Area I Juvenile Aid Section.

In May 2016, three new detectives were assigned to the Area II Juvenile Aid Section to replace recently promoted and transferred detectives. They were to receive training in sex assault investigations, domestic violence and crimes against children.

During Fiscal Year 2015–2016, the Area II Juvenile Aid Section investigated 530 cases and 266 miscellaneous public incidents, including sexual assaults, domestic violence and other crimes against women, child pornography and other juvenile related crimes, such as burglaries, thefts, child abuse and neglect, and other status offenses.

Among the many cases the Juvenile Aid Sections investigated this fiscal year, the following were particularly noteworthy:

- ▶ In July 2015, detectives from the Area II Juvenile Aid Section investigated a burglary of a home in the Hawaiian Ocean View Estates subdivision. Surveillance video at the house revealed two juvenile male suspects who were later identified. Further investigation linked the suspects to two more burglaries involving three other juvenile suspects. Items that were taken in those burglaries included a pellet rifle, a BB gun, a laptop computer, a smart phone, money, an oriental rug and miscellaneous household items. After completion of the investigation, all three cases were routed to the Office of the Prosecuting Attorney for final disposition.
- ▶ In September 2015, Area I JAS detectives conducted an abuse investigation in connection with a domestic violence incident in the Puna District involving a husband and wife at a home in Volcano. The incident escalated due to the husband possessing a firearm. The Special Response Team responded, while members of the Crisis Negotiation Team communicated with the occupants of the house throughout the night, and the following morning de-escalated the situation. The husband was arrested and later charged with several felony and misdemeanor criminal offenses.
- ▶ In September 2015, detectives from the Area II Juvenile Aid Section conducted an intricate investigation concerning an adult male suspect involved in sexual contact of a female juvenile and child, which he recorded on camera. During the investigation, additional cases were initiated, including sexual assault, protective custody, child abuse, abuse of a family/ household member, promoting dangerous drugs, promoting detrimental drugs, drug paraphernalia, kidnapping, terroristic threatening, reckless endangering, meth trafficking, promoting prostitution, and use of a computer in commission of a separate crime. After concluding the investigation, which included the execution of numerous search warrants, in March 2016, the Department of Homeland Security, Immigration and Customs Enforcement adopted the investigation for federal prosecution.
- ▶ In December 2015, Area I Juvenile Aid Section detectives conducted a double sexual assault investigation in the South Hilo District, involving a female adult and a female minor victim. A man was arrested and later charged for the double sexual assault and related felony offenses. He was also arrested on a warrant for a 2011 felony marijuana case and on suspicion of first-degree sexual assault for a 2011 case. The 2011 sexual assault investigation was forwarded to the Office of the Prosecuting Attorney for disposition.

► In February 2016, detectives from the Area II Juvenile Aid Section investigated an abuse complaint involving a woman who made arrangements to live with an adult male homeowner in exchange for house duties. After about two weeks, an argument ensued between the female victim and the homeowner suspect over the electronic transferring of photos. During the argument, which escalated, the man pointed a handgun at the woman and threatened her. To prevent the victim

from leaving, the man tied her up using a vacuum cleaner electric cord. Prior to police arriving at the scene, the suspect untied the victim. He was subsequently arrested and the following cases were added to the initial abuse case: kidnapping, terroristic threatening, promoting a harmful drug, promoting a detrimental drug and drug paraphernalia. At the conclusion of the investigation, those cases were forwarded to the Office of the Prosecuting Attorney for disposition.

Vice Sections

Commanders: Area I—Lieutenant Mark Farias • Area II—Lieutenant Sherry Bird

The Vice Sections are primarily responsible for preventing and suppressing all forms of commercialized vice activity, including prostitution, gambling, cruelty to animals and the importation and distribution of illegal narcotics such as crystal methamphetamine, cocaine, heroin, designer drugs and diverted prescription pills.

The Area I and Area II Vice Sections each have three narcotics detection canine teams with one being a dedicated canine team that focuses its investigative efforts on the importation and exportation of illegal narcotics and/or proceeds from narcotics distribution by focusing on parcel interdiction at the various mailing services at the two main shipping ports of entry and by conducting passenger screenings at the various airports.

Crystal methamphetamine (also known as “ice”) continues to be the greatest drug threat to the community, as the drug is continually being imported into the island from Honolulu and the West Coast by way of body carriers and parcel services.

The abuse of pharmaceutical prescription

drugs (known as “pharmaceutical diversion”) continues to remain an alarming drug threat in the United States, including in Hawai‘i County. It has been reported that pharmaceutical drugs—legally prescribed or diverted—were present in approximately 90 percent of the search warrants executed for illegal narcotics. The most commonly recovered pharmaceutical drugs during these investigations were oxycodone, hydrocodone, methadone and illegal steroids.

In November 2008, Hawai‘i County voters passed a bill for an ordinance making the adult personal use of marijuana the lowest law enforcement priority of the Hawai‘i Police Department. The ordinance prohibited the Hawai‘i County Council from accepting any federal funding for marijuana eradication. A week before the end of Fiscal Year 2015–2016, the Hawai‘i Supreme Court invalidated the ordinance, saying it is unenforceable because it conflicts with state law. During the seventh and final year of this bill, the Hawai‘i Police Department’s Vice Sections recovered 8,996 marijuana plants and more than 148 pounds

of dried processed marijuana despite the absence of eradication missions.

Abuse of medical marijuana laws, which were enacted in Hawai‘i in 2000, also is common.

Vice officers belong to the statewide Hawai‘i Narcotics Task Force and are involved in joint operations with the Drug Enforcement Administration, FBI, Immigration and Customs Enforcement, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The Vice Sections are also a part of the Hawai‘i High Intensity Drug Trafficking Area Task Force. They continue to strive to identify, infiltrate, and dismantle drug trafficking organizations in Hawai‘i County from the street to the highest level.

In 2015–2016, Area I Vice Section officers conducted 1,633 drug investigations, resulting in 367 arrests and 1,125 charges. In addition, Area I Vice officers recovered the following illegal drugs:

- ▶ 5.7 pounds of crystal meth
- ▶ 8,211 marijuana plants
- ▶ 142 pounds of dried marijuana
- ▶ 248.7 grams of heroin
- ▶ 72.7 grams of cocaine
- ▶ 1,308 assorted prescription pills

In 2015–2016, Area II Vice Section officers conducted 566 drug-related investigations, which resulted in 132 arrests for 406 charges. In addition, Area II Vice officers recovered the following illegal drugs:

- ▶ 2,561.26 grams (5.6 pounds) of crystal meth
- ▶ 785 marijuana plants
- ▶ 6.12 pounds (2,774.6 grams) of dried marijuana
- ▶ 909.6 grams of hashish
- ▶ 342.9 grams of heroin
- ▶ 36.74 grams of cocaine
- ▶ 422 assorted prescription pills

Among the many cases investigated, the following were particularly noteworthy:

- ▶ In July 2015, vice officers observed a possible marijuana distribution operation advertised on a YouTube video titled “Alternative Pain Management Puuhonua Collective Hawaii Big Island Cannabis” that had been posted the previous month on the channel of a man with a Puna address. In August 2015, an undercover officer was sent to the address. The officer met with a 58-year-old man confirmed to be the person on the video and observed what appeared to be a marijuana dispensary/storefront. In September 2015, a search warrant was executed on the address, leading to the recovery of 150 marijuana plants, 13,417.4 grams (29.58 pounds) of dried processed marijuana, 2,498.9 grams (5.5 pounds) of marijuana infused food, 357.0 grams of marijuana concentrate, paraphernalia associated with the packaging, distribution and consumption of narcotics, and \$1,827 in cash. The man was arrested and charged with 32 counts of drug-related offenses.
- ▶ In August 2015, officers of the Area I Vice Section made an aerial observation of approximately 60 potted marijuana plants on an undeveloped piece of property in the Hawaiian Acres subdivision in Kurtistown. Officers were also able to observe trails leading from the plants to an adjoining property with a house on it. The owner of the parcel was a 55-year-old man with a Hilo address. After conducting a check for medical marijuana permits, the State of Hawai‘i Department of Health, confirmed that the property located on Pulelehua Road was registered as an authorized grow site and had multiple valid cards or permits, which the number of plants exceeded. Search warrants for the three adjoining

properties were executed, which led to the recovery of 41 growing marijuana plants outdoors, 268 growing marijuana plants indoors, 68.12 pounds of dried processed marijuana and \$19,500 in cash. The Hilo man was arrested on 14 counts of marijuana and paraphernalia offenses.

- In February 2016, officers of the Area I Vice Section recovered a parcel from a parcel service following a canine screen. During the execution of a search warrant on the parcel, police recovered 276.4 grams of “ice” or crystal-methamphetamine. A “controlled delivery” of the parcel was made at a Puna address and accepted by a 36-year-old Los Angeles woman. Two separate parcels recovered the next day from the same parcel service were destined for the same address and contained 187.2 grams and 190.6 grams of “ice” or crystal-methamphetamine. The woman was arrested and charged with three counts of first-degree meth trafficking and three counts of possessing drug paraphernalia.
- In September 2015, Area II Vice Officers took over a narcotics investigation after Kona Patrol officers responded to a request to check on the well-being of a man who was seen in a parked sports-utility vehicle at a business establishment with the engine running for two hours. Arriving officers found a 39-year-old man slumped over the driver’s seat of the SUV with the engine still running. When they woke him, he appeared to be under the influence of an intoxicant, and officers observed paraphernalia associated with intravenous drug use inside the vehicle. The man, who was the sole occupant, was arrested and taken to the Kona police cellblock. Vice officers executed a search warrant on the SUV and recovered 40.7 grams of heroin, 2.8 grams of methamphetamine, 26 diverted pharmaceutical pills, a switchblade and \$4,457 in cash for forfeiture. The man was charged with operating a vehicle under the influence of an intoxicant, first-degree promotion of a dangerous drug, four counts of third-degree promotion of a dangerous drug, and one count each of fourth-degree promotion of a harmful drug, possession of drug paraphernalia, and possessing a prohibited switchblade.
- In September 2015, Area II Vice Officers executed a search warrant on a vehicle owned and operated by a 41-year-old man, after he was stopped for a traffic violation in Kailua-Kona. A search of the vehicle resulted in the recovery of a loaded 9mm semi-automatic handgun, a box of live 9mm ammunition, two zip packets containing crystal methamphetamine with a combined weight of 2.1 grams, a plastic bag containing 156.4 grams of marijuana, a plastic bag containing 29.3 grams of crystal methamphetamine, 24 zip packets of heroin with a combined weight of 29.4 grams, a jar with 4 grams of marijuana and various items of drug paraphernalia and a box of live 30.06 rifle ammunition. The man was charged with methamphetamine trafficking, promoting dangerous drugs, drug paraphernalia and several firearms offenses.
- In November 2015, Airport Task Force officers, while conducting checks at a parcel shipping business, located a suspicious parcel sent from Ontario, California, and destined for an address in South Kona. A narcotics canine screening resulted in a positive alert and officers prepared a search warrant to open the parcel. Officers executed the warrant and recovered two containers,

each containing 19.87 ounces of crystal methamphetamine. Working in collaboration with the Drug Enforcement Administration, a controlled delivery was attempted. However, no one claimed the parcel and no suspects were identified. The DEA is continuing this investigation.

► In December 2015, Area II Vice Officers, working with the FBI, received information that a 32-year-old man, a known heroin importer and resident of Kailua-Kona, had traveled from Kona to California and was scheduled to return to Kona within two days. Officers observed as the man deplaned the flight from California and then met with a 28-year-old Oceanside, California, man. Both men were eventually picked up by a 21-year-old Kailua-Kona woman. After police conducted a traffic stop on the vehicle, a narcotics canine screening resulted in a positive alert. The three persons were arrested for promoting dangerous drugs and taken to the Kona police station. Officers had knowledge that this organization's method of operation is to internally "body-carry" the narcotics to avoid law enforcement detection. Police obtained search warrants to X-ray both men's bodies at the hospital. Upon serving the X-ray warrant on the Kona man, no anomalies were noted. After serving the X-ray warrant on the California man, approximately 3 ounces of heroin and 12.7 grams of crystal methamphetamine were recovered. The Kona man was released pending further investigation. The Kona woman was arrested and charged with promoting dangerous drugs and possessing drug paraphernalia. The California man was arrested and charged with methamphetamine trafficking, promoting dangerous drugs and possessing

drug paraphernalia.

► In May 2016, South Kohala Patrol Officers responded to reports of a reckless driver on the Daniel K. Inouye Highway at the 16-mile marker headed in the Kona direction. Officers located the vehicle traveling westbound near the Route 190 intersection. Upon contacting the operator and sole occupant, a 39-year-old man, officers determined that he was wanted in connection with a narcotics investigation previously initiated by Area I Vice. After arresting him, officers conducted a cursory search of his person and located two plastic packets containing 0.2 grams of methamphetamine and \$4,425 in cash. The man was taken to the Kona police station and his vehicle was towed to the South Kohala police station. Police executed a search warrant on the vehicle and recovered a loaded 9mm semi-automatic pistol, 29 unspent rounds of ammunition, 189.4 grams of methamphetamine packaged in distributable amounts, 0.6 grams of cocaine, 18 hydrocodone pills, four morphine pills, 202.2 grams of marijuana packaged in distributable amounts, and paraphernalia associated with the use and distribution of methamphetamine and marijuana. The man, who was a convicted felon, was charged with first-degree methamphetamine trafficking, four counts of third-degree promoting dangerous drugs, first-degree promoting detrimental drugs, second-degree promoting detrimental drugs, two counts of possessing drug paraphernalia, reckless driving, driving without a license, driving without insurance and eight weapons offenses. In addition, for the previous narcotics offenses initiated by Area I Vice, the man was arrested and charged with one count of first-degree

promoting detrimental drugs and three counts each of third-degree promoting dangerous drugs and possessing drug paraphernalia.

► In June 2016, Vice officers executed a search warrant on Kino'ole Street following a narcotics investigation into a 35-year-old man, known to be a mid-level drug dealer. Officers recovered 113.2 grams or 4 ounces of crystal methamphetamine and paraphernalia associated with its packaging and distribution. The man was arrested for first-degree drug trafficking, third-degree promotion of a dangerous drug and two counts of possessing drug paraphernalia. Also recovered was

\$1,295 in cash for asset forfeiture.

► In June 2016, officers of the Area I Vice Section executed a search warrant on a vehicle at a Banyan Drive address following a narcotics investigation into a 52-year-old man who was known to be a high-level drug dealer. Officers recovered 338 grams, or 12 ounces, of crystal methamphetamine and paraphernalia associated with its packaging and distribution. The man was arrested for first-degree drug trafficking, third-degree promotion of a dangerous drug and two counts of possessing drug paraphernalia. Also recovered was \$556 in cash for asset forfeiture.

Crime Lab

Supervisor: Criminalist III Kathy Pung

In Fiscal Year 2015 – 2016, after training and on-the-job work experience, the department's evidence specialist I was reallocated to evidence specialist II, and the criminalist I was reallocated to criminalist II. Within this time period, the Crime Lab acquired and put into service updated analytical and precision balances with printers for drug analysis casework. The balances were purchased with Coverdell grant funds.

Within this time period, the Crime Lab completed 1,324 cases, compared with 1,363 in Fiscal Year 2015, 1,630 in Fiscal Year 2014, and 1,583 in Fiscal Year 2013. Crime Lab casework consisted of 882 drug, 361 latent print, 36 firearm, 26 biological, and two forensic computer cases.

Crime Lab personnel conducted 48

in-service training sessions for Area I and Area II Operations, with 464 personnel receiving forensic services-related training. The evidence specialists assisted in 113 call-outs that included major crime scenes, traffic fatalities, autopsies and requests for specialized evidence processing. A criminalist assisted in six of the 113 call-outs, and responded to 17 call-outs when an evidence specialist was not available. Crime Lab personnel provided community service through public speaking engagements such as the Onizuka Science Day Program.

In Fiscal Year 2015–2016, the Crime Lab received a Coverdell Forensic Science Improvement grant of \$23,151 for Crime Lab accreditation and training. The Crime Lab accreditation application process was initiated, with the goal of

attaining accreditation in Fiscal Year 2016–2017. **Crime Lab personnel** were able to attend various training events, including the International Association for Identification Annual Educational Conference, American Academy of Forensic Sciences Annual Scientific Meeting, Clandestine Laboratory Investigating Chemists Annual Technical Training seminar, a Balance Uncertainty Part II training session hosted by the HPD-SIS laboratory, a Latent Print Processing class hosted by NED, and a DEA Forensic Chemist seminar.

Crime Lab personnel received additional training through the U.S. Secret Service, and National Institute of Justice. The U.S. Secret Service provided training and equipment to conduct digital evidence recovery from electronic mobile devices, such as cell phones and tablets, increasing the forensic services' capabilities of HPD Crime Lab. The National Institute of Justice provided a grant-funded workshop on statistics and probability in forensic science. The workshop facilitated a better understanding of the application of statistics and probabilities in the forensic sciences.

Area I Patrol Districts

Hāmākua District

Commander: Captain Andrew Burian

Area: 223 square miles / Authorized sworn positions: 18

For the 2015–2016 fiscal year, property crimes in the Hāmākua District remained relatively stable with the previous fiscal year. There were 22 reported burglaries compared with 18 the previous fiscal year. Nine of the burglaries were solved, for a clearance rate of more than 40 percent, which is far above the national average.

Theft reports also remained relatively stable with 70 reported this year compared with 78 the previous year. Twenty-four percent of the thefts were cleared.

Traffic enforcement remains a priority as officers issued more than 2,000 citations. Of those, 629 were for speeding, 149 for seat belt or child restraint violations and 70 for using a cell phone or other electronic device while driving. Emphasis on traffic enforcement remains an important motivator for reducing major traffic accidents. There were 37 major traffic accidents this fiscal year, a slight decrease from the 38 accidents during the previous fiscal year.

Officers assisted Civil Defense during the Dengue Fever outbreak this past year by providing assistance at the Waipio Valley lookout in restricting traffic into the valley to residents only.

The school resource officer assigned to Honoka'a schools actively worked with school administrators and provided a visible presence at the Honoka'a and Pa'auilo schools to limit incidents of bullying, truancy, thefts and drug activity.

Throughout the year, the community policing and school resource officers worked in partnership with Neighborhood Watch organizations, schools and other community organizations, such as the Honoka'a Traffic Safety Council and Honoka'a Business Association to address various community concerns. Some of the major community events in which they were involved included the annual Western Week parade and block party, Honoka'a Peace Day Fair, and the popular First Friday events in Honoka'a.

The North Hilo District at Ka'ala Gulch and the South Kohala District at Lakeland form the boundaries of the Hāmākua District. Its police station is located at 45-3400 Māmane Street in Honoka'a Town.

North Hilo District

Commander: Captain Andrew Burian

Area: 144 square miles / Authorized sworn positions: 13

The North Hilo District experienced a significant decrease with four reported burglaries compared with 17 the previous fiscal year. Two of the reported

burglaries were closed, for a clearance rate of 50 percent.

Thefts also decreased to 29 cases compared with 33 the previous fiscal year. Eight of the

thefts were cleared, for a clearance rate of 28 percent.

During this fiscal year, there were no traffic fatalities, and major traffic collisions decreased to 25 compared with 33 the previous fiscal year.

North Hilo officers issued more than 1,600 citations for the fiscal year. Of those, 552 were for speeding and 96 for seat belt or child restraint violations.

The North Hilo and Hāmākua community

police officers and Hāmākua school resource officer work together in North Hilo and assisted with two Drug-Free Bash celebrations with the Queen Lili‘uokalani Children’s Center, the Big Island Biker Fest at Laupāhoehoe Point, and the Laupāhoehoe Music Festival. They also partnered with the Department of Parks and Recreation by conducting HI-PAL presentations dealing with safety during summer fun programs at the Papa‘aloa Gym.

The Hāmākua District at Ka‘ala Gulch and the South Hilo District at Hakalau Gulch form the boundaries of the North Hilo District. Its police station is located at 36-2285 Pu‘u‘ala‘a Homestead Road in Laupāhoehoe just west of the 25-mile marker off Old Māmalahoa Highway.

South Hilo Patrol

Commander: Captain Richard Sherlock

Area: 635 square miles / Authorized sworn positions: 88

The South Hilo District is the department’s largest staffed patrol division and is situated on the ground floor of Building B at the Public Safety Complex, 349 Kapi‘olani Street. Patrol officers also operate out of the Mo‘oheau Bus Terminal mini-station.

The district provides 24-hour police services and consists of the Patrol Division—which also operates the East Hawai‘i Detention Center, which houses pre-trial detainees for the four police districts that comprise Area I Operations—the **Community Policing** Section, which includes community policing and school resources officers, and the reserve officer program.

Burglaries decreased by 55 percent this fiscal year as police investigated 161 burglaries this year compared with 354 reported the previous fiscal year. This was also a 59 percent decrease from the 390 reported burglaries two fiscal years ago. Decreases in burglary rates

can be attributed to crime trend analysis, intelligence, objective-based task forces, and the cooperation of Neighborhood Watches in raising community awareness and sharing information with friends and neighbors. The rise of social media has also assisted not only in identifying suspects and sharing information but also in stigmatizing criminal activity in the East Hawai‘i community.

Thefts also decreased to 2,215 from 2,536 reported during the previous fiscal year.

Theft of motor vehicles decreased by 55 percent this fiscal year to 212 compared with 333 in the previous fiscal year. Although there was a reduction in auto thefts, this crime trend remains a concern of the South Hilo District, as well as throughout Hawai‘i County.

Robberies in South Hilo remained consistent for the year with 25 reported cases. The majority of robberies occur in commerce areas, where shoplifting attempts sometimes turn physical during the

suspects' attempts to flee.

Officers saw an increase of reported sexual assault cases. This fiscal year, 169 sex assaults were reported compared with 108 the previous fiscal year.

Officers responded to 470 major traffic accidents compared with 454 the previous fiscal year. In the area of traffic enforcement, officers arrested 280 impaired drivers and issued 2,296 speeding and 1,146 seat belt citations. Overall, officers issued 14,903 traffic citations.

Officers also served 3,561 court documents, including bench warrants, penal summonses, subpoenas and restraining orders.

Police investigated six murder cases in

South Hilo this fiscal year compared with two the previous fiscal year.

In November 2015, a 39-year-old man was shot and killed outside a house in Waiākea.

In December 2015, a vehicle traveling on the Saddle Road just above Kaūmana was shot at by a trailing vehicle numerous times, with several stray bullets striking a nearby house.

In January 2016, a shooting occurred at the Honoli'i lookout during the early morning hours.

These events culminated during a one-week period in February 2016, with two officer-involved shootings in shopping areas off Kanoiehua Avenue in Hilo.

The South Hilo District occupies the area between the North Hilo District at Hakalau Gulch and the Puna District at Pāpa'i. Its police station is located at 349 Kapi'olani Street.

Puna District

Commander: Captain Samuel Jelsma

Area: 683 square miles / Authorized sworn positions: 59

The district of Puna is larger in land mass than the entire island of Oahu or the cities of Fort Worth and Dallas, Texas, combined. It has been described as the fastest-growing district on the island, with a projected population of more than 58,000 people by 2020.

Fifty-one police officers, six sergeants, one lieutenant and one captain position are designated for the Puna District. Additionally, the district has four volunteer reserve officers and three civilian staff members.

The Puna District station is located just outside Pāhoa Village on Highway 130. The Kea'au substation is located in Kea'au town off Old Volcano Road.

Community Policing officers in Puna work with 10 Neighborhood Watch groups

in crime prevention, community awareness and problem solving. Command staff from the Puna District attend several of these community meetings including the monthly Puna Watch meeting, which bring together most of the Neighborhood Watch groups from the district to one forum to discuss concerns and share information.

Improving the quality of life is a police and community priority in Pāhoa town. The Community Policing and Patrol officers conduct crime reduction details and walking patrols to increase police presence in town. Community police officers attend Pāhoa Main Street Association meetings monthly to discuss and address issues with the major business owners in Pāhoa Town.

During this fiscal year, police investigated

a triple murder in Leilani Estates. Patrol officers responded to a report of a woman shot at a home. When they arrived at the scene, they observed a vehicle driving away from the property. Officers initiated a traffic stop on the male driver of the vehicle. During the traffic stop, officers observed blood on the rear bumper. When they investigated, they discovered the body of a woman with head wounds. Officers then discovered two more deceased persons at the house. The investigation later revealed that the male driver had murdered all three persons. Area I Criminal Investigations Section detectives later charged the suspect for the triple homicide.

Also during this fiscal year, Officer Brian Souki was honored by his peers and

supervisors as “2015 Puna Patrol Officer of the Year” for his outstanding dedication, efforts and work ethic. Officer Souki had previously been named Aloha Exchange Club’s Officer of the Month for both March and August of 2015.

Overall, criminal cases initiated in the Puna District follow a three-year trend of remaining largely unchanged with 6,392 cases initiated in Fiscal Year 2015–2016. Burglaries decreased by nearly 44 percent, with 229 reported cases compared with 403 the previous fiscal year. Thefts decreased by nearly 16 percent to 993 compared with 1,156 the previous fiscal year.

The Puna District served 2,843 court documents, an increase of nearly 15 percent from the 2,434 served the previous fiscal year.

The Puna District is situated between the South Hilo District at Pāpa‘i and the Ka‘ū District at Keauhou Landing. Its police station is located in Pāhoa at 15-2615 Kea‘au-Pāhoa Road.

Area II Patrol Districts

North Kohala District

Commander: Captain Albert Jason Cortez

Area: 123 square miles / Authorized sworn positions: 16

During Fiscal Year 2015–2016, the North Kohala District experienced a slight decrease in the number of reported burglaries (17 cases compared with 19 cases the previous fiscal year). Reported assaults were up (25 cases compared with 18 cases the previous fiscal year), and thefts were up (72 cases compared with 62 cases the previous fiscal year).

A police-community meeting was held at the Kohala High School cafeteria, where members of the community voiced their concerns to the police captain and his Community Policing officer.

North Kohala patrol officers issued 524 speeding citations this fiscal year (compared with 639 the previous fiscal year).

The number of major traffic accidents increased (from 25 to 40) with no fatalities.

Among the incidents that occurred in North Kohala, one was particularly noteworthy: In July 2015, police responded to a report of a domestic dispute at a home in Halaula. Officers learned that gunshots had been fired prior to their arrival. When they approached the house, a 38-year-old man shot and wounded a 13-year veteran of the Police Department and barricaded himself inside the house. The wounded officer was given first

aid at the scene and continued to secure the perimeter. Officers later made contact with a 34-year-old woman, who reported that the suspect had shot her in the leg during the dispute. The Police Department's special response team responded, and a lengthy stand-off ensued. Through the efforts of the crisis negotiation team, the suspect surrendered and was arrested for multiple offenses, including attempted murder.

The North Kohala community police officer participated with the community in annual events, including the Kamehameha Day parade, Skate Day, and Toys for Tots. HI-PAL activities at Kohala Elementary and Middle School also continued with the community police officer, including kickball and dodge ball. The district's first annual SPLASH! pool event was held at the Kohala community pool. Approximately 70 kids of all ages participated in games, food and fun. Monthly articles in the Kohala Mountain News are contributed by the Community Policing officer to address police and community concerns. Interviews of our Community Policing officer have been conducted on a local radio station to address current issues and have been met with positive feedback from the community.

The North Kohala District is bounded by South Kohala at Kai'ōpae and Hāmākua at Honopue. Its police station is located behind the Kamehameha statue in Kapa'au at 54-3900 Akoni Pule Highway.

South Kohala District

Commander: Captain Randall Medeiros

Area: 688 square miles / Authorized sworn positions: 34

The South Kohala District experienced a decrease in property crimes during Fiscal Year 2015–2016. Although burglaries increased by 1.8 percent to 54 reported burglaries (up one from 53), thefts (including vehicle break-ins) decreased by 31.8 percent to 240, and auto thefts decreased by 20 percent to 24 reported stolen vehicles. Patrol officers cleared 30 percent of burglaries and 62 percent of theft cases (including vehicle break-ins).

South Kohala officers conducted 35 drug investigations to interdict criminal activity associated with drug use and distribution within the South Kohala community.

Throughout the year, Community Policing and Patrol officers conducted search warrants and traffic stops that led to the recovery of drugs and numerous illegal firearms.

South Kohala patrol officers' traffic enforcement increased to 6,146 citations compared with 5,967 citations during the previous fiscal year. DUI arrests also increased to 111 compared with 107 the previous fiscal year.

Officers conducted 149 major traffic investigations and 438 minor traffic investigations for a total of 587 collisions, which reflect a 1.7 percent increase over the previous fiscal year. The district experienced two fatal traffic crashes.

The South Kohala District covers the area between the North Kohala District at Kiowa and the Kona District at Kua'i Point. Its police station is located at 67-5185 Kamāmalu Street in Waimea.

Kona Patrol

Commander: Captain Randal Ishii

Area: 834 square miles / Authorized sworn positions: 83

The Kealahou police station serves as the main station for the Kona Patrol Division and also houses a cellblock detention section, a firearms registration section and an evidence section.

During Fiscal Year 2015–2016, Kona Patrol clerks processed 3,469 firearms registrations, including handguns, rifles and shotguns. Of these registered firearms, 1,927 were imported from outside the state.

The evidence section, which is staffed by two evidence custodians, is responsible for the storage and preservation of several thousand pieces of evidence recovered in

criminal investigations as well as non-criminal incidents. The preservation of these pieces of evidence is critical to the successful prosecution of criminal cases. Evidence is stored at the main Kealahou police evidence room as well as in a newly acquired warehouse owned by Hawai'i County in the Kaloko area. The installation of a new vehicle evidence lot in the main station rear parking lot began at the end of the previous fiscal year and was completed so vehicles can be stored in Kona rather than being transported across the island to a warehouse in Puna.

At the end of the 2015–2016 fiscal year,

the Kona Patrol District was short seven officers of the 83 positions authorized. It was anticipated that new officers and veteran officers would be assigned to the Kona District once the officers in the police recruit class completed their field training and officer transfers were made.

Kona Patrol officers responded to more than 9,252 criminal complaints and more than 17,500 calls for service related to non-criminal complaints, such as minor nuisances or persons needing assistance. They also issued 20,838 citations, of which 2,658 were for speeding violations. In a department-wide effort to combat distracted driving, Kona Patrol officers issued 1,001 citations for using an electronic device while driving. In addition, 1,462 citations were issued for mandatory seat belt use, 1,512 for driving an unsafe vehicle, and 449 drivers were arrested on suspicion of driving under the influence of alcohol or drugs. The Kona District received 5,408 court documents and served 3,078 court documents.

The Kona Community Policing Unit is

headed by a police sergeant and consists of seven community police officers and two school resource officers.

The community police officers focus on addressing community-related issues in the North and South Kona areas. Their responsibilities also include bicycle patrol in the Ali'i Drive area and beach sweeps to ensure the safety of the tourist community and businesses and to address the growing number of transient homeless persons attracted to the warm climate. Their problem-solving efforts include crime reduction details and spearheading Neighborhood Watch groups.

The school resource officers are assigned to Konawaena Middle School and Kealakehe Intermediate School. In addition to teaching DARE classes, they provide students with information on anti-bullying, internet safety, laws and ordinances, and a variety of other topics. The school resource officers establish a rapport with the students so that they perceive police officers as more approachable. They provide a liaison between the school and the Police Department.

The Kona district occupies the area between the South Kohala District at Waikoloa and the Ka'ū District at Kaulanamauna. Its main police station is in Kealakehe at 74-611 Hale Maka'i Place. In addition to the main station, the Kona district has two sub-stations. One is located at Hale Halawai in downtown Kailua-Kona and the other is in Captain Cook.

Ka'ū District

Commander: Captain Burt Shimabukuro

Area: 700 square miles / **Authorized sworn position:** 24

During Fiscal Year 2015–2016, Ka'ū Patrol officers investigated 83 major traffic accidents, an increase of 75 from Fiscal Year 2014–2015. A total of 3,010 citations were issued. Of those, 636 were for speeding and 156 were for seat belt or child restraint violations.

Ka'ū Patrol officers investigated more than 1,311 incidents and responded to 3,390 calls for services of non-criminal complaints. Officers investigated 69 burglaries, an increase from the 56 cases initiated in the previous fiscal year. Theft and unauthorized entry into motor vehicle cases increased to 168 from

141 the previous fiscal year.

The district received 536 court documents and served 412 of them.

Community police officers continue to work with Neighborhood Watch groups in Discovery Harbor, the Green Sands subdivision and Hawaiian Ocean View Estates to maintain community support and awareness.

They were also involved in the teaching of DARE classes, school presentations on anti-bullying, and Ka'ū Christmas Keiki ID. In addition, they coordinated HI-PAL youth activities, such as three-on-three basketball tournaments in Nā'ālehu and Hawaiian Ocean View Estates and a T-ball tournament in Nā'ālehu.

The Ka'ū District is bounded by the Kona District at Kaulanamaua and the Puna District at Keauhou Landing. Its police station is located at 95-5353 Māmalahoa Highway in Nā'ālehu.

Traffic Enforcement Unit (TEU)

Commanders: Area I—Sergeant Christopher Gali • Area II—Sergeant Bradley Freitas

The Traffic Enforcement Units are charged with investigating traffic crashes involving death or serious injury while also conducting traffic enforcement and training related to traffic enforcement and investigation.

During the 2015–2016 fiscal year, Area I TEU officers, whose offices are in Hilo, investigated eight fatal crashes that killed nine people. Area II TEU officers, whose offices are in Kona, investigated eight fatal crashes that killed nine people.

Of the Area I fatalities, three were related to drugs, one was related to alcohol, and two were related to both drugs and alcohol. Three Area I fatalities were pending toxicology results at the end of the fiscal year.

In Area II, one of the fatalities involved both drugs and alcohol. Alcohol was a factor in two of the fatal crashes and drugs alone were a factor in two.

Area I TEU officers conducted 84 DUI sobriety checkpoints and 81 seat belt and distracted driver checkpoints. They arrested 162 drivers who were under the influence of intoxicants and made 136 other arrests while also issuing 4,109 moving citations, of which 2,084 were for speeding and 1,793

Fatal Traffic Crashes	
Alcohol related	3
Drug related	5
Drug and alcohol related	3
Not impaired	5
Total	16

for regulatory citations.

Area II Traffic Enforcement units conducted 89 DUI sobriety checkpoints and arrested 79 drivers who were under the influence of an intoxicant. They also conducted 97 seat belt and distracted driver checkpoints and issued 556 seat belt citations, 87 child restraint citations and 199 mobile electronic device citations. They issued 8,198 citations, of which 2,600 were moving citations, 3,094 were speeding citations, 1,353 were regulatory citations, 13 were loud muffler citations, four were littering citations, three were parking citations, and 289 were for unsafe motor vehicles. Area II TEU Officers also made 88 other arrests.

Grants

The following grants were funded by state or federal agencies during Fiscal Year 2015–2016:

‘Click It or Ticket’ Basketball

To increase the number of youths and adults being informed or educated regarding the importance of wearing a seat belt and restraining young children in a child safety seat during “Click It or Ticket” events. To reduce fatalities and injuries to occupants aged 17 and under during motor vehicle collisions. This was accomplished by improving awareness of state laws to increase the seat belt usage rate of youths and teens ages 4–17.

Traffic Records/DATA Grant

To establish a statewide traffic data system and ensure compliance with national standards.

Hawai‘i Impact

To combat the methamphetamine (“ice”) drug problem in the County of Hawai‘i by conducting various “sting” operations.

Hawai‘i Narcotics Task Force

To assist with the interdiction of drugs within the County of Hawai‘i via the apprehension/arrest/conviction of individuals smuggling narcotics into, out of and within the County of Hawai‘i.

Roadblock Grant

To reduce the number of alcohol-related fatalities and injuries, increase public awareness and provide a constant deterrence against impaired driving.

Seat Belt Enforcement Grant

To reduce fatalities and injuries to front-seat occupants and rear-seat occupants by increasing the usage rate of seat belts.

Speed Enforcement Grant

To reduce the number of motor vehicle collisions resulting in injuries and fatalities caused by speeding drivers by issuing speeding citations and launching an aggressive islandwide speeding campaign.

Traffic Investigations

To increase the number of officers trained in advanced traffic accident reconstruction and other traffic crash related courses.

Aggressive Driving

To reduce fatalities and injuries, increase public awareness and provide a constant deterrence against aggressive driving.

SANE/SART Training

To provide SANE personnel training, technical assistance and information to respond to violent crimes, physical abuse and crimes of violence against women.

Distracted Driving

To reduce the number of drivers using an electronic mobile device while operating a motor vehicle.

Crime Lab Improved Forensic Services in Hawai'i County

To improve and enhance the quality of Hawai'i County forensic services.

Tobacco Sales to Minors

To provide continued enforcement of the state law prohibiting tobacco sales to minors in the County of Hawai'i.

Wrongful Conviction Project

To improve Hawai‘i County’s response to wrongful conviction allegations by purchasing recording equipment and using related technology for recording custodial interrogations of individuals by law enforcement.

2011 Justice Assistance Grant

To purchase a trailer to transport training materials and mats to outer districts and purchase audio and video equipment for training which will allow the department to produce in-house training videos.

2015 Justice Assistance Grant Program

To purchase equipment and related technology to assist in tracking and managing accreditation files, implement microfilm conversion project and install a security door system for Area I CID.

FBI Organized Crime Drug Enforcement Task Force

To assist with overtime incurred by officers working with the FBI Organized Crime Enforcement Task Force on specified investigations and/or strategic initiative.

US Marshals Service—Hawai‘i Fugitive Task Force

To assist with overtime incurred to Hawai‘i County police officers working with the United States Marshals Service on the enforcement and capture of fugitives wanted under the Hawai‘i Fugitive Task Force Initiative.

COPS

To provide additional support to the Police Department and various communities to assist in the prevention of crimes. This shall be accomplished by providing Neighborhood Watch programs, Business Watch programs, home security inspections and by working with the schools on programs such as anti-bullying campaigns.

United States Department of Justice, Drug Enforcement Administration—Hawai‘i Airport Task Force

To assist with overtime incurred by Hawai‘i Police Department officers working with United States Department of Justice, Drug Enforcement Administration, under the Hawai‘i Airport Task Force, for the purpose of disrupting the flow of illicit drug trafficking into Hawai‘i.

Leica ScanStation Training

To purchase a Leica ScanStation and to host ACTAR MapScenes and ScanStation training classes. This equipment will reduce the time it takes to reopen roadways after fatality investigation and improve the completeness, consistency, and accuracy of the motor vehicle accident report diagram in fatal motor vehicle collision.

Budget

The following are the budget figures for Fiscal Year 2015 – 2016:

Personnel Services

Salaries and wages, straight time	\$ 42,012,214
Salaries and wages, other	\$ 3,592,734

Other current expenses

Contractual services	\$ 9,091,489
Materials and supplies	\$ 2,259,147
Other charges	\$ 413,700
Equipment	\$ 437,849
Miscellaneous accounts	\$ 1,203,651
Grants funded	\$ 1,351,354
Total	\$ 60,362,138

Personnel Changes

New Hires

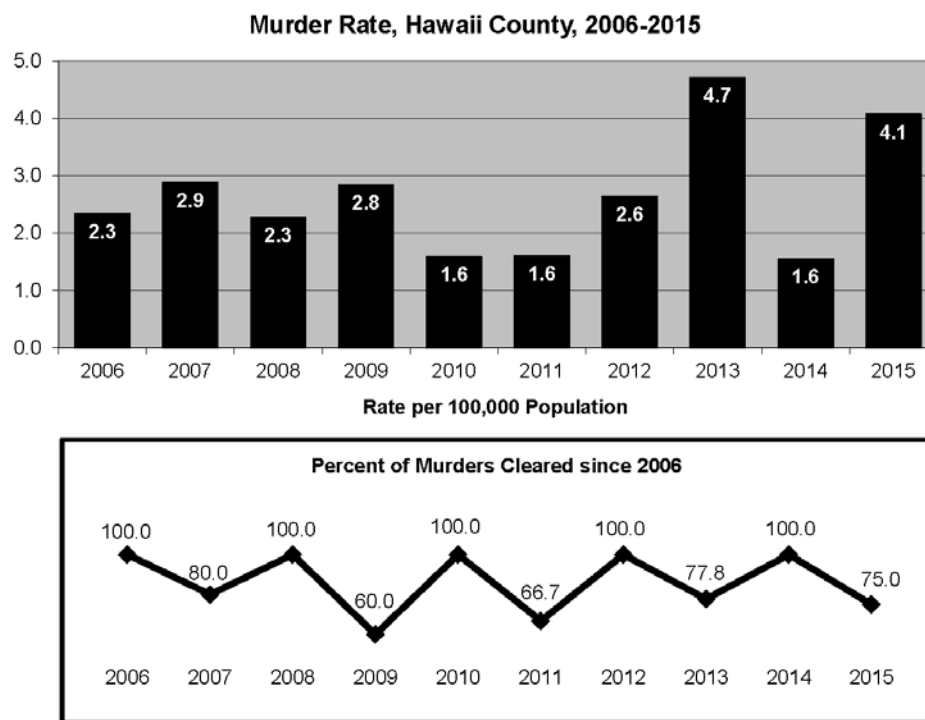
Kamuela A. Akana, Police Officer	Karol A. M. Ikeda, Clerk III
Chad K. Apigo, Custodian/Groundskeeper	Robert K. Kamau Jr., Police Officer
Gerald D. Arguello, Evidence Custodian	Aissa B. McCorkle, Police Radio Dispatcher
Kaipokoka D. Aurello, Police Officer	Isaac Michaels, Police Officer
Conrad C. Bidal, Police Officer	Ann Y. Nakamura-Jones, School Crossing Guard
Suzanne K. S. Braley, Clerk III	Paul C. Oshiro, Police Officer
Jessie W. Brogdon, Police Officer	Lauren K. K. Pacheco, Police Officer
Micah R. Cockett, Information Systems Analyst IV	Kaori K. Picadura, Police Radio Dispatcher
Laurence S. Davis, Police Officer	Joshua K. Rodby-Tomas, Police Officer
Natalie Louise C. K Delaries-Daog, Storeroom Clerk	Rebecca A. Romero, School Crossing Guard
Robert G. Dexter, Radio Technician I	Guy Edward J. Silva Jr., Police Radio Dispatcher
Steven T. Dukich, Custodian/Groundskeeper	Andreana K. Soares, Police Radio Dispatcher
Lisa A. Ebesugawa, Police Officer	Brian Y. Tada, Police Officer
Isabell H. Feki, Police Officer	Desiree E. N. Vierra, School Crossing Guard
Ravani T. Flood, Clerk III	Elik Vodovoz, Police Officer
Jayne M. Frey, School Crossing Guard	Joshua A. Willing, Police Officer
Noelani A. K. Gomes, Clerk III	Brian J. Young, Police Officer
Diana M. Greef, Clerk III	Kyung H. Yu, Police Officer
Christopher J. Huff, Police Officer	

Promotions

Nelson M. Acob, Sergeant	Michelle L. Kualii, Senior Clerk-Stenographer
Andrea K. Akau, Senior Account Clerk	Scott J. Kurashige, Lieutenant
Carrie K. Akina, Detective	Jenny K. L. Lee, Sergeant
William C. Brown, Detective	David T. Matsushima, Detective
Charisse A. Correa, Supervising Police Radio Dispatcher	Jason S. O'Brien, Supervising Police Radio Dispatcher
Lori K. E. Hara, Firearms Registration Clerk	John T. Talich, Sergeant
Kayne K. M. Kelii, Detective	Arlene S. Young, Senior Police Records Clerk
Torey D. Keltner, Traffic Safety Coordinator	

Retirements

Charles M. Adams, Sergeant	Jeness J. Jonas, Clerk III
Jonathan P. Bartsch, Police Officer	Cory L. Koi, Sergeant
Raymond E. Childers, Sergeant	Nancy A. Martinez, Senior Clerk-Stenographer
Julie B. Ebanes, Firearms Registration Clerk	Linda Y. Revell, Supervising Police Radio Dispatcher
Caroldeen N. Freitas, Police Officer	Debra T. Yamashiro, Investigative Operations Clerk
Herbert P. Hamersma, Evidence Custodian	
Robert E. Hatton, Detective	
Gregory A. Ikeda, Police Officer	



Murder - The willful killing of one human being by another.

From 2014 to 2015:

- The rate of reported murders increased 162.3%, with 3 murders reported in 2014, versus 8 murders reported in 2015.

Comparing 2015 to 2006:

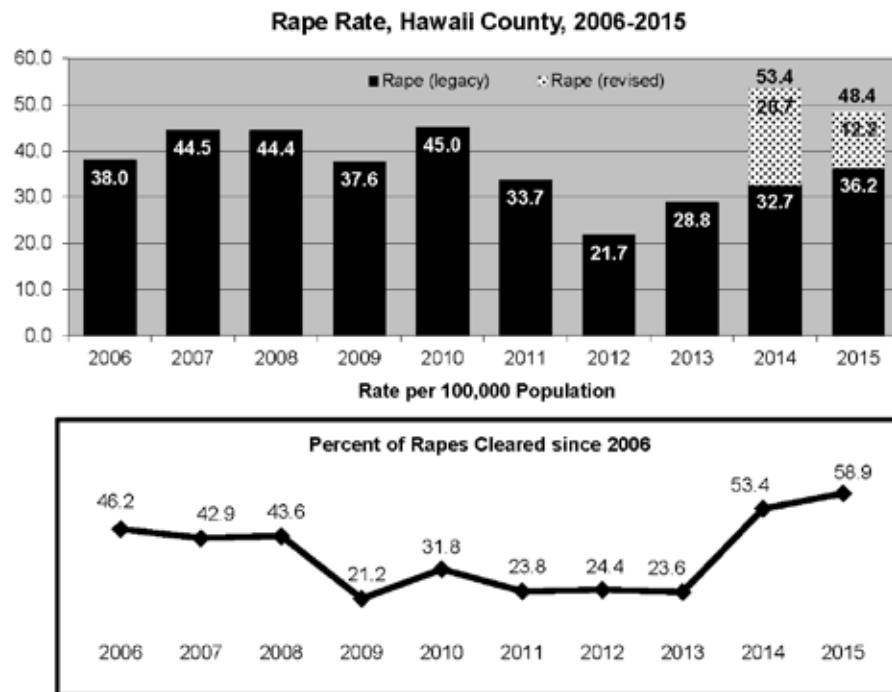
- The murder rate increased 74.5%, with 4 murders were reported in 2006, as compared to 8 murders reported in 2015.

In 2015, of the 8 murders reported:

- Knives or cutting instruments were involved in 37.5% (3).
- Other dangerous weapons were involved in 37.5% (3).
- A strongarm weapon (hands, fists, feet, etc.) was involved in 12.5% (1).
- A firearm was involved in 12.5% (1).

Hawaii County's murder rate in 2015 was the highest in the State of Hawaii.

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.



Rape (legacy)* - The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.

Rape (revised)* - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

From 2014 to 2015:

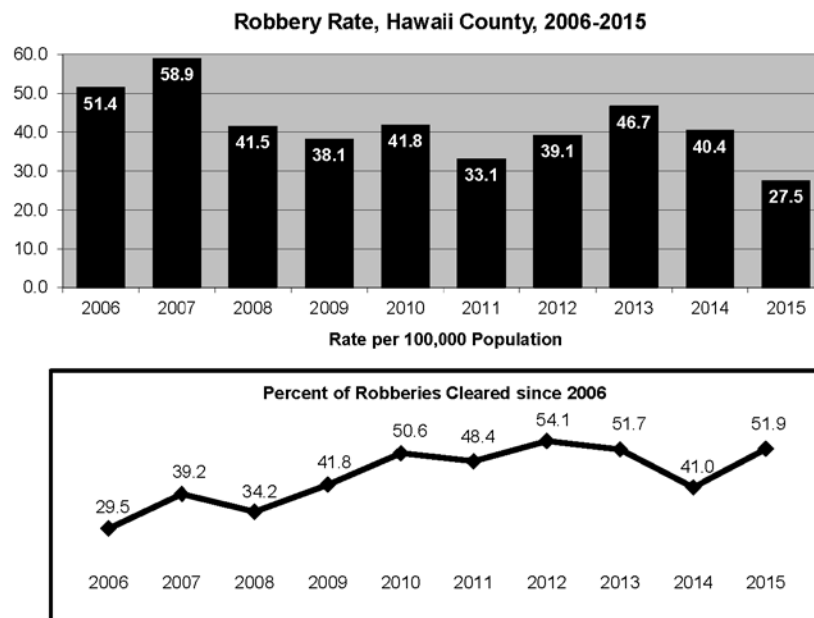
- Reported rapes decreased 9.3% in rate.

Comparing 2015 to 2006:

- The rape rate based on the legacy definition decreased 4.7%.

*Note: On January 1, 2014, the State of Hawaii began collecting rape data under the FBI's revised definition. The State of Hawaii will continue to also collect rape data under the old, or legacy, definition so that comparative trends can be established.

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.



Robbery - The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

From 2014 to 2015:

- Reported robberies decreased 31.9% in rate.

Comparing 2015 to 2006:

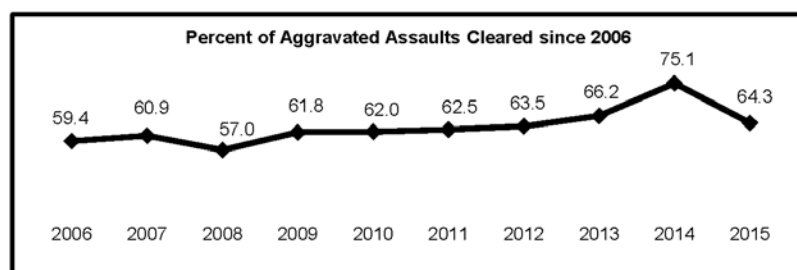
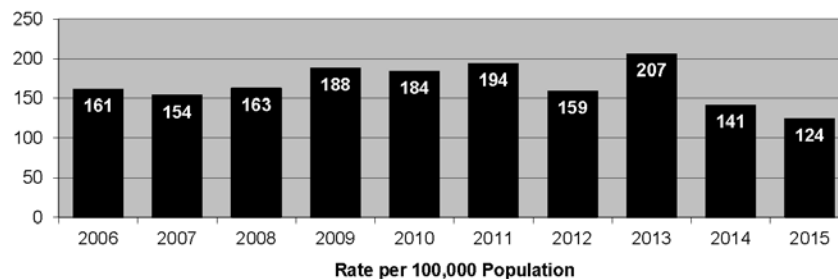
- The robbery rate decreased 46.4%.

In 2015, of the 54 robberies reported:

- Strongarm weapons (hands, fists, feet, etc.) were involved in 51.9% (28).
- Other dangerous weapons were involved in 24.1% (13).
- Knives or cutting instruments were involved in 13.0% (7).
- Firearms were involved in 11.1% (6).

Hawaii County's robbery rate in 2015 was the lowest in the State of Hawaii.

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.

Aggravated Assault Rate, Hawaii County, 2006-2015

Aggravated Assault - The unlawful attack or attempted attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

From 2014 to 2015:

- Reported aggravated assaults decreased 12.1% in rate.

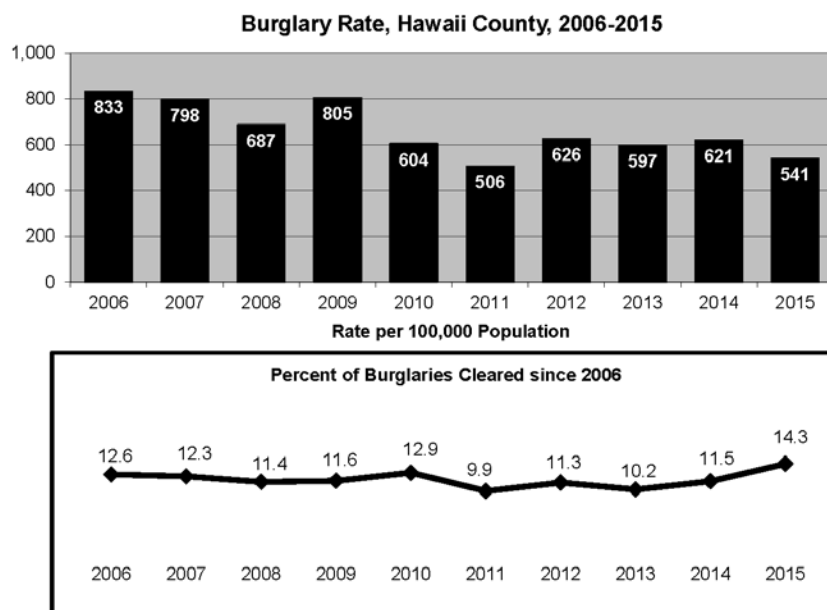
Comparing 2015 to 2006:

- The aggravated assault rate decreased 22.9%.

In 2015, of the 244 reported aggravated assaults:

- Strongarm weapons (hands, fists, feet, etc.) were involved in 38.5% (94).
- Other dangerous weapons were involved in 29.9% (73).
- Knives or other cutting instruments were involved in 17.2% (42).
- Firearms were involved in 14.3% (35).

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.



Burglary - The unlawful entry of a structure to commit a felony or a theft. Attempted burglary is included.

From 2014 to 2015:

- Reported burglaries decreased 12.9% in rate.

Comparing 2015 to 2006:

- The burglary rate decreased 35.1%.

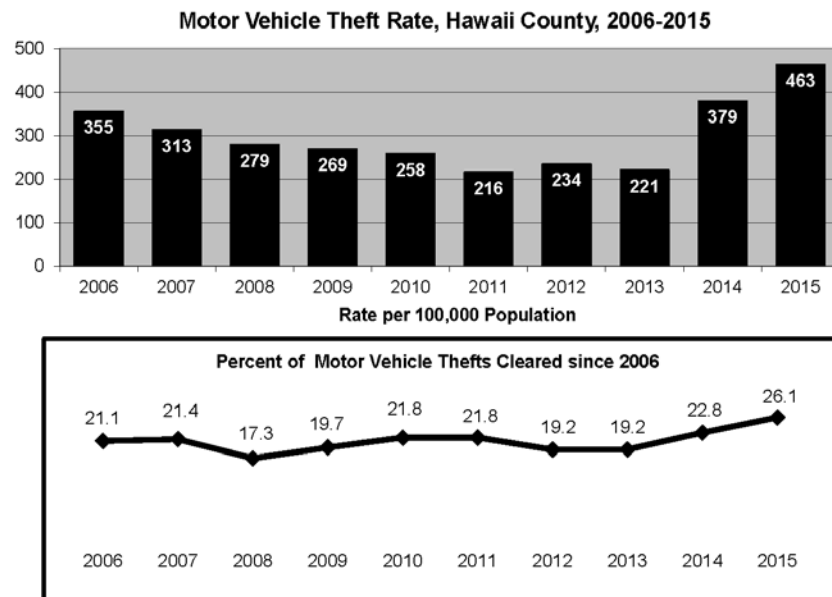
In 2015, of the 1,061 burglaries and attempted burglaries reported:

- Burglary accounted for 99.2% (1,052).
- Attempted burglary accounted for 0.8% (9).

In 2015, of the 1,052 burglaries that were reported:

- Structures entered by force accounted for 57.5% (605).
- Structures entered without force accounted for 42.5% (447).

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.



Motor Vehicle Theft - The theft or attempted theft of a motor vehicle.

From 2014 to 2015:

- Reported motor vehicle thefts increased 22.1% in rate.

Comparing 2015 to 2006:

- The motor vehicle theft rate increased 30.5%.

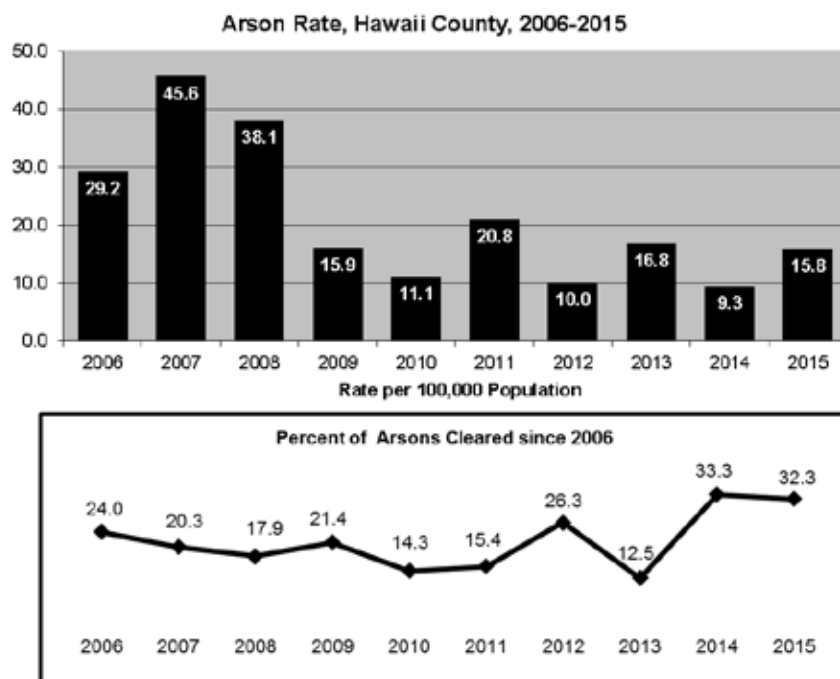
In 2015, of the 909 motor vehicle thefts reported:

- Autos accounted for 45.7% (415).
- Trucks and buses accounted for 33.4% (304). Included in this category are pickup trucks and vans.
- Other vehicles accounted for 20.9% (190). Included in this category are motorcycles, mopeds, and golf carts.

Hawaii County's motor vehicle theft rate in 2015 was the highest in the State of Hawaii.

Hawaii County's motor vehicle theft rate in 2015 was the highest on record since the state of statewide data collection in 1975.

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.



Arson - Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

From 2014 to 2015:

- Reported arsons increased 69.4% in rate.

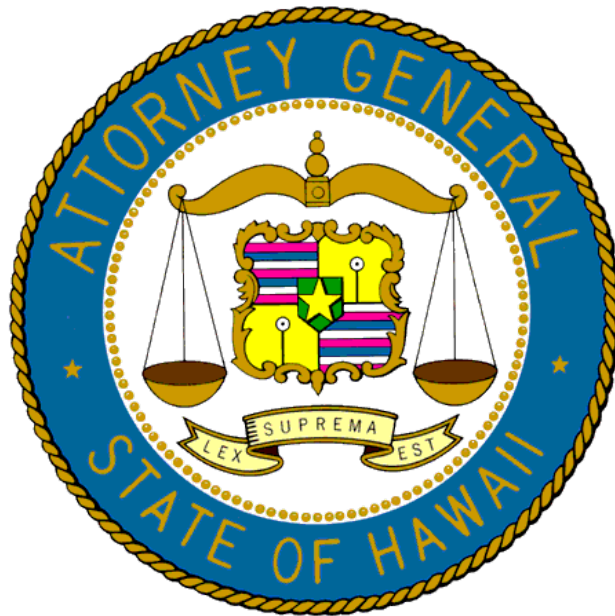
Comparing 2015 to 2006:

- The arson rate decreased 45.9%.

Hawaii County's arson rate in 2015 was the lowest in the State of Hawaii.

Source—Crime Prevention and Justice Assistance Division (2016). *Crime in Hawai'i, 2015: A Review of Uniform Crime Reports*. State of Hawai'i: Department of the Attorney General.

CRIME IN HAWAII



2016

A REVIEW OF UNIFORM CRIME REPORTS

Crime in Hawaii can be downloaded from the
Crime Prevention & Justice Assistance Division web site
ag.hawaii.gov/cpja/

In accordance with the Americans with Disabilities Act, P.L. 101-336, this material is available in an altered format, upon request. If you require an altered format, please call the Department of the Attorney General, Crime Prevention and Justice Assistance Division at (808) 586-1150. TDD: Oahu, 586-1298; neighbor islands, 1-877-586-1298.

CRIME IN HAWAII



2016

A REVIEW OF UNIFORM CRIME REPORTS

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Caveats

Statistical crime reporting requires a number of rules to count events consistently. Multiple offenses may be committed in most opportunities for crime, and multiple charges may be attached to a single arrest. The statistics presented in this report were collected and compiled using the FBI's Hierarchy Rule that limits crime counts to only the most serious offense committed within an incident that is constrained by time and place, and limits arrest counts to only the most serious charge per booking. Therefore, some crimes may be underreported, e.g., if the victim is killed in a single-victim robbery situation, only murder is recorded, not the crime of robbery. Further details of the Hierarchy Rule are discussed in Footnote 1 on page 2.

The number of reported offenses corresponds to a victim count for only some types of offenses. Violent crimes generally employ the total victim count. Robberies, however, are counted by the incident, regardless of the number of victims. Property crimes also are generally counted by the incident, with the notable exceptions that a burglary is counted for each structure entered, and a motor vehicle theft for each vehicle stolen.

Some crimes are inherently difficult to classify. The Uniform Crime Reporting (UCR) definition of aggravated assault, for example, is complex and has been misinterpreted, resulting in large variations between agencies and between years.

These statistics were produced from the operations of Hawaii's four county police departments. Statistics of prosecutorial, court, and parole board decisions are reported separately, by those agencies.

It is strongly cautioned that year-to-year changes based on small numbers of events are likely to result in large percentage changes which typically are not as meaningful as they might appear at first glance.

An unappreciated difference in the time period covered by two different sets of statistics can lead to erroneous conclusions regarding underlying relationships. For example, an abrupt change in the "percent of offenses cleared" statistics, which link the volume of arrests to the volume of reported offenses, should be viewed with caution because offenses already reported in previous years may be counted as cleared, by arrest or exceptional means, in the current year. A clearance is further defined in Appendix A.

The distinction between resident and de facto population is a most important consideration in viewing *Crime in Hawaii*. Crime rates are based on the number of crimes per 100,000 residents. De facto population includes the number of persons physically present in the state: residents, tourists, and non-resident military personnel. Crime rates based on de facto population can be significantly different than rates based on resident population. The UCR program uses resident population to calculate crime rates for all states. However, because of Hawaii's relatively small resident population and large visitor population, crime rates based on resident population are much higher when compared to rates based on the actual number of people in the state.

These and other issues surrounding the collection and compilation of crime and arrest data can contribute to the misinterpretation of statistics presented in this report. We welcome the opportunity to address the validity of readers' interpretations involving these crime statistics. Please feel free to contact us:

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EXECUTIVE SUMMARY

In 2016, a total of 45,805 Index Crimes* were reported in the State of Hawaii, yielding a rate of 3,206 offenses per 100,000 resident population, the lowest on record since statewide data collection began in 1975. The total Index Crime rate in 2016 was 6.2% below the rate reported in 2015, and 27.1% below the rate reported a decade earlier (2007).

There were 3,452 violent Index Crimes reported statewide in 2016, yielding a rate of 241.6 offenses per 100,000 residents. Hawaii's violent Index Crime rate in 2016 was 2.0% below the rate reported in 2015, and 12.5% below the rate reported in 2007.

There were 42,353 property Index Crimes reported statewide in 2016, yielding a record low rate of 2,965 offenses per 100,000 residents. Hawaii's property Index Crime rate in 2016 was 6.5% less than the rate reported in 2015, and 28.0% below the rate reported in 2007.

Other highlights of *Crime in Hawaii 2016* include the following:

- The rate of reported offenses for two violent Index Crimes decreased in the State of Hawaii in 2016: robbery, by 9.0%; and aggravated assault, by 2.3%. The rate of reported offenses for the other two violent Index Crimes increased: murder, by 20.9%; and rape, by 11.9%.
- Rates of reported offenses decreased for two property Index Crime categories: burglary, by 12.0%; and larceny-theft, by 6.6%. The rate of reported offenses for motor vehicle theft increased by 1.3%.
- The rate of reported offenses for arson increased by 16.6% statewide in 2016.
- The number of Index Crime arrests fell by 20.1% statewide in 2016. Arrests for violent Index Crimes decreased 13.9%, and arrests for property Index Crimes decreased 21.7%.
- Adult arrests comprised 85.0% of all Index Crime arrests in 2016; juvenile arrests accounted for 15.0%. *Crime in Hawaii, 2016* also provides state and county data on the age, gender, and race/ethnicity of arrestees.
- Based on the proportion of arrests (plus cases closed by "exceptional means") to reported offenses, the statewide clearance rate for total Index Crimes decreased, from 15.3% in 2015 to 13.5% in 2016.
- The City & County of Honolulu's total Index Crime rate, violent crime rate, and property crime rate all decreased by approximately 2.5% in 2016, and its burglary rate fell to a record low level.
- In 2016, Hawaii County's total Index Crime rate and property crime rate decreased 24.1% and 26.5%, respectively, to reach their record low levels, and the violent crime rate rose 16.3%. Hawaii County's burglary rate in 2016 was also at its record low level.

* Including the violent Index Crimes of murder, rape, aggravated assault, robbery, and tracked separately, human trafficking - commercial sex acts and human trafficking - involuntary servitude; the property Index Crimes of burglary, motor vehicle theft, and larceny-theft; and tracked separately, arson.

- Maui County reported record low rates for total Index Crimes and property crime in 2016, with decreases of 5.6% and 4.3%, respectively, as compared to 2015. Maui County's violent crime rate fell by 19.1% in 2016, and its burglary and larceny-theft rates decreased to record low levels.
- Kauai County's total Index Crime rate decreased 5.3% in 2016, reaching its lowest level on record. The violent crime rate decreased 24.1% and the property crime rate dropped 7.8%, also reaching a record low level. In 2016, Kauai County also reported its record low burglary, larceny-theft, and motor vehicle theft rates.
- Thirty-five murders were reported statewide in 2016, marking a 20.7% increase compared to the prior year. Males comprised 91% of the alleged murder offenders and 66% of the victims in 2016. Roughly two-thirds (68.6%) of the murder victims knew the offenders, and firearms were used in about half (51.4%) of the murders.
- Of the 2,851 murders, robberies, and aggravated assaults reported statewide in 2016, 43.9% were committed using strongarm weapons (i.e., hands, fists, and feet); 25.2% with "other" or unknown weapons; 18.3% with knives or other edged weapons; and 12.6% with firearms.
- Over \$80 million in property value was reported stolen in the State of Hawaii in 2016, down 5.9% from the figure reported in 2015. Of the total value stolen in 2016, 32.2% was recovered, marking an increase from the 29.5% that was recovered in 2015.
- No police officers were killed in the line of duty in the State of Hawaii during 2016, but 373 officers were assaulted, yielding a rate of 12.5 assaults per 100 officers. *Crime in Hawaii, 2016* also provides data on the time of day, type of assignment, and the weapons used in assaults against police officers (see Appendix D).
- On October 31, 2016, a total of 2,995 police officers and 784 civilians were employed by the four county police departments, denoting a 0.4% increase in workforce from the figures reported from October 31, 2015.

The table on the following page provides comparative state and county crime rate data by offense, offense category, and percent change from 2015.

2016 Index Crime Rates* and Percent Change from 2015

State of Hawaii and Counties

	State of Hawaii	City & County of Honolulu	Hawaii County	Maui County	Kauai County
Total Index Crimes	3,206.4	3,270.3	2,747.1	3,757.3	2,312.7
	-6.2%	-2.5%	-24.1%	-5.6%	-5.3%
Violent Index Crimes	241.6	237.7	237.8	273.1	235.3
	-2.0%	-2.5%	16.3%	-19.1%	24.1%
Murder	2.5	1.6	4.6	3.0	7.0
	20.9%	7.1%	12.4%	25.1%	147.8%
Rape**	42.1	36.6	58.6	46.7	62.7
	11.9%	14.9%	20.9%	-18.0%	43.9%
Robbery	69.0	83.1	35.1	41.3	29.2
	-9.0%	-7.4%	27.6%	-39.8%	-5.4%
Aggravated Assault	128.2	116.4	139.5	182.1	136.4
	-2.3%	-3.7%	12.2%	-13.2%	21.4%
Property Index Crimes	2,964.7	3,032.6	2,509.3	3,484.2	2,077.4
	-6.5%	-2.5%	-26.5%	-4.3%	-7.8%
Burglary	418.8	374.1	419.1	593.6	637.7
	-12.0%	-12.7%	-22.5%	-2.8%	-0.9%
Larceny-Theft	2,161.0	2,237.6	1,822.9	2,455.5	1,347.8
	-6.6%	-2.5%	-24.3%	-8.3%	-10.2%
Motor Vehicle Theft	384.9	421.0	267.3	435.1	91.9
	1.3%	8.7%	-42.3%	23.3%	-15.0%
Arson***	34.0	26.4	20.9	91.0	43.2
	16.6%	14.3%	32.1%	39.0%	-34.6%
Human Trafficking -**** Commercial Sex Acts	0.1	0.2	0.0	0.0	0.0
	-49.9%	-33.1%	-100.0%	0.0%	0.0%
Human Trafficking -**** Involuntary Servitude	0.0	0.0	0.0	0.0	0.0
	0.0%	0.0%	0.0%	0.0%	0.0%

* Number of reported offenses per 100,000 resident population.

** Rapes reported under the FBI's revised and expanded rape definition commenced on January 1, 2014.

***Arson rates are not included in the total or property Index Crime rates.

****Human Trafficking tracking commenced on January 1, 2014; these offenses are not included in the total or violent Index Crime rates.

Record Crime Rates* **State of Hawaii and Counties, 2016**

State of Hawaii

Record low total Index Crime rate.

Record low property crime rate.

Record low burglary rate.

Record low larceny-theft rate.

City & County of Honolulu

Record low burglary rate.

Hawaii County

Record low total Index Crime rate.

Record low property crime rate.

Record low burglary rate.

Maui County

Record low total Index Crime rate.

Record low property crime rate.

Record low burglary rate.

Record low larceny-theft rate.

Kauai County

Record low total Index Crime rate.

Record low property crime rate.

Record low burglary rate.

Record low larceny-theft rate.

Record low motor vehicle theft rate.

*Within jurisdiction, since the start of statewide data collection in 1975 (1980 for arson rates).

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THE UNIFORM CRIME REPORTING PROGRAM

BACKGROUND

The Uniform Crime Reporting (UCR) Program was initiated in 1930 by the International Association of Chiefs of Police (IACP) to meet a recognized need for a nationwide system to collect crime statistics. Since there are numerous differences in criminal codes throughout the United States, the UCR program uses a standard definition for each offense. Law enforcement agencies submit data in accordance to these definitions rather than state statutes. This standardization allows for inter-jurisdictional comparisons and internal validity of national totals.

The national UCR program is administered by the Federal Bureau of Investigation (FBI). Definitions of specific offenses, as well as reporting criteria, are contained in the FBI's *Summary Reporting System (SRS) User Manual*. The FBI provides report forms and training to city, county, and state law enforcement agencies. Crime data are collected by over 18,000 local enforcement agencies and reported to the FBI. The FBI assembles, publishes, and distributes a comprehensive annual publication entitled *Crime in the United States*, as well as periodic special reports.

In an effort to streamline procedures and provide consistency and comparability of data, the FBI promoted the development of state UCR programs. The purpose of the state-level UCR program is to collect data from local law enforcement agencies and assure compliance with standards developed jointly by the FBI and IACP.

Hawaii's UCR program was housed in the Judiciary from its inception in 1975 until 1981, when it was transferred to the Hawaii Criminal Justice Data Center, a Division of the Department of the Attorney General. In 1991, the program was transferred from the Data Center to the Research and Statistics Branch of the Crime Prevention Division, which in 1995 became the Crime Prevention and Justice Assistance Division.

The Research and Statistics Branch collects and reviews the UCR reports received from the four county police departments before forwarding the reports to the FBI. The Branch is also responsible for providing technical assistance to the contributing agencies, as well as serving as the FBI's single point of contact in the State of Hawaii.

CRIME STATISTICS

Consistent with the UCR objectives of providing the best representation of total crime and providing the most meaningful data to police departments, the UCR program collects data on reported offenses and arrests. It is widely understood that offenses known to police are an under-representation of the total number of crimes committed, and that a truly reliable measure of unreported crimes is difficult, if not impossible, to obtain. However, the use of reported offenses as official statistics can be verified and compared over time and between jurisdictions.

Because of their seriousness and frequency of occurrence, seven offenses were initially chosen by the IACP to comprise a Crime Index and serve as indicators of our nation's crime experience: murder and non-negligent manslaughter; rape; robbery; aggravated assault; burglary; larceny-theft; and motor vehicle theft. In 1979, a congressional mandate added arson

as the eighth Crime Index Offense.¹ In 2013, a reauthorization act mandated the FBI to add two human trafficking offenses, commercial sex act and involuntary servitude, as Part I offenses, totaling ten Crime Index offenses.

Information reported for Index Offenses includes: the number of crimes reported; the number of offenses cleared by arrest or by exceptional means;² the number of arrests, and the value of property destroyed by arson and taken in each of the remaining offenses, except aggravated assault. (By definition, property cannot be taken in an assault. An offense that begins as an assault but ends with property being taken is classified as robbery.) The ten Index Crimes plus the crime of negligent manslaughter are referred to as Part I Offenses. While complete information is collected on non-traffic related negligent manslaughters, this offense is rare and not mentioned in *Crime in the United States*. Part II Offenses include all other offenses, except traffic, not included in Part I. The national UCR program collects and reports only arrest data for Part II Offenses, while *Crime in Hawaii* additionally contains reported Part II Offense statistics.³ Total negligent manslaughter arrests, including traffic-related, are included in *Crime in Hawaii* with the Part II arrests.

Definitions of terms used in this report appear in Appendices A and B. More detailed descriptions of the UCR program can be obtained from the *Summary Reporting System (SRS) User Manual* published by the FBI. Trends in law enforcement officers killed and assaulted (LEOKA) are reported in Appendix C, and population estimates are noted in Appendix D. New data for cargo theft, effective 2014, are reported in Appendix E.

UCR program rules for classifying and counting crimes are somewhat complex and can, at times, even appear contradictory. Prior to delving into the pages that follow, first-time readers of *Crime in Hawaii* are encouraged to read the “Caveats” page. All readers are requested to review this page when attempting to answer questions about how crimes and arrests are counted and to contact us if their questions remain unanswered. Contact information is at the bottom of the “Caveats” page.

RECENT REVISIONS

In 2013, in addition to removing the word “forcible,” the FBI also approved revisions to the UCR Program’s definition of rape.⁴ The revised definition of rape is, “The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a

¹ Hawaii has collected arson offense data since 1980. The Hierarchy Rule does not apply to arson offenses. This means that all arsons which become known to the police are counted, so that crime incidents which include arson and one or more of the other Index Offenses are counted twice. As a result, the FBI does not include arsons in calculating and reporting total Index Crimes or property crimes and their respective crime rates. In order to remain consistent with federal reporting, Hawaii also does not include arsons in total Index Crimes and property crimes. Arson offenses are also not counted in the grand total of Index & Part II Offenses.

² An offense cleared by exceptional means is one in which the offender and his or her exact location are known to the law enforcement agency but, for reasons beyond the control of the agency, the offender cannot be arrested. See Appendix A for definition and examples.

³ See Appendix B for definitions of Part II offenses.

⁴ The State of Hawaii will continue to track rape data under the old, or legacy, definition until comparative trends have been established. This will only apply to offense data and not arrests.

sex organ of another person, without the consent of the victim.” This revised definition encompasses all genders as victims of rape and also includes the offenses of sodomy, and sexual assaults with an object, which were previously reported to the FBI only as arrests in the “other sex offenses” category. The old definition, which will be referred to as the legacy definition throughout this report, is defined as, “The carnal knowledge of a female forcibly and against her will.” The State of Hawaii commenced the collection of rape data per the revised definition on January 1, 2014.

Other than the addition of arson in 1979, the UCR program has been a stable and static source of crime statistics for the U.S., allowing for crime rate comparisons between police departments and states across the nation. The FBI recently directed the participating agencies to additionally report the following offenses and arrests to its UCR program:

In 2010, in response to the *USA Patriot Improvement and Re-authorization Act of 2005*, which required the Attorney General to report cargo theft as a separate category in the FBI's UCR system, the FBI added the offense of cargo theft. Due to the low numbers of participating agencies reporting cargo theft to the FBI, the FBI has yet to publish a cargo theft report. The State of Hawaii required participating law enforcement agencies to commence the collection of cargo theft data in January 2014; these data are reported in Appendix E.

In 2013, in order to comply with the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, the FBI added two more offenses to its Part I Crime Index track: “Human Trafficking - Commercial Sex Acts” and “Human Trafficking - Involuntary Servitude”. The Act also required the FBI to distinguish between assisting or promoting prostitution, purchasing prostitution, and prostitution, all of which are reported only as Part II arrests. The State of Hawaii initiated the human trafficking data collection in January 2014. In contrast to the FBI's *Crime in the U.S.* report, which reports human trafficking data separately, the *Crime in Hawaii* report documents human trafficking offenses⁵ and arrests as Part I violent Index Crimes, as specified in the FBI's *SRS User Manual*. Prostitution arrests are aggregated under the prostitution category, in line with the national report.

Lastly, the FBI revised the race categories in 2013 in accordance with a directive from the U.S. Government's Office of Management and Budget. The “Asian/Pacific Islander” race category was separated into “Asian” and “Native Hawaiian or Other Pacific Islander” categories, which also necessitated the State of Hawaii to add “Other Asian” and “Other Pacific Islander” subcategories to its expanded list of Asian and Pacific Islander subcategories.

NATIONAL INCIDENT-BASED REPORTING SYSTEM

The FBI announced the discontinuation of the SRS version of the nationwide UCR Program, effective January 1, 2021. Only the National Incident-Based Reporting System (NIBRS) version will continue thereafter (see <https://ucr.fbi.gov/nibrs-overview>). As of August 2017, a NIBRS data repository is in development for the Hawaii UCR Program, and the Honolulu Police Department is testing NIBRS data. The FBI and other federal agencies are assisting with these efforts.

⁵ As in the case for arson, the Hierarchy Rule does not apply to human trafficking offenses, thus all instances of human trafficking are reported. Human trafficking offenses are not included in the total Index Crime count, violent Index Crime, or the grand total of Index & Part II Offenses.

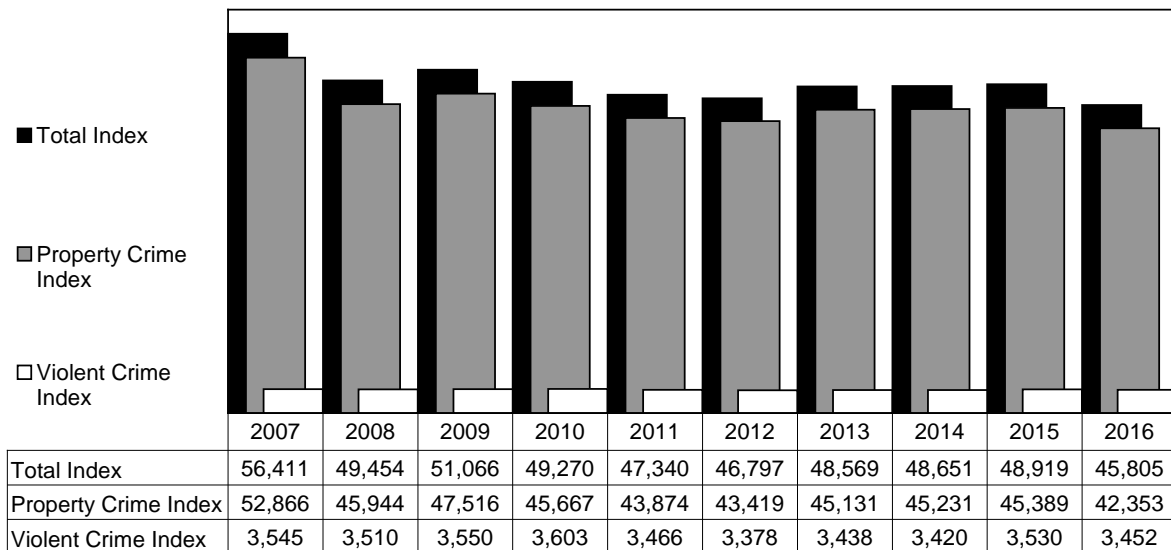
STATE OF HAWAII**2016 HIGHLIGHTS**

In 2016, the population of the State of Hawaii decreased 0.2% from the year prior. The total number of reported Index Crimes, property crimes, and violent crimes decreased by 6.4%, 6.7%, and 2.2%, respectively.

From 2015 to 2016 in the State of Hawaii, the number of reported offenses for five Index Crime categories decreased: robbery, 9.2%; aggravated assault, 2.5%; burglary, 12.1%; larceny-theft, 6.8%; and human trafficking - commercial sex acts, 50.0%. The number of reported offenses increased for four Index Crime categories in 2016: murder, 20.7%; rape, 11.7%; motor vehicle theft, 1.1%; and arson, 16.3%. No reports of human trafficking - involuntary servitude were reported in 2015 or 2016.

The table on the next page lists the numbers of reported offenses, excluding traffic, in the State of Hawaii during the past 10 years. The population of the State of Hawaii increased 11.3% during this period, while the number of reported Index Crimes, violent Index Crimes, and property Index Crimes declined 18.8%, 2.6%, and 19.9%, respectively.

**Total Reported Index Offenses
State of Hawaii, 2007-2016**



Reported Offenses State of Hawaii, 2007-2016

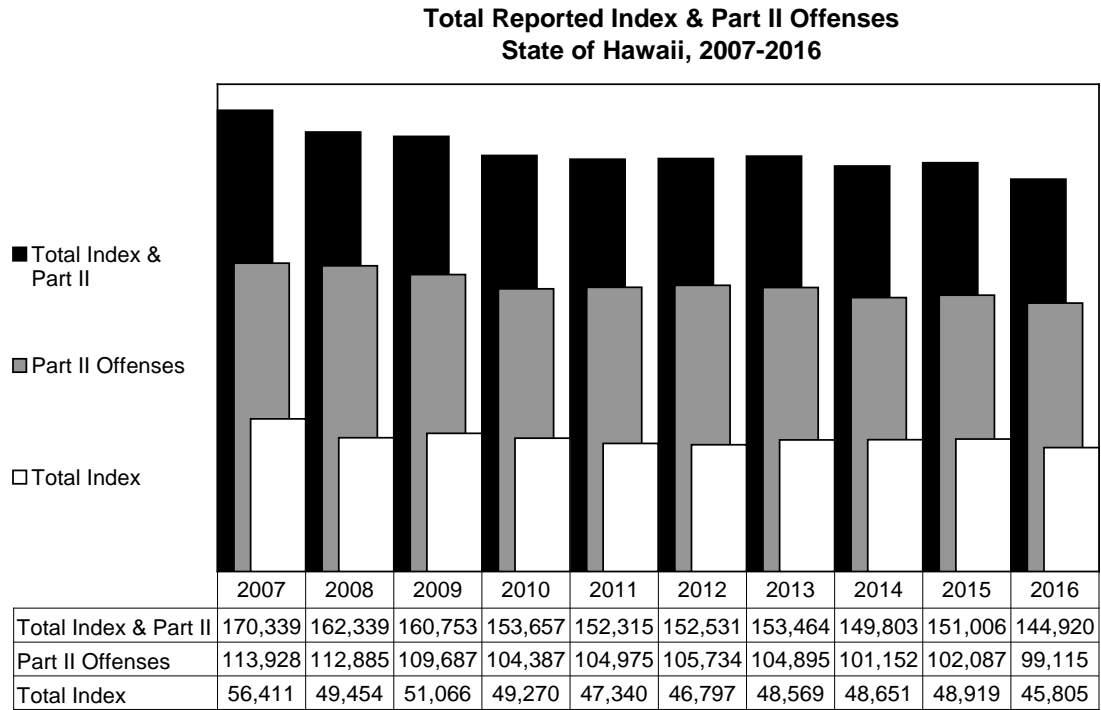
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	56,411	49,454	51,066	49,270	47,340	46,797	48,569	48,651	48,919	45,805
Violent Crime Index	3,545	3,510	3,550	3,603	3,466	3,378	3,438	3,420	3,530	3,452
Murder	25	26	23	25	21	21	29	27	29	35
Rape*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	544	538	601
Rape (legacy)*	377	363	385	377	353	279	341	306**	357**	317**
Robbery	1,122	1,085	1,030	1,065	994	1,125	951	957	1,085	985
Aggravated Assault	2,021	2,036	2,112	2,136	2,098	1,953	2,117	1,892	1,878	1,831
Property Crime Index	52,866	45,944	47,516	45,667	43,874	43,419	45,131	45,231	45,389	42,353
Burglary	9,089	9,404	9,244	8,706	8,165	7,653	7,727	7,458	6,810	5,983
Larceny-Theft	37,494	31,424	33,415	31,681	31,240	31,901	32,741	32,451	33,140	30,871
Motor Vehicle Theft	6,283	5,116	4,857	5,280	4,469	3,865	4,663	5,322	5,439	5,499
Arson	554	509	501	441	357	312	333	249	417	485
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	4	2
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0

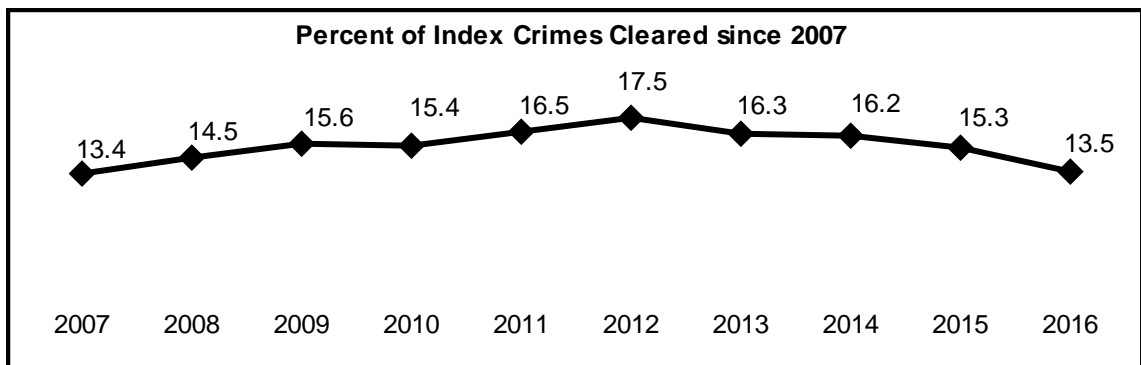
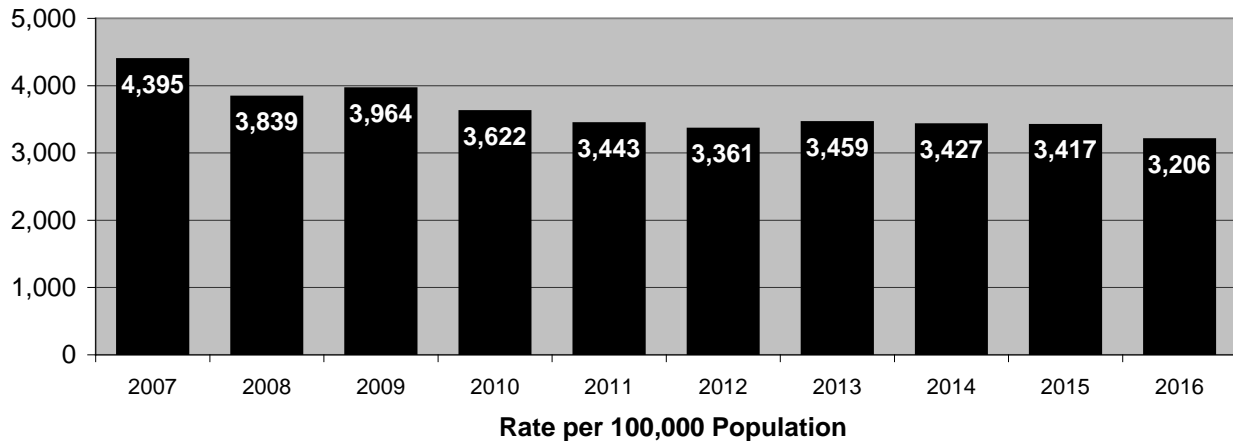
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	113,928	112,885	109,687	104,387	104,975	105,734	104,895	101,152	102,087	99,115
Total Index & Part II	170,339	162,339	160,753	153,657	152,315	152,531	153,464	149,803	151,006	144,920

Note: Violent Crime Index, Property Crime Index, Part II Offenses, and Total Index and Part II offenses exclude arson and human trafficking offenses.

* On January 1, 2014, the State of Hawaii commenced the collection of rape data using a revised definition (see pages 3 and 15 for more details).

**The total number of rapes under the legacy definition in 2014 is not separately included in the Violent Crime Index, Total Index, and Total Index & Part II offenses. It is, however, already included in the rape count under the revised definition.



Total Index Crime Rate, State of Hawaii, 2007-2016

Index Crimes - Murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. However, due to a different method of counting, arson and human trafficking offenses are not included in the totals of reported Index Crimes and Index & Part II Offenses.

From 2015 to 2016:

- Reported Index Crimes decreased 6.2% in rate.

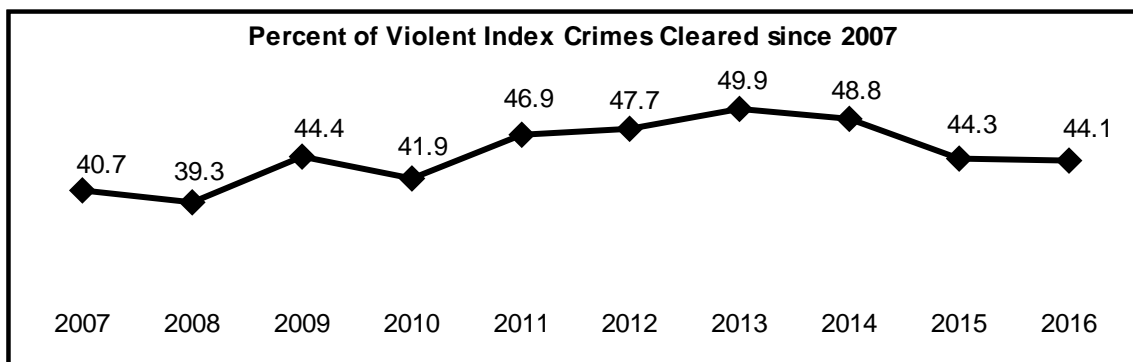
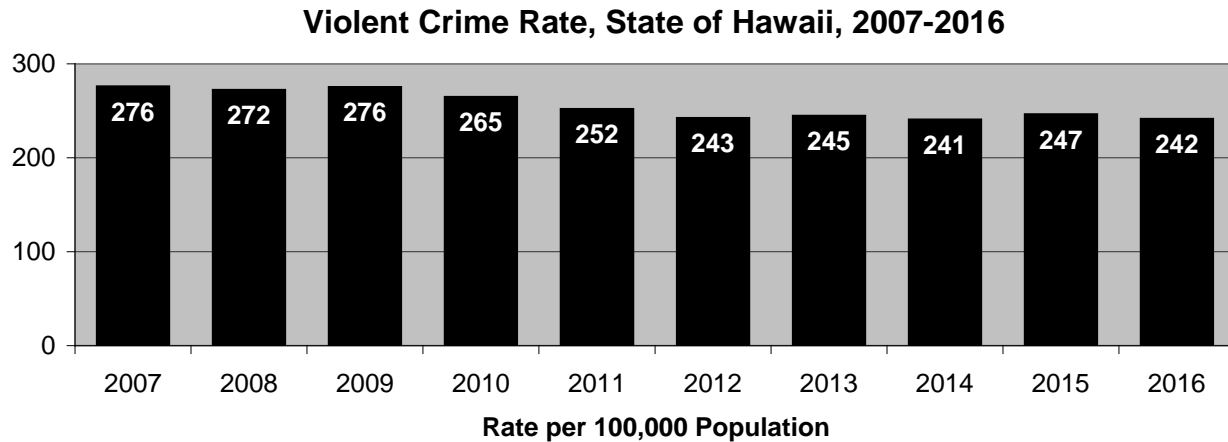
Comparing 2016 to 2007:

- The Index Crime rate decreased 27.1%.

In 2016, of the 45,805 Index Crimes reported:

- Property crimes accounted for 92.5% (42,353).
- Violent crimes accounted for 7.5% (3,452).

Hawaii's total Index Crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



Violent Crimes - Murder, rape, robbery, and aggravated assault. Human trafficking - commercial sex acts, and human trafficking - involuntary servitude are also violent crimes; however, due to a different method of counting, they are not included in the totals of violent crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

- Reported violent crimes decreased 2.0% in rate.

Comparing 2016 to 2007:

- The violent crime rate decreased 12.5%.

In 2016, of the 3,452 violent crimes reported:

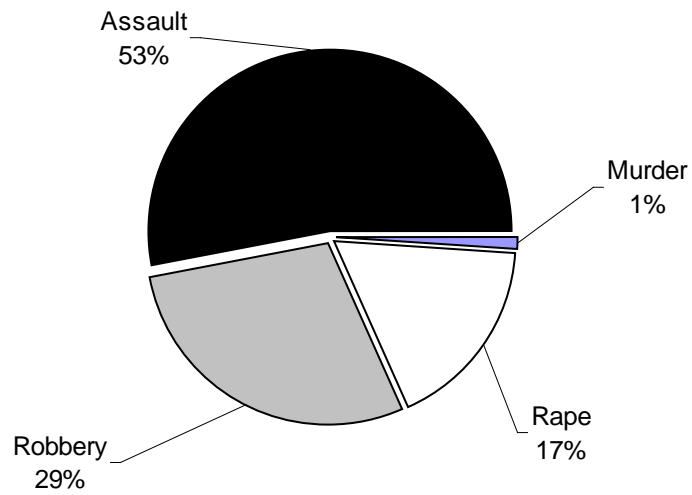
- Aggravated assault accounted for 53.0% (1,831).
- Robbery accounted for 28.5% (985).
- Rape accounted for 17.4% (601).
- Murder accounted for 1.0% (35).

In 2016, of the 2,851 murders, robberies, and aggravated assaults reported statewide*:

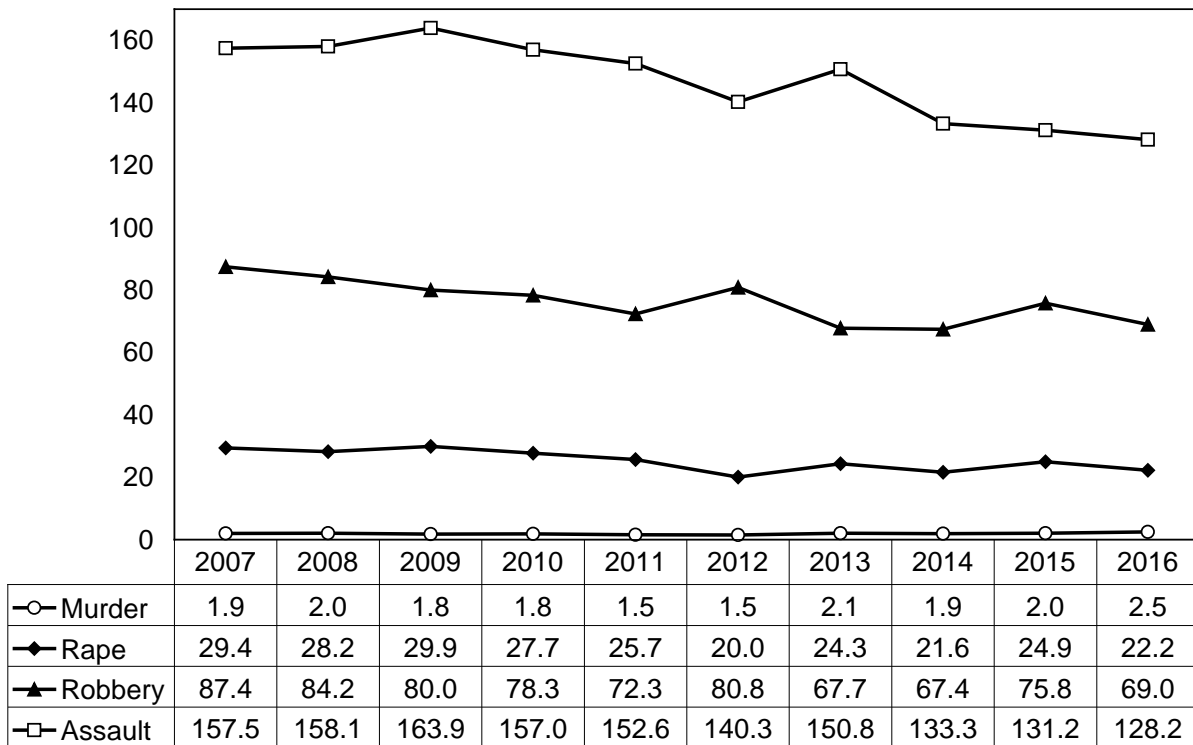
- Strongarm weapons (hands, fists, feet, etc.) were involved in 43.9% (1,252).
- Other/unknown weapons were involved in 25.2% (719).
- Knives or other edged weapons were involved in 18.3% (522).
- Firearms were involved in 12.6% (358).

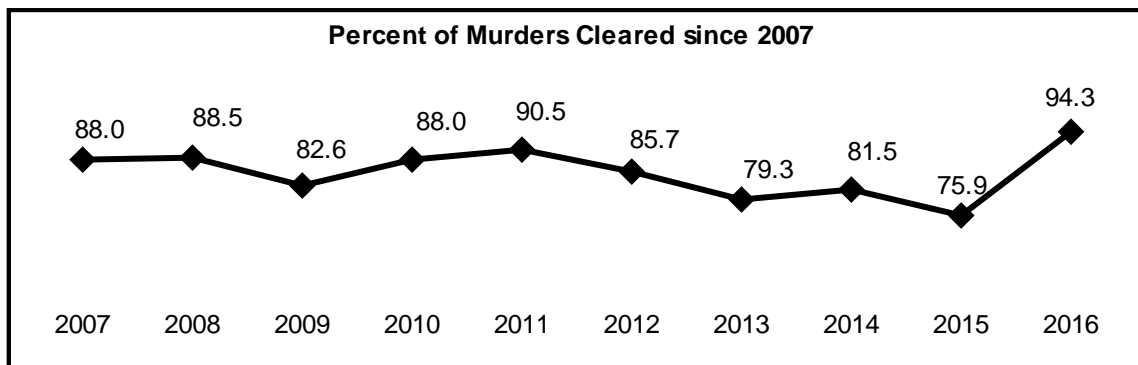
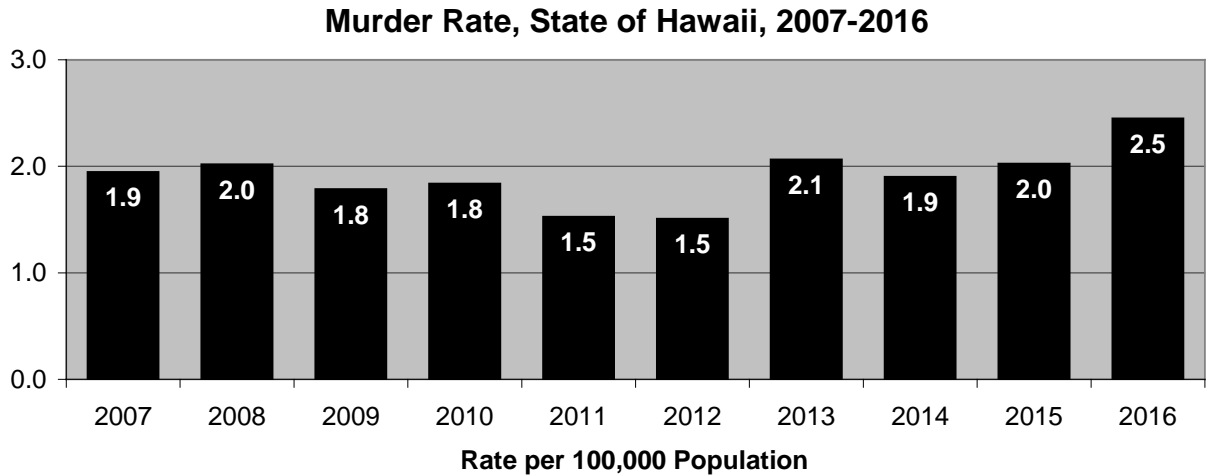
*Weapon data are not reported for the offense of rape.

Proportions of Violent Index Crimes State of Hawaii, 2016



Violent Crime Rates, State of Hawaii, 2007-2016





Murder - The willful killing of one human being by another.

From 2015 to 2016:

- Reported murders increased 20.9% in rate.

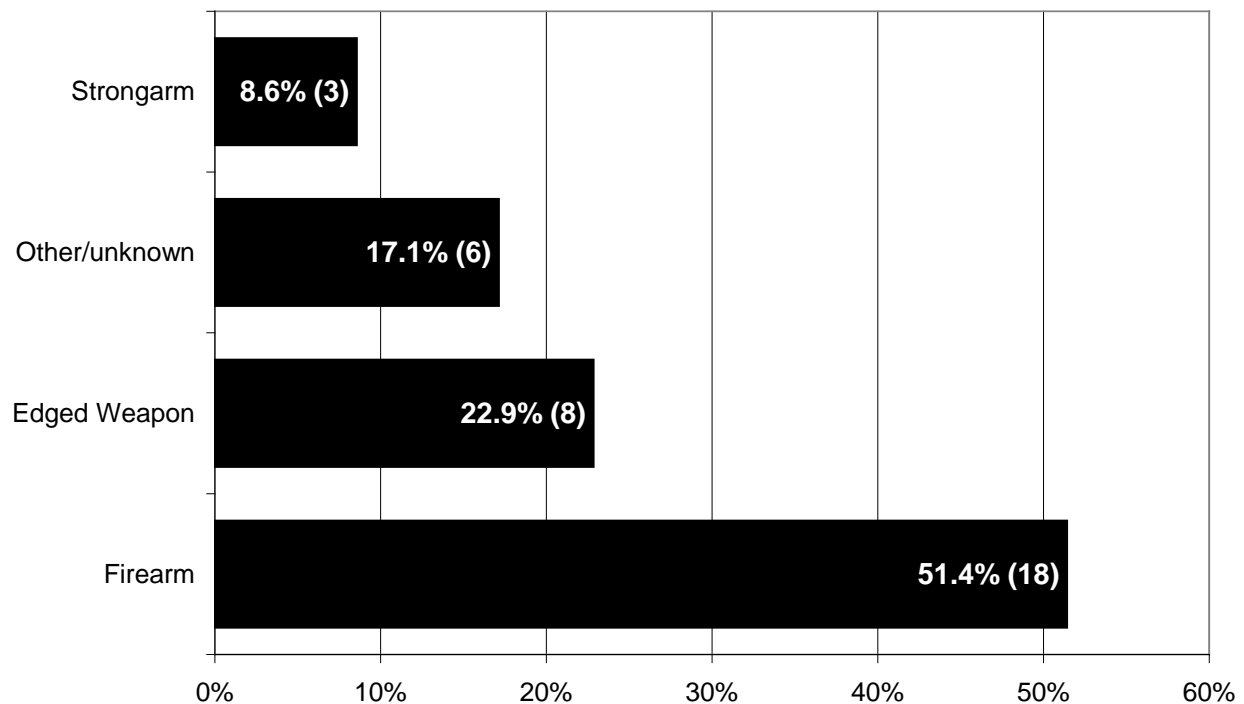
Comparing 2016 to 2007:

- The murder rate increased 25.8%.

In 2016, of the 35 murders reported:

- Firearms were used in 51.4% (18).
- Knives or cutting instruments were involved in 22.9% (8).
- Other or unknown weapons were used in 17.1% (6).
- Strongarm weapons (hands, fists, feet, etc.) were involved in 8.6% (3).

**Weapons Used in Murders
State of Hawaii, 2016**

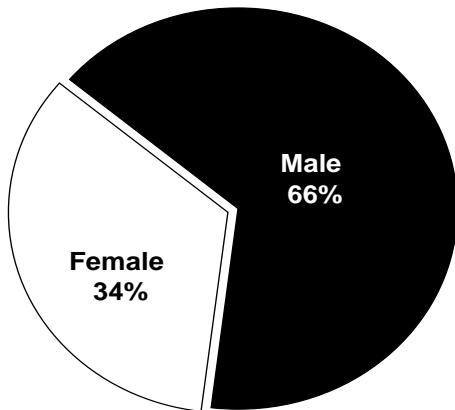


**Race/Ethnicity of Murder Victims & Known Offenders
State of Hawaii, 2016**

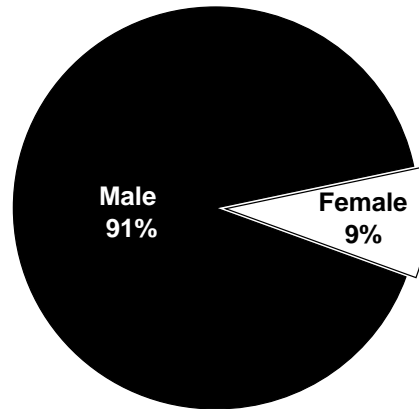
Race/Ethnicity	Victims		Offenders	
	Number	Percent	Number	Percent
White	10	29.4	11	32.4
Black	4	11.8	2	5.9
American Indian	0	0.0	0	0.0
Chinese	0	0.0	0	0.0
Japanese	2	5.9	0	0.0
Filipino	6	17.6	7	20.6
Korean	0	0.0	1	2.9
Other Asian	1	2.9	0	0.0
Hawaiian/part-Hawaiian	7	20.6	8	23.5
Samoan	3	8.8	4	11.8
Other Pacific Islander	1	2.9	1	2.9
TOTAL	34	100%	34	100%

Murder Victim & Offender Characteristics State of Hawaii, 2016

Sex of Murder Victims



Sex of Known Murder Offenders



Sex of Murder Victims & Known Offenders State of Hawaii, 2016

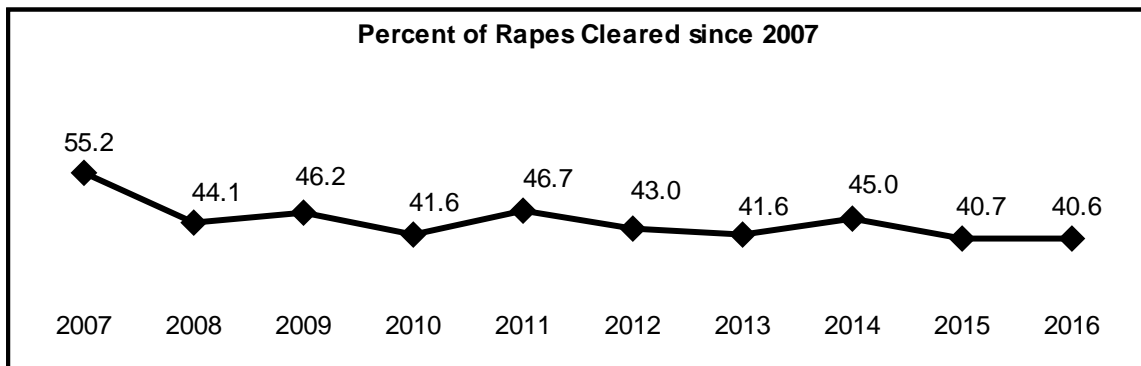
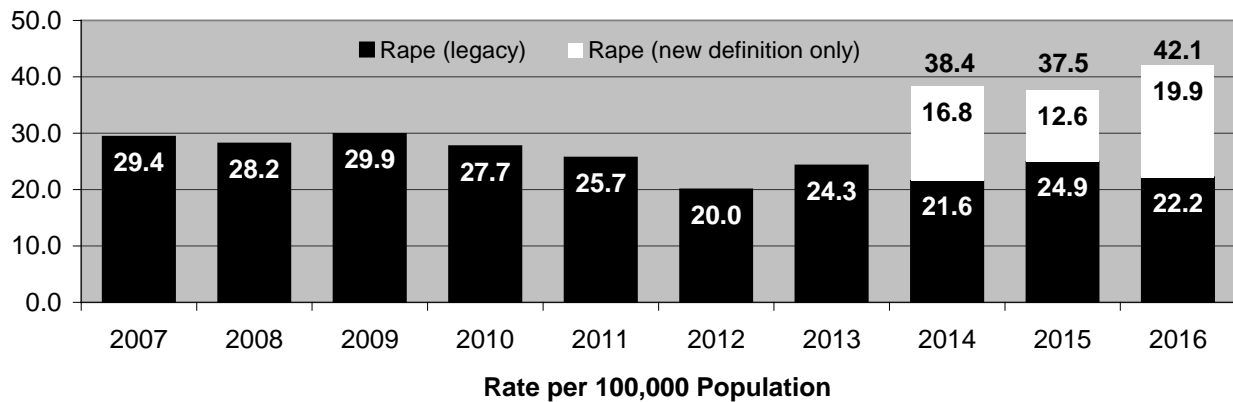
Sex	Victims		Offenders	
	Number	Percent	Number	Percent
Male	23	66	31	91
Female	12	34	3	9
TOTAL	35	100%	34	100%

Relationship of Murder Victims to Known Offenders
State of Hawaii, 2016

Relationship	Number	Percent
Stranger	8	23.5%
Immediate Family	8	23.5%
Acquaintance	8	23.5%
Spouse	7	20.6%
Other	2	5.9%
Girlfriend/Boyfriend	1	2.9%
TOTAL	34	100.0%

Age of Murder Victims & Known Offenders
State of Hawaii, 2016

Age	Victims		Offenders	
	Number	Percent	Number	Percent
Under 18	5	14.3	1	2.9
18-19	0	0.0	1	2.9
20-24	4	11.4	3	8.8
25-29	2	5.7	4	11.8
30-34	1	2.9	8	23.5
35-39	6	17.1	3	8.8
40-44	4	11.4	1	2.9
45-49	4	11.4	6	17.6
50-54	1	2.9	1	2.9
55-59	5	14.3	1	2.9
60 & over	3	8.6	5	14.7
TOTAL	35	100%	34	100%

Rape Rate, State of Hawaii, 2007-2016

Rape (legacy)* - The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.

Rape (revised)* - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

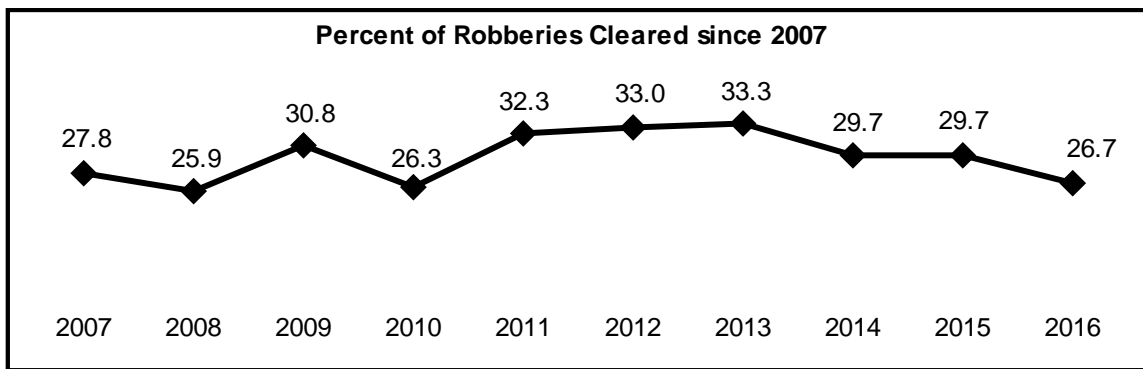
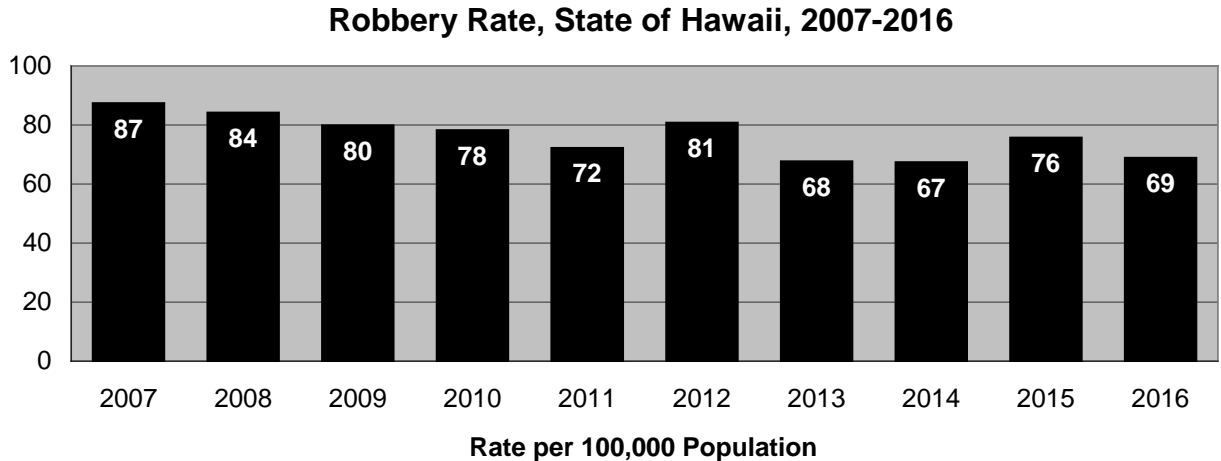
From 2015 to 2016:

- Reported rapes increased 11.9% in rate. The rape rate per the legacy definition decreased 11.0%.

Comparing 2016 to 2007:

- The rape rate, based on the legacy definition, decreased 24.5%.

**Note: On January 1, 2014, the State of Hawaii began collecting rape data under the FBI's revised definition. The State of Hawaii will continue to also collect rape data under the old, or legacy, definition so that comparative trends can be established. See page 3 for more information.*



Robbery - The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

From 2015 to 2016:

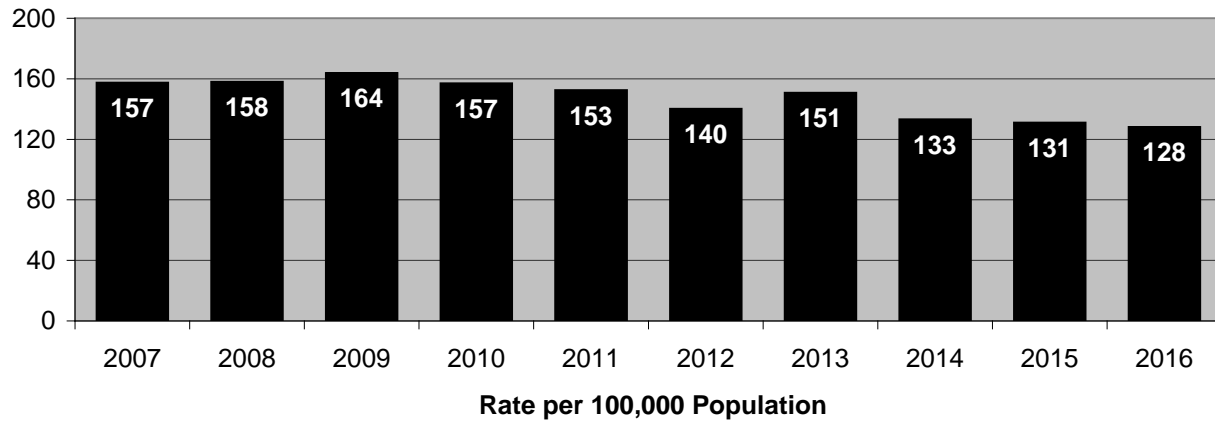
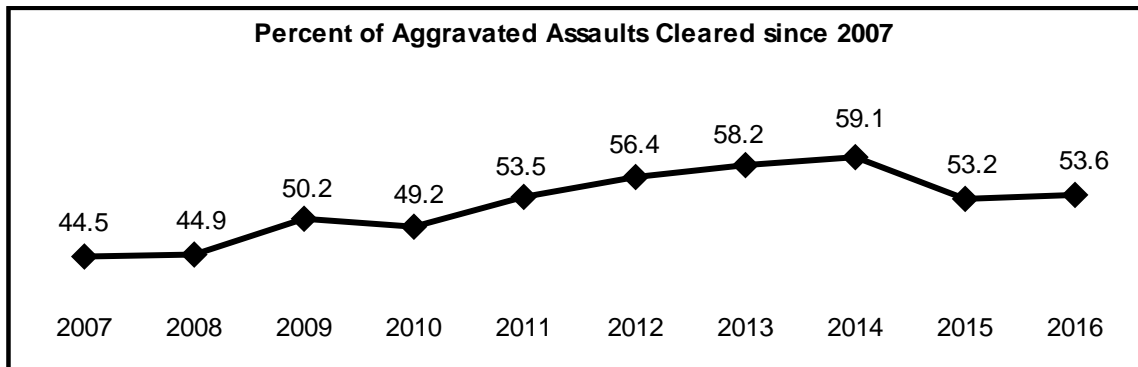
- Reported robberies decreased 9.0% in rate.

Comparing 2016 to 2007:

- The robbery rate decreased 21.1%.

In 2016, of the 985 robberies reported:

- Strongarm weapons (hands, fists, feet, etc.) were involved in 64.9% (639).
- Firearms were involved in 16.0% (158).
- Knives or cutting instruments were involved in 9.5% (94).
- Other dangerous weapons were involved in 9.5% (94).

Aggravated Assault Rate, State of Hawaii, 2007-2016**Percent of Aggravated Assaults Cleared since 2007**

Aggravated Assault - The unlawful attack or attempted attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

From 2015 to 2016:

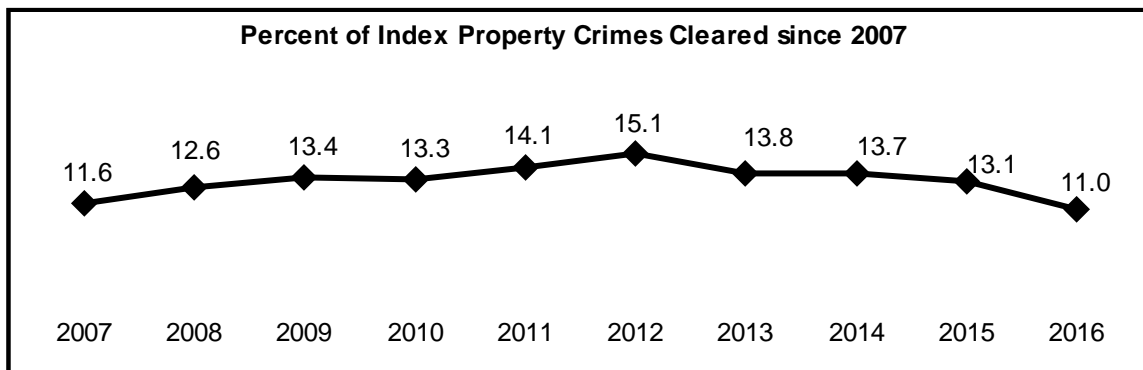
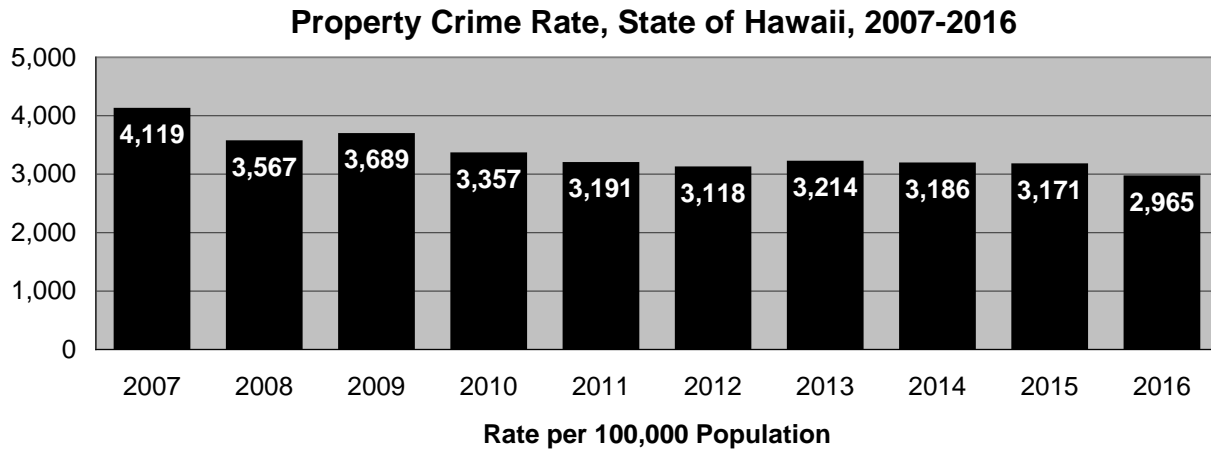
- Reported aggravated assaults decreased 2.3% in rate.

Comparing 2016 to 2007:

- The aggravated assault rate decreased 18.6%.

In 2016, of the 1,831 aggravated assaults reported:

- Other dangerous weapons were involved in 33.9% (620).
- Strongarm weapons (hands, fists, feet, etc.) were involved in 33.3% (610).
- Knives or cutting instruments were involved in 22.9% (420).
- Firearms were involved in 9.9% (181).



Property Crimes - Burglary, larceny-theft, and motor vehicle theft. Arson is also a property crime; however, due to a different method of counting, it is not included in the totals of property crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

- Reported property crimes decreased 6.5% in rate.

Comparing 2016 to 2007:

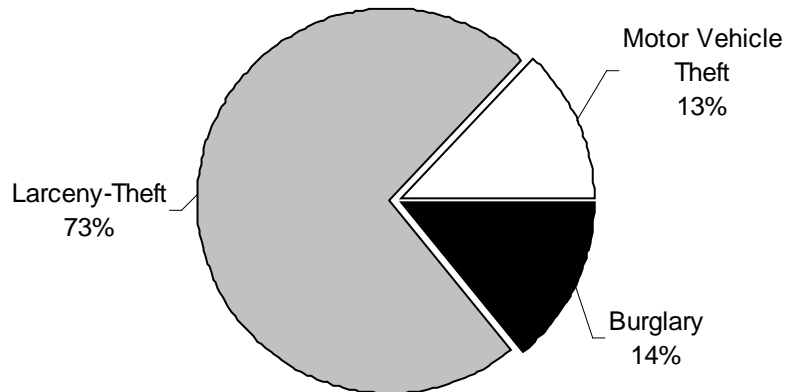
- The property crime rate decreased 28.0%.

In 2016, of the 42,353 property crimes reported:

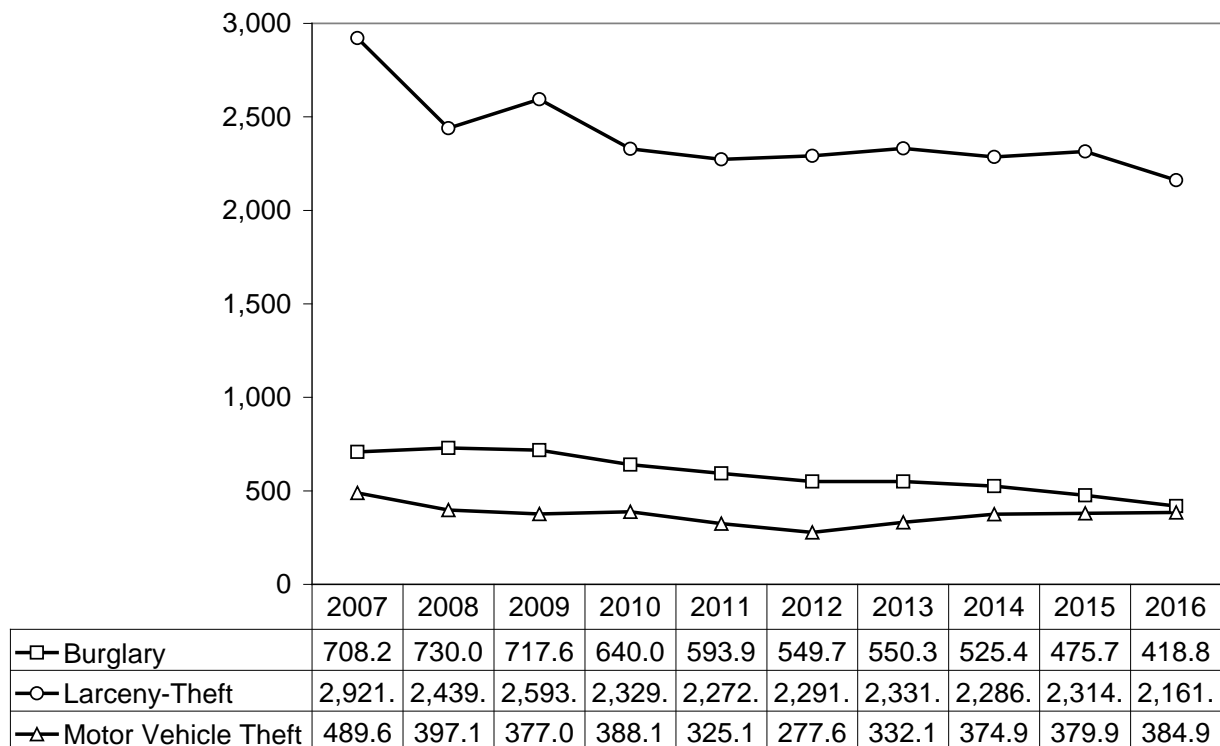
- Larceny-theft accounted for 72.9% (30,871).
- Burglary accounted for 14.1% (5,983).
- Motor vehicle theft accounted for 13.0% (5,499).

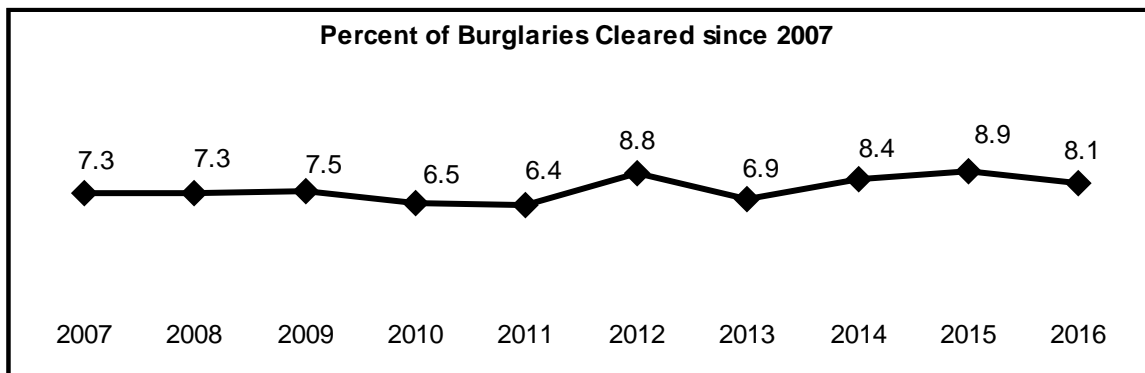
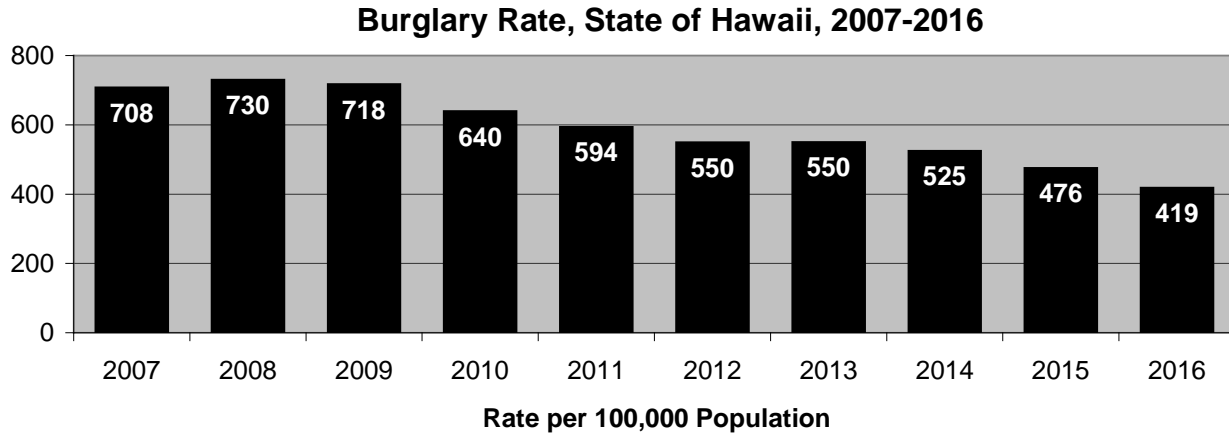
Hawaii's property crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Proportions of Property Index Crimes State of Hawaii, 2016



Property Crime Rates, State of Hawaii, 2007-2016





Burglary - The unlawful entry of a structure to commit a felony or a theft. Attempted burglary is included.

From 2015 to 2016:

- The rate of reported burglaries decreased 12.0%.

Comparing 2016 to 2007:

- The burglary rate decreased 40.9%.

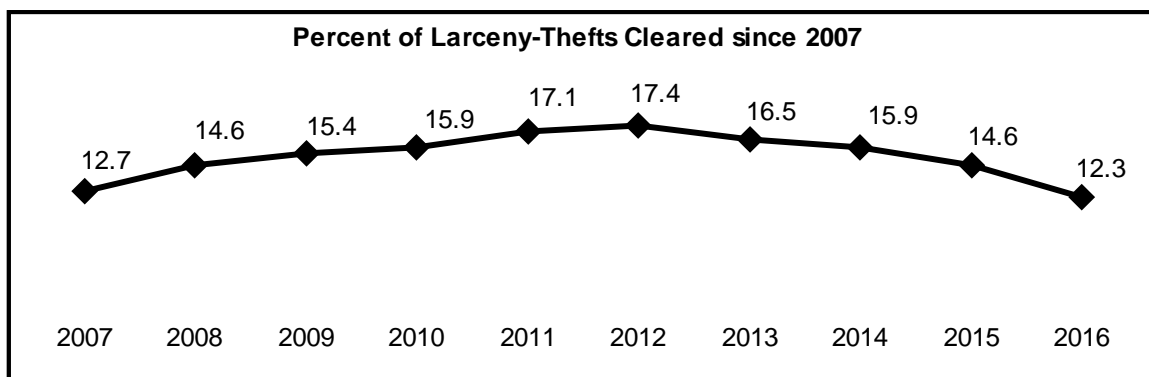
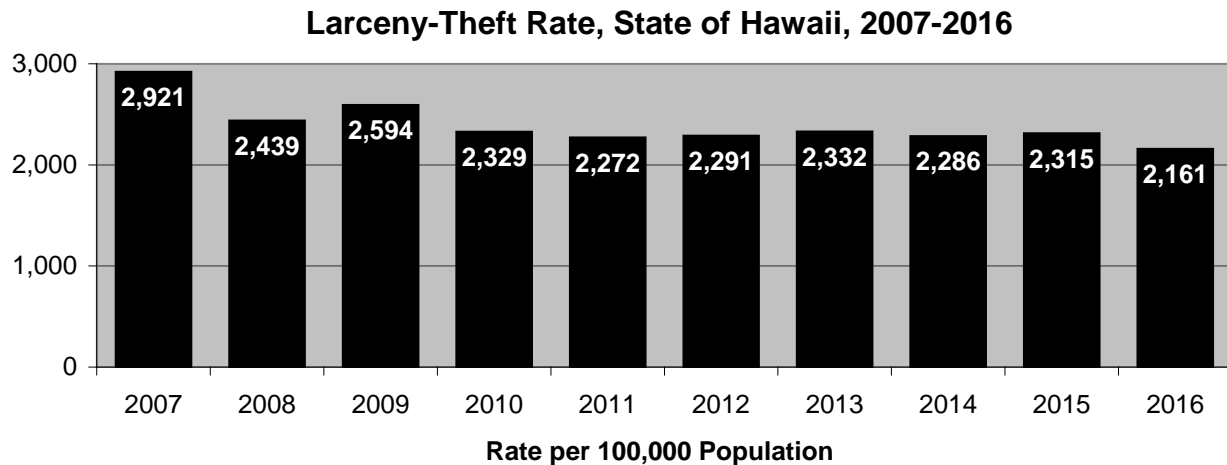
In 2016, of the 5,983 burglaries or attempted burglaries reported:

- Burglary accounted for 92.3% (5,521).
- Attempted burglary accounted for 7.7% (462).

In 2016, of the 5,521 burglaries reported:

- Structures entered by force accounted for 61.1% (3,372).
- Structures entered without force accounted for 38.9% (2,149).

Hawaii's burglary rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



Larceny-theft - The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

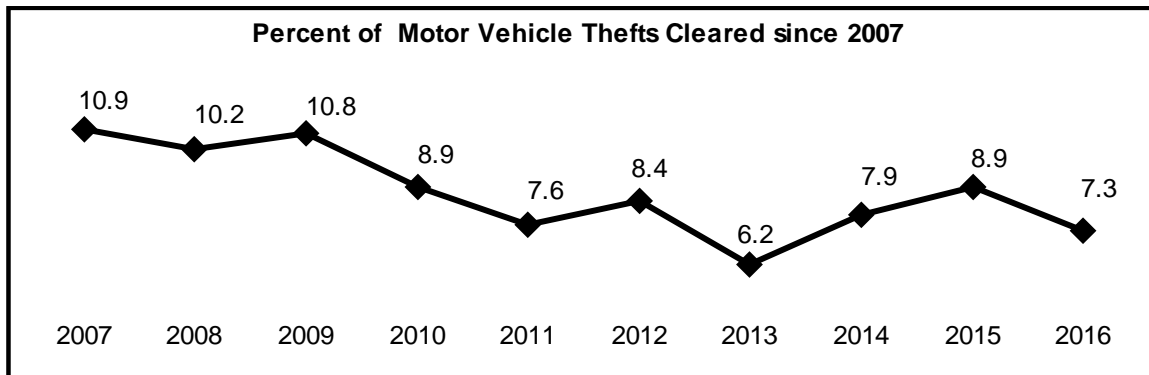
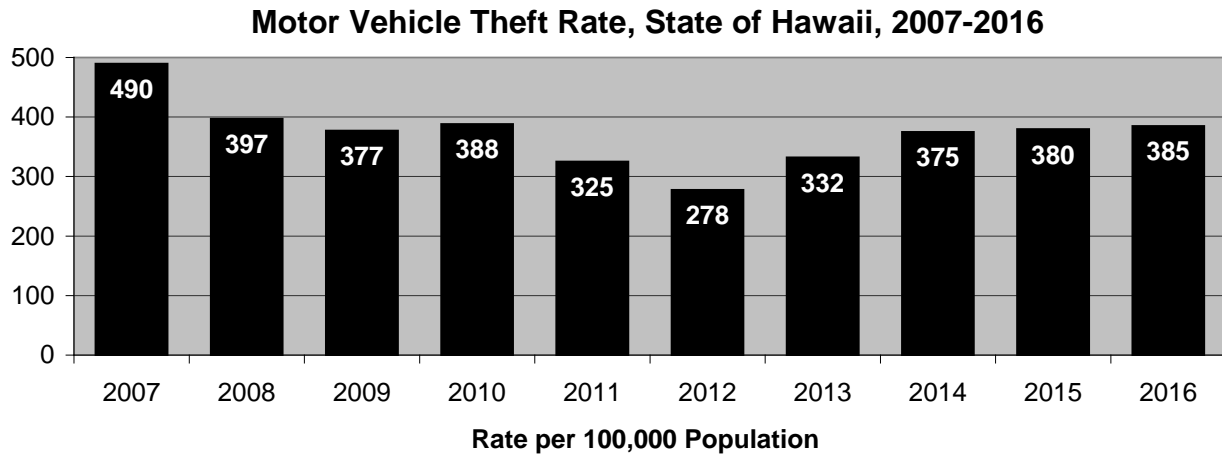
From 2015 to 2016:

- Reported larceny-thefts decreased 6.6% in rate.

Comparing 2016 to 2007:

- The larceny-theft rate decreased 26.0%.

Hawaii's larceny-theft rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



Motor Vehicle Theft - The theft or attempted theft of a motor vehicle.

From 2015 to 2016:

- Reported motor vehicle thefts increased 1.3% in rate.

Comparing 2016 to 2007:

- The motor vehicle theft rate decreased 21.4%.

In 2016, of the 5,499 motor vehicle thefts reported:

- Autos accounted for 50.5% (2,775).
- Other vehicles accounted for 29.9% (1,645). Included in this category are motorcycles, mopeds, and golf carts.
- Trucks and buses accounted for 19.6% (1,079). Included in this category are pickup trucks and vans.

Value of Property Stolen by Type of Offense
State of Hawaii, 2016

OFFENSE	# OF OFFENSES	PROPERTY VALUE	% OF TOTAL
MURDER	35	\$ 141	0.0
RAPE	601	\$ 2,002	0.0
ROBBERY TOTAL	985	\$ 1,250,809	1.6
Highway	361	\$ 347,833	0.4
Commercial House	138	\$ 168,802	0.2
Service Station	16	\$ 3,919	0.0
Convenience Store	127	\$ 61,095	0.1
Residence	98	\$ 341,640	0.4
Bank	26	\$ 29,993	0.0
Miscellaneous	219	\$ 297,527	0.4
BURGLARY TOTAL	5,983	\$ 19,355,464	24.2
Residence - Night	902	\$ 2,513,713	3.1
Residence - Day	1,340	\$ 4,089,803	5.1
Residence - Unknown	1,701	\$ 6,803,854	8.5
Non-Residence - Night	500	\$ 1,122,091	1.4
Non-Residence - Day	369	\$ 763,799	1.0
Non-Residence - Unknown	1,171	\$ 4,062,204	5.1
LARCENY-THEFT TOTAL	30,871	\$ 26,759,837	33.4
Pocket Picking	271	\$ 193,980	0.2
Purse Snatching	175	\$ 164,196	0.2
Shoplifting	5,298	\$ 1,384,583	1.7
From Motor Vehicles	9,341	\$ 7,134,392	8.9
Motor Vehicle Parts	1,539	\$ 436,321	0.5
Bicycles	1,207	\$ 608,503	0.8
From Buildings	3,162	\$ 4,851,236	6.1
Coin Machines	53	\$ 20,006	0.0
All Others	9,825	\$ 11,966,620	14.9
MOTOR VEHICLE THEFT	5,499	\$ 32,750,854	40.9
GRAND TOTAL	43,974	\$ 80,119,107	100%

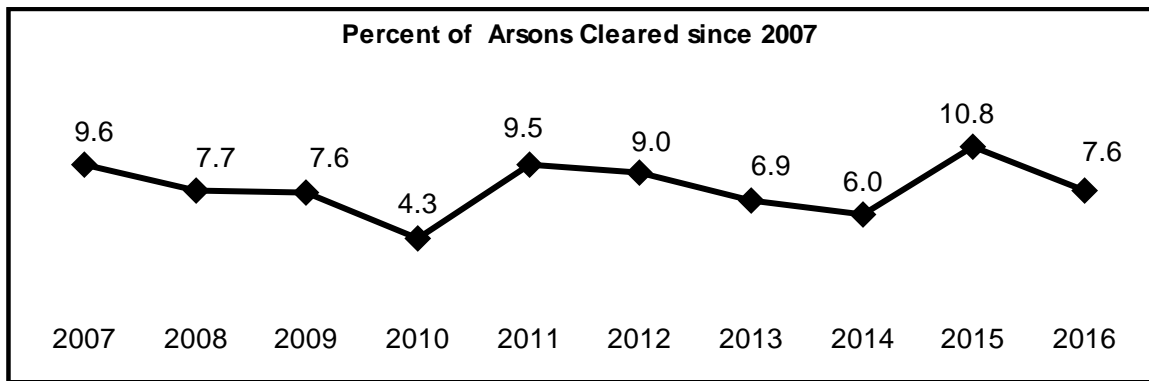
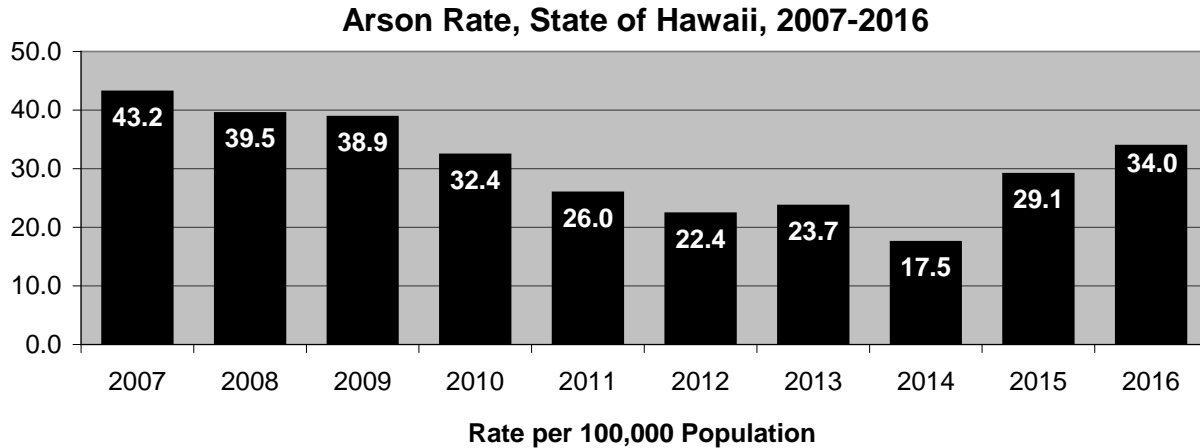
Note: Due to rounding, individual percentages may not resolve with subtotals and total.

Value of Property Stolen & Recovered
State of Hawaii, 2016

Property Type	Amount Stolen	Amount Recovered	% Recovered
Money - Notes	\$6,346,526	\$85,288	1.3
Jewels	\$10,605,424	\$314,921	3.0
Clothing - Furs	\$4,088,555	\$241,508	5.9
Motor Vehicles	\$33,261,034	\$22,124,010	66.5
Office Equipment	\$2,713,209	\$213,574	7.9
Televisions - Radios	\$2,329,955	\$135,516	5.8
Firearms	\$146,552	\$18,732	12.8
Household Goods	\$1,352,583	\$74,658	5.5
Consumable Goods	\$426,584	\$82,348	19.3
Livestock	\$39,145	\$4,105	10.5
Miscellaneous	\$18,809,540	\$2,464,709	13.1
TOTAL	\$80,119,107	\$25,759,369	32.2%

Total Value of Property Stolen in Larceny-Thefts,
by Value Lost per Offense
State of Hawaii, 2016

Value Lost per Offense	# of Offenses	Total Property Value	% of Lost Value
\$200 or Over	14,514	\$25,923,911	96.9
\$50 to \$200	6,705	\$719,442	2.7
Under \$50	9,652	\$116,484	0.4
TOTAL	30,871	\$26,759,837	



Arson - Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

From 2015 to 2016:

- Reported arsons increased 16.6% in rate.

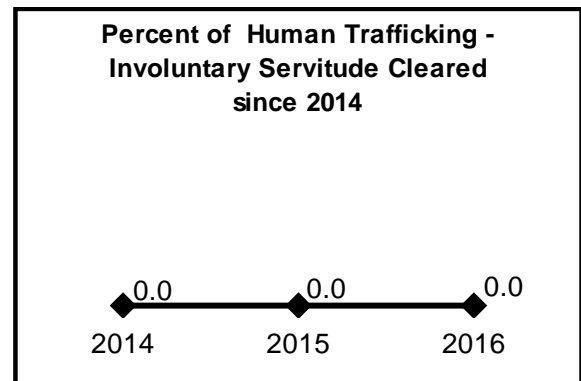
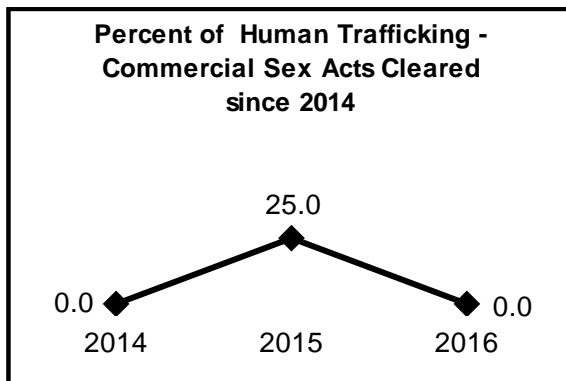
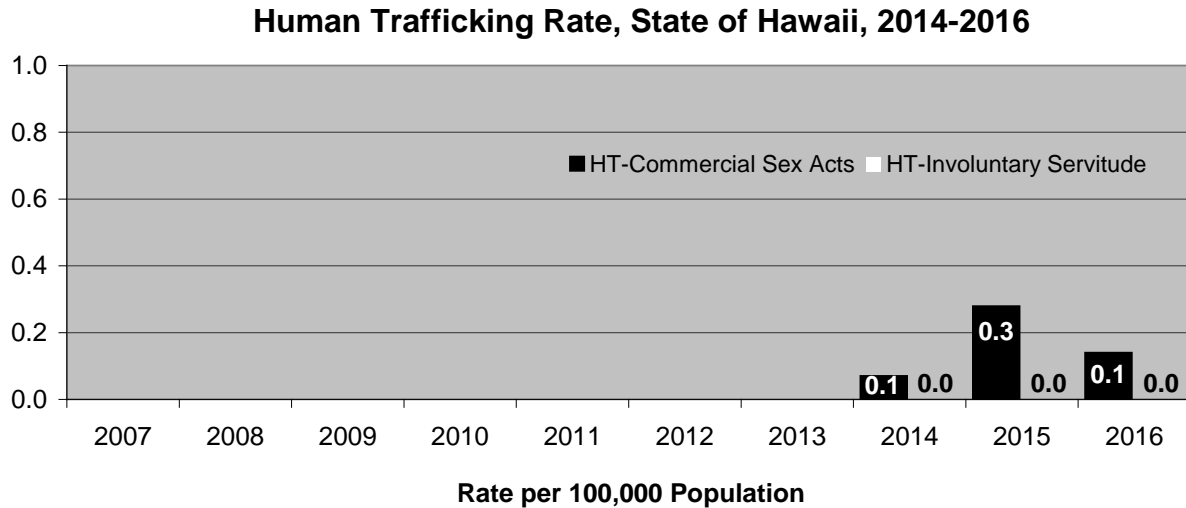
Comparing 2016 to 2007:

- The arson rate decreased 21.4%.

Value of Property Destroyed by Arson
State of Hawaii, 2016

Property Type	# of Offenses (% of Total)	Property Value (% of Total)
Structure Total	107 (22.1)	\$2,228,222 (65.9)
Single Occupancy Residential	23 (4.7)	\$1,767,440 (52.3)
Other Residential	13 (2.7)	\$312,010 (9.2)
Storage	1 (0.2)	\$25 (0.0)
Industrial / Manufacturing	0 (0.0)	\$0 (0.0)
Other Commercial	22 (4.5)	\$81,311 (2.4)
Community / Public	33 (6.8)	\$42,937 (1.3)
All Other Structures	15 (3.1)	\$24,499 (0.7)
Mobile Total	188 (38.8)	\$797,594 (23.6)
Motor Vehicles	183 (37.7)	\$755,594 (22.3)
Other Mobile Property	5 (1.0)	\$42,000 (1.2)
Other	190 (39.2)	\$355,989 (10.5)
TOTAL	485	\$3,381,805

Note: Due to rounding, individual percentages may not resolve with subtotals and total.



Commercial Sex Acts* – Inducing a person by force, fraud, or coercion to participate in commercial sex acts, or in which the person induced to perform such act(s) has not attained 18 years of age.

Involuntary Servitude* – The obtaining of a person(s) through recruitment, harboring, transportation, or provision, and subjecting such person(s) by force, fraud, or coercion into involuntary servitude, peonage, debt bondage, or slavery (not to include commercial sex acts).

From 2015 to 2016:

- Human trafficking - commercial sex acts decreased 49.9% in rate. There were four offenses of commercial sex act reported in 2015, as compared to two in 2016.
- There were no reports of human trafficking - involuntary servitude in 2015 and 2016.

**Note: On January 1, 2014, the State of Hawaii began collecting data for human trafficking - commercial sex acts, and human trafficking - involuntary servitude. See page 3 for more information.*

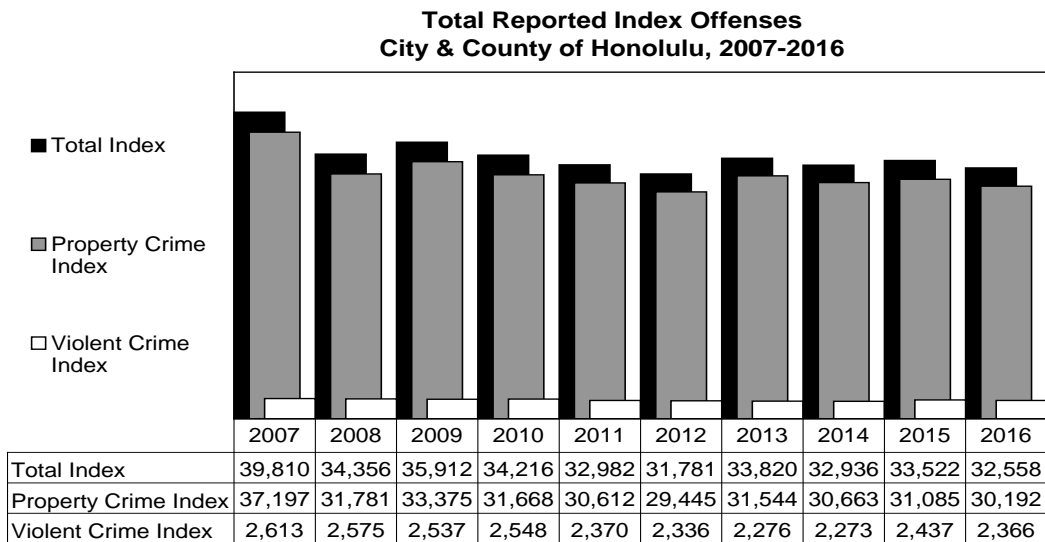
CITY & COUNTY OF HONOLULU**2016 HIGHLIGHTS**

In 2016, 69.7% of Hawaii's population resided in the City & County of Honolulu, where 71.1% of the State's total Index Crimes, 68.5% of the violent crimes, and 71.3% of the property crimes were reported.

In 2016, the total number of Index Crimes, violent crimes, and property crimes reported in the City & County of Honolulu all decreased by roughly 2.9%. The number of reported offenses increased for four of the Index Crime categories: murder, 6.7%; rape, 14.5%; motor vehicle theft, 8.3%; and arson, 13.9%. The number of reported offenses for five crime categories decreased: robbery, 7.7%; aggravated assault, 4.1%; burglary, 13.1%; larceny-theft, 2.8%; and human trafficking - commercial sex acts, 33.3%. No reports of human trafficking - involuntary servitude were reported in the City & County of Honolulu in 2015 or 2016.

The table on the following page lists the numbers of reported offenses, excluding traffic, in the City & County of Honolulu during the past 10 years. The population of the City & County of Honolulu increased 9.9% during this period, while the number of reported Index Crimes decreased 18.2%. In the City & County of Honolulu in 2016, there were 9.5% fewer violent crimes and 18.8% fewer property crimes than were reported in 2007.

Data submitted by the Honolulu Police Department for November and December 2016 were converted to the traditional Summary Reporting System (SRS) format from test data processed under the National Incident-Based Reporting System (NIBRS), a new, more comprehensive system. The absence of the hierarchy rule and other nuances in NIBRS may account for slight differences in the number of reported offenses and other tallies reported under the native SRS specifications. For more information on the differences between SRS and NIBRS, see <https://ucr.fbi.gov/nibrs-overview>.



Reported Offenses

City & County of Honolulu, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	39,810	34,356	35,912	34,216	32,982	31,781	33,820	32,936	33,522	32,558
Violent Crime Index	2,613	2,575	2,537	2,548	2,370	2,336	2,276	2,273	2,437	2,366
Murder	19	18	14	19	14	11	18	19	15	16
Rape*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	320	318	364
Rape (legacy)*	226	203	243	218	203	165	221	181**	208**	167**
Robbery	943	928	869	891	821	914	743	768	896	827
Aggravated Assault	1,425	1,426	1,411	1,420	1,332	1,246	1,294	1,166	1,208	1,159
Property Crime Index	37,197	31,781	33,375	31,668	30,612	29,445	31,544	30,663	31,085	30,192
Burglary	5,777	6,370	5,999	5,760	5,373	4,713	4,813	4,540	4,284	3,724
Larceny-Theft	26,483	21,473	23,647	22,007	21,987	21,978	23,059	22,221	22,930	22,277
Motor Vehicle Theft	4,937	3,938	3,729	3,901	3,252	2,754	3,672	3,902	3,871	4,191
Arson	407	365	413	349	228	210	211	169	231	263
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	3	2
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0

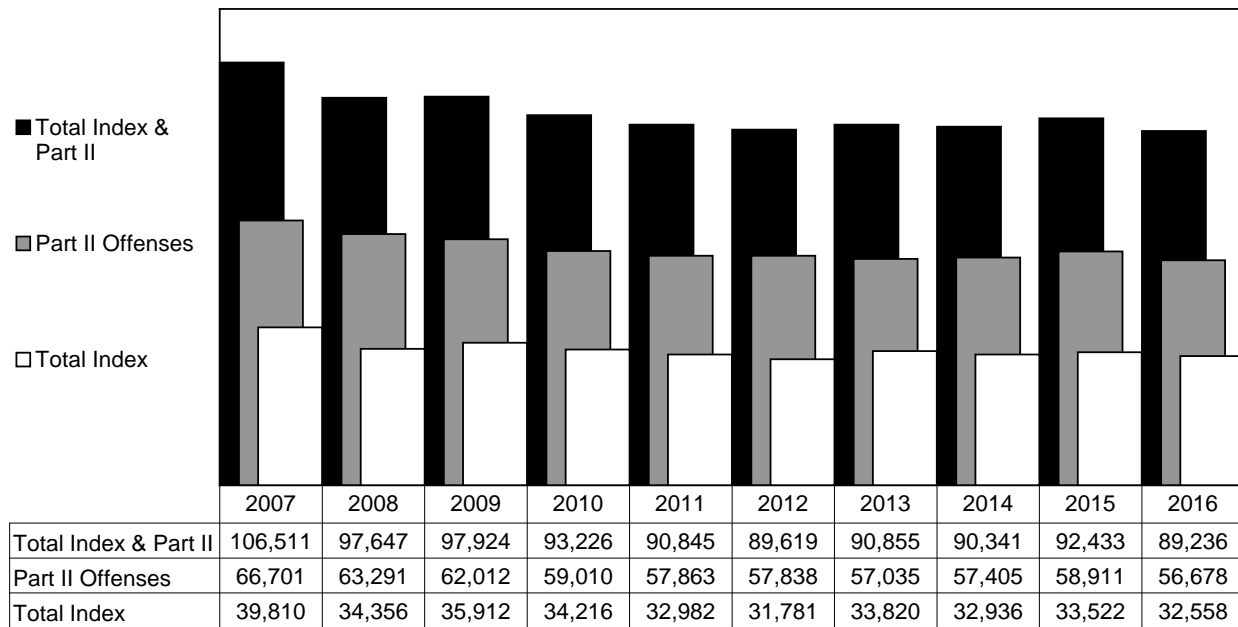
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	66,701	63,291	62,012	59,010	57,863	57,838	57,035	57,405	58,911	56,678
Total Index & Part II	106,511	97,647	97,924	93,226	90,845	89,619	90,855	90,341	92,433	89,236

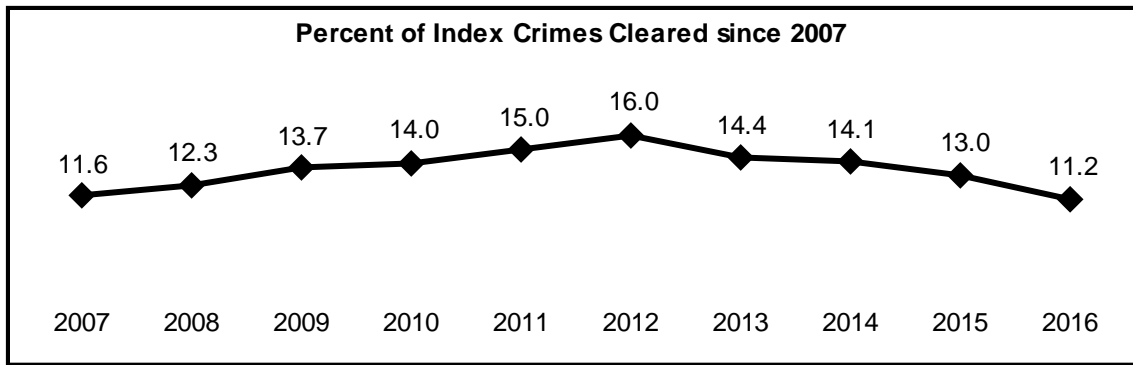
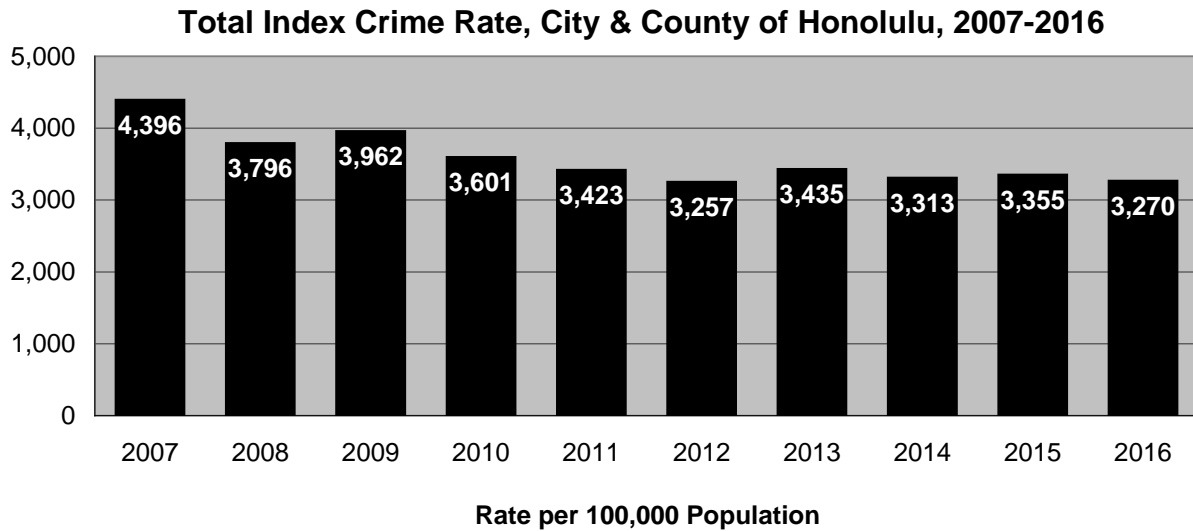
Note: Violent Crime Index, Property Crime Index, Part II Offenses, and Total Index and Part II offenses exclude arson and human trafficking offenses.

* On January 1, 2014, the State of Hawaii commenced the collection of rape data using a revised definition (see pages 3 and 35 for more details).

**The total number of rapes under the legacy definition in 2014 is not separately included in the Violent Crime Index, Total Index, and Total Index & Part II offenses. It is, however, already included in the rape count under the revised definition.

**Total Reported Index & Part II Offenses
City & County of Honolulu, 2007-2016**





Index Crimes - Murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. However, due to a different method of counting, arson and human trafficking offenses are not included in the totals of reported Index Crimes and Index & Part II Offenses.

From 2015 to 2016:

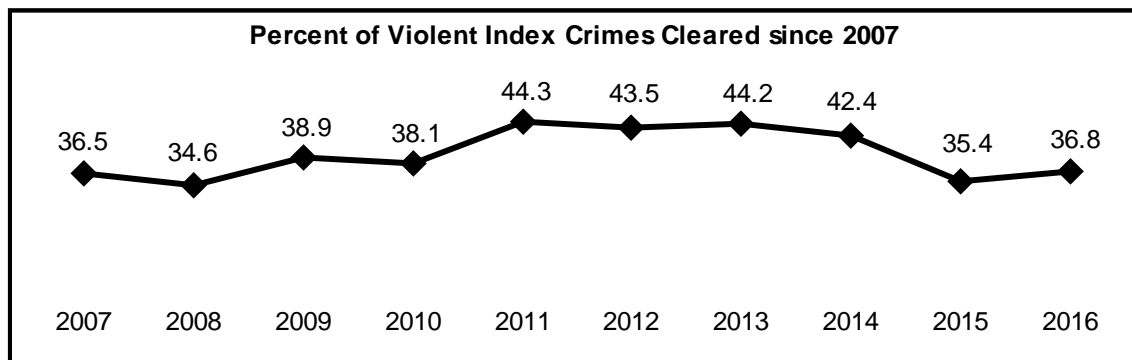
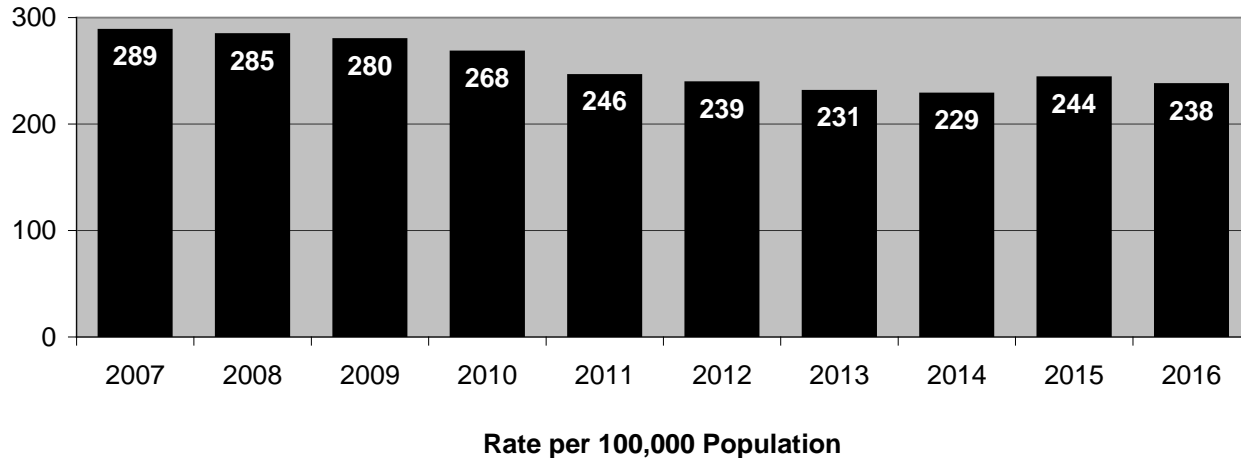
- Reported Index Crimes decreased 2.5% in rate.

Comparing 2016 to 2007:

- The Index Crime rate decreased 25.6%.

In 2016, of the 32,558 Index Crimes reported:

- Property crimes accounted for 92.7% (30,192).
- Violent crimes accounted for 7.3% (2,366).

Violent Crime Rate, City & County of Honolulu, 2007-2016

Violent Crimes - Murder, rape, robbery, and aggravated assault. Human trafficking - commercial sex acts and human trafficking - involuntary servitude are also violent crimes; however, due to a different method of counting, they are not included in the totals of violent crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

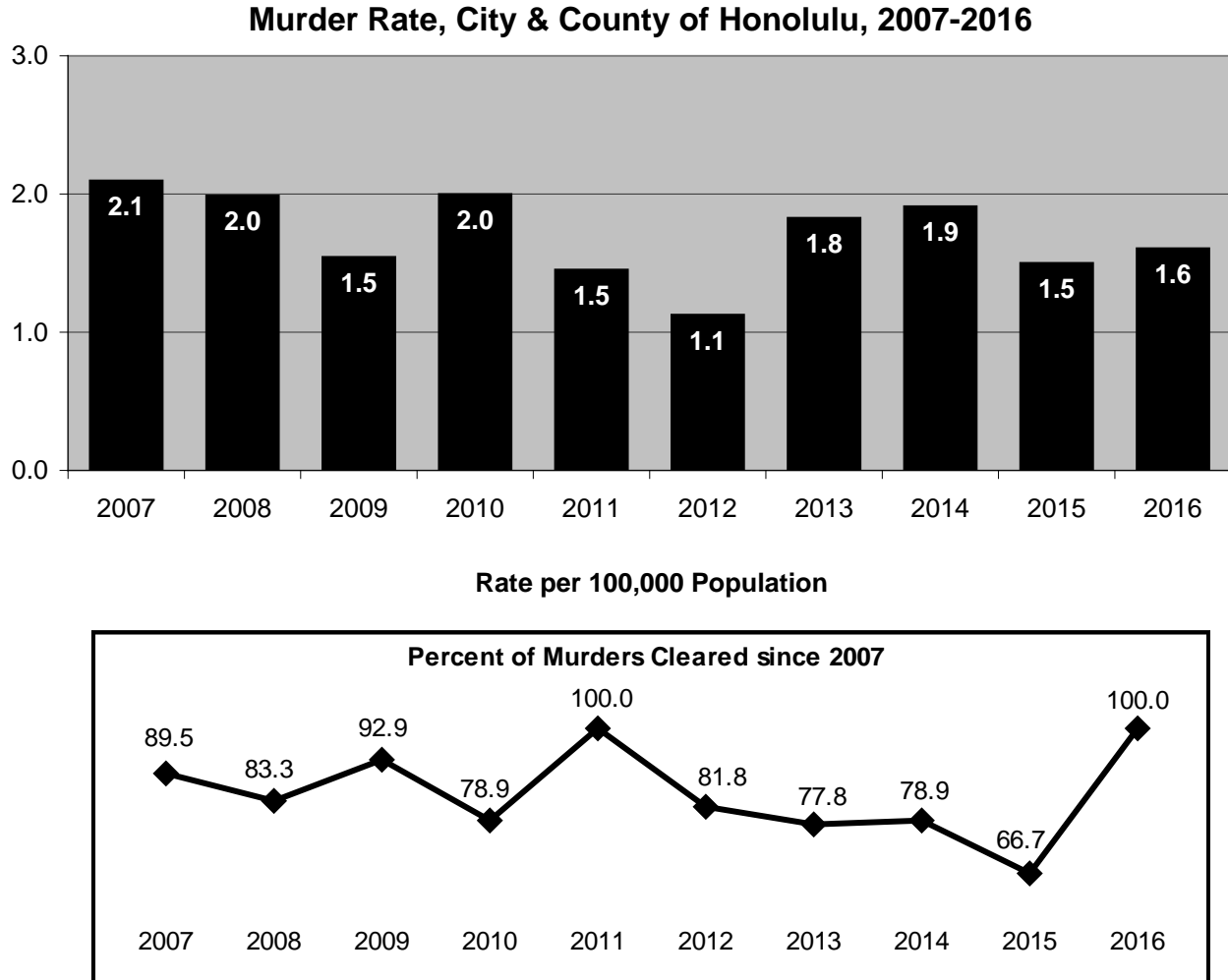
- Reported violent Index Crimes decreased 2.5% in rate.

Comparing 2016 to 2007:

- The violent Index Crime rate decreased 17.6%.

In 2016, of the 2,366 violent crimes reported:

- Aggravated assault accounted for 49.0% (1,159).
- Robbery accounted for 35.0% (827).
- Rape accounted for 15.4% (364).
- Murder accounted for 0.7% (16).



Murder - The willful killing of one human being by another.

From 2015 to 2016:

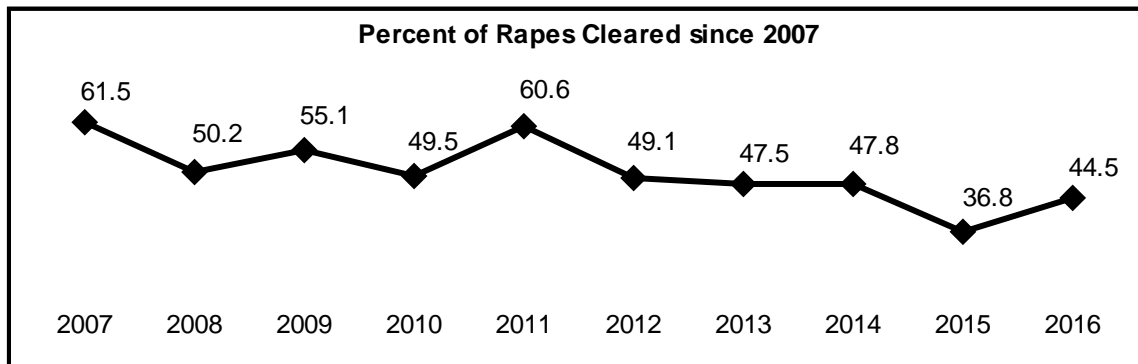
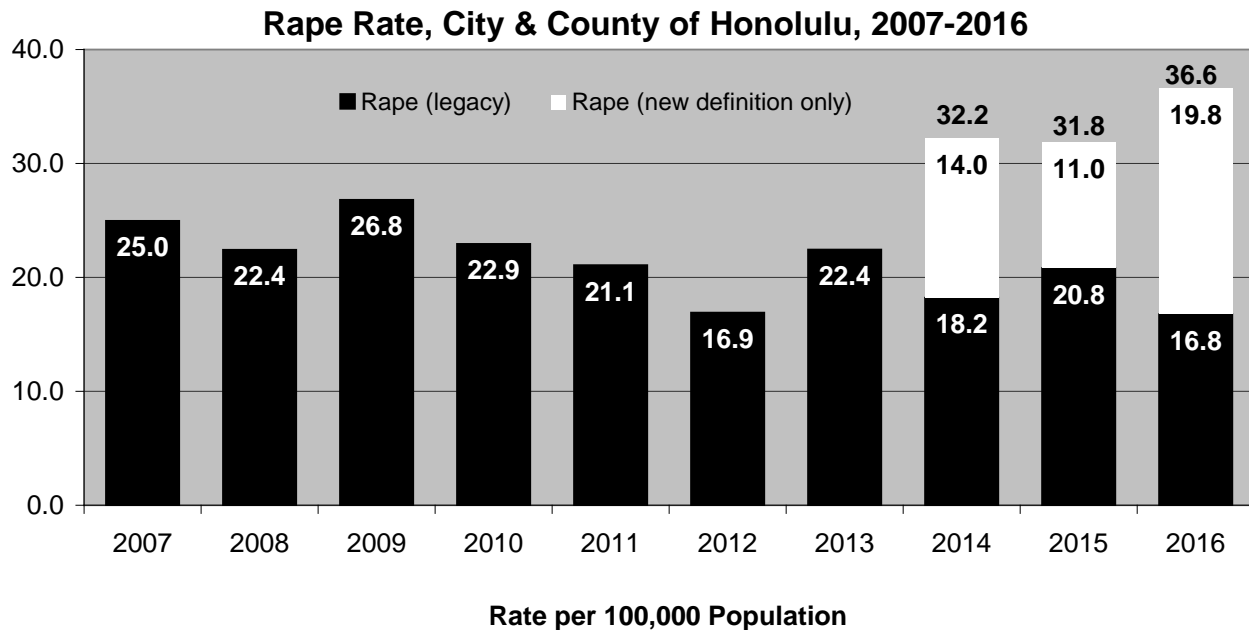
- The murder rate increased 7.1%. There were 15 murders reported in 2015, as compared to 16 murders reported in 2016.

Comparing 2016 to 2007:

- The murder rate decreased 23.4%, with 16 murders reported in 2016 compared to 19 murders reported in 2007.

In 2016, of the 16 reported murders:

- Firearms were involved in 37.5% (6).
- Knives or cutting instruments were involved in 37.5% (6).
- Strongarm weapons (hands, fists, feet, etc.) were involved in 18.8% (3).
- An “other” or unknown weapon was used in 6.3% (1).



Rape (legacy)* - The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.

Rape (revised)* - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

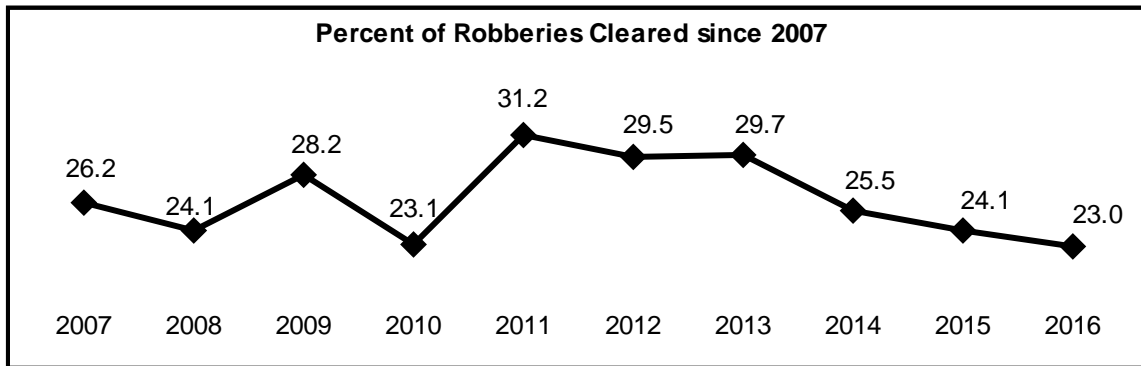
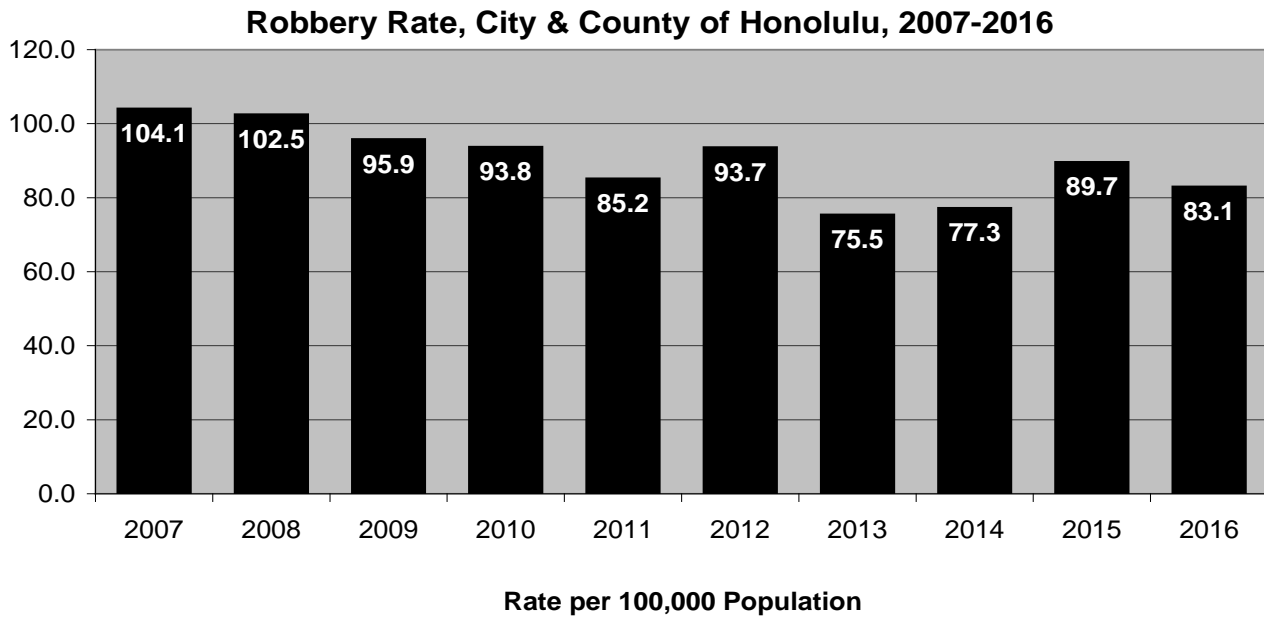
From 2015 to 2016:

- Reported rapes increased 14.9% in rate.

Comparing 2016 to 2007:

- The rape rate, based on the legacy definition, decreased 32.8%.

**Note: On January 1, 2014, the State of Hawaii began collecting rape data under the FBI's revised definition. The State of Hawaii will continue to also collect rape data under the old, or legacy, definition so that comparative trends can be established. See page 3 for more information.*



Robbery - The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

From 2015 to 2016:

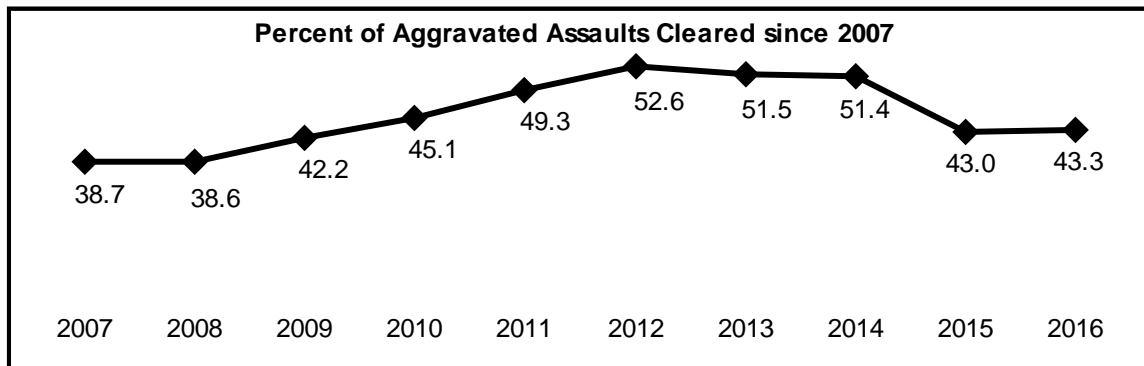
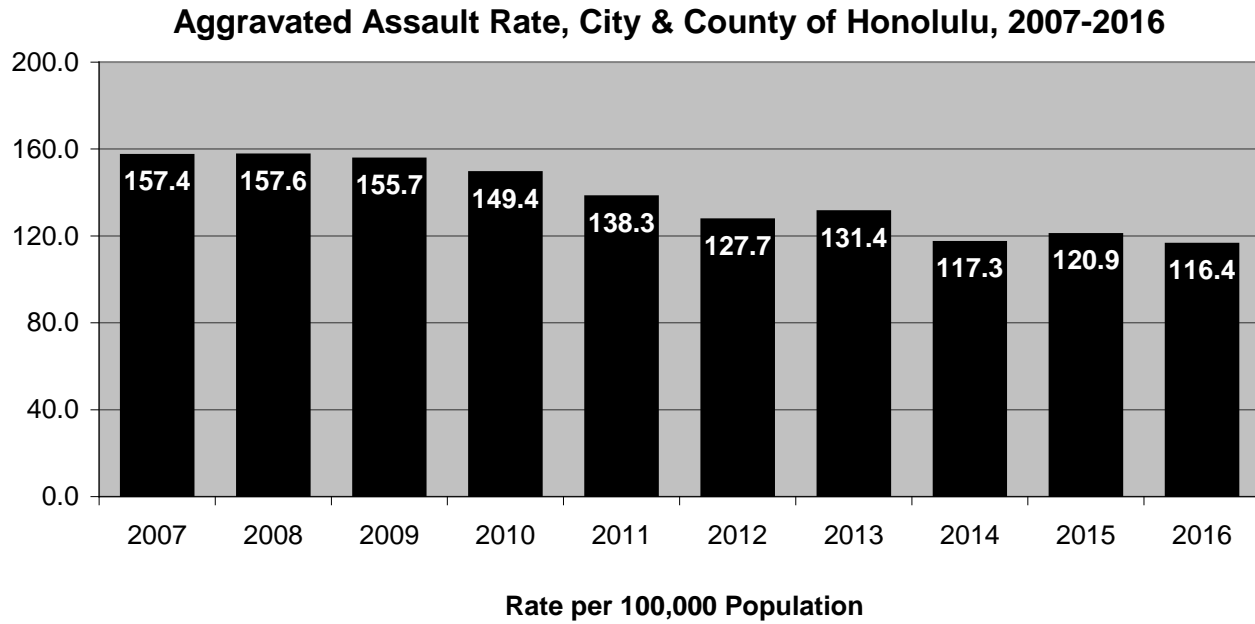
- The rate of reported robberies decreased 7.4%.

Comparing 2016 to 2007:

- The robbery rate decreased 20.2%.

In 2016, of the 827 reported robberies:

- Strongarm weapons (hands, fists, feet, etc.) were used in 64.6% (534).
- Firearms were used in 16.6% (137).
- Knives or cutting instruments were used in 9.6% (79).
- Other dangerous weapons were used in 9.3% (77).



Aggravated Assault - The unlawful attack or attempted attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

From 2015 to 2016:

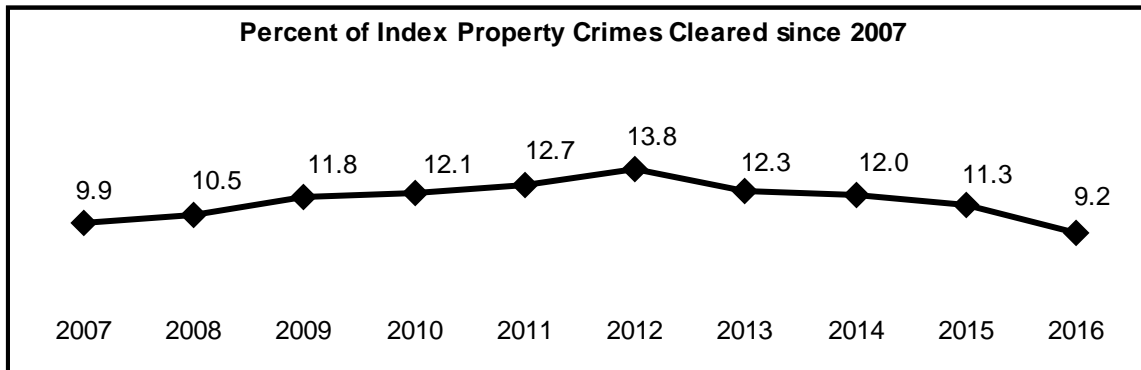
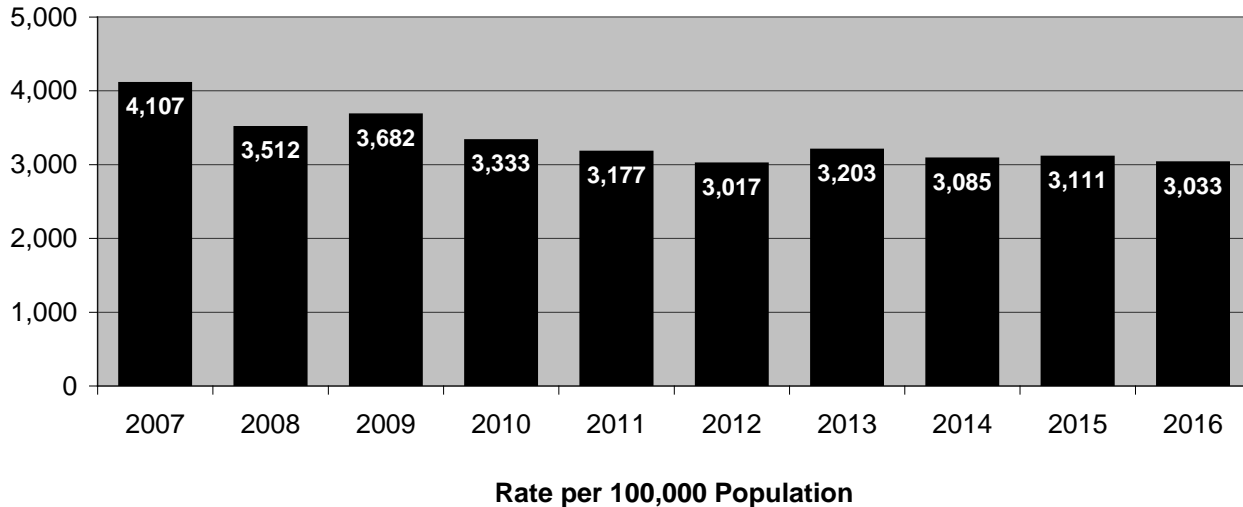
- Reported aggravated assaults decreased 3.7% in rate.

Comparing 2016 to 2007:

- The aggravated assault rate decreased 26.0%.

In 2016, of the 1,159 reported aggravated assaults:

- Strongarm weapons (hands, fists, feet, etc.) were used in 30.9% (358).
- Other dangerous weapons were used in 30.9% (358).
- Knives or cutting instruments were used in 26.8% (311).
- Firearms were used in 11.4% (132).

Property Crime Rate, City & County of Honolulu, 2007-2016

Property Crimes - Burglary, larceny-theft, and motor vehicle theft. Arson is also a property crime; however, due to a different method of counting, it is not included in the totals of property crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

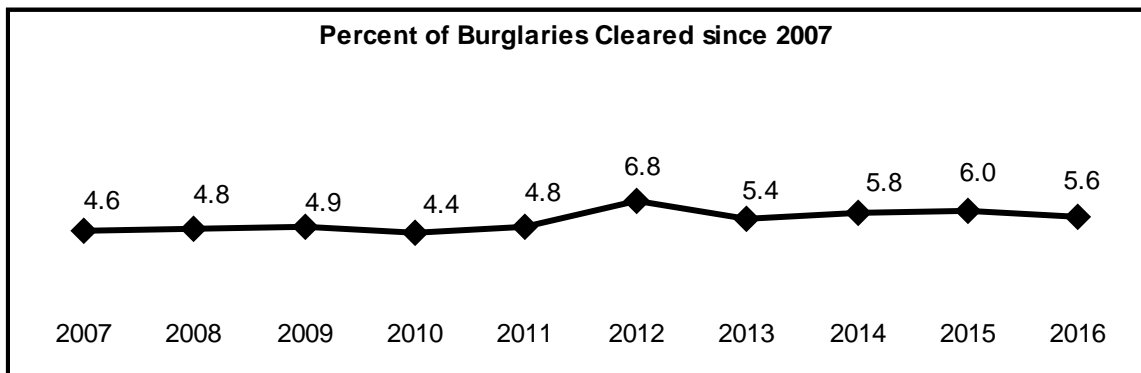
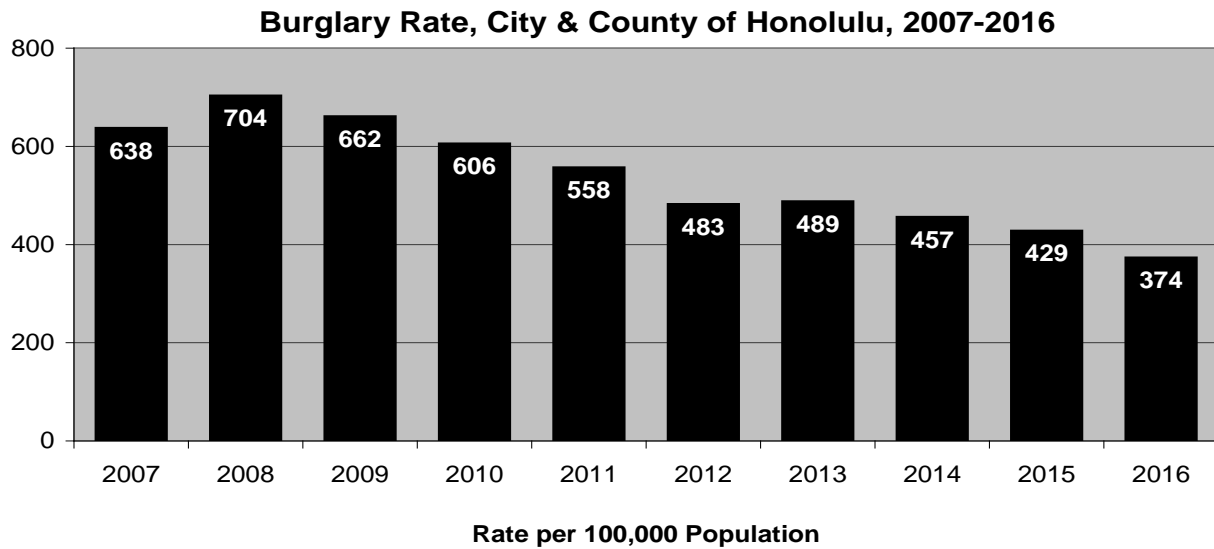
- Reported property crimes decreased 2.5% in rate.

Comparing 2016 to 2007:

- The property crime rate decreased 26.2%.

In 2016, of the 30,192 property crimes reported:

- Larceny-theft accounted for 73.8% (22,277).
- Motor vehicle theft accounted for 13.9% (4,191).
- Burglary accounted for 12.3% (3,724).



Burglary - The unlawful entry of a structure to commit a felony or a theft. Attempted burglary is included.

From 2015 to 2016:

- The rate of reported burglaries decreased 12.7%.

Comparing 2016 to 2007:

- The burglary rate decreased 41.4%.

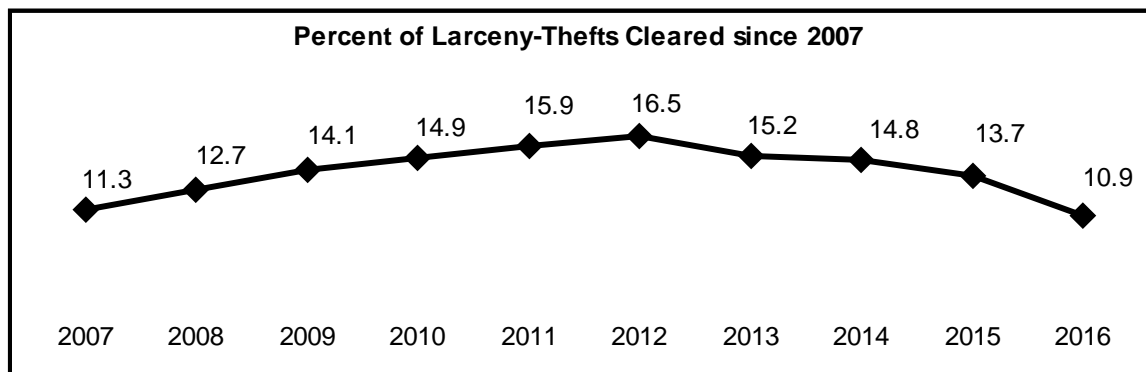
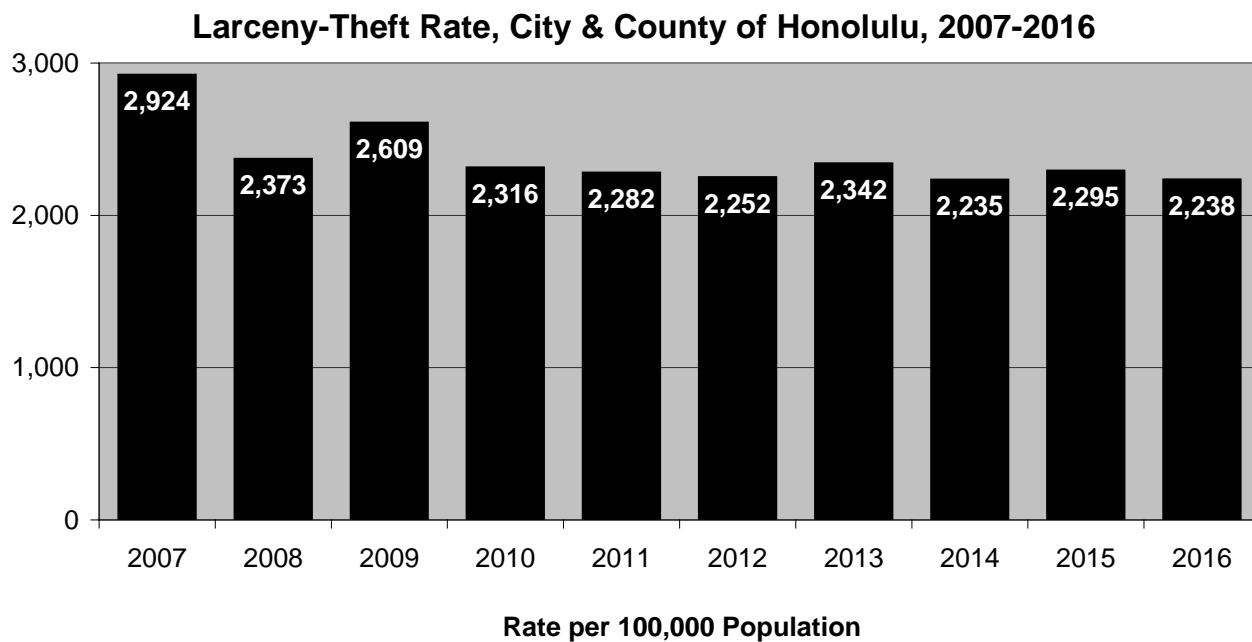
In 2016, of the 3,724 burglaries and attempted burglaries reported:

- Burglary accounted for 90.1% (3,354).
- Attempted burglary accounted for 9.9% (370).

In 2016, of the 3,354 reported burglaries:

- Structures entered by force accounted for 64.2% (2,154).
- Structures entered without force accounted for 35.8% (1,200).

The City & County of Honolulu's burglary rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



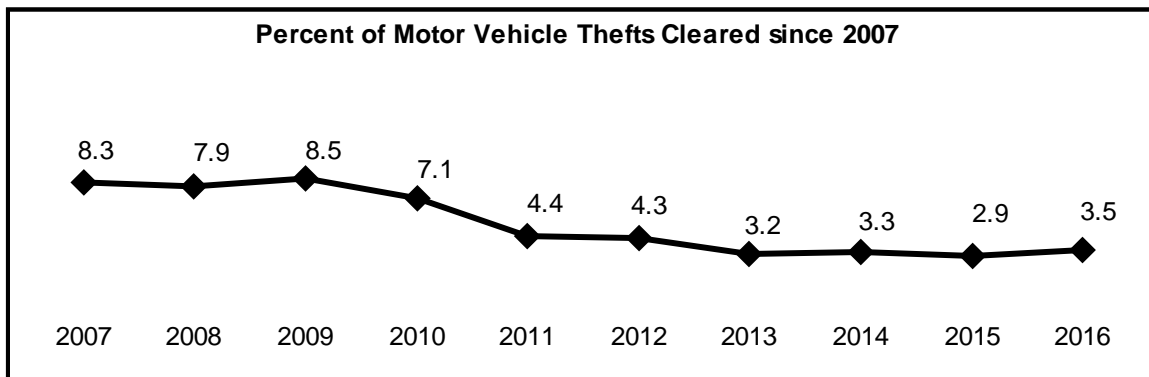
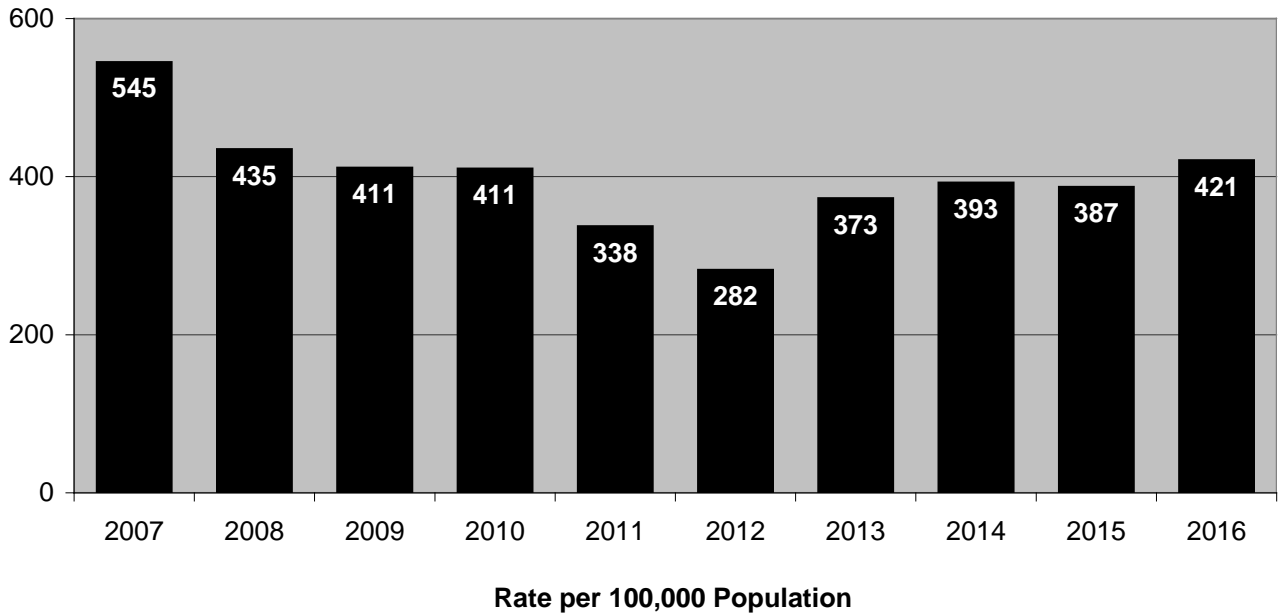
Larceny-Theft - The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

From 2015 to 2016:

- Reported larceny-thefts decreased 2.5% in rate.

Comparing 2016 to 2007:

- The larceny-theft rate decreased 23.5%.

Motor Vehicle Theft Rate, City & County of Honolulu, 2007-2016

Motor Vehicle Theft - The theft or attempted theft of a motor vehicle.

From 2015 to 2016:

- Reported motor vehicle thefts increased 8.7% in rate.

Comparing 2016 to 2007:

- The motor vehicle theft rate decreased 22.8%.

In 2016, of the 4,191 motor vehicle thefts reported:

- Autos accounted for 52.4% (2,195).
- Other vehicles accounted for 31.0% (1,300). Included in this category are motorcycles, golf carts and other self-propelled vehicles.
- Trucks and buses accounted for 16.6% (696). Included in this category are pickup trucks and vans.

Value of Property Stolen by Type of Offense**City & County of Honolulu, 2016**

OFFENSE	# OF OFFENSES	PROPERTY VALUE	% OF TOTAL
MURDER	16	\$ 141	0.0
RAPE	364	\$ 1,498	0.0
ROBBERY TOTAL	827	\$ 1,007,203	1.8
Highway	307	\$ 270,780	0.5
Commercial House	121	\$ 128,476	0.2
Service Station	15	\$ 3,919	0.0
Convenience Store	114	\$ 56,087	0.1
Residence	80	\$ 331,474	0.6
Bank	24	\$ 27,395	0.0
Miscellaneous	166	\$ 189,072	0.3
BURGLARY TOTAL	3,724	\$ 12,825,260	22.5
Residence - Night	672	\$ 2,157,757	3.8
Residence - Day	892	\$ 2,819,058	4.9
Residence - Unknown*	938	\$ 3,669,451	6.4
Non-Residence - Night	332	\$ 766,976	1.3
Non-Residence - Day	239	\$ 520,734	0.9
Non-Residence - Unknown*	651	\$ 2,891,284	5.1
LARCENY-THEFT TOTAL	22,277	\$ 19,158,046	33.5
Pocket Picking	257	\$ 189,880	0.3
Purse Snatching	159	\$ 158,193	0.3
Shoplifting	3,647	\$ 900,612	1.6
From Motor Vehicles	7,704	\$ 5,796,223	10.1
Motor Vehicle Parts	1,247	\$ 327,467	0.6
Bicycles	979	\$ 529,213	0.9
From Buildings	2,446	\$ 3,903,668	6.8
Coin Machines	37	\$ 17,051	0.0
All Others	5,801	\$ 7,335,739	12.8
MOTOR VEHICLE THEFT	4,191	\$ 24,122,617	42.2
GRAND TOTAL	31,399	\$ 57,114,765	100%

Note: Due to rounding, individual percentages may not resolve with subtotals and total.

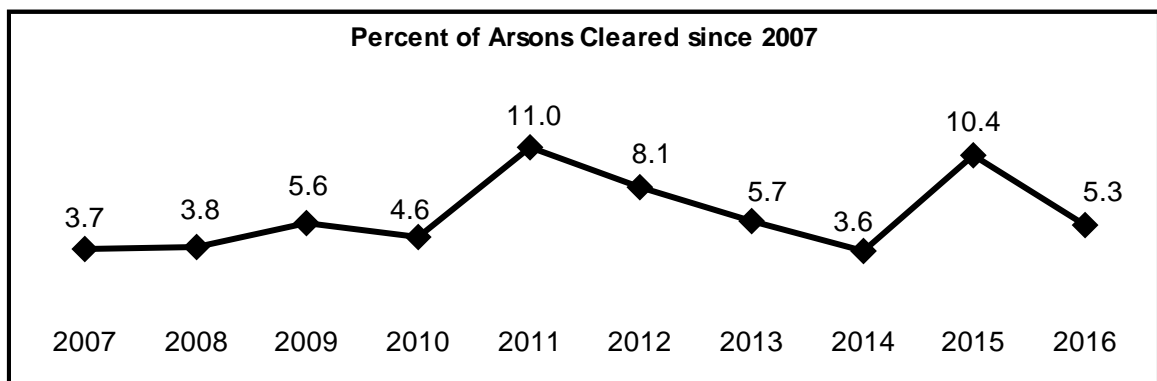
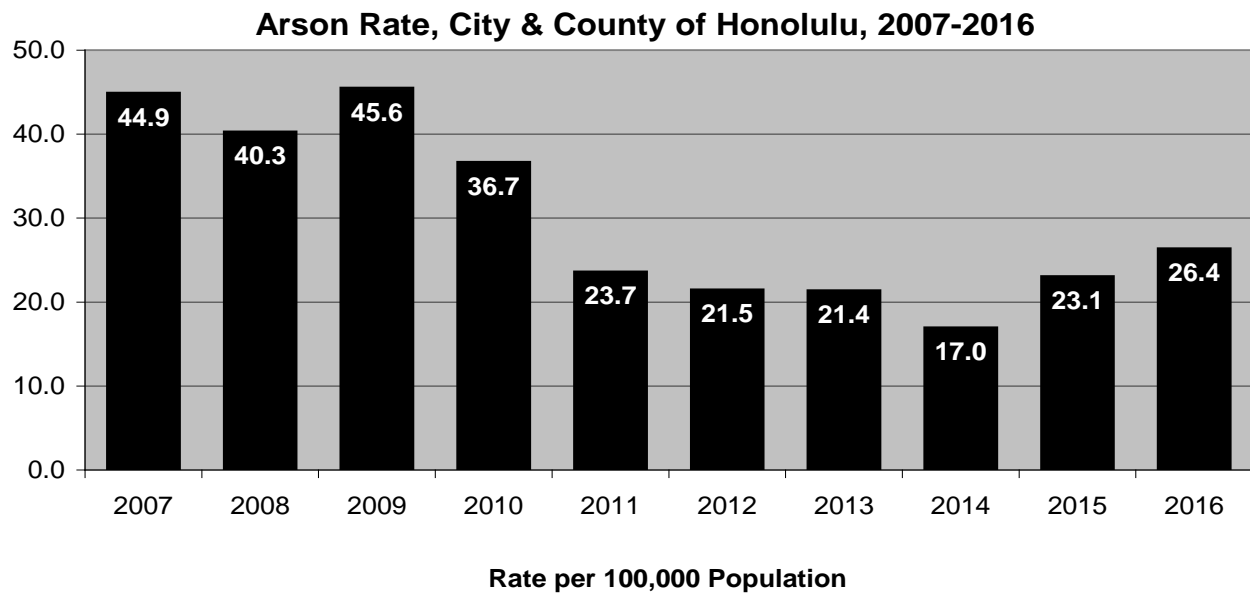
*Effective November 2016, burglaries that were previously noted by the Honolulu Police Department as having occurred at an "unknown" time are classified as either "day" or "night" based on the earliest time the person reporting the offense thought it occurred.

**Value of Property Stolen & Recovered
City and County of Honolulu, 2016**

Property Type	Amount Stolen	Amount Recovered	% Recovered
Money - Notes	\$3,854,906	\$56,970	1.5
Jewels	\$7,269,679	\$198,413	2.7
Clothing - Furs	\$3,530,795	\$192,196	5.4
Motor Vehicles	\$24,167,174	\$16,505,983	68.3
Office Equipment	\$2,461,379	\$191,159	7.8
Televisions - Radios	\$1,678,038	\$78,416	4.7
Firearms	\$67,524	\$11,966	17.7
Household Goods	\$1,223,948	\$72,682	5.9
Consumable Goods	\$274,168	\$46,732	17.0
Livestock	\$9,955	\$975	9.8
Miscellaneous	\$12,577,199	\$1,753,035	13.9
TOTAL	\$57,114,765	\$19,108,527	33.5%

**Total Value of Property Stolen in Larceny-Thefts, by Value Lost per Offense
City & County of Honolulu, 2016**

Value Lost per Offense	# of Offenses	Total Property Value	% of Lost Value
\$200 or Over	10,598	\$18,603,741	97.1
\$50 to \$200	4,486	\$472,224	2.5
Under \$50	7,193	\$82,081	0.4
TOTAL	22,277	\$19,158,046	



Arson - Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

From 2015 to 2016:

- Reported arsons increased 14.3% in rate.

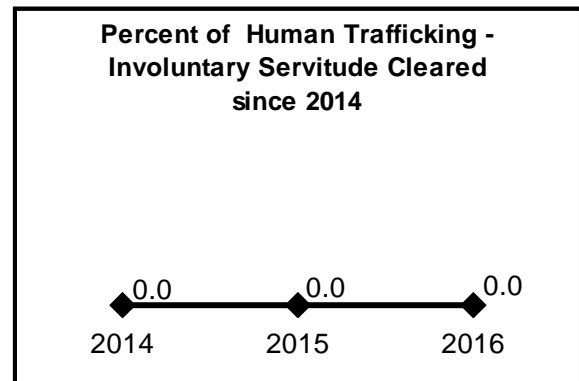
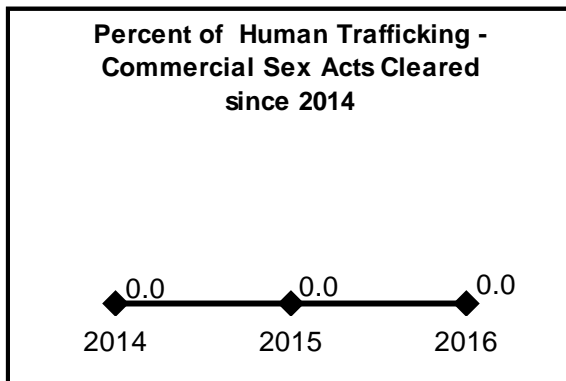
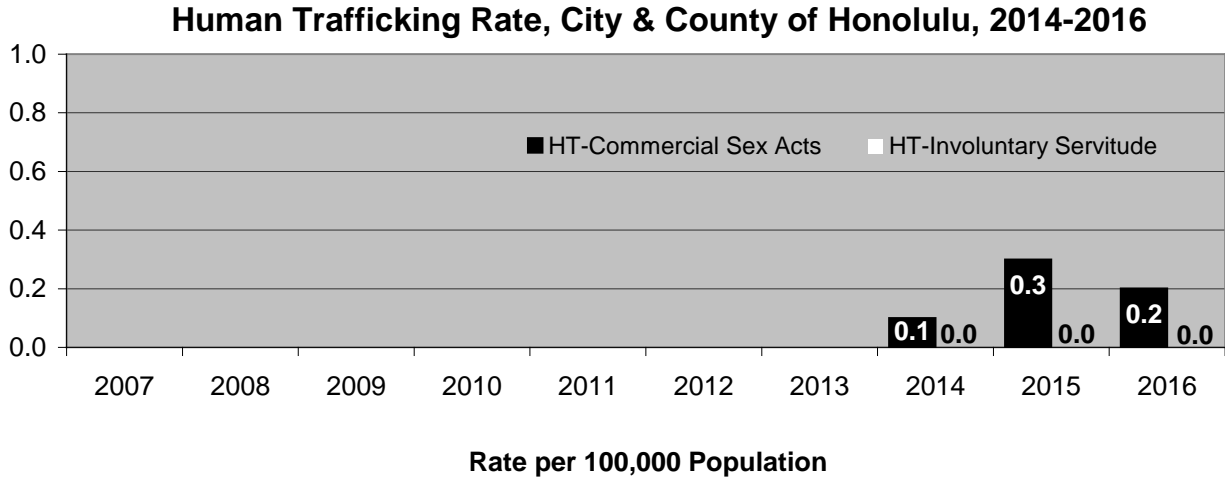
Comparing 2016 to 2007:

- The rate of reported arsons decreased 41.2%.

Value of Property Destroyed by Arson
City & County of Honolulu, 2016

Property Type	# of Offenses (% of Total)	Property Value (% of Total)
Structure Total	85 (32.3)	\$1,051,592 (60.2)
Single Occupancy Residential	12 (4.6)	\$618,100 (35.4)
Other Residential	10 (3.8)	\$306,610 (17.6)
Storage	1 (0.4)	\$25 (0.0)
Industrial / Manufacturing	0 (0.0)	\$0 (0.0)
Other Commercial	19 (7.2)	\$60,596 (3.5)
Community / Public	29 (11.0)	\$41,762 (2.4)
All Other Structures	14 (5.3)	\$24,499 (1.4)
Mobile Total	88 (33.5)	\$643,250 (36.8)
Motor Vehicles	88 (33.5)	\$643,250 (36.8)
Other Mobile Property	0 (0.0)	\$0 (0.0)
Other	90 (34.2)	\$51,056 (2.9)
TOTAL	263	\$1,745,898

Note: Due to rounding, individual percentages may not resolve with subtotals and total.



Commercial Sex Acts* - _Inducing a person by force, fraud, or coercion to participate in commercial sex acts, or in which the person induced to perform such act(s) has not attained 18 years of age.

Involuntary Servitude* - The obtaining of a person(s) through recruitment, harboring, transportation, or provision, and subjecting such person(s) by force, fraud, or coercion into involuntary servitude, peonage, debt bondage, or slavery (not to include commercial sex acts).

From 2015 to 2016:

- Reported commercial sex acts decreased 33.1% in rate. Three human trafficking - commercial sex acts were reported in 2015, as compared to two in 2016.
- No reports of human trafficking - involuntary servitude were reported in the City & County of Honolulu in 2015 or 2016.

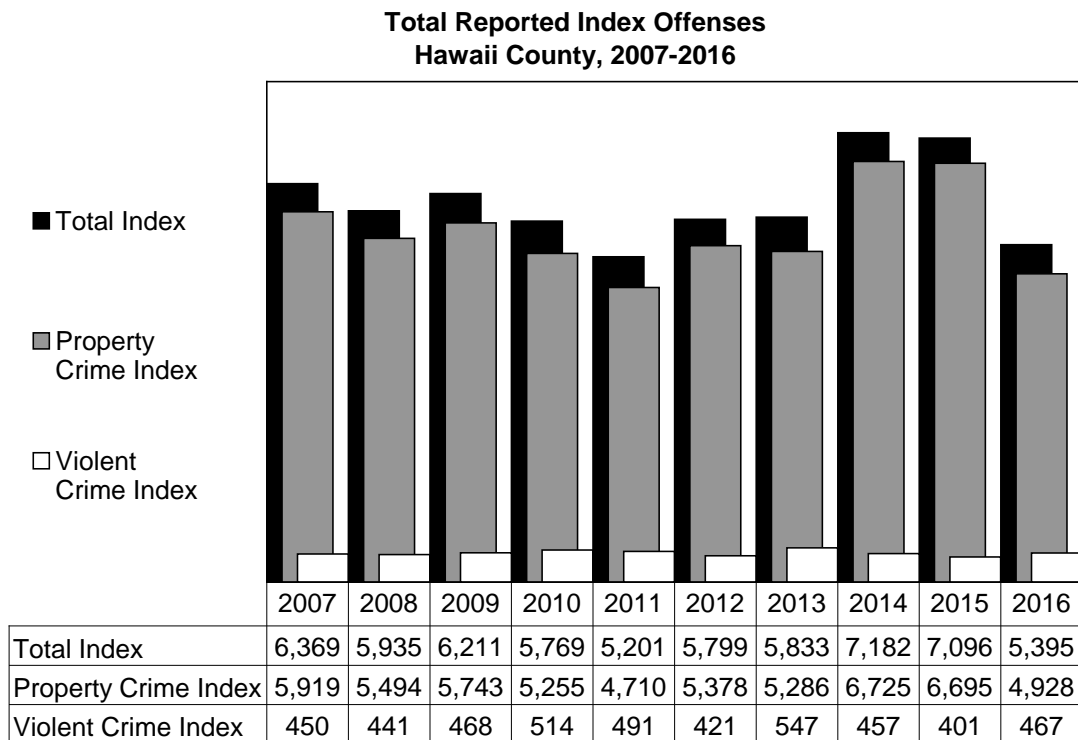
**Note: On January 1, 2014, the State of Hawaii began collecting data for human trafficking - commercial sex acts, and human trafficking - involuntary servitude. See page 3 for more information.*

HAWAII COUNTY**2016 HIGHLIGHTS**

In 2015, 13.7% of Hawaii's population resided in Hawaii County, where 11.4% of the State's Index Crimes, 10.6% of the violent crimes, and 11.5% of the property crimes were reported throughout the year.

The total number of reported Index Crimes decreased 24.0% in Hawaii County in 2016, with violent Index Crimes up 16.5% and property Index Crimes down 26.4%. Five of the Index Crimes increased in number from 2015 to 2016: murder, 12.5%; rape, 21.1%; robbery, 27.8%; aggravated assault, 12.3%; and arson, 32.3%. The number of reported offenses for four Index Crime categories decreased from 2015 to 2016: burglary, 22.4%; larceny-theft, 24.2%; motor vehicle theft, 42.2%; and human trafficking - commercial sex acts, 100%. No reports of human trafficking - involuntary servitude were recorded in Hawaii County in 2015 and 2016.

The table on the following page lists the numbers of reported offenses, excluding traffic, in Hawaii County during the past 10 years. The population of Hawaii County increased 13.5% during this period, while the number of reported Index Offenses decreased 15.3%. Property crimes decreased 16.7%, while violent crimes increased 3.8%.



Reported Offenses

Hawaii County, 2007-2016

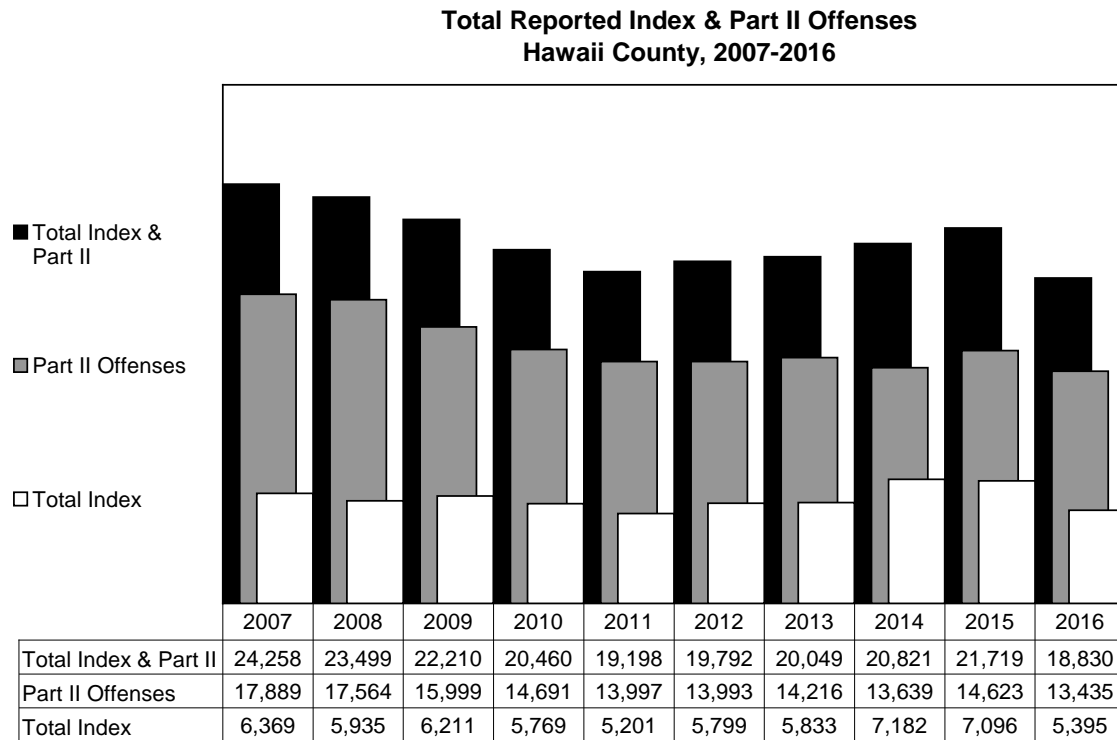
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	6,369	5,935	6,211	5,769	5,201	5,799	5,833	7,182	7,096	5,395
Violent Crime Index	450	441	468	514	491	421	547	457	401	467
Murder	5	4	5	3	3	5	9	3	8	9
Rape*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	103	95	115
Rape (legacy)*	77	78	66	85	63	41	55	63**	71**	72**
Robbery	102	73	67	79	62	74	89	78	54	69
Aggravated Assault	266	286	330	347	363	301	394	273	244	274
Property Crime Index	5,919	5,494	5,743	5,255	4,710	5,378	5,286	6,725	6,695	4,928
Burglary	1,381	1,208	1,415	1,141	946	1,184	1,138	1,198	1,061	823
Larceny-Theft	3,996	3,796	3,855	3,627	3,360	3,751	3,727	4,795	4,725	3,580
Motor Vehicle Theft	542	490	473	487	404	443	421	732	909	525
Arson	79	67	28	21	39	19	32	18	31	41
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	1	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0

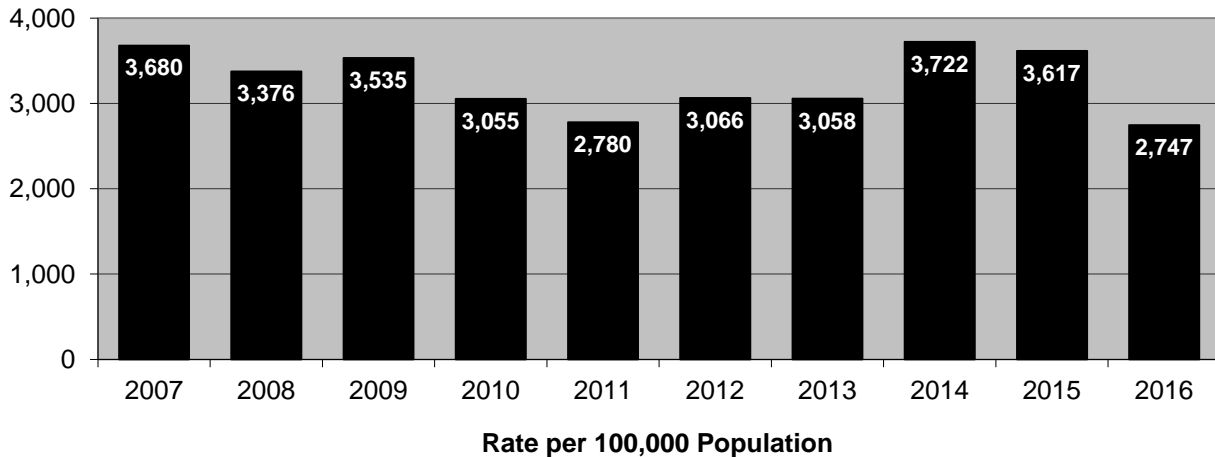
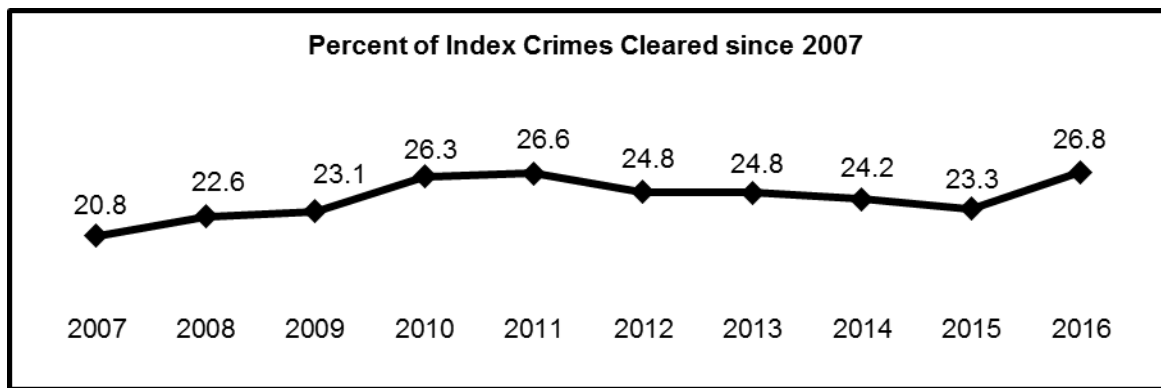
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	17,889	17,564	15,999	14,691	13,997	13,993	14,216	13,639	14,623	13,435
Total Index & Part II	24,258	23,499	22,210	20,460	19,198	19,792	20,049	20,821	21,719	18,830

Note: Violent Crime Index, Property Crime Index, Part II Offenses, and Total Index and Part II offenses exclude arson and human trafficking offenses.

* On January 1, 2014, the State of Hawaii commenced the collection of rape data using a revised definition (see pages 3 and 53 for more details).

**The total number of rapes under the legacy definition in 2014 is not separately included in the Violent Crime Index, Total Index, and Total Index & Part II offenses. It is, however, already included in the rape count under the revised definition.



Total Index Crime Rate, Hawaii County, 2007-2016**Percent of Index Crimes Cleared since 2007**

Index Crimes - Murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. However, due to a different method of counting, arson and human trafficking offenses are not included in the totals of reported Index Crimes and Index & Part II Offenses.

From 2015 to 2016:

- Reported Index Crimes decreased 24.1% in rate.

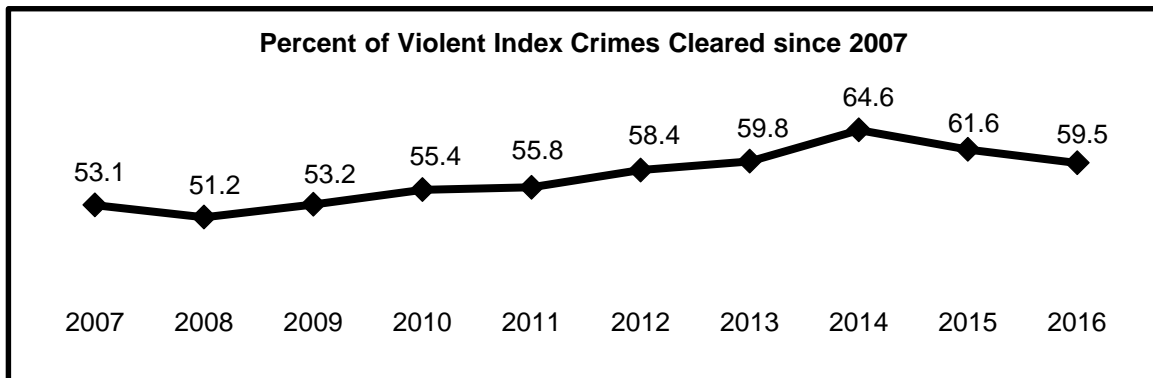
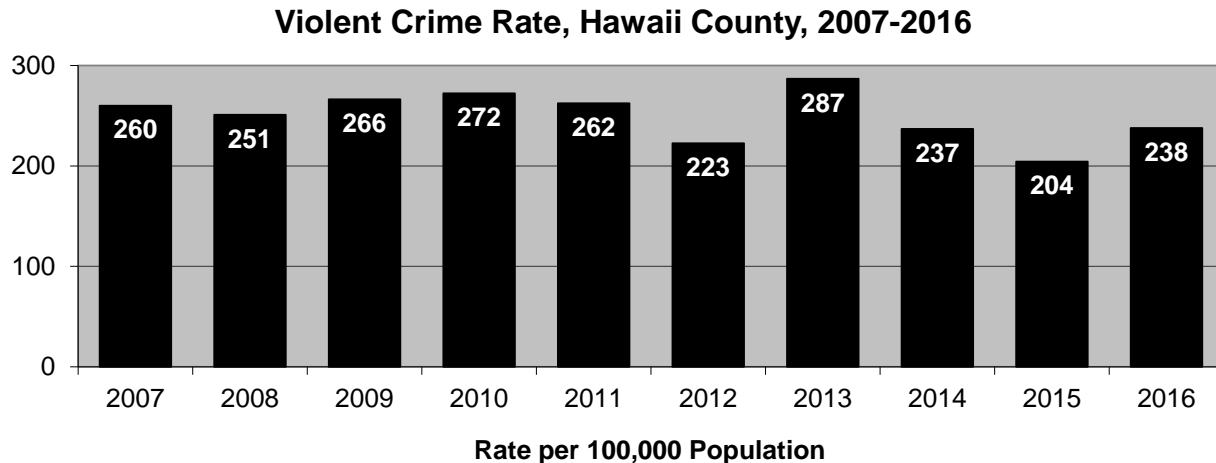
Comparing 2016 to 2007:

- The Index Crime rate declined 25.4%.

In 2016, of the 5,395 Index Offenses reported:

- Property crimes accounted for 91.3% (4,928).
- Violent crimes accounted for 8.7% (467).

Hawaii County's total Index Crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



Violent Crimes - Murder, rape, robbery, and aggravated assault. Human trafficking - commercial sex acts and human trafficking - involuntary servitude are also violent crimes; however, due to a different method of counting, they are not included in the totals of violent crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

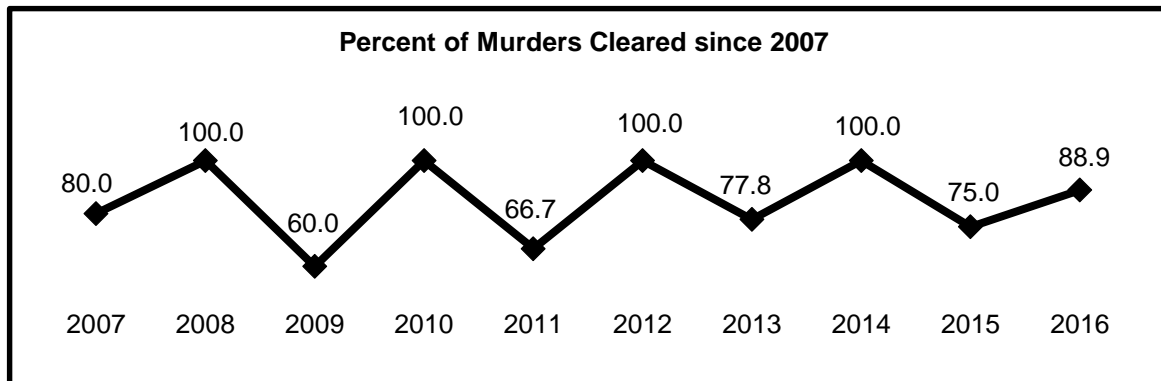
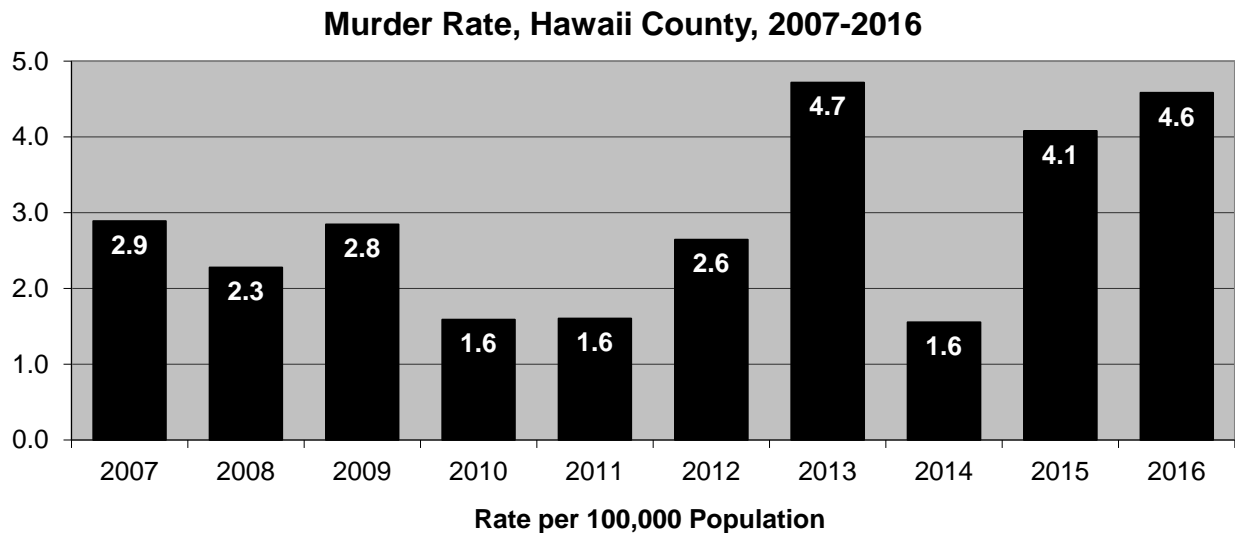
- The rate of reported violent crimes increased 16.3%.

Comparing 2016 to 2007:

- The violent crime rate decreased 8.6%.

In 2016, of 467 violent crimes reported:

- Aggravated assault accounted for 58.7% (274).
- Rape accounted for 24.6% (115).
- Robbery accounted for 14.8% (69).
- Murder accounted for 1.9% (9).



Murder - The willful killing of one human being by another.

From 2015 to 2016:

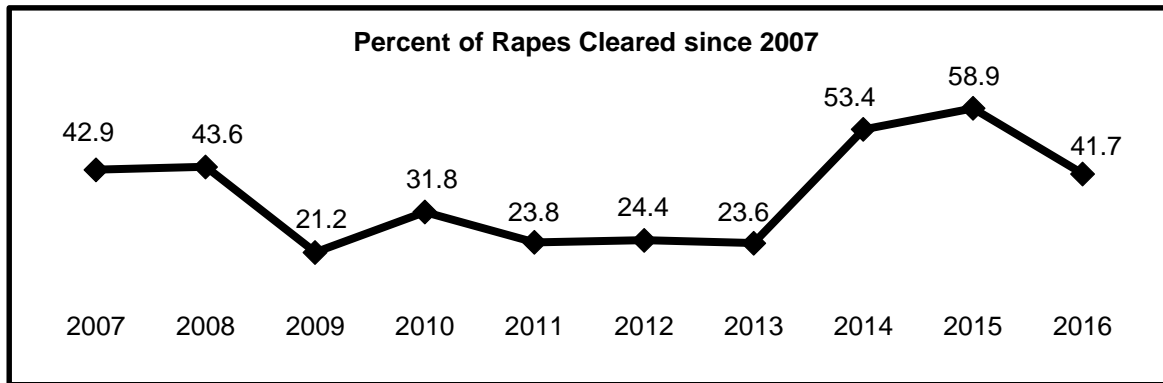
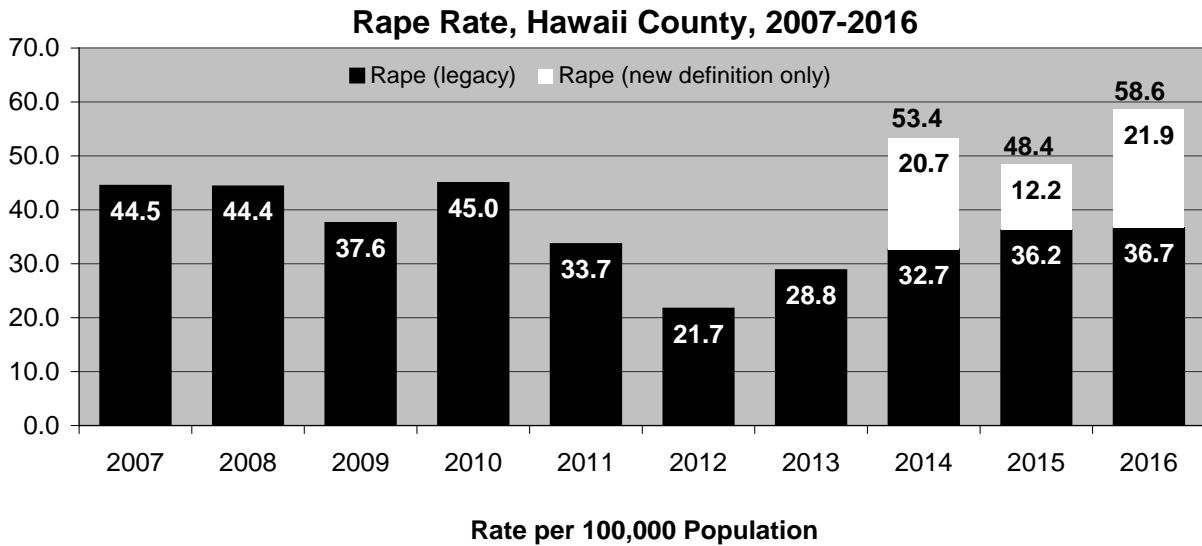
- The rate of reported murders increased 12.4%, with 8 murders reported in 2015, versus 9 murders reported in 2016.

Comparing 2016 to 2007:

- The murder rate increased 58.6%, with 9 murders were reported in 2016, as compared to 5 murders reported in 2007.

In 2016, of the 9 murders reported:

- Firearms were involved in 88.9% (8).
- An “other” or unknown dangerous weapon was involved in 11.1% (1).



Rape (legacy)* - The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.

Rape (revised)* - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

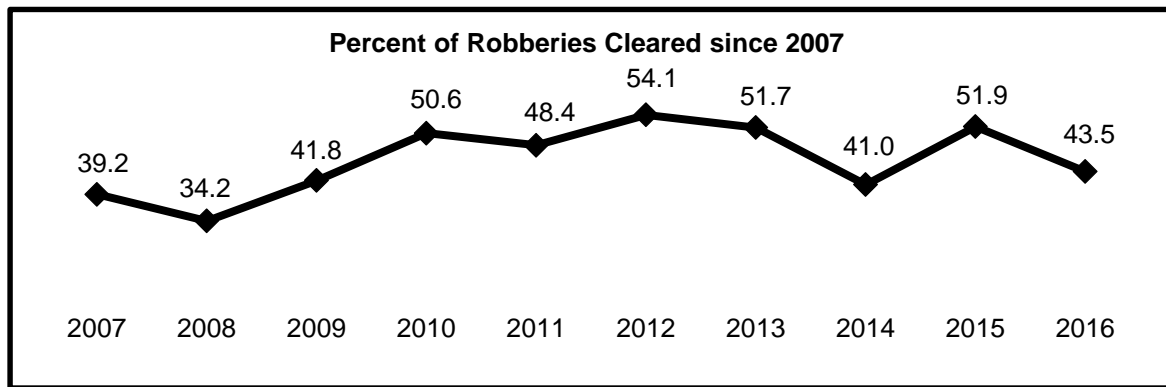
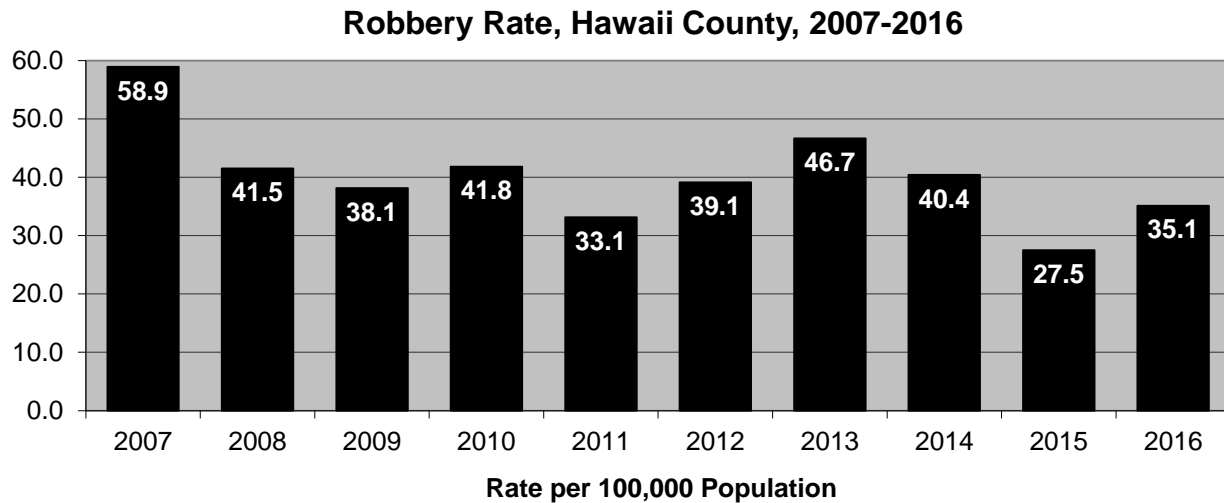
From 2015 to 2016:

- Reported rapes increased 20.9% in rate.

Comparing 2016 to 2007:

- The rape rate, based on the legacy definition, decreased 17.6%.

**Note: On January 1, 2014, the State of Hawaii began collecting rape data under the FBI's revised definition. The State of Hawaii will continue to also collect rape data under the old, or legacy, definition so that comparative trends can be established. See page 3 for more information.*



Robbery - The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

From 2015 to 2016:

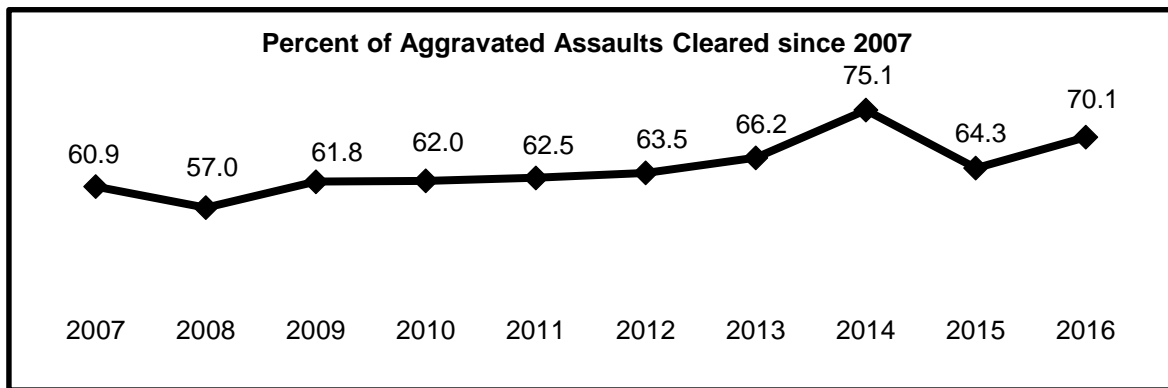
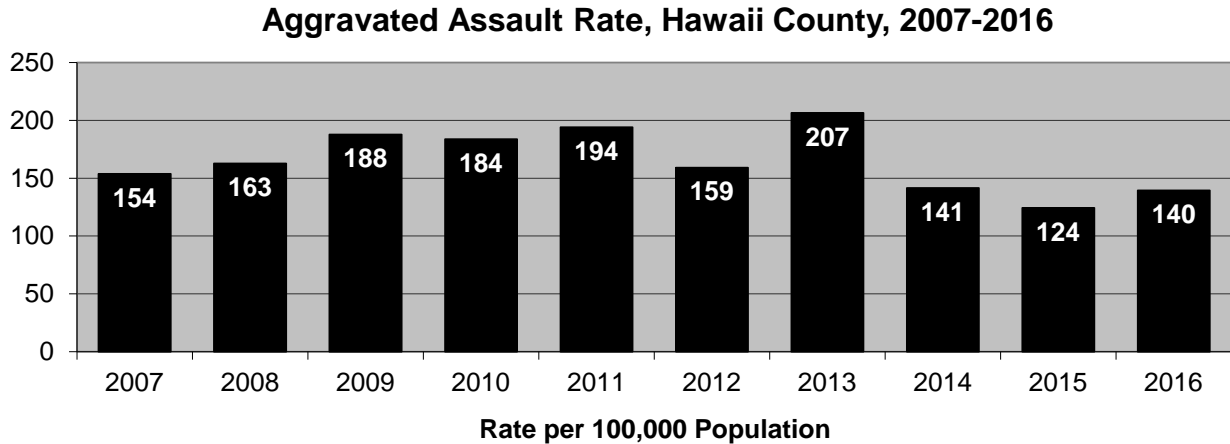
- Reported robberies increased 27.6% in rate.

Comparing 2016 to 2007:

- The robbery rate decreased 40.4%.

In 2016, of the 69 robberies reported:

- Strongarm weapons (hands, fists, feet, etc.) were involved in 71.0% (49).
- Knives or cutting instruments were involved in 11.6% (8).
- Other dangerous weapons were involved in 10.1% (7).
- Firearms were involved in 7.2% (5).



Aggravated Assault - The unlawful attack or attempted attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

From 2015 to 2016:

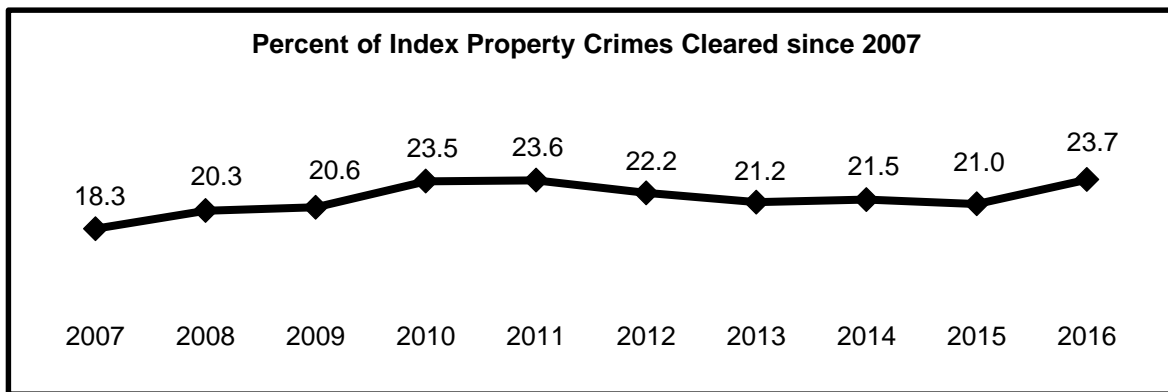
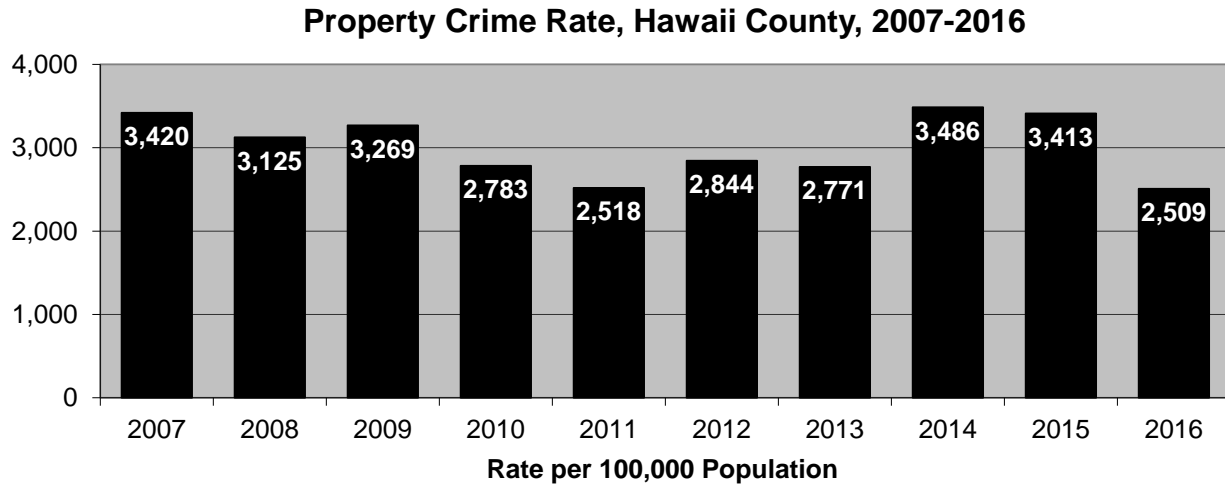
- Reported aggravated assaults increased 12.2% in rate.

Comparing 2016 to 2007:

- The aggravated assault rate decreased 9.2%.

In 2016, of the 274 reported aggravated assaults:

- Other dangerous weapons were involved in 38.3% (105).
- Strongarm weapons (hands, fists, feet, etc.) were involved in 26.6% (73).
- Knives or cutting instruments were involved in 21.9% (60).
- Firearms were involved in 13.1% (36).



Property Crimes - Burglary, larceny-theft, and motor vehicle theft. Arson is also a property crime; however, due to a different method of counting, it is not included in the totals of property crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

- Reported property crimes decreased 26.5% in rate.

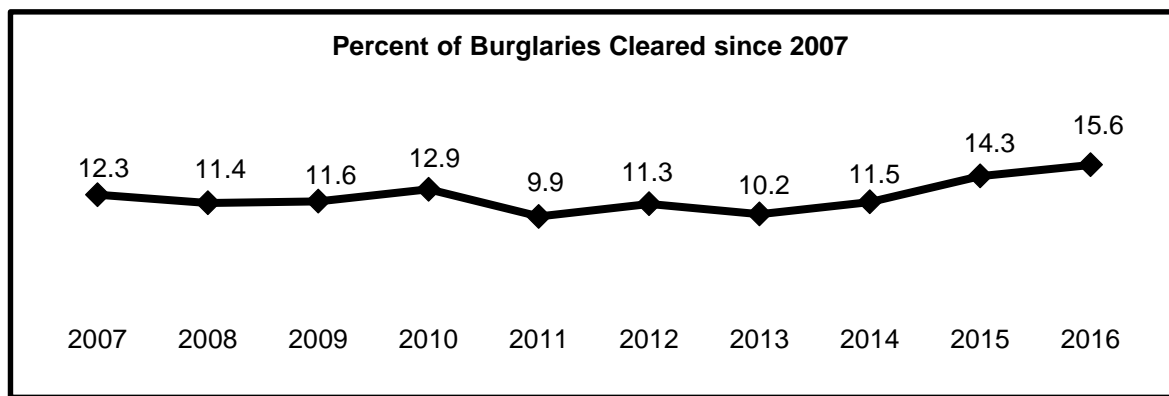
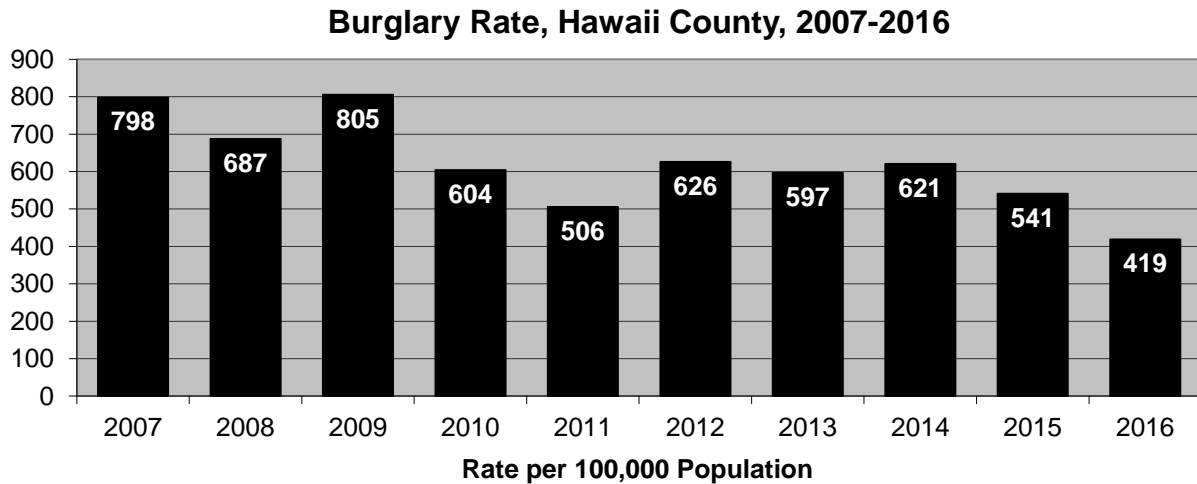
Comparing 2016 to 2007:

- The property crime rate decreased 26.6%.

In 2016, of the 4,928 property crimes reported:

- Larceny-theft accounted for 72.6% (3,580).
- Burglary accounted for 16.7% (823).
- Motor vehicle theft accounted for 10.7% (525).

Hawaii County's property crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



Burglary - The unlawful entry of a structure to commit a felony or a theft. Attempted burglary is included.

From 2015 to 2016:

- Reported burglaries decreased 22.5% in rate.

Comparing 2016 to 2007:

- The burglary rate decreased 47.5%.

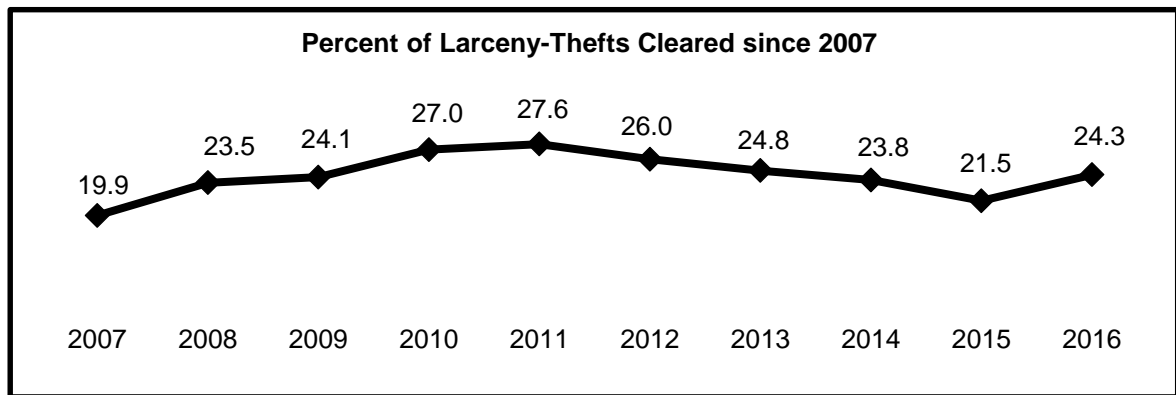
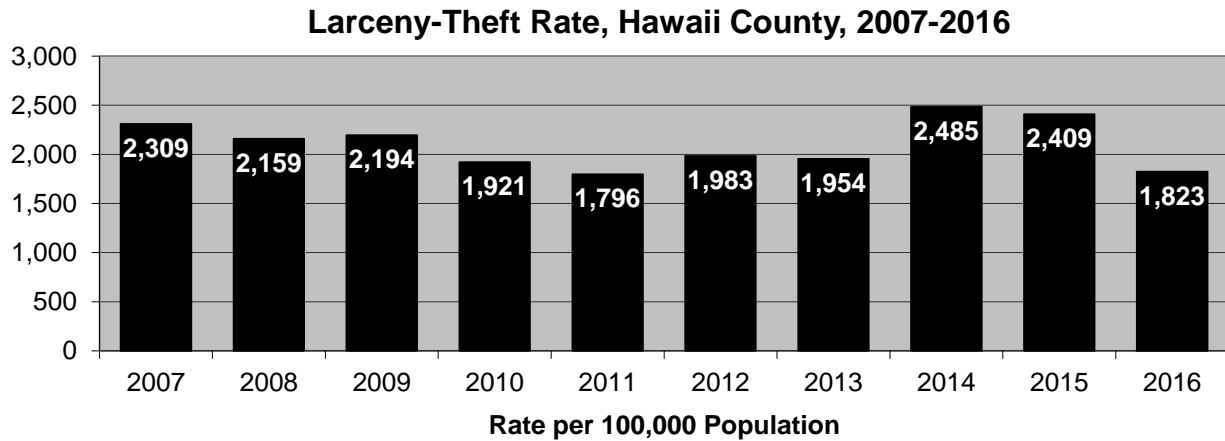
In 2016, of the 823 burglaries and attempted burglaries reported:

- Burglary accounted for 98.1% (807).
- Attempted burglary accounted for 1.9% (16).

In 2016, of the 807 burglaries that were reported:

- Structures entered by force accounted for 58.0% (468).
- Structures entered without force accounted for 42.0% (339).

Hawaii County's burglary rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



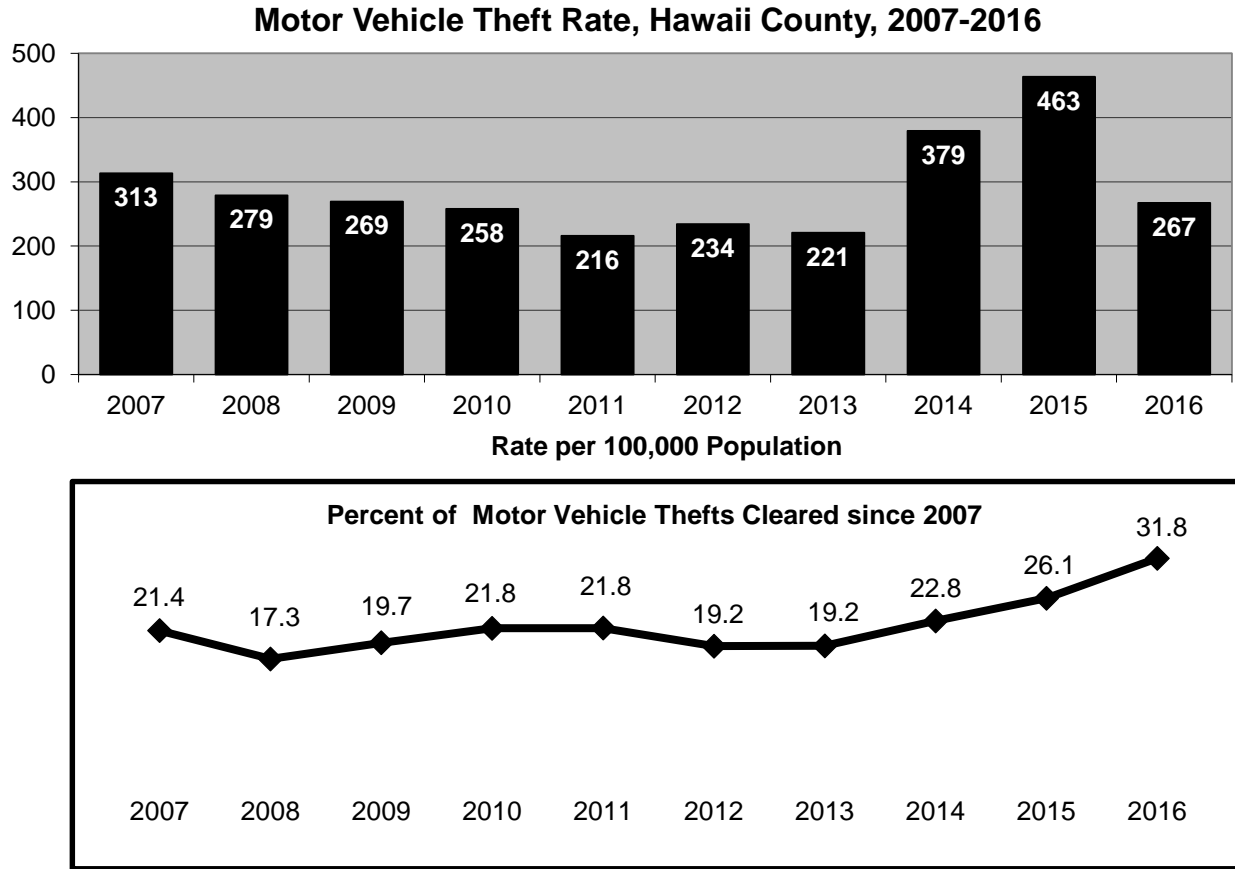
Larceny-theft - The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

From 2015 to 2016:

- Reported larceny-thefts decreased 24.3% in rate.

Comparing 2016 to 2007:

- The larceny-theft rate decreased 21.1%.



Motor Vehicle Theft - The theft or attempted theft of a motor vehicle.

From 2015 to 2016:

- Reported motor vehicle thefts decreased 42.3% in rate.

Comparing 2016 to 2007:

- The motor vehicle theft rate decreased 14.6%.

In 2016, of the 525 motor vehicle thefts reported:

- Autos accounted for 54.5% (286).
- Trucks and buses accounted for 26.7% (140). Included in this category are pickup trucks and vans.
- Other vehicles accounted for 18.9% (99). Included in this category are motorcycles, mopeds, and golf carts.

Value of Property Stolen by Type of Offense

Hawaii County, 2016

OFFENSE	# OF OFFENSES	PROPERTY VALUE	% OF TOTAL
MURDER	9	\$ -	0.0
RAPE	115	\$ 500	0.0
ROBBERY TOTAL	69	\$ 68,230	0.8
Highway	35	\$ 51,618	0.6
Commercial House	2	\$ 45	0.0
Service Station	1	\$ -	0.0
Convenience Store	12	\$ 1,008	0.0
Residence	10	\$ 7,980	0.1
Bank	0	\$ -	0.0
Miscellaneous	9	\$ 7,579	0.1
BURGLARY TOTAL	823	\$ 2,231,494	27.2
Residence - Night	65	\$ 113,175	1.4
Residence - Day	174	\$ 629,052	7.7
Residence - Unknown	411	\$ 1,164,916	14.2
Non-Residence - Night	21	\$ 47,036	0.6
Non-Residence - Day	8	\$ 3,177	0.0
Non-Residence - Unknown	144	\$ 274,138	3.3
LARCENY-THEFT TOTAL	3,580	\$ 2,929,757	35.7
Pocket Picking	6	\$ 1,317	0.0
Purse Snatching	3	\$ 526	0.0
Shoplifting	862	\$ 117,691	1.4
From Motor Vehicles	692	\$ 319,833	3.9
Motor Vehicle Parts	151	\$ 52,543	0.6
Bicycles	122	\$ 43,569	0.5
From Buildings	440	\$ 476,774	5.8
Coin Machines	11	\$ 1,407	0.0
All Others	1,293	\$ 1,916,097	23.4
MOTOR VEHICLE THEFT	525	\$ 2,971,592	36.2
GRAND TOTAL	5,121	\$ 8,201,573	100%

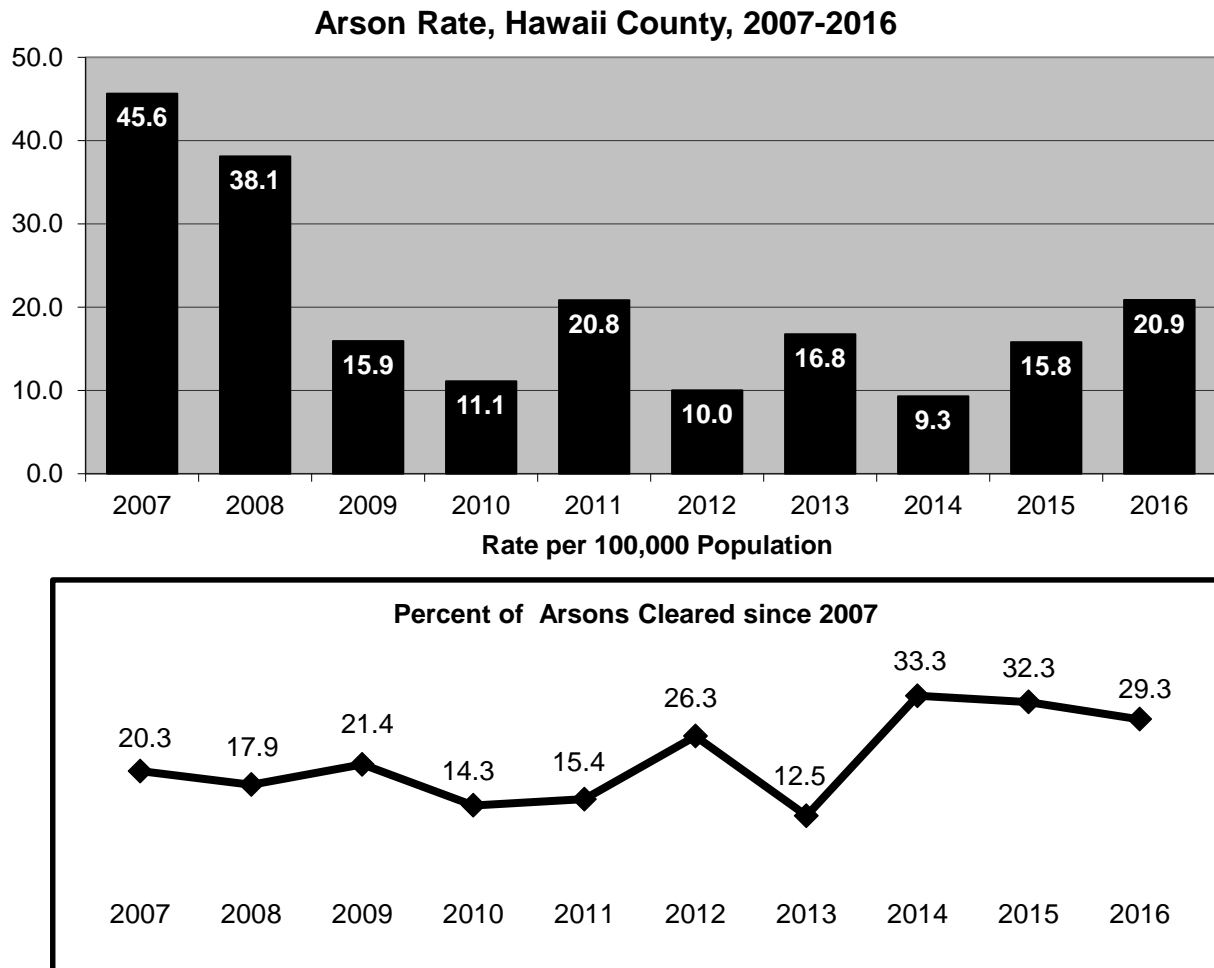
Note: Due to rounding, individual percentages may not resolve with subtotals and total.

Value of Property Stolen & Recovered**Hawaii County, 2016**

Property Type	Amount Stolen	Amount Recovered	% Recovered
Money - Notes	\$1,017,226	\$1,505	0.1
Jewels	\$600,756	\$3,441	0.6
Clothing - Furs	\$111,758	\$10,889	9.7
Motor Vehicles	\$3,034,102	\$1,550,285	51.1
Office Equipment	\$26,984	\$209	0.8
Televisions - Radios	\$273,371	\$14,062	5.1
Firearms	\$45,373	\$1,400	3.1
Household Goods	\$69,099	\$415	0.6
Consumable Goods	\$61,440	\$25,754	41.9
Livestock	\$1,740	\$80	4.6
Miscellaneous	\$2,959,724	\$364,002	12.3
TOTAL	\$8,201,573	\$1,972,042	24.0%

Total Value of Property Stolen in Larceny-Thefts, by Value Lost per Offense**Hawaii County, 2016**

Value Lost per Offense	# of Offenses	Total Property Value	% of Lost Value
\$200 or Over	1,494	\$2,828,516	96.5
\$50 to \$200	812	\$85,959	2.9
Under \$50	1,274	\$15,282	0.5
Total	3,580	\$2,929,757	



Arson - Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

From 2015 to 2016:

- Reported arsons increased 32.1% in rate.

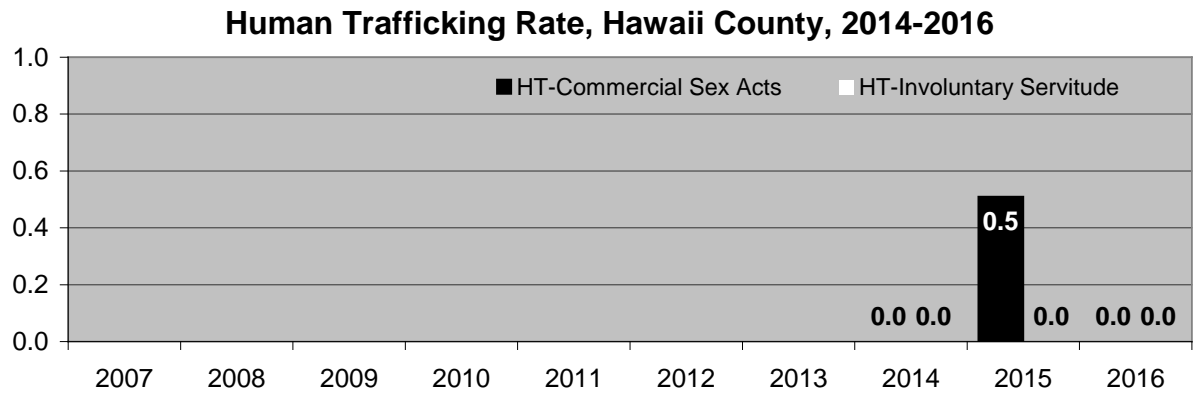
Comparing 2016 to 2007:

- The arson rate decreased 54.3%.

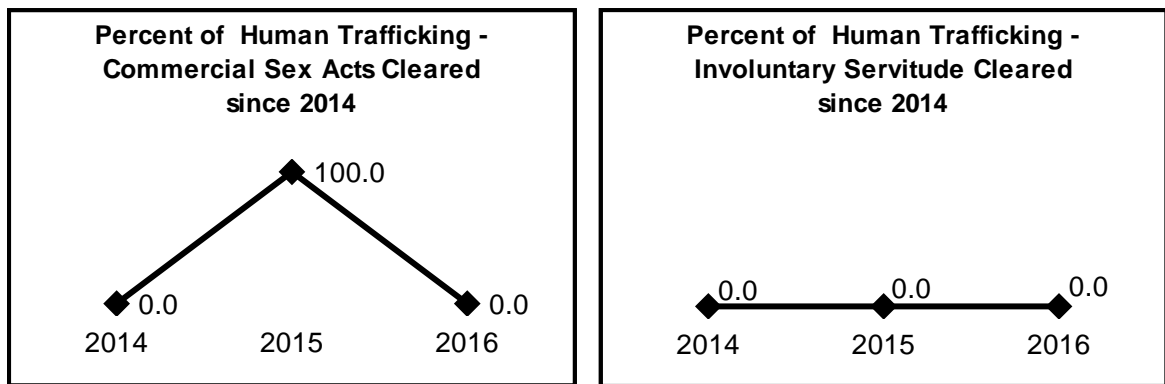
Value of Property Destroyed by Arson
Hawaii County, 2016

Property Type	# of Offenses (% of Total)	Property Value (% of Total)
Structure Total	13 (31.7)	\$1,145,650 (98.1)
Single Occupancy Residential	8 (19.5)	\$1,144,300 (97.9)
Other Residential	2 (4.9)	\$400 (0.0)
Storage	0 (0.0)	\$0 (0.0)
Industrial / Manufacturing	0 (0.0)	\$0 (0.0)
Other Commercial	0 (0.0)	\$0 (0.0)
Community / Public	2 (4.9)	\$950 (0.1)
All Other Structures	1 (2.4)	\$0 (0.0)
Mobile Total	6 (14.6)	\$5,500 (0.5)
Motor Vehicles	6 (14.6)	\$5,500 (0.5)
Other Mobile Property	0 (0.0)	\$0 (0.0)
Other	22 (53.7)	\$17,271 (1.5)
TOTAL	41	\$1,168,421

Note: Due to rounding, individual percentages may not resolve with subtotals and total.



Rate per 100,000 Population



Commercial Sex Acts* – Inducing a person by force, fraud, or coercion to participate in commercial sex acts, or in which the person induced to perform such act(s) has not attained 18 years of age.

Involuntary Servitude* – The obtaining of a person(s) through recruitment, harboring, transportation, or provision, and subjecting such person(s) by force, fraud, or coercion into involuntary servitude, peonage, debt bondage, or slavery (not to include commercial sex acts).

From 2015 to 2016:

- One report of human trafficking - commercial sex act was reported in 2015, as compared to none reported in 2016.
- No reports of human trafficking - involuntary servitude were reported in Hawaii County in 2015 or 2016.

**Note: On January 1, 2014, the State of Hawaii began collecting data for human trafficking - commercial sex acts, and human trafficking - involuntary servitude. See page 3 for more information.*

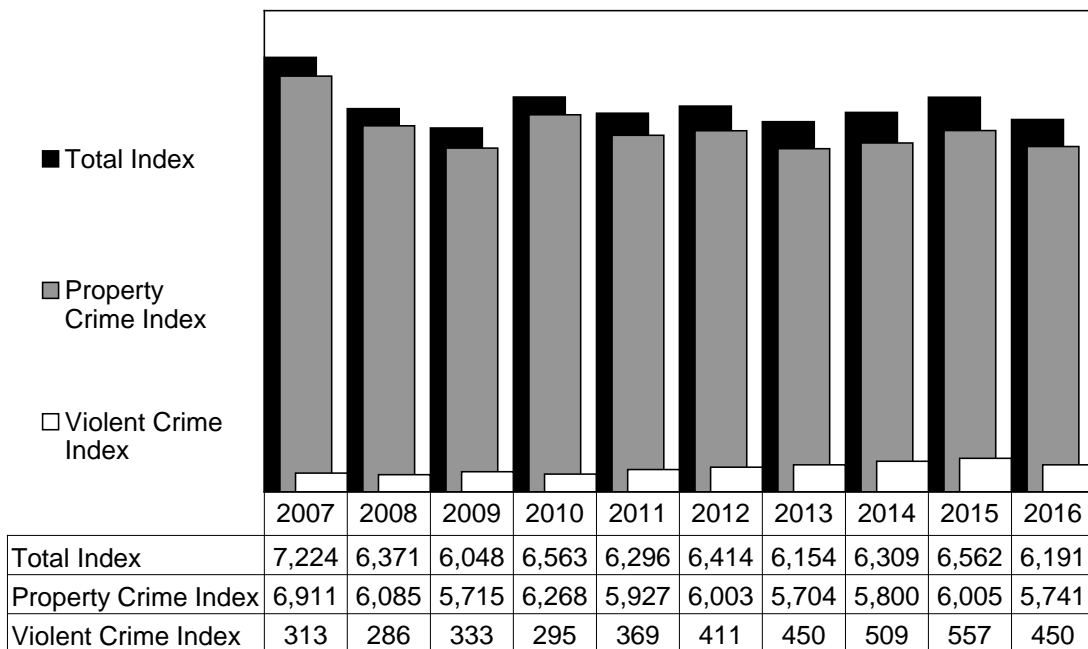
MAUI COUNTY**2016 HIGHLIGHTS**

In 2016, 11.5% of Hawaii's population resided in Maui County, where 13.1% of the State's total Index Crimes, 10.2% of the violent crimes, and 13.4% of the property crimes were reported.

From 2015 to 2016, the total number of Index Crimes reported in Maui County decreased 5.7%, violent crimes decreased 19.2%, and property crimes decreased 4.4%. The number of reported crimes decreased in 2016 for five Index Crime categories: rape, 18.1%; robbery, 39.8%; aggravated assault, 13.3%; burglary, 2.9%; and larceny-theft, 8.4%. The number of reported crimes increased for three Index Crime categories: murder, 25.0%; motor vehicle theft, 23.2%; and arson, 38.9%. No human trafficking offenses were reported for either year.

The table on the following page lists the numbers of reported offenses, excluding traffic, in Maui County from 2007 to 2016. During the past 10 years, the population of Maui County increased 16.1%, and the total number of reported Index Crimes decreased 14.3%, violent crimes increased 43.8%, and property crimes decreased 16.9%.

**Total Reported Index Offenses
Maui County, 2007-2016**



Reported Offenses Maui County, 2007-2016

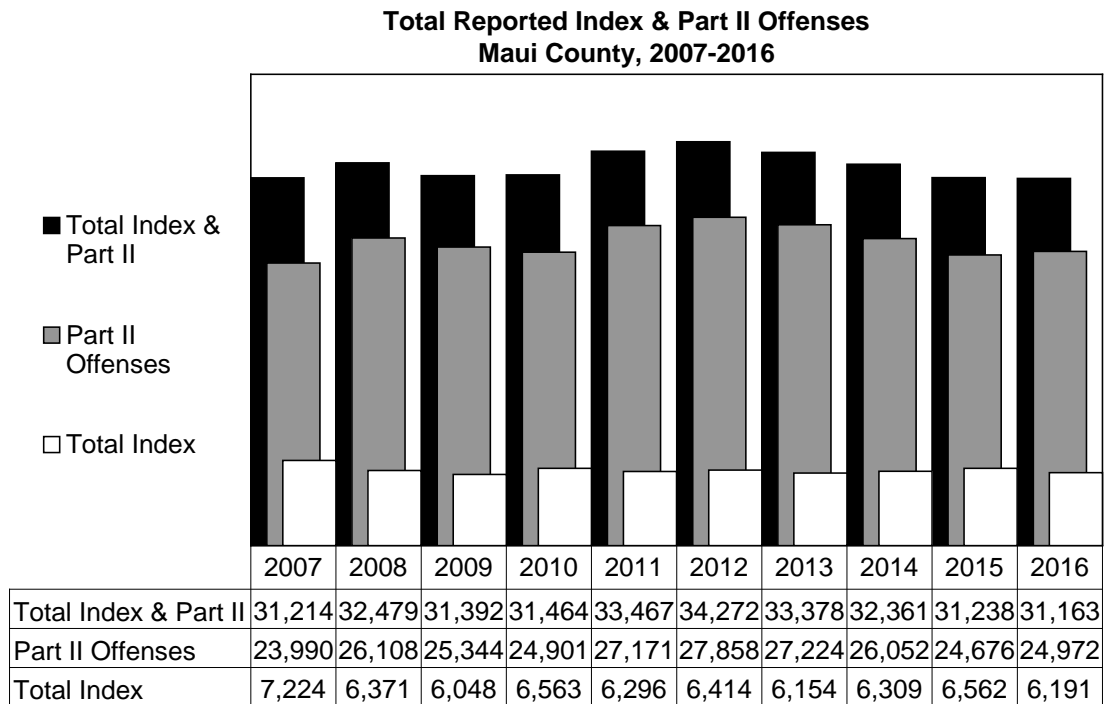
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	7,224	6,371	6,048	6,563	6,296	6,414	6,154	6,309	6,562	6,191
Violent Crime Index	313	286	333	295	369	411	450	509	557	450
Murder	0	2	3	1	2	5	1	4	4	5
Rape*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	89	94	77
Rape (legacy)*	28	30	44	34	54	44	45	49**	62**	53**
Robbery	61	64	71	77	86	115	97	80	113	68
Aggravated Assault	224	190	215	183	227	247	307	336	346	300
Property Crime Index	6,911	6,085	5,715	6,268	5,927	6,003	5,704	5,800	6,005	5,741
Burglary	1,212	1,116	1,020	1,091	1,059	1,067	948	1,046	1,007	978
Larceny-Theft	5,056	4,437	4,155	4,395	4,203	4,419	4,314	4,184	4,416	4,046
Motor Vehicle Theft	643	532	540	782	665	517	442	570	582	717
Arson	41	67	52	61	79	73	87	57	108	150
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0

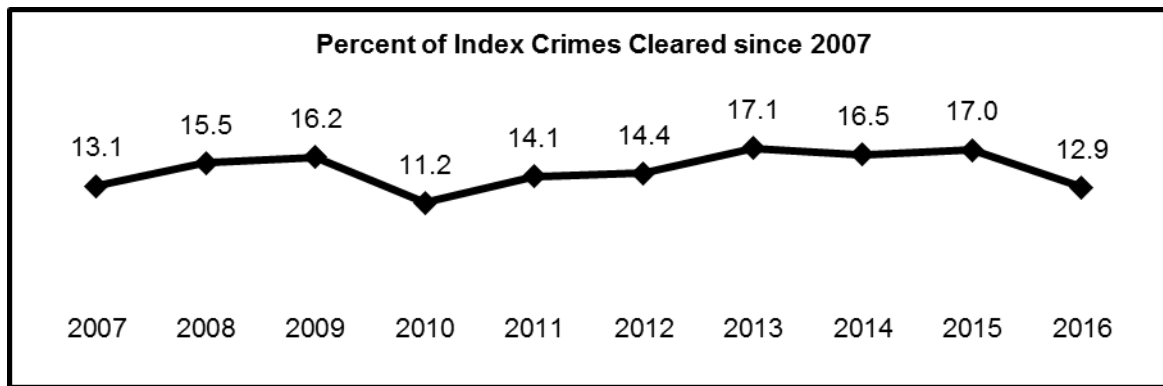
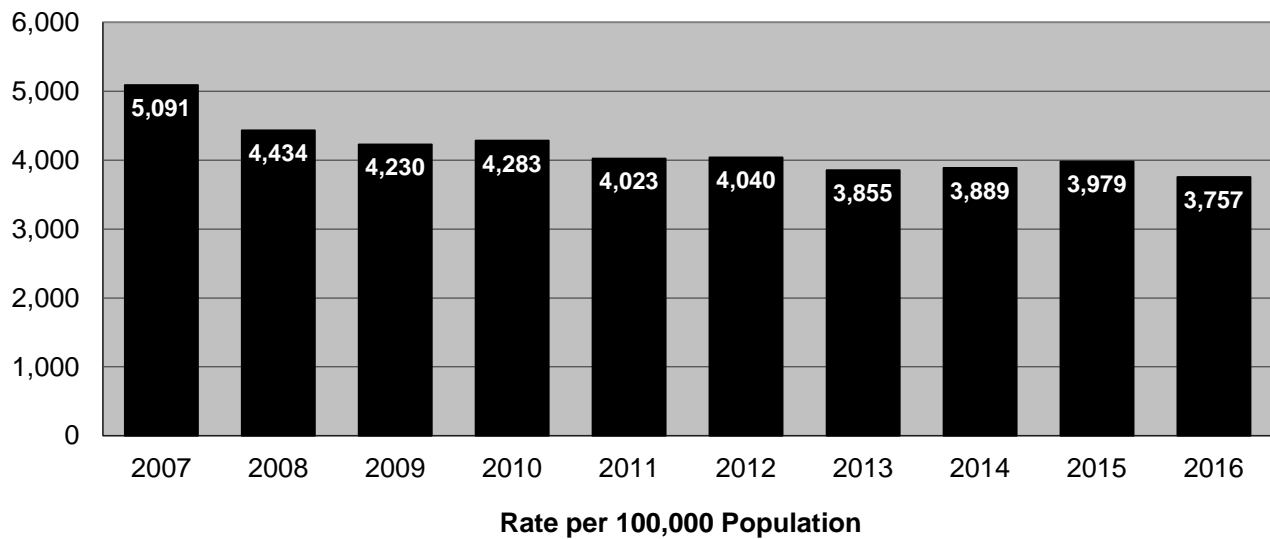
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	23,990	26,108	25,344	24,901	27,171	27,858	27,224	26,052	24,676	24,972
Total Index & Part II	31,214	32,479	31,392	31,464	33,467	34,272	33,378	32,361	31,238	31,163

Note: Violent Crime Index, Property Crime Index, Part II Offenses, and Total Index and Part II offenses exclude arson and human trafficking offenses.

* On January 1, 2014, the State of Hawaii commenced the collection of rape data using a revised definition (see pages 3 and 71 for more details).

**The total number of rapes under the legacy definition in 2014 is not separately included in the Violent Crime Index, Total Index, and Total Index & Part II offenses. It is, however, already included in the rape count under the revised definition.



Total Index Crime Rate, Maui County, 2007-2016

Index Crimes - Murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. However, due to a different method of counting, arson and human trafficking offenses are not included in the totals of reported Index Crimes and Index & Part II Offenses.

From 2015 to 2016:

- Reported Index Crimes decreased 5.6% in rate.

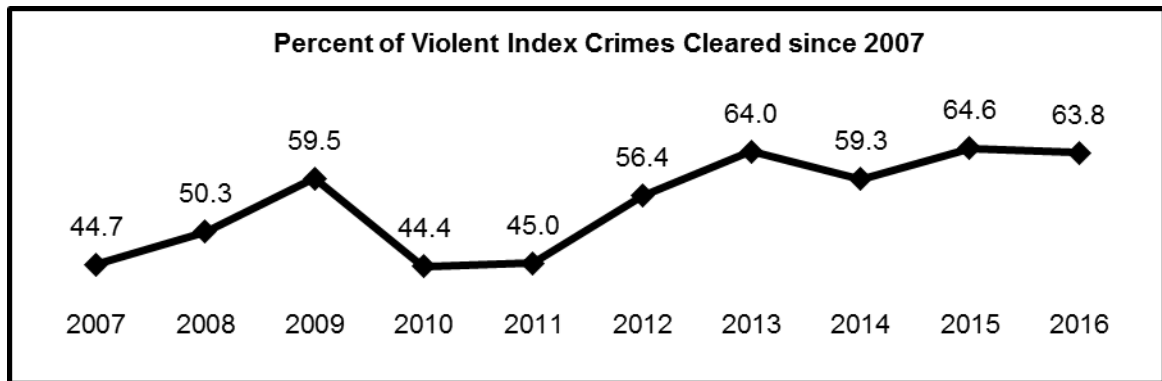
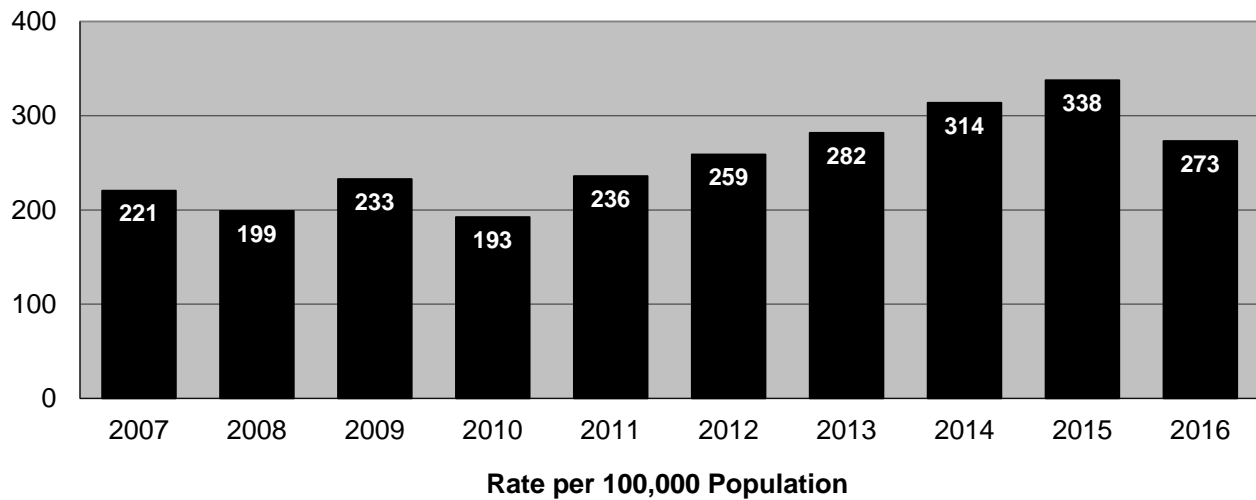
Comparing 2016 to 2007:

- The Index Crime rate decreased 26.2%.

In 2016, of the 6,191 Index Crimes reported:

- Property crimes accounted for 92.7% (5,741).
- Violent crimes accounted for 7.3% (450).

Maui County's total Index Crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Violent Crime Rate, Maui County, 2007-2016

Violent Crimes - Murder, rape, robbery, and aggravated assault. Human trafficking - commercial sex acts and human trafficking - involuntary servitude are also violent crimes; however, due to a different method of counting, they are not included in the totals of violent crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

- The rate of reported violent crimes decreased 19.1%.

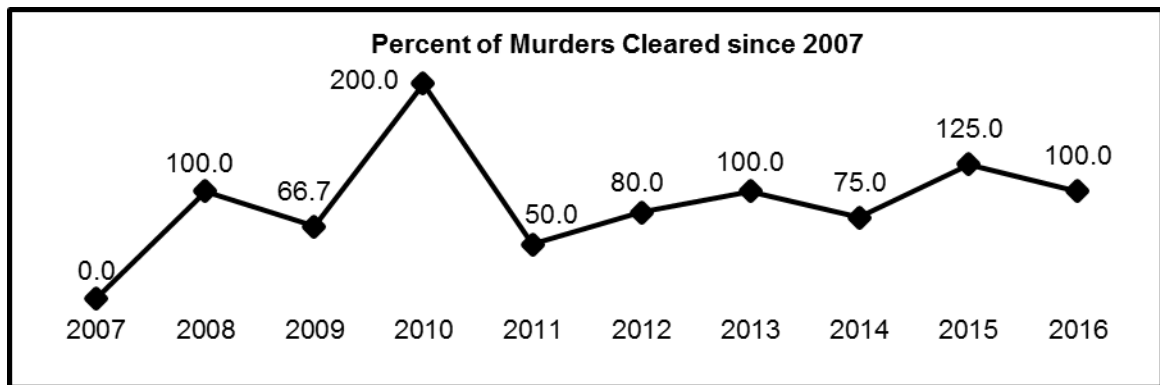
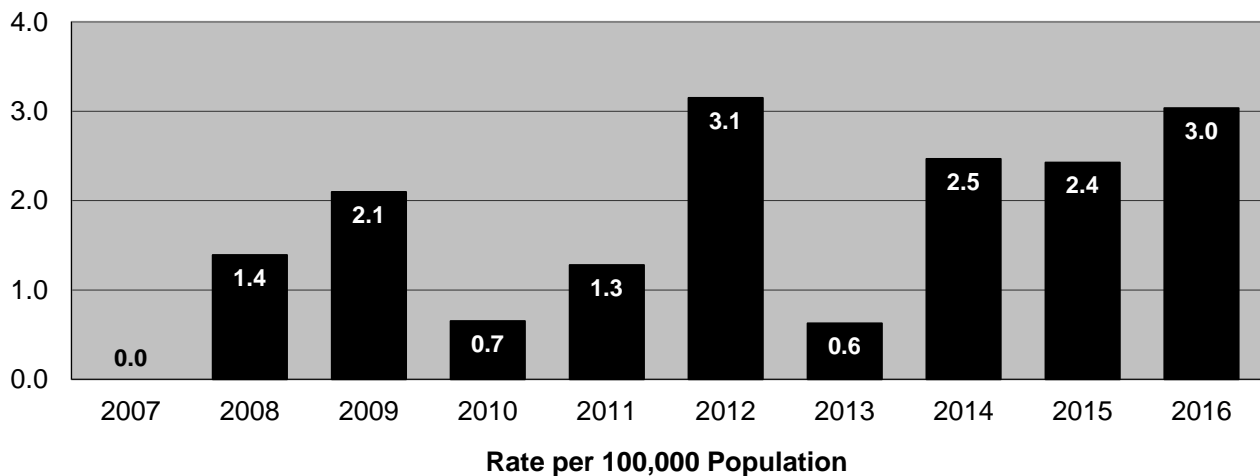
Comparing 2016 to 2007:

- The violent crime rate increased 23.8%.

In 2016, of the 450 violent crimes reported:

- Aggravated assault accounted for 66.7% (300).
- Rape accounted for 17.1% (77).
- Robbery accounted for 15.1% (68).
- Murder accounted for 1.1% (5).

Murder Rate, Maui County, 2007-2016



Murder - The willful killing of one human being by another.

From 2015 to 2016:

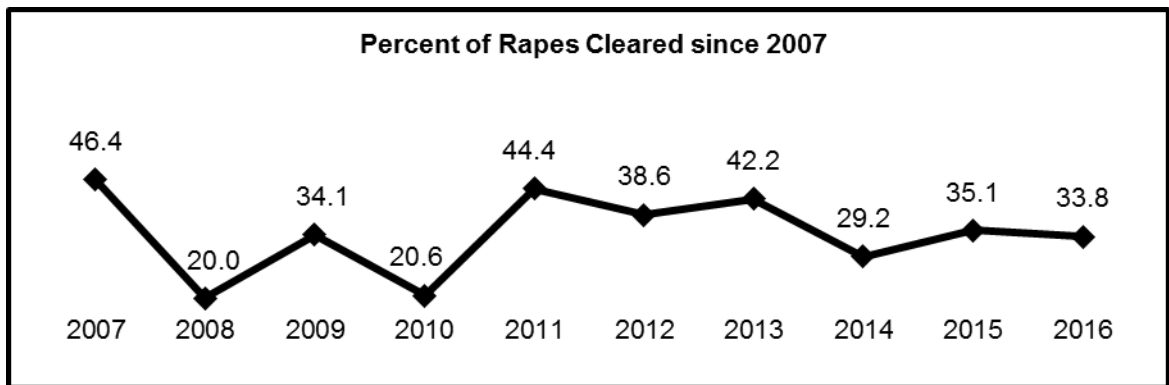
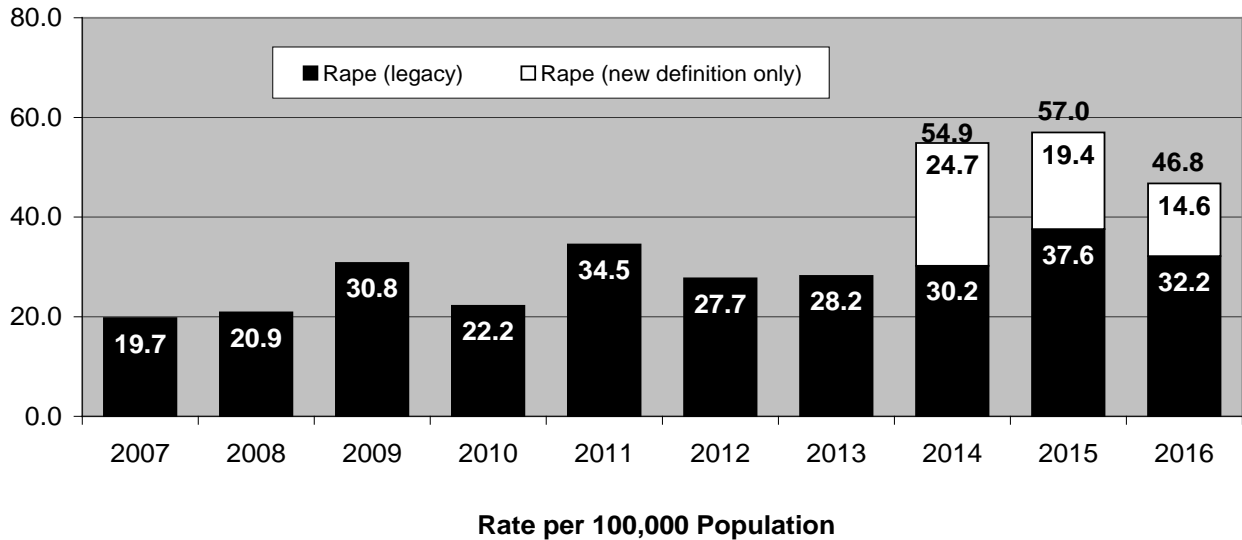
- The murder rate increased 25.1%, with 4 murders reported in 2015, versus 5 reported in 2016.

Comparing 2016 to 2007:

- Five murders were reported in 2016, and none were reported in 2007.

In 2016, of the 5 reported murders:

- Knives or cutting instruments were involved in 40.0% (2).
- Other or unknown weapons were involved in 40.0% (2).
- A firearm was involved in 20.0% (1).

Rape Rate, Maui County, 2007-2016

Rape (legacy)* - The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.

Rape (revised)* - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

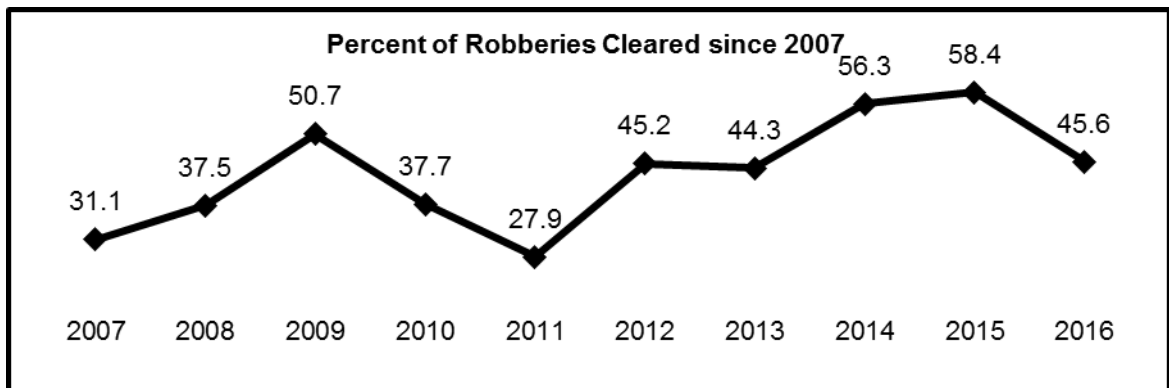
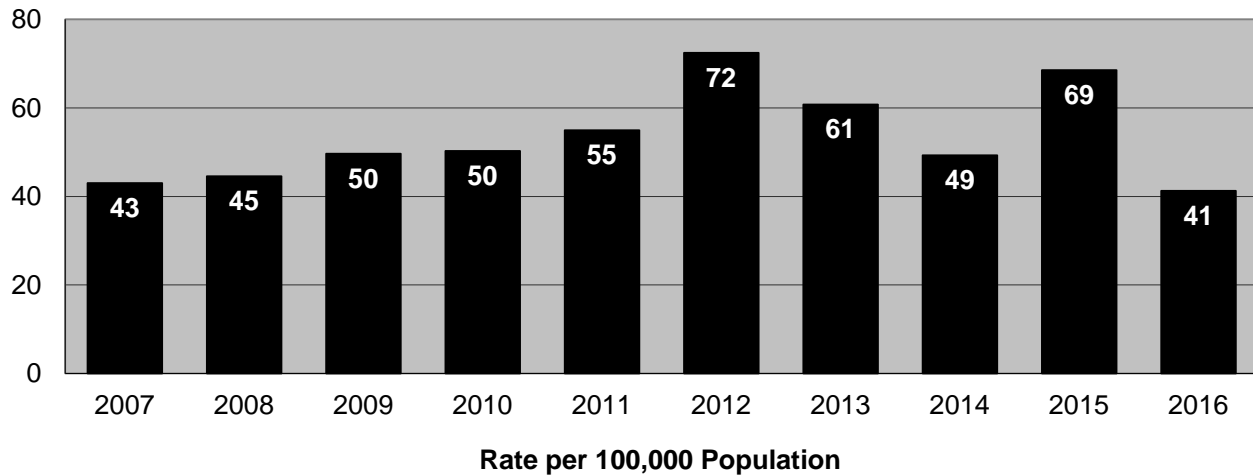
From 2015 to 2016:

- Rapes decreased by 18.0% in rate.

Comparing 2016 to 2007:

- The rape rate, based on the legacy definition, increased 63.0%.

**Note: On January 1, 2014, the State of Hawaii began collecting rape data under the FBI's revised definition. The State of Hawaii will continue to also collect rape data under the old, or legacy, definition so that comparative trends can be established. See page 3 for more information.*

Robbery Rate, Maui County, 2007-2016

Robbery - The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

From 2015 to 2016:

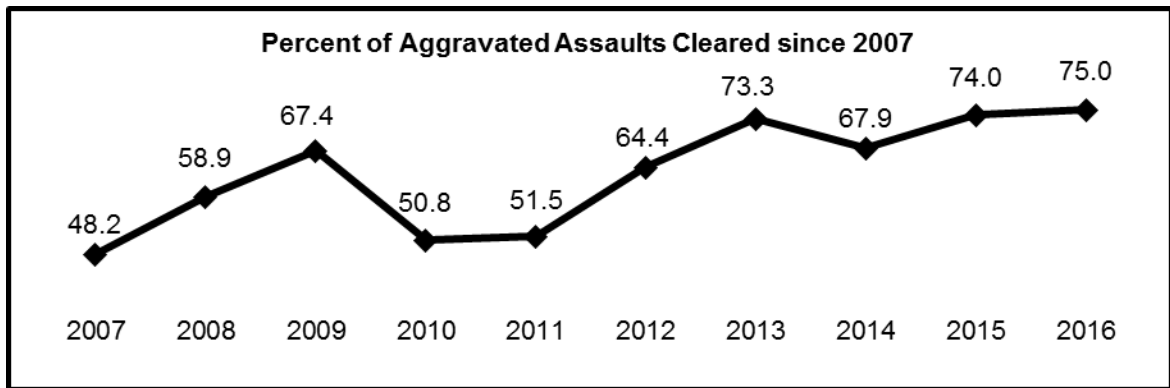
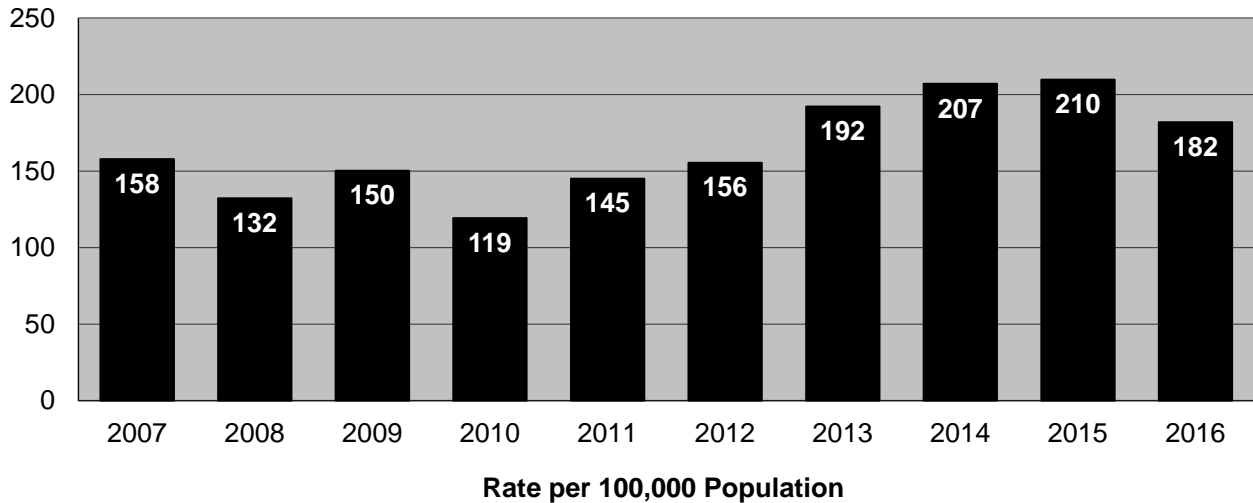
- The rate of reported robberies decreased 39.8%.

Comparing 2016 to 2007:

- The robbery rate decreased 4.0%.

In 2016, of the 68 robberies reported:

- Strongarm weapons (hands, fists, feet, etc.) were involved in 63.2% (43).
- Firearms were involved in 13.2% (9).
- Other dangerous instruments were involved in 13.2% (9).
- Knives or cutting instruments were involved in 10.3% (7).

Aggravated Assault Rate, Maui County, 2007-2016

Aggravated Assault - The unlawful attack or attempted attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

From 2015 to 2016:

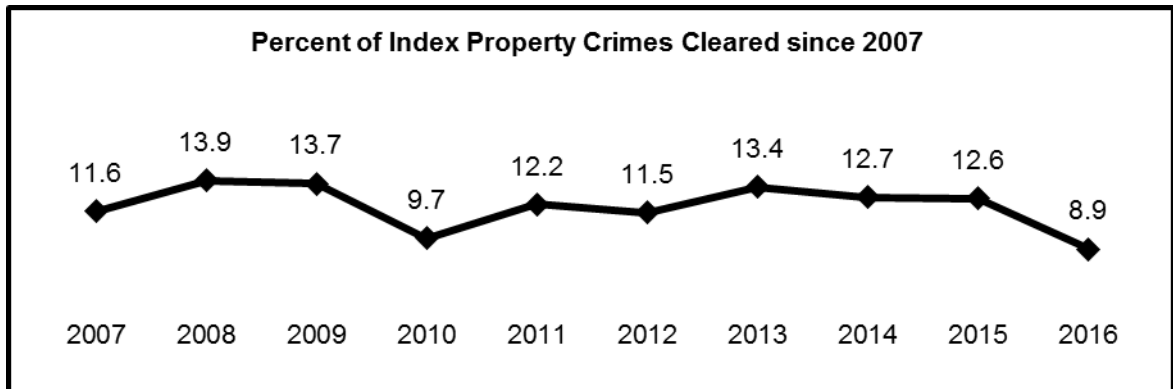
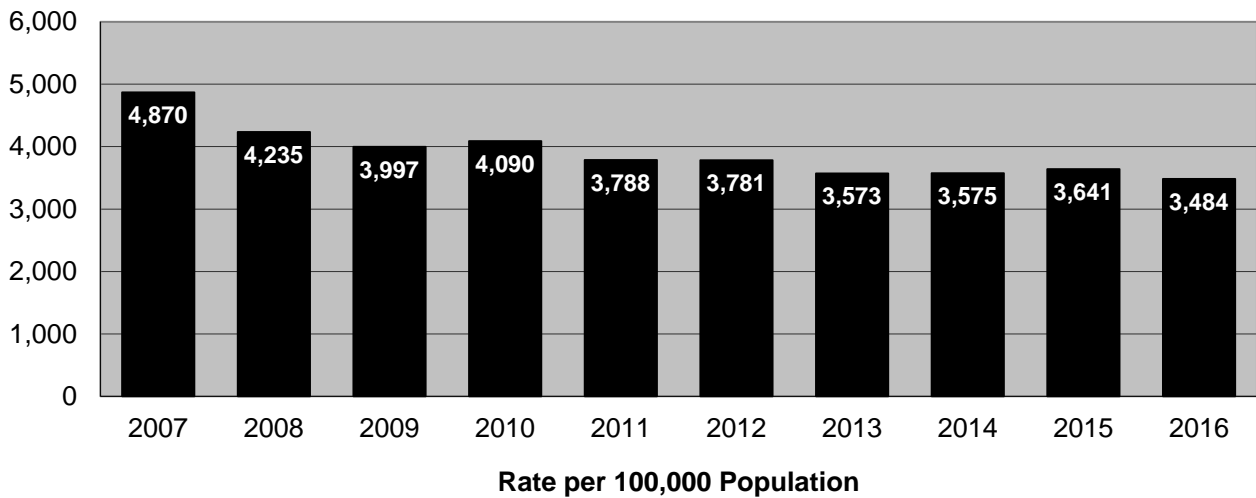
- Reported aggravated assaults decreased 13.2% in rate.

Comparing 2016 to 2007:

- The reported aggravated assault rate increased 15.3%.

In 2016, of the 300 aggravated assaults reported:

- Strongarm weapons (hands, fists, feet, etc.) were used in 49.0% (147).
- Other dangerous instruments were involved in 41.0% (123).
- Knives or cutting instruments were involved in 9.3% (28).
- Firearms were involved in 0.7% (2).

Property Crime Rate, Maui County, 2007-2016

Property Crimes - Burglary, larceny-theft, and motor vehicle theft. Arson is also a property crime; however, due to a different method of counting, it is not included in the totals of property crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

- Reported property crimes decreased 4.3% in rate.

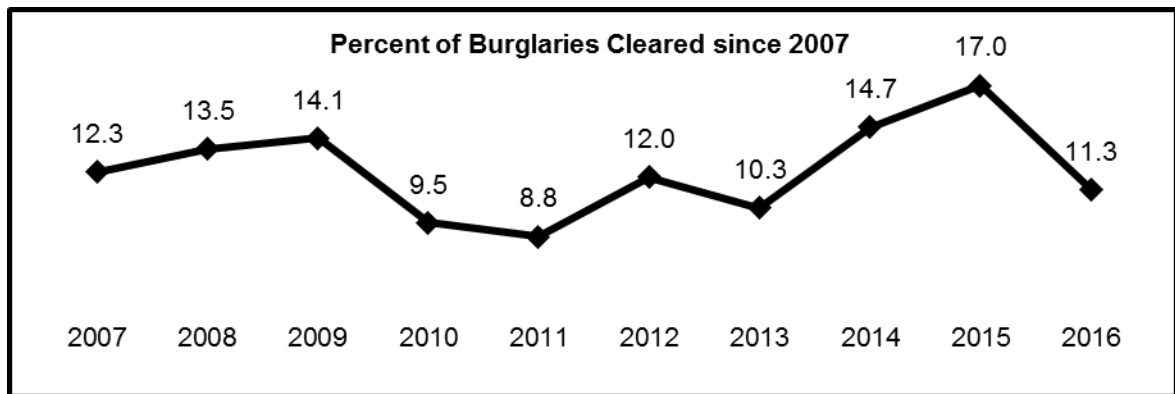
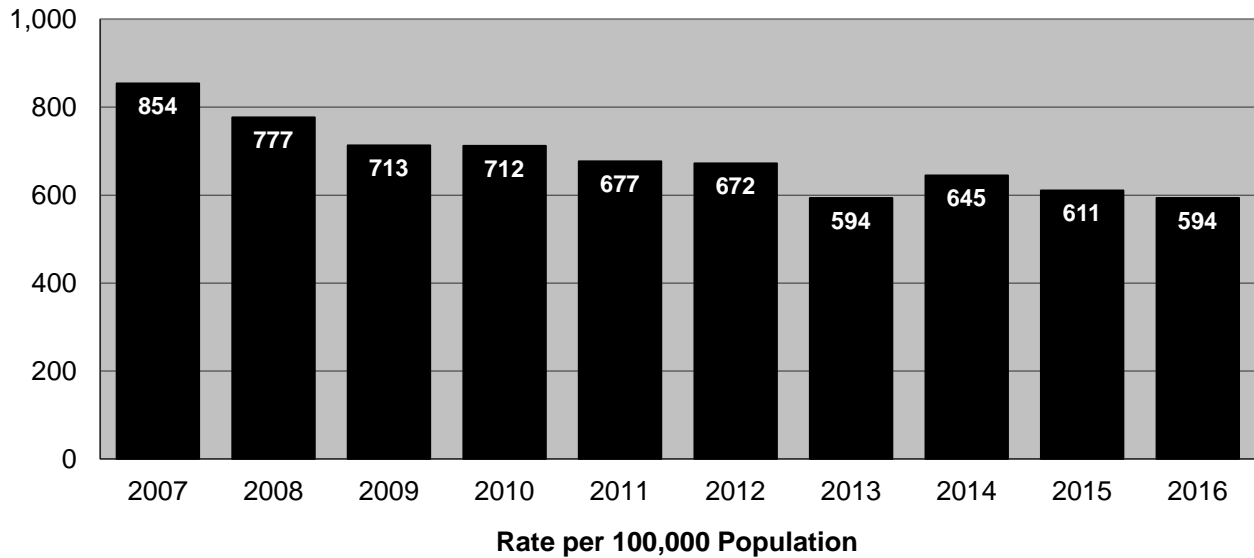
Comparing 2016 to 2007:

- The property crime rate decreased 28.5%.

In 2016, of the 5,741 property crimes reported:

- Larceny-theft accounted for 70.5% (4,046).
- Burglary accounted for 17.0% (978).
- Motor vehicle theft accounted for 12.5% (717).

Maui County's property crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Burglary Rate, Maui County, 2007-2016

Burglary - The unlawful entry of a structure to commit a felony or a theft. Attempted burglary is included.

From 2015 to 2016:

- The rate of reported burglaries decreased 2.8%.

Comparing 2016 to 2007:

- The burglary rate decreased 30.5%.

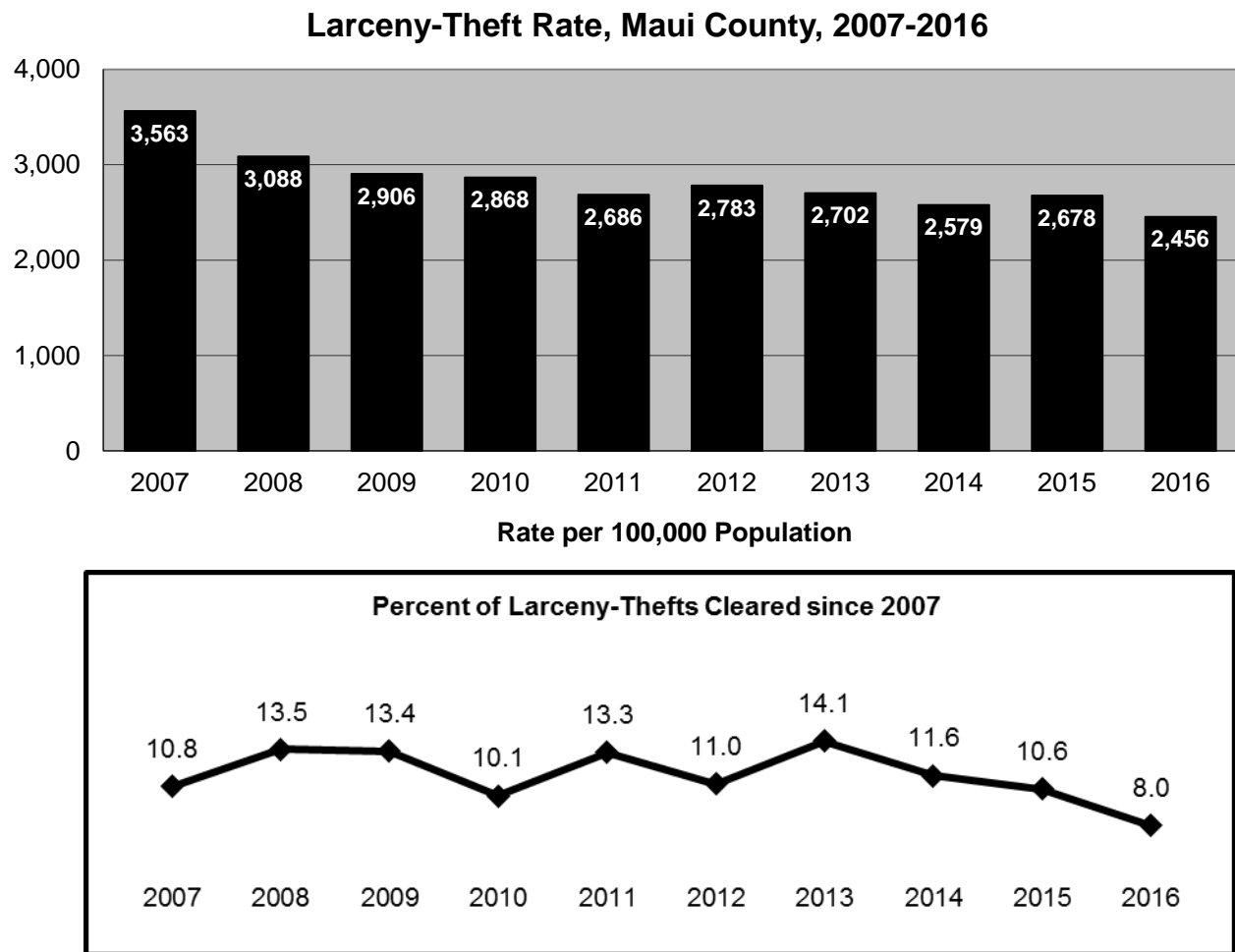
In 2016, of the 978 burglaries and attempted burglaries reported:

- Burglary accounted for 95.0% (929).
- Attempted burglary accounted for 5.0% (49).

In 2016, of the 929 burglaries that were reported:

- Structures entered by force accounted for 51.7% (480).
- Structures entered without force accounted for 48.3% (449).

Maui County's burglary rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.



Larceny-theft - The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

From 2015 to 2016:

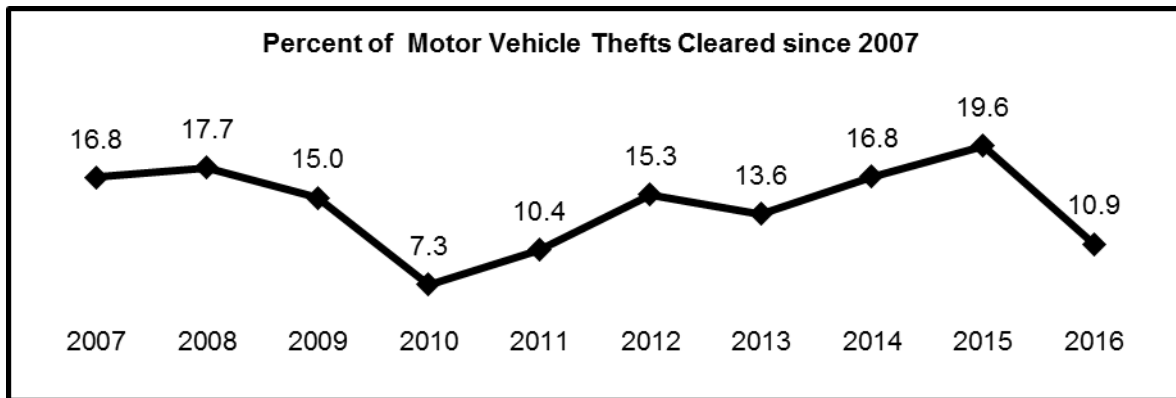
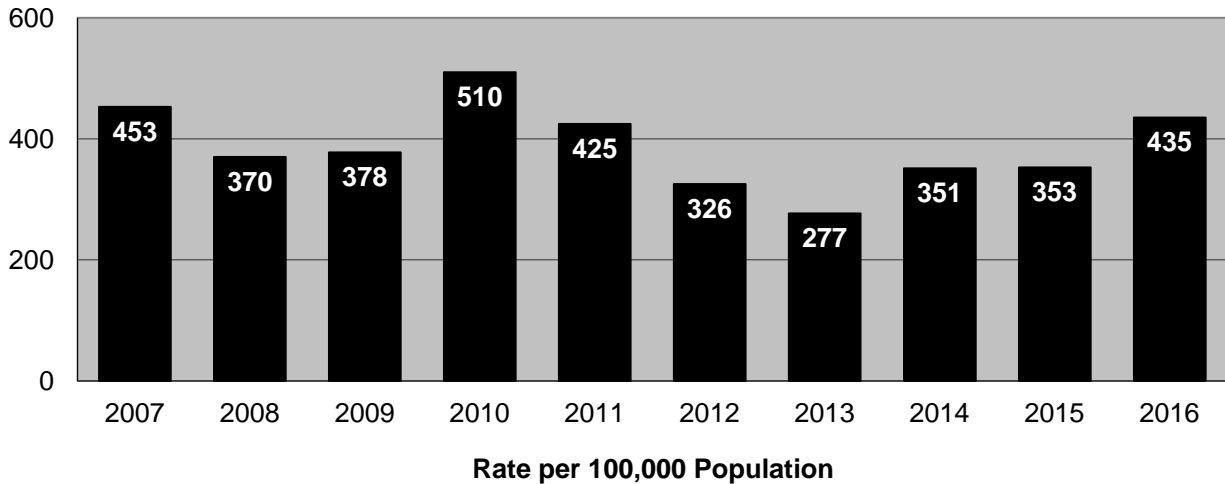
- The rate of reported larceny-thefts decreased 8.3%.

Comparing 2016 to 2007:

- The larceny-theft rate decreased 31.1%.

Maui County's larceny-theft rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Motor Vehicle Theft Rate, Maui County, 2007-2016



Motor Vehicle Theft - The theft or attempted theft of a motor vehicle.

From 2015 to 2016:

- Reported motor vehicle thefts increased 23.3% in rate.

Comparing 2016 to 2007:

- The motor vehicle theft rate decreased 4.0%.

In 2016, of the 717 motor vehicle thefts reported:

- Autos accounted for 35.4% (254).
- Trucks and buses accounted for 32.1% (230). Included in this category are pickup trucks and vans.
- Other vehicles accounted for 32.5% (233). Included in this category are motorcycles, mopeds, and golf carts.

Value of Property Stolen by Type of Offense

Maui County, 2016

OFFENSE	# OF OFFENSES	PROPERTY VALUE	% OF TOTAL
MURDER	5	\$ -	0.0
RAPE	77	\$ 4	0.0
ROBBERY TOTAL	68	\$ 120,054	0.9
Highway	15	\$ 19,723	0.2
Commercial House	12	\$ 40,137	0.3
Service Station	0	\$ -	0.0
Convenience Store	1	\$ 4,000	0.0
Residence	6	\$ 1,486	0.0
Bank	1	\$ 2,118	0.0
Miscellaneous	33	\$ 52,590	0.4
BURGLARY TOTAL	978	\$ 3,502,079	27.3
Residence - Night	114	\$ 163,087	1.3
Residence - Day	218	\$ 544,336	4.2
Residence - Unknown	268	\$ 1,749,186	13.6
Non-Residence - Night	68	\$ 199,863	1.6
Non-Residence - Day	95	\$ 195,552	1.5
Non-Residence - Unknown	215	\$ 650,055	5.1
LARCENY-THEFT TOTAL	4,046	\$ 3,929,213	30.6
Pocket Picking	6	\$ 1,824	0.0
Purse Snatching	5	\$ 1,237	0.0
Shoplifting	632	\$ 332,339	2.6
From Motor Vehicles	755	\$ 909,899	7.1
Motor Vehicle Parts	57	\$ 34,153	0.3
Bicycles	69	\$ 20,478	0.2
From Buildings	142	\$ 198,192	1.5
Coin Machines	3	\$ 932	0.0
All Others	2,377	\$ 2,430,159	18.9
MOTOR VEHICLE THEFT	717	\$ 5,292,645	41.2
GRAND TOTAL	5,891	\$ 12,843,995	100%

Note: Due to rounding, individual percentages may not resolve with subtotals and total.

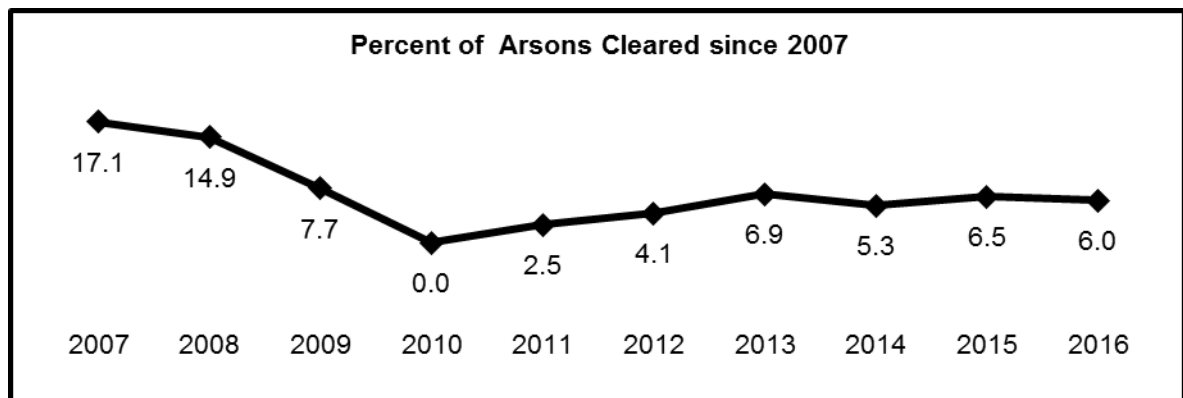
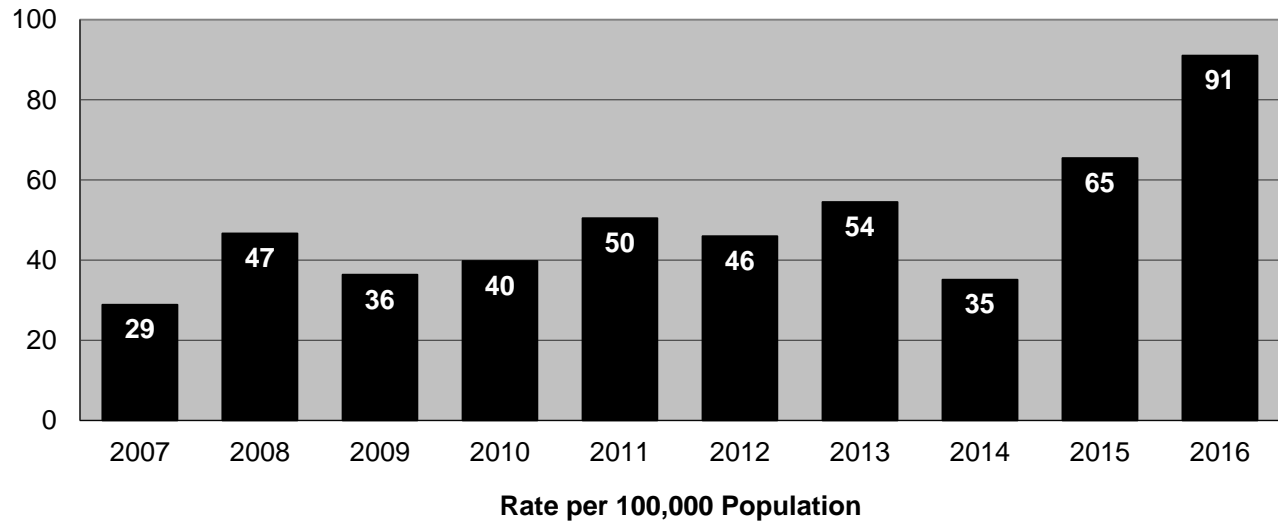
Value of Property Stolen & Recovered
Maui County, 2016

Property Type	Amount Stolen	Amount Recovered	% Recovered
Money - Notes	\$1,129,179	\$21,145	1.9
Jewels	\$2,474,442	\$87,213	3.5
Clothing - Furs	\$381,034	\$31,638	8.3
Motor Vehicles	\$5,652,508	\$3,746,642	66.3
Office Equipment	\$209,244	\$21,452	10.3
Televisions - Radios	\$291,554	\$30,968	10.6
Firearms	\$26,255	\$4,666	17.8
Household Goods	\$32,621	\$1,561	4.8
Consumable Goods	\$39,754	\$7,097	17.9
Livestock	\$24,550	\$1,850	7.5
Miscellaneous	\$2,582,854	\$306,588	11.9
TOTAL	\$12,843,995	\$4,260,820	33.2%

Total Value of Property Stolen in Larceny-Thefts, by Value Lost per Offense
Maui County, 2016

Value Lost per Offense	# of Offenses	Total Property Value	% of Lost Value
\$200 or Over	1,935	\$3,780,314	96.2
\$50 to \$200	1,138	\$133,933	3.4
Under \$50	973	\$14,966	0.4
Total	4,046	\$3,929,213	

Arson Rate, Maui County, 2007-2016



Arson - Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

From 2015 to 2016:

- The reported arson rate increased 39.0%.

Comparing 2016 to 2007:

- The arson rate increased 215.1%.

Value of Property Destroyed by Arson
Maui County, 2016

Property Type	# of Offenses (% of Total)	Property Value (% of Total)
Structure Total	9 (6.0)	\$30,980 (7.4)
Single Occupancy Residential	3 (2.0)	\$5,040 (1.2)
Other Residential	1 (0.7)	\$5,000 (1.2)
Storage	0 (0.0)	\$0 (0.0)
Industrial / Manufacturing	0 (0.0)	\$0 (0.0)
Other Commercial	3 (2.0)	\$20,715 (5.0)
Community / Public	2 (1.3)	\$225 (0.1)
All Other Structures	0 (0.0)	\$0 (0.0)
Mobile Total	86 (57.3)	\$103,844 (24.9)
Motor Vehicles	85 (56.7)	\$103,344 (24.8)
Other Mobile Property	1 (0.7)	\$500 (0.1)
Other	55 (36.7)	\$281,657 (67.6)
TOTAL	150	\$416,481

Note: Due to rounding, individual percentages may not resolve with subtotals and total.

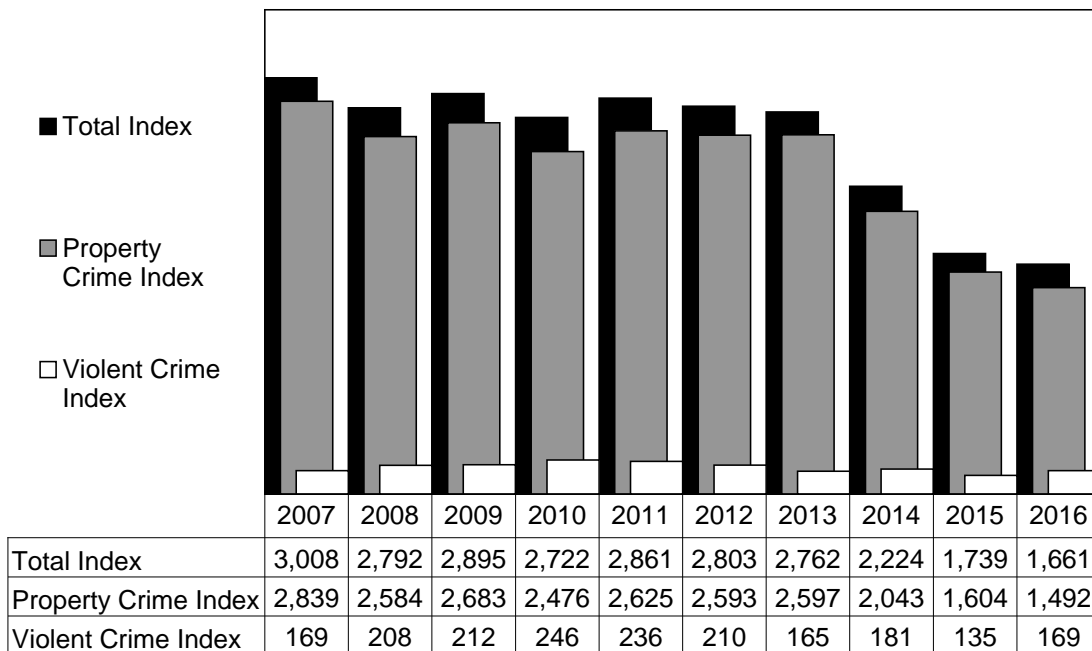
KAUAI COUNTY**2016 HIGHLIGHTS**

In 2016, 5.0% of Hawaii's population resided in Kauai County, where 3.5% of the State's total Index Crimes, 3.8% of the violent crimes, and 3.5% of the property crimes were reported.

The total number of Index Crimes reported in Kauai County decreased 4.5% from 2015 to 2016; violent crimes increased 25.2%, and property crimes decreased 7.0%. In 2016, the number of reported Index Crimes in Kauai County increased for three crime categories: murder, 150.0%; rape, 45.2%; and aggravated assault, 22.5%. The number of reported Index Crimes for four categories decreased in 2016: robbery, 4.5%; larceny-theft, 9.4%; motor vehicle theft, 14.3%; and arson, 34.0%. An identical number of burglaries were reported in Kauai County in 2015 and 2016, and no human trafficking offenses were reported in either year.

The table on the following page lists the numbers of reported offenses, excluding traffic, in Kauai County from 2007 to 2016. Over the past 10 years, the population of Kauai County increased 14.3%. During that same period, the total number of reported Index Crimes decreased 44.8%, property crimes decreased 47.4%, and the tally of violent crimes remained the same.

**Total Reported Index Offenses
Kauai County, 2007-2016**



Reported Offenses Kauai County, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	3,008	2,792	2,895	2,722	2,861	2,803	2,762	2,224	1,739	1,661
Violent Crime Index	169	208	212	246	236	210	165	181	135	169
Murder	1	2	1	2	2	0	1	1	2	5
Rape*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	32	31	45
Rape (legacy)*	46	52	32	40	33	29	20	13**	16**	25**
Robbery	16	20	23	18	25	22	22	31	22	21
Aggravated Assault	106	134	156	186	176	159	122	117	80	98
Property Crime Index	2,839	2,584	2,683	2,476	2,625	2,593	2,597	2,043	1,604	1,492
Burglary	719	710	810	714	787	689	828	674	458	458
Larceny-Theft	1,959	1,718	1,758	1,652	1,690	1,753	1,641	1,251	1,069	968
Motor Vehicle Theft	161	156	115	110	148	151	128	118	77	66
Arson	27	10	8	10	11	10	3	5	47	31
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses***	5,348	5,922	6,332	5,785	5,944	6,045	6,420	4,056	3,877	4,030
Total Index & Part II***	8,356	8,714	9,227	8,507	8,805	8,848	9,182	6,280	5,616	5,691

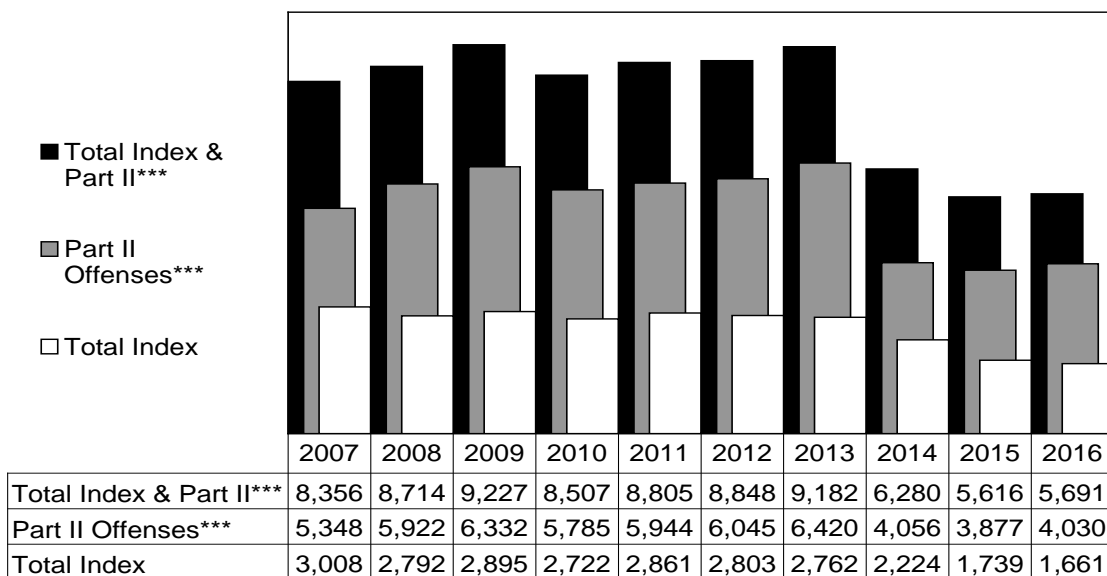
Note: Violent Crime Index, Property Crime Index, Part II Offenses, and Total Index and Part II offenses exclude arson and human trafficking offenses.

** On January 1, 2014, the State of Hawaii commenced the collection of rape data using a revised definition (see pages 3 and 89 for more details).*

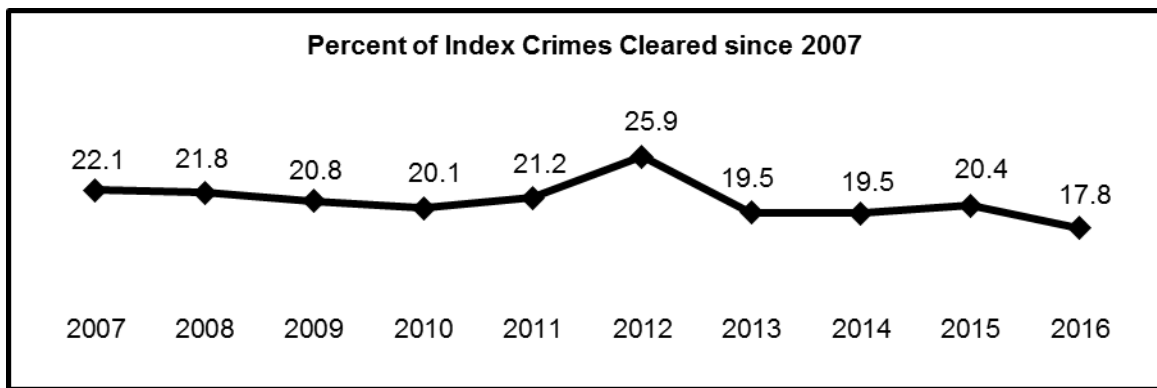
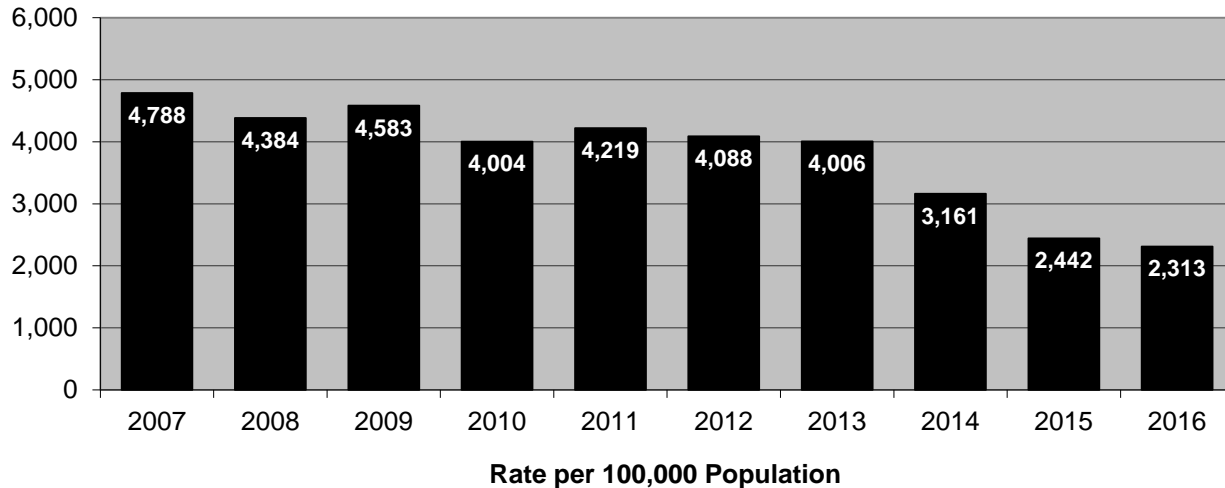
***The total number of rapes under the legacy definition in 2014 is not separately included in the Violent Crime Index, Total Index, and Total Index & Part II offenses. It is, however, already included in the rape count under the revised definition.*

****In 2014, Kauai Police Department began excluding traffic violations from the Part II Offenses count, in accordance with the Uniform Crime Reporting Program's procedures. Prior to this year, traffic violations were erroneously included under All Other Offenses. This revision impacts the Part II Offenses and the Total Index & Part II categories.*

**Total Reported Index & Part II Offenses
Kauai County, 2007-2016**



***In 2014, Kauai Police Department began excluding traffic violations from the Part II Offenses count, in accordance with the Uniform Crime Reporting Program's procedures. Prior to that year, traffic violations were erroneously included under All Other Offenses. This revision impacts the Part II Offenses and the Total Index and Part II categories.

Total Index Crime Rate, Kauai County, 2007-2016

Index Crimes - Murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. However, due to a different method of counting, arson and human trafficking offenses are not included in the totals of reported Index Crimes and Index & Part II Offenses.

From 2015 to 2016:

- Reported Index Crimes decreased 5.3% in rate.

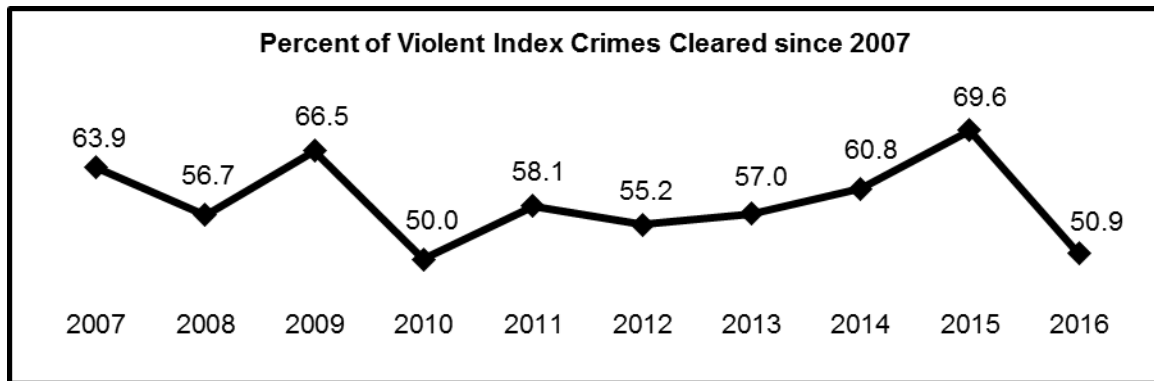
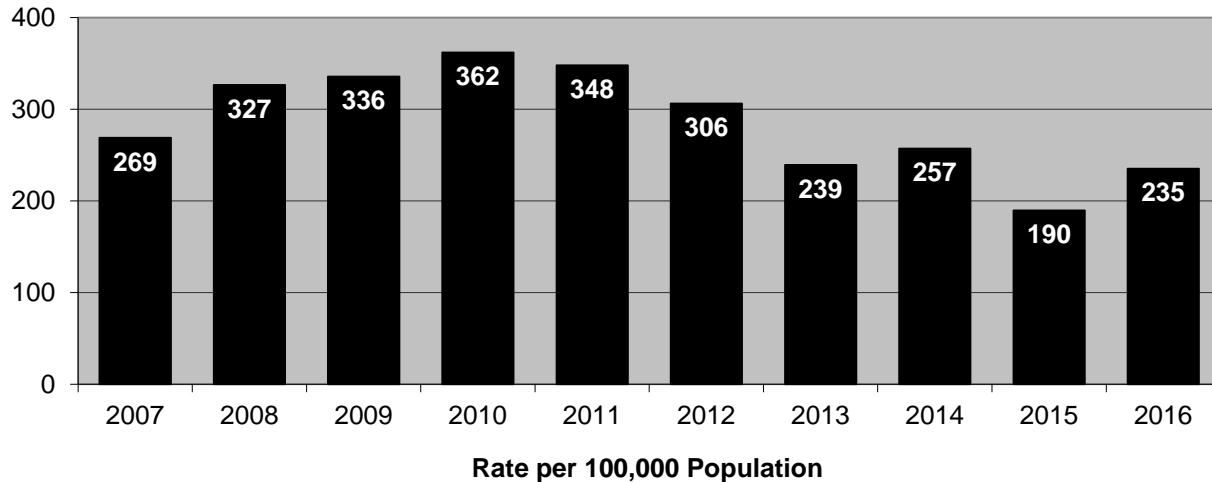
Comparing 2016 to 2007:

- The Index Crime rate decreased 51.7%.

In 2016, of the 1,661 Index Crimes reported:

- Property crimes accounted for 89.8% (1,492).
- Violent crimes accounted for 10.2% (169).

Kauai County's total Index Crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Violent Crime Rate, Kauai County, 2007-2016

Violent Crimes - Murder, rape, robbery, and aggravated assault. Human trafficking - commercial sex acts and human trafficking - involuntary servitude are also violent crimes; however, due to a different method of counting, they are not included in the totals of violent crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

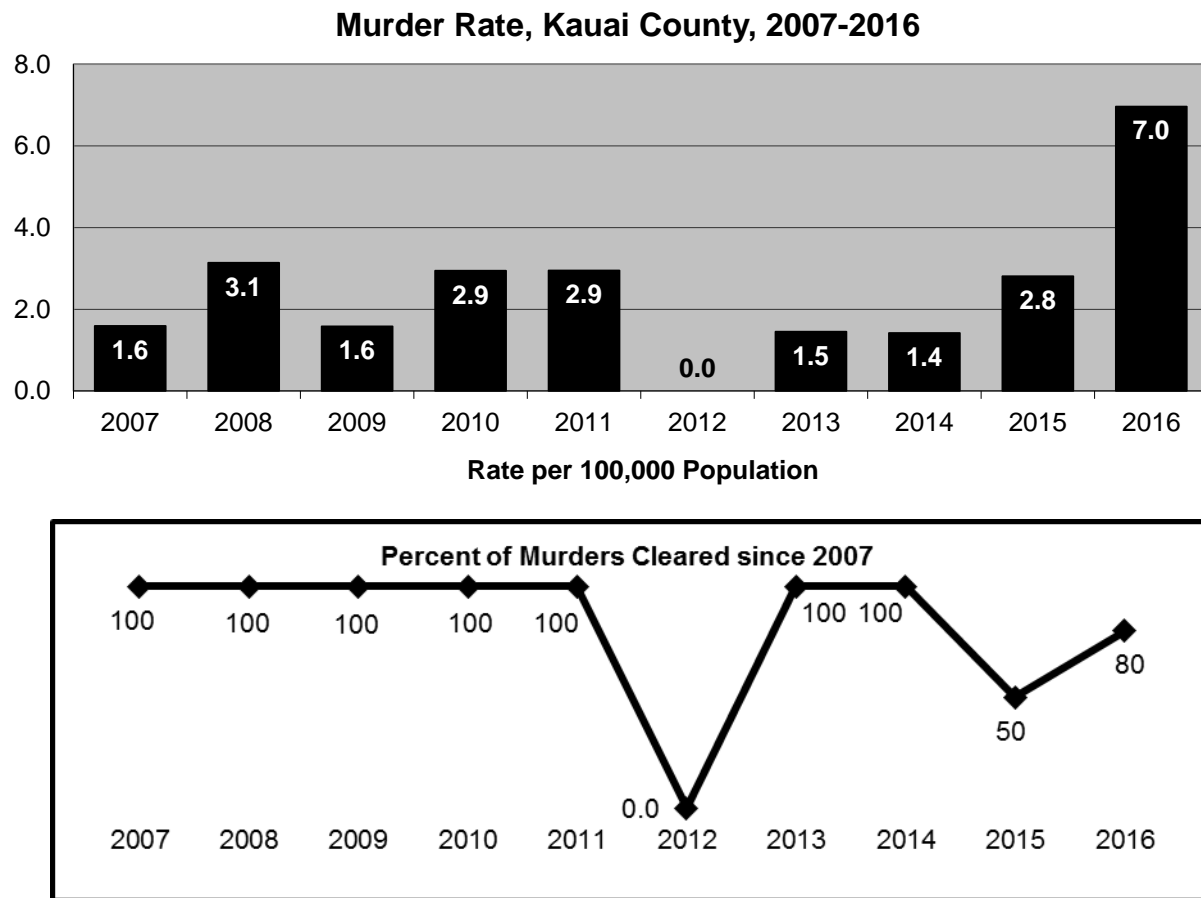
- The rate of reported violent crimes increased 24.1%.

Comparing 2016 to 2007:

- The violent crime rate decreased 12.5%.

In 2016, of the 169 violent crimes reported:

- Aggravated assault accounted for 58.0% (98).
- Rape accounted for 26.6% (45).
- Robbery accounted for 12.4% (21).
- Murder accounted for 3.0% (5).



Murder - The willful killing of one human being by another.

From 2015 to 2016:

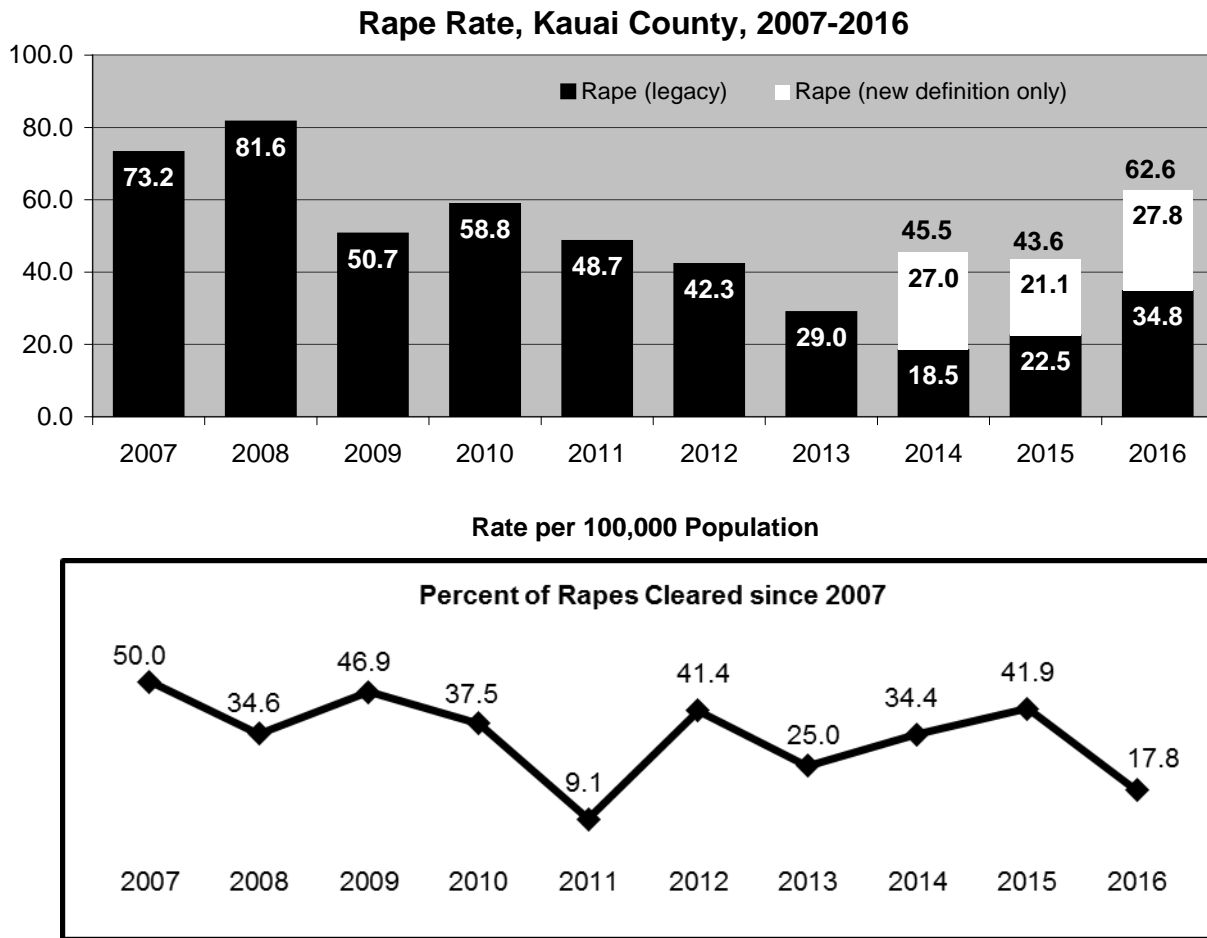
- The murder rate increased 147.8%, with 2 murders reported in 2015, versus 5 murders reported in 2016.

Comparing 2016 to 2007:

- The murder rate increased 337.4%, with 5 murders reported in 2016, versus 1 murder reported in 2007.

In 2016, of the 5 reported murders:

- Firearms were involved in 60.0% (3).
- Other or unknown weapons were involved in 40.0% (2).



Rape (legacy)* - The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.

Rape (revised)* - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

From 2015 to 2016:

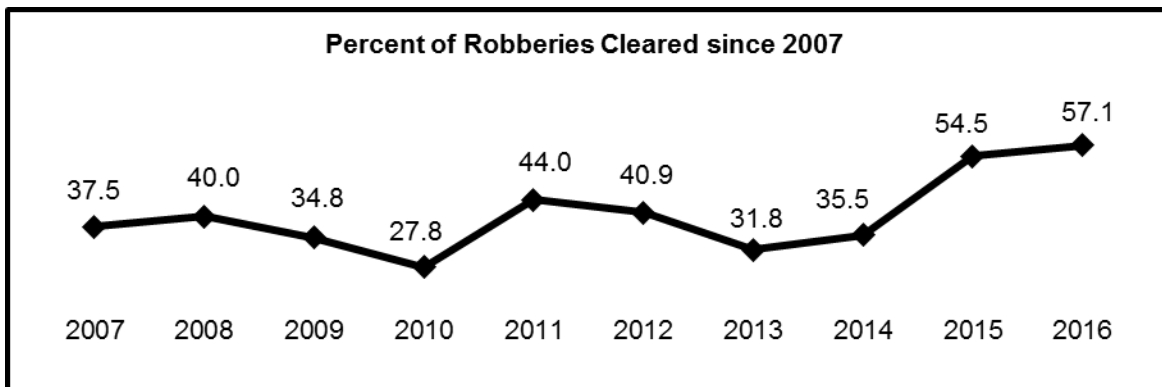
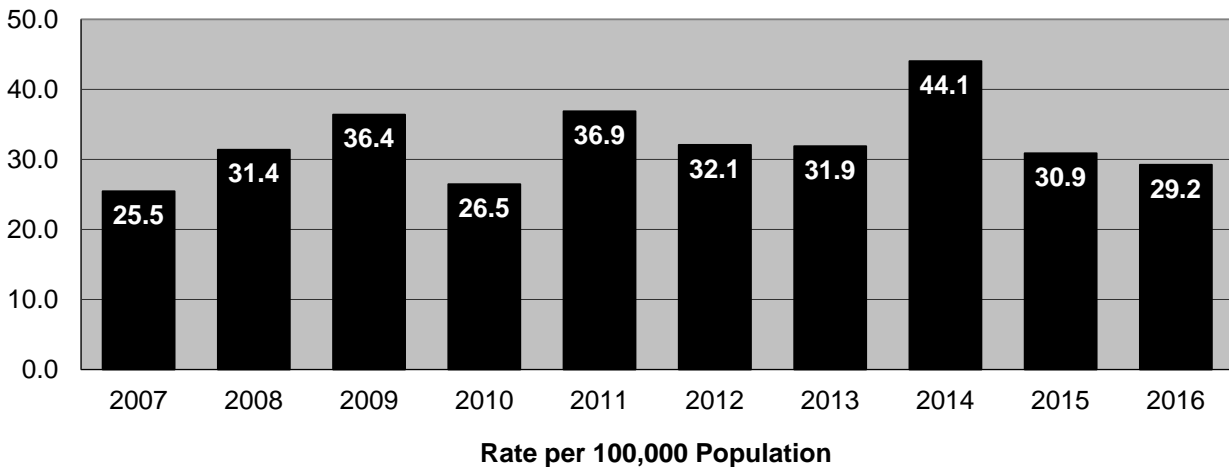
- Rapes increased by 43.9% in rate.

Comparing 2016 to 2007:

- The rape rate, based on the legacy definition, decreased 52.5%.

**Note: On January 1, 2014, the State of Hawaii began collecting rape data under the FBI's revised definition. The State of Hawaii will continue to also collect rape data under the old, or legacy, definition so that comparative trends can be established. See page 3 for more information.*

Robbery Rate, Kauai County, 2007-2016



Robbery - The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

From 2015 to 2016:

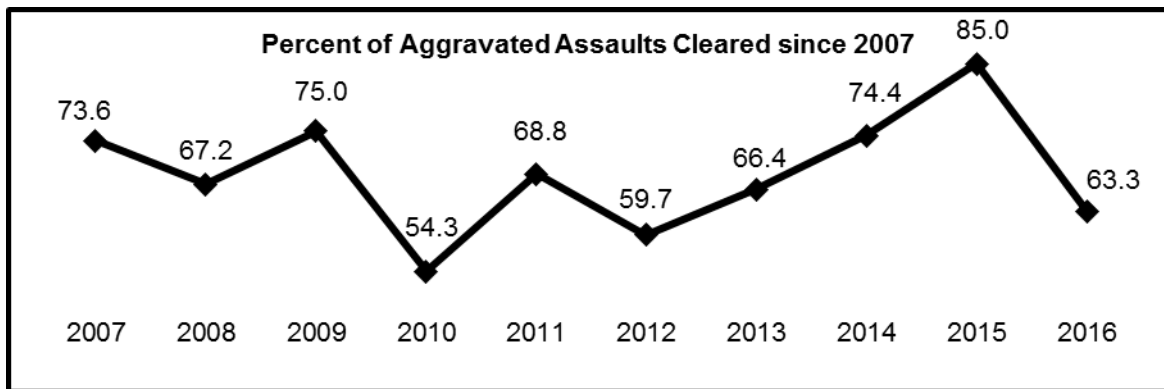
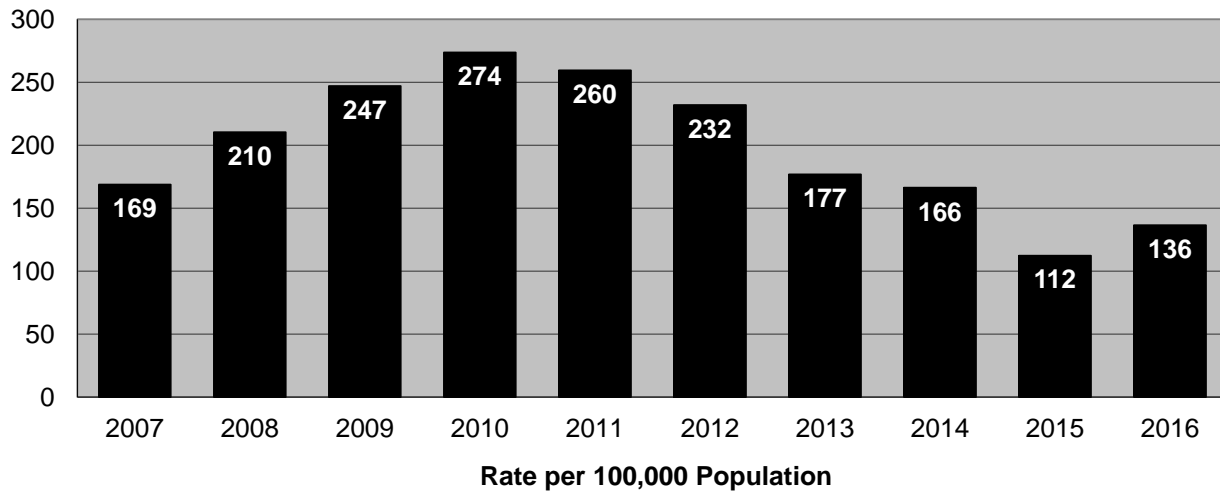
- Reported robberies decreased 5.4% in rate.

Comparing 2016 to 2007:

- The robbery rate increased 14.8%.

In 2016, of the 21 robberies reported:

- Strongarm weapons (hands, fists, feet, etc.) were used in 61.9% (13).
- Firearms were used in 33.3% (7).
- An "other" dangerous weapon was used in 4.8% (1).

Aggravated Assault Rate, Kauai County, 2007-2016

Aggravated Assault - The unlawful attack or attempted attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

From 2015 to 2016:

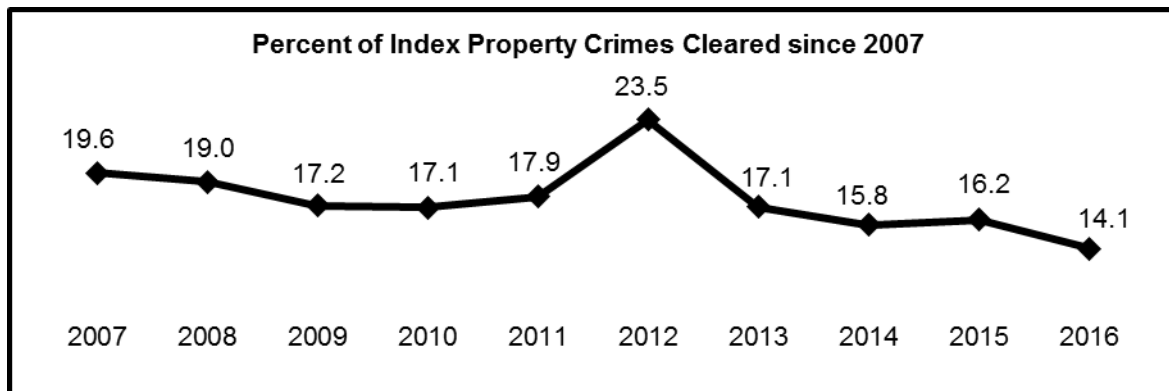
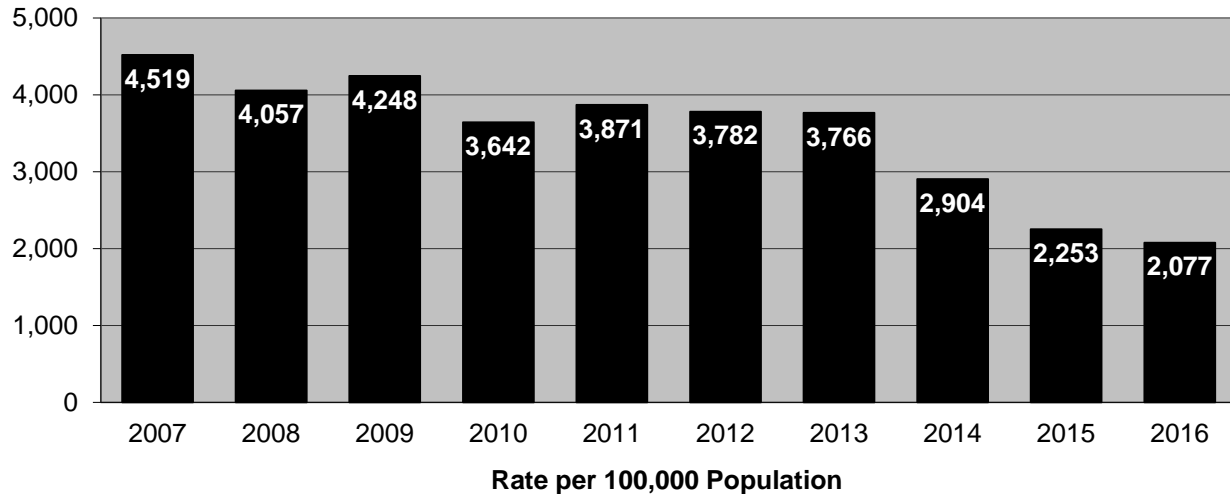
- The rate of aggravated assaults increased 21.4%.

Comparing 2016 to 2007:

- Aggravated assaults decreased 19.1% in rate.

In 2016, of the 98 aggravated assaults reported:

- Other dangerous weapons were involved in 34.7% (34).
- Strongarm weapons (hands, fists, feet, etc.) were involved in 32.7% (32).
- Knives or cutting instruments were involved in 21.4% (21).
- Firearms were involved in 11.2% (11).

Property Crime Rate, Kauai County, 2007-2016

Property Crimes - Burglary, larceny-theft, and motor vehicle theft. Arson is also a property crime; however, due to a different method of counting, it is not included in the totals of property crimes, Index Crimes, and total Index & Part II Offenses.

From 2015 to 2016:

- Reported property crimes decreased 7.8% in rate.

Comparing 2016 to 2007:

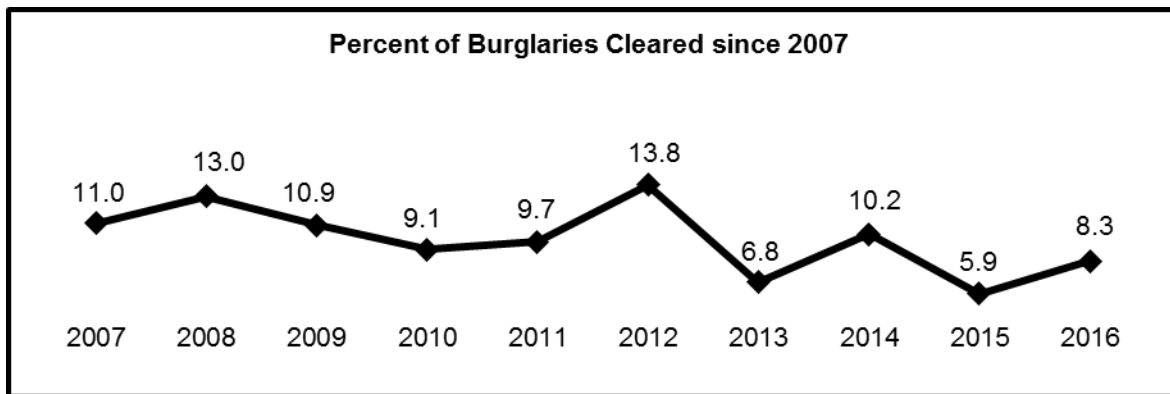
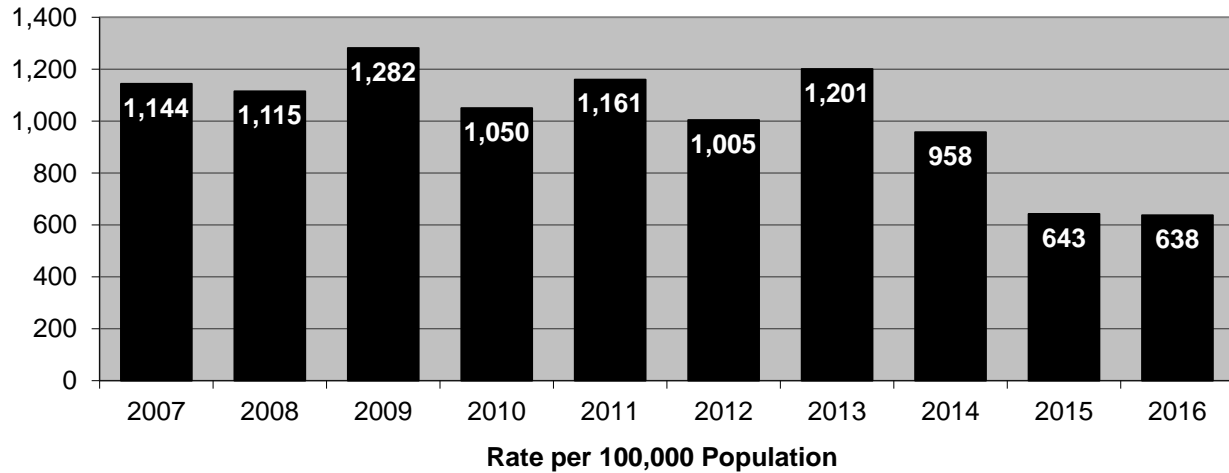
- The property crime rate decreased 54.0%.

In 2016, of the 1,492 property crimes reported:

- Larceny-theft accounted for 64.9% (968).
- Burglary accounted for 30.7% (458).
- Motor vehicle theft accounted for 4.4% (66).

Kauai County's property crime rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Burglary Rate, Kauai County, 2007-2016



Burglary - The unlawful entry of a structure to commit a felony or a theft. Attempted burglary is included.

From 2015 to 2016:

- The rate of reported burglaries decreased 0.9%.

Comparing 2016 to 2007:

- The burglary rate decreased 44.3%.

In 2016, of the 458 burglaries and attempted burglaries reported:

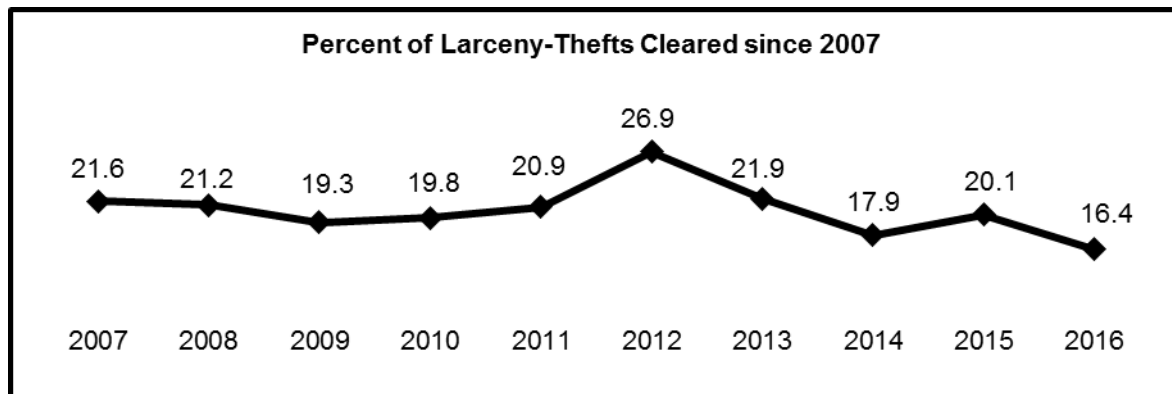
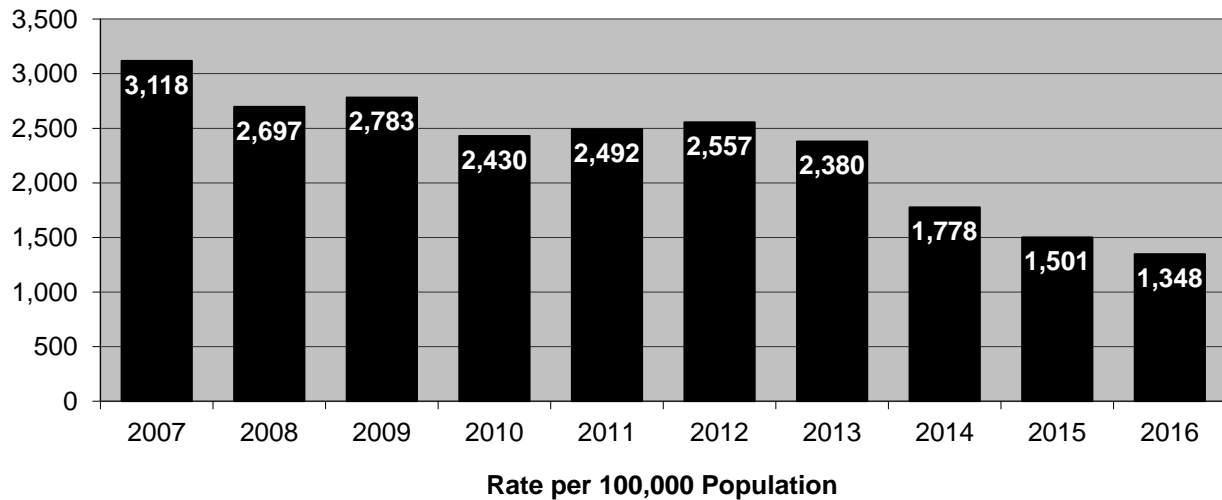
- Burglary accounted for 94.1% (431).
- Attempted burglary accounted for 5.9% (27).

In 2016, of the 431 reported burglaries:

- Structures entered by force accounted for 62.6% (270).
- Structures entered without force accounted for 37.4% (161).

Kauai County's burglary rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Larceny-Theft Rate, Kauai County, 2007-2016



Larceny-theft - The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

From 2015 to 2016:

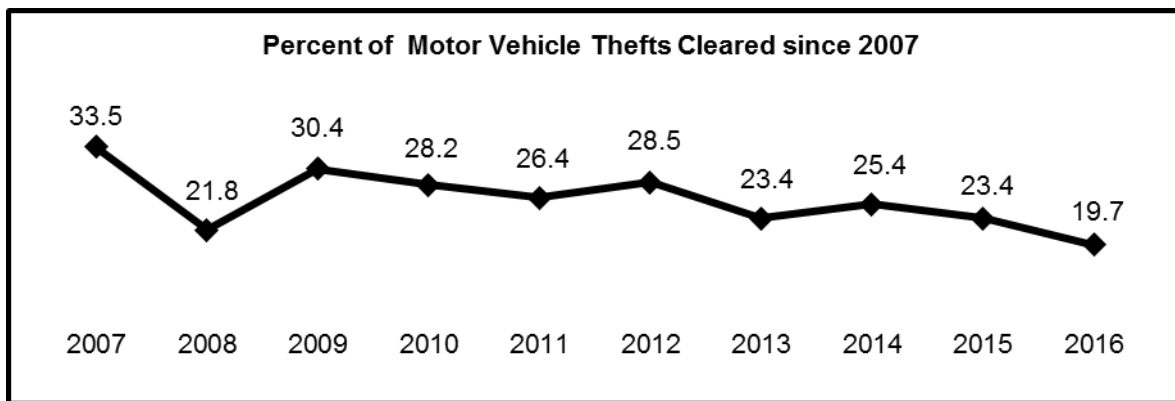
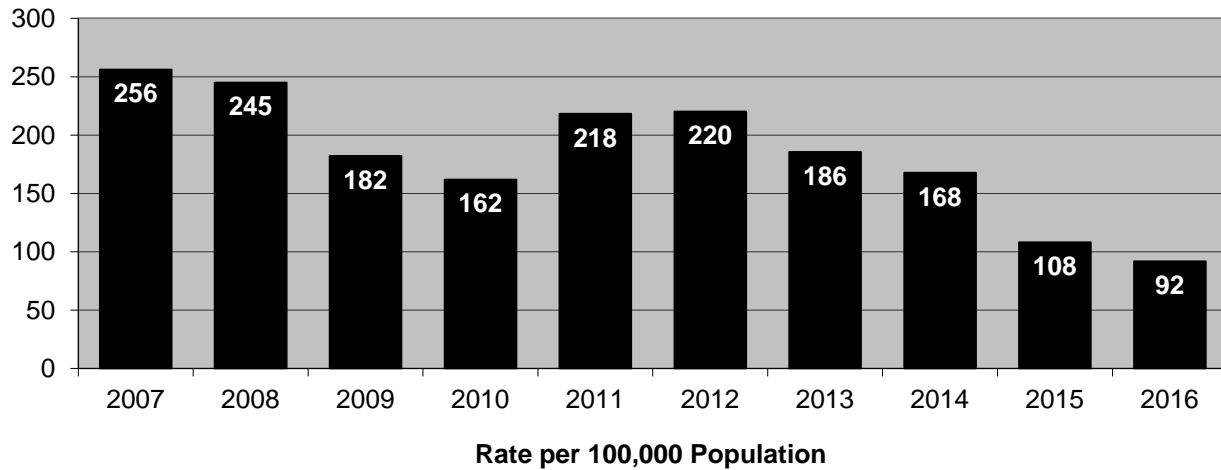
- Larceny-theft decreased 10.2% in rate.

Comparing 2016 to 2007:

- The larceny-theft rate decreased 56.8%.

Kauai County's larceny-theft rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Motor Vehicle Theft Rate, Kauai County, 2007-2016



Motor Vehicle Theft - The theft or attempted theft of a motor vehicle.

From 2015 to 2016:

- Reported motor vehicle thefts decreased 15.0% in rate.

Comparing 2016 to 2007:

- The motor vehicle theft rate decreased 64.1%.

In 2016, of the 66 motor vehicles reported stolen:

- Autos accounted for 60.6% (40).
- Other vehicles accounted for 19.7% (13). Included in this category are motorcycles, mopeds, and golf carts.
- Trucks and buses accounted for 19.7% (13). Included in this category are pickup trucks and vans.

Kauai County's motor vehicle theft rate in 2016 was at its lowest level on record since the start of statewide data collection in 1975.

Value of Property Stolen by Type of Offense
Kauai County, 2016

OFFENSE	# OF OFFENSES	PROPERTY VALUE	% OF TOTAL
MURDER	5	\$ -	0.0
RAPE	45	\$ -	0.0
ROBBERY TOTAL	21	\$ 55,322	2.8
Highway	4	\$ 5,712	0.3
Commercial House	3	\$ 144	0.0
Service Station	0	\$ -	0.0
Convenience Store	0	\$ -	0.0
Residence	2	\$ 700	0.0
Bank	1	\$ 480	0.0
Miscellaneous	11	\$ 48,286	2.5
BURGLARY TOTAL	458	\$ 796,631	40.7
Residence - Night	51	\$ 79,694	4.1
Residence - Day	56	\$ 97,357	5.0
Residence - Unknown	84	\$ 220,301	11.2
Non-Residence - Night	79	\$ 108,216	5.5
Non-Residence - Day	27	\$ 44,336	2.3
Non-Residence - Unknown	161	\$ 246,727	12.6
LARCENY-THEFT TOTAL	968	\$ 742,821	37.9
Pocket Picking	2	\$ 959	0.0
Purse Snatching	8	\$ 4,240	0.2
Shoplifting	157	\$ 33,941	1.7
From Motor Vehicles	190	\$ 108,437	5.5
Motor Vehicle Parts	84	\$ 22,158	1.1
Bicycles	37	\$ 15,243	0.8
From Buildings	134	\$ 272,602	13.9
Coin Machines	2	\$ 616	0.0
All Others	354	\$ 284,625	14.5
MOTOR VEHICLE THEFT	66	\$ 364,000	18.6
GRAND TOTAL	1,563	\$ 1,958,774	100%

Note: Due to rounding, individual percentages may not resolve with subtotals and total.

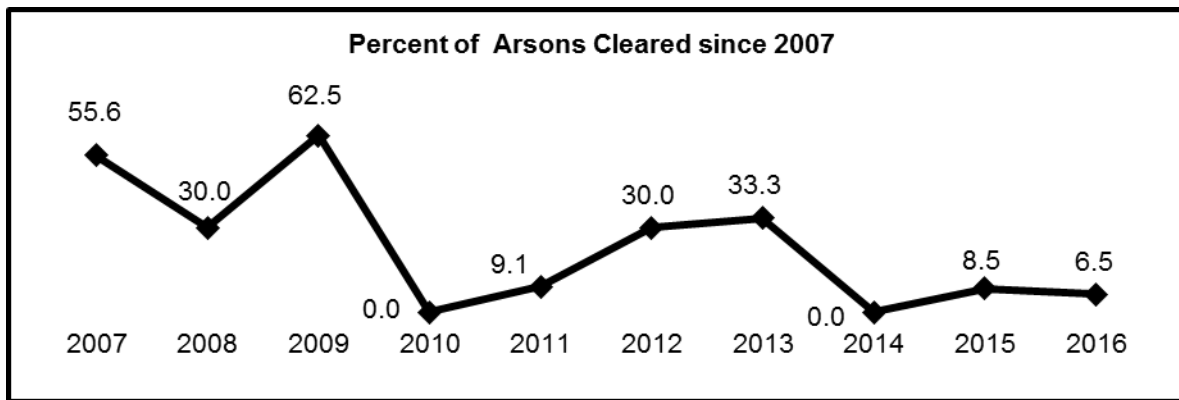
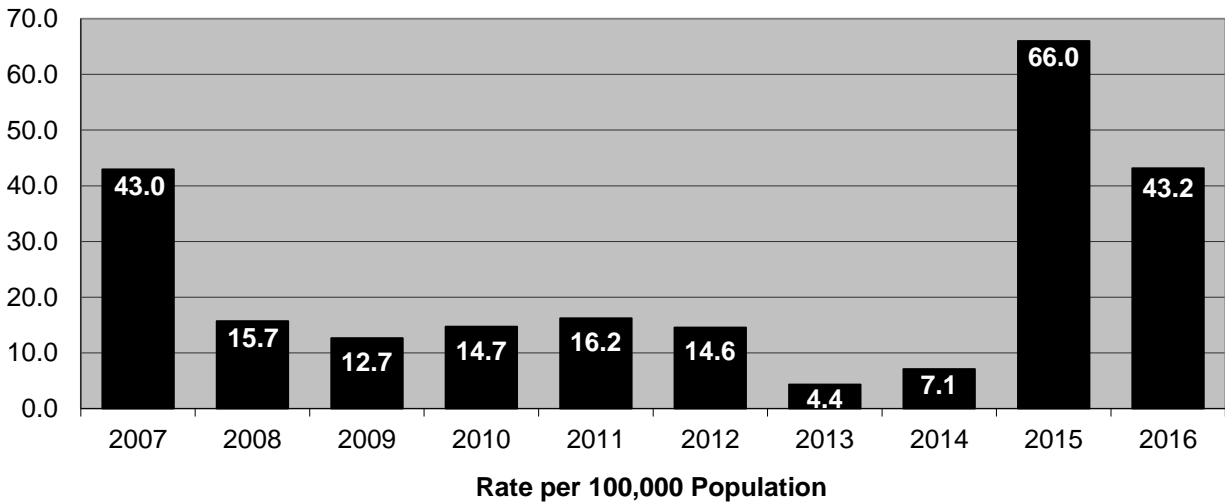
Value of Property Stolen & Recovered
Kauai County, 2016

Property Type	Amount Stolen	Amount Recovered	% Recovered
Money - Notes	\$345,215	\$5,668	1.6
Jewels	\$260,547	\$25,854	9.9
Clothing - Furs	\$64,968	\$6,785	10.4
Motor Vehicles	\$407,250	\$321,100	78.8
Office Equipment	\$15,602	\$754	4.8
Televisions - Radios	\$86,992	\$12,070	13.9
Firearms	\$7,400	\$700	9.5
Household Goods	\$26,915	\$0	0.0
Consumable Goods	\$51,222	\$2,765	5.4
Livestock	\$2,900	\$1,200	41.4
Miscellaneous	\$689,763	\$41,084	6.0
TOTAL	\$1,958,774	\$417,980	21.3%

Total Value of Property Stolen in Larceny-Thefts, by Value Lost per Offense
Kauai County, 2016

Value Lost per Offense	# of Offenses	Total Property Value	% of Lost Value
\$200 or Over	487	\$711,340	95.8
\$50 to \$200	269	\$27,326	3.7
Under \$50	212	\$4,155	0.6
TOTAL	968	\$742,821	

Arson Rate, Kauai County, 2007-2016



Arson - Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

From 2015 to 2016:

- The reported arson rate decreased 34.6%.

Comparing 2016 to 2007:

The arson rate increased 0.4%.

Value of Property Destroyed by Arson
Kauai County, 2016

Property Type	# of Offenses (% of Total)	Property Value (% of Total)
Structure Total	0 (0.0)	\$0 (0.0)
Single Occupancy Residential	0 (0.0)	\$0 (0.0)
Other Residential	0 (0.0)	\$0 (0.0)
Storage	0 (0.0)	\$0 (0.0)
Industrial / Manufacturing	0 (0.0)	\$0 (0.0)
Other Commercial	0 (0.0)	\$0 (0.0)
Community / Public	0 (0.0)	\$0 (0.0)
All Other Structures	0 (0.0)	\$0 (0.0)
Mobile Total	8 (25.8)	\$45,000 (88.2)
Motor Vehicles	4 (12.9)	\$3,500 (6.9)
Other Mobile Property	4 (12.9)	\$41,500 (81.4)
Other	23 (74.2)	\$6,005 (11.8)
TOTAL	31	\$51,005

Note: Due to rounding, individual percentages may not resolve with subtotals and total.

ARREST STATISTICS

Arrest data, including the age, sex, and race/ethnicity of the arrestees, are reported by county law enforcement agencies for all violations except most traffic offenses¹. The UCR Program requires that an arrest be counted on each separate occasion a person is taken into custody, notified, or cited. As such, arrest figures do not measure the number of individual people arrested, since one person may be arrested several times during the year, for the same or different types of offenses.

Only the most serious offense is recorded for each arrest. The offenses are divided into two categories: Index Offenses, including murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, arson, and the two human trafficking offenses: commercial sex acts and involuntary servitude; and Part II Offenses, comprised of all other offenses, including manslaughter by negligence². Definitions of Index Offenses and Part II Offenses are included in Appendices A and B, respectively.

In 2013, the FBI separated its “Asian or Pacific Islander” race category into two distinct groups: “Asian” and “Native Hawaiian or Other Pacific Islander”. Categories typically employed by the FBI and elsewhere in the nation are restrictive to the following: White, Black, American Indian or Alaskan Native, Asian, and Native Hawaiian or Other Pacific Islander. In this report, race and ethnicity data are presented using additional categories relevant to Hawaii: White, Black, American Indian or Alaskan Native (“Indian” in the tables), Chinese, Japanese, Filipino, Korean, Other Asian, Hawaiian, Samoan, and Other Pacific Islander.

The status offenses of truancy and ungovernability are included in the Part II arrest category of “All Other Offenses” for juveniles. The role that these status offenses play in any examination of juvenile arrest trends should be seriously considered. For example, in 2007, there were 5,214 arrests statewide for the specified status offenses, accounting for 46.4% of juvenile arrests for Part II Offenses, and 38.8% of all juvenile arrests. Thus, status offense arrests weigh heavily into the calculation of juvenile arrest totals and trends, and any adult-to-juvenile comparison based on traditional Part II totals will be biased in favor of adults.

¹ Contrary to the UCR rule in which reported offenses of negligent manslaughter are tallied for non-traffic cases only, arrest totals for this offense include both traffic and non-traffic cases.

² The division of crime categories is sometimes still made between Part I, an older term that encompassed Index Offenses plus manslaughter by negligence, and Part II, which includes all other offenses. The sections herein on reported offenses (pages 5-99) and arrests (pages 101-171) include manslaughter by negligence with the Part II Offenses for two reasons: 1) the current emphasis of the UCR Program, and this report, is on Index Offenses (which exclude manslaughter by negligence) rather than Part I Offenses; and 2) the FBI’s national report, *Crime in the United States*, groups arrest data by Index Offenses and all other offenses — arrests for manslaughter by negligence are excluded.

Two types of human trafficking offenses, commercial sex acts and involuntary servitude, were added to this report in 2014. The arrest counts for these categories are reported with the violent crime sections throughout this report. Prostitution, a Part II offense, was broken down into three categories: prostitution, assisting or promoting prostitution, and purchasing prostitution. In line with the FBI's *Crime in the U.S.* report, arrests for these three categories are combined and reported as "Prostitution."

An important note about arrest data for rape

The State of Hawaii began collecting data per the FBI's revised definition of rape in 2014 (see page 3 for more information). A distinction between rape cases collected under the revised and the legacy definition is only noted for data on reported offenses. The rape category for arrest data accounts for all rape arrests regardless of which definition is applied.

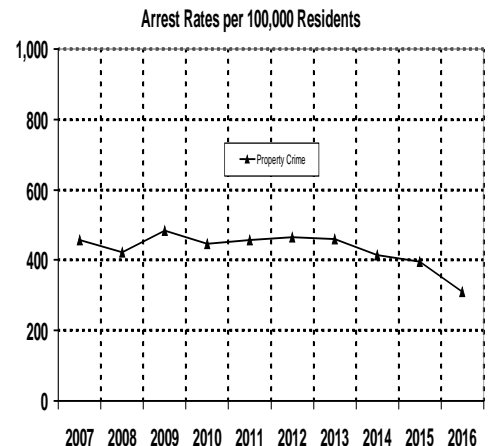
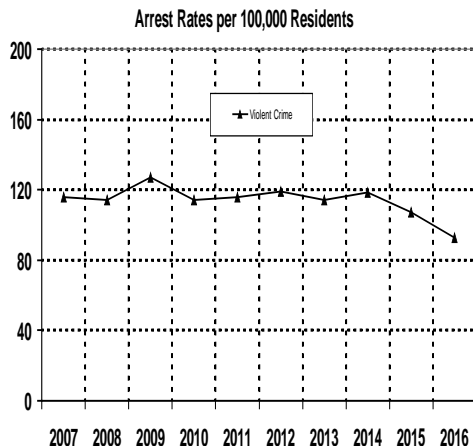
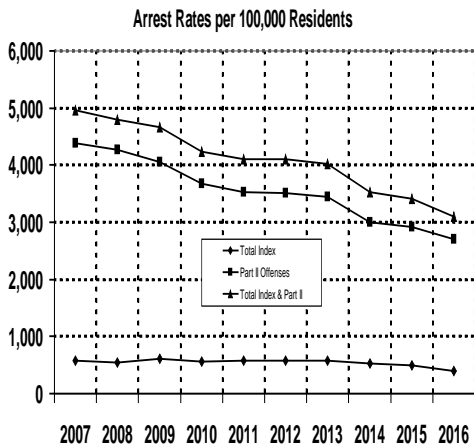
Total Arrests

State of Hawaii, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	7,370	6,919	7,868	7,614	7,874	8,018	8,078	7,570	7,192	5,748
Violent Crime Index	1,489	1,474	1,638	1,554	1,593	1,545	1,603	1,683	1,536	1,322
Murder	33	19	17	25	20	18	25	25	36	35
Rape*	128	109	136	132	142	104	107	241	157	150
Robbery	390	423	460	410	447	476	432	361	412	293
Aggravated Assault	938	923	1,025	987	984	947	1,039	1,056	928	844
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	3	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime Index	5,881	5,445	6,230	6,060	6,281	6,473	6,475	5,887	5,656	4,426
Burglary	725	795	718	671	678	695	657	672	676	636
Larceny-Theft	4,328	4,066	4,890	4,842	5,079	5,234	5,223	4,590	4,253	3,365
Motor Vehicle Theft	781	540	584	514	483	513	573	613	684	389
Arson	47	44	38	33	41	31	22	12	43	36

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	56,331	54,916	52,327	50,104	48,509	49,054	48,330	42,497	41,757	38,535
Total Index & Part II	63,701	61,835	60,195	57,718	56,383	57,072	56,408	50,067	48,949	44,283



Adult Arrests for Index Offenses, State of Hawaii, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	5,189	4,779	5,628	5,665	6,085	6,379	6,690	6,300	5,969	4,885
Total Violent	1,194	1,159	1355	1284	1,356	1,295	1,372	1,504	1,331	1,147
Violent Crime										
Murder	30	19	17	23	18	18	24	23	36	34
Rape*	113	100	119	119	129	91	88	212	132	127
Robbery	247	262	329	282	316	352	330	311	319	221
Aggravated Assault	804	778	890	860	893	834	930	958	841	765
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	3	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Total Property	3,995	3,620	4,273	4,381	4,729	5,084	5,318	4,796	4,638	3,738
Property Crime										
Burglary	484	541	558	538	533	597	580	607	581	551
Larceny-Theft	2,898	2,666	3,234	3,386	3,744	4,009	4,209	3,634	3,390	2,820
Motor Vehicle Theft	583	390	457	439	422	459	514	546	634	339
Arson	30	23	24	18	30	19	15	9	33	28

Juvenile Arrests for Index Offenses, State of Hawaii, 2007-2016

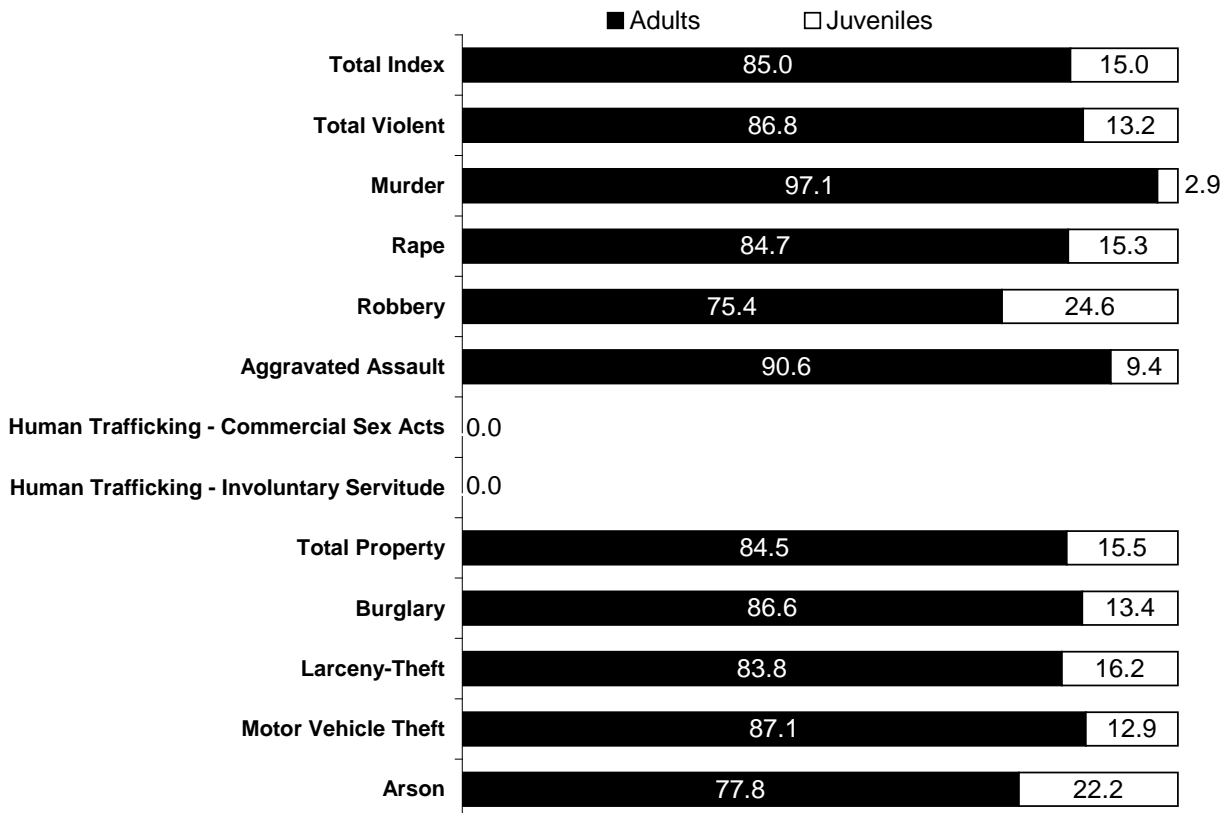
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	2,181	2,140	2,240	1,949	1,789	1,639	1,388	1,270	1,223	863
Total Violent	295	315	283	270	237	250	231	179	205	175
Violent Crime										
Murder	3	0	0	2	2	0	1	2	0	1
Rape*	15	9	17	13	13	13	19	29	25	23
Robbery	143	161	131	128	131	124	102	50	93	72
Aggravated Assault	134	145	135	127	91	113	109	98	87	79
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Total Property	1,886	1,825	1,957	1,679	1,552	1,389	1,157	1,091	1,018	688
Property Crime										
Burglary	241	254	160	133	145	98	77	65	95	85
Larceny-Theft	1,430	1,400	1,656	1,456	1,335	1,225	1,014	956	863	545
Motor Vehicle Theft	198	150	127	75	61	54	59	67	50	50
Arson	17	21	14	15	11	12	7	3	10	8

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

Percentage of Adult & Juvenile Arrests by Index Offenses

State of Hawaii, 2016

		Adults	Juveniles	Total	Adult %	Juvenile %
Total Index		4,885	863	5,748	85.0	15.0
Violent Crime	Total Violent	1,147	175	1,322	86.8	13.2
	Murder	34	1	35	97.1	2.9
	Rape	127	23	150	84.7	15.3
	Robbery	221	72	293	75.4	24.6
	Aggravated Assault	765	79	844	90.6	9.4
	Human Trafficking - Commercial Sex Acts	0	0	0	0.0	0.0
	Human Trafficking - Involuntary Servitude	0	0	0	0.0	0.0
Property Crime	Total Property	3,738	688	4,426	84.5	15.5
	Burglary	551	85	636	86.6	13.4
	Larceny-Theft	2,820	545	3,365	83.8	16.2
	Motor Vehicle Theft	339	50	389	87.1	12.9
	Arson	28	8	36	77.8	22.2



Age and Sex of Adults Arrested for Index Offenses**State of Hawaii, 2016**

Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Murder	M	7	7	5	2	2	4	0	3	30	88.2%
	F	0	0	1	1	0	1	1	0	4	11.8%
Rape	M	29	15	23	18	21	7	6	6	125	98.4%
	F	0	1	0	1	0	0	0	0	2	1.6%
Robbery	M	69	36	28	28	8	10	8	3	190	86.0%
	F	8	5	7	2	6	1	1	1	31	14.0%
Aggravated Assault	M	110	118	89	92	48	50	49	66	622	81.3%
	F	34	20	31	16	13	5	14	10	143	18.7%
Human Trafficking - Commercial Sex Acts	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Burglary	M	115	83	64	61	35	47	27	23	455	82.6%
	F	23	14	12	8	10	11	12	6	96	17.4%
Larceny-Theft	M	455	363	269	212	139	171	126	189	1,924	68.2%
	F	217	142	120	107	90	82	58	80	896	31.8%
Motor Vehicle Theft	M	70	64	45	29	14	16	11	7	256	75.5%
	F	30	19	16	6	3	2	4	3	83	24.5%
Arson	M	1	1	4	4	2	1	4	4	21	75.0%
	F	1	1	2	3	0	0	0	0	7	25.0%
Total	M	856	687	527	446	269	306	231	301	3,623	74.2%
	F	313	202	189	144	122	102	90	100	1,262	25.8%
Column Percent	M	73.2%	77.3%	73.6%	75.6%	68.8%	75.0%	72.0%	75.1%	74.2%	
	F	26.8%	22.7%	26.4%	24.4%	31.2%	25.0%	28.0%	24.9%	25.8%	

Race/Ethnicity of Adults Arrested for Index Offenses
State of Hawaii, 2016

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	9 26.5%	2 5.9%	0 0.0%	0 0.0%	1 2.9%	5 14.7%	1 2.9%	0 0.0%	9 26.5%	4 11.8%	3 8.8%	34 100.0%
Rape	47 37.0%	13 10.2%	0 0.0%	0 0.0%	2 1.6%	18 14.2%	1 0.8%	3 2.4%	28 22.0%	6 4.7%	9 7.1%	127 100.0%
Robbery	67 30.3%	15 6.8%	0 0.0%	2 0.9%	6 2.7%	21 9.5%	0 0.0%	1 0.5%	74 33.5%	15 6.8%	20 9.0%	221 100.0%
Aggravated Assault	241 31.5%	44 5.8%	1 0.1%	4 0.5%	30 3.9%	100 13.1%	8 1.0%	7 0.9%	227 29.7%	42 5.5%	61 8.0%	765 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	208 37.7%	22 4.0%	3 0.5%	6 1.1%	26 4.7%	53 9.6%	2 0.4%	4 0.7%	187 33.9%	15 2.7%	25 4.5%	551 100.0%
Larceny-Theft	1,067 37.8%	97 3.4%	15 0.5%	50 1.8%	125 4.4%	325 11.5%	19 0.7%	26 0.9%	843 29.9%	89 3.2%	164 5.8%	2,820 100.0%
Motor Vehicle Theft	105 31.0%	7 2.1%	1 0.3%	6 1.8%	4 1.2%	24 7.1%	0 0.0%	1 0.3%	158 46.6%	10 2.9%	23 6.8%	339 100.0%
Arson	10 35.7%	0 0.0%	2 7.1%	0 0.0%	0 0.0%	3 10.7%	0 0.0%	1 3.6%	11 39.3%	1 3.6%	0 0.0%	28 100.0%
Total	1,754	200	22	68	194	549	31	43	1,537	182	305	4,885
Column Percent	35.9%	4.1%	0.5%	1.4%	4.0%	11.2%	0.6%	0.9%	31.5%	3.7%	6.2%	100.0%

Age and Sex of Juveniles Arrested for Index Offenses**State of Hawaii, 2016**

Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Murder	M	0	0	0	0	1	0	1	100.0%
	F	0	0	0	0	0	0	0	0.0%
Rape	M	0	1	6	5	2	8	22	95.7%
	F	0	0	1	0	0	0	1	4.3%
Robbery	M	0	3	17	19	16	15	70	97.2%
	F	0	0	1	1	0	0	2	2.8%
Aggravated Assault	M	1	5	11	11	16	15	59	74.7%
	F	0	2	6	2	4	6	20	25.3%
Human Trafficking - Commerical Sex Acts	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Burglary	M	1	5	13	12	24	19	74	87.1%
	F	1	1	3	2	1	3	11	12.9%
Larceny-Theft	M	0	22	86	77	83	64	332	60.9%
	F	0	14	63	46	45	45	213	39.1%
Motor Vehicle Theft	M	0	2	6	9	8	8	33	66.0%
	F	0	0	1	2	7	7	17	34.0%
Arson	M	0	0	2	1	1	2	6	75.0%
	F	0	0	0	2	0	0	2	25.0%
Total	M	2	38	141	134	151	131	597	69.2%
	F	1	17	75	55	57	61	266	30.8%
Column Percent	M	66.7%	69.1%	65.3%	70.9%	72.6%	68.2%	69.2%	
	F	33.3%	30.9%	34.7%	29.1%	27.4%	31.8%	30.8%	

Race/Ethnicity of Juveniles Arrested for Index Offenses**State of Hawaii, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
Rape	3 13.0%	5 21.7%	0 0.0%	0 0.0%	2 8.7%	3 13.0%	0 0.0%	0 0.0%	4 17.4%	3 13.0%	3 13.0%	23 100.0%
Robbery	2 2.8%	3 4.2%	0 0.0%	0 0.0%	2 2.8%	13 18.1%	0 0.0%	2 2.8%	14 19.4%	14 19.4%	22 30.6%	72 100.0%
Aggravated Assault	15 19.0%	4 5.1%	0 0.0%	3 3.8%	1 1.3%	10 12.7%	0 0.0%	3 3.8%	21 26.6%	6 7.6%	16 20.3%	79 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	19 22.4%	1 1.2%	0 0.0%	0 0.0%	8 9.4%	14 16.5%	0 0.0%	2 2.4%	24 28.2%	0 0.0%	17 20.0%	85 100.0%
Larceny-Theft	106 19.4%	15 2.8%	1 0.2%	7 1.3%	28 5.1%	88 16.1%	6 1.1%	14 2.6%	164 30.1%	20 3.7%	96 17.6%	545 100.0%
Motor Vehicle Theft	11 22.0%	1 2.0%	0 0.0%	1 2.0%	2 4.0%	7 14.0%	1 2.0%	3 6.0%	17 34.0%	2 4.0%	5 10.0%	50 100.0%
Arson	2 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 25.0%	0 0.0%	0 0.0%	2 25.0%	0 0.0%	2 25.0%	8 100.0%
Total	158	29	1	11	43	137	7	24	247	45	161	863
Column Percent	18.3%	3.4%	0.1%	1.3%	5.0%	15.9%	0.8%	14.9%	28.6%	5.2%	18.7%	100.0%

Adult Part II Arrests by Offense, State of Hawaii, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	16	18	13	14	12	22	6	10	5	6
	Other Assault	4,329	4,365	4,453	4,427	4,557	4,376	4,128	4,362	4,429	4,151
	Sex Offenses	269	249	253	236	226	301	207	193	196	176
Property-Related	Forgery	314	223	251	165	137	135	137	139	135	138
	Fraud	476	448	555	407	293	296	373	331	309	257
	Embezzlement	87	126	86	79	34	48	48	25	47	32
	Stolen Property	120	101	120	117	82	119	156	145	123	109
	Vandalism	504	550	521	520	516	500	483	536	492	449
Drug Manufacturing/Sale	Opium or Cocaine	69	44	31	31	13	18	36	25	29	22
	Marijuana	214	198	165	166	139	129	137	97	93	35
	Synthetic Narcotic	41	52	61	31	17	16	9	3	2	5
	Nonnarcotic	180	148	121	150	191	151	189	224	183	131
Drug Possession	Opium or Cocaine	292	210	176	164	241	272	305	247	309	242
	Marijuana	752	698	873	924	801	849	794	792	751	629
	Synthetic Narcotic	107	242	252	141	33	46	32	31	24	15
	Nonnarcotic	1,068	517	494	623	761	906	956	1,155	1,145	1,041
Gambling	Bookmaking	0	0	2	23	11	32	33	14	21	35
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	80	125	58	58	85	65	51	54	22	41
Alcohol-Related	DUI	6,410	6,622	6,237	6,593	6,429	7,305	7,063	6,707	6,480	5,906
	Liquor Laws	824	1,162	1,415	1,141	642	768	645	567	610	483
	Disorderly Conduct	915	899	868	842	852	856	805	925	1,048	979
Other	Offenses Agst. Family/Children	40	60	51	32	60	41	49	20	26	16
	Prostitution	516	413	312	320	300	307	253	254	148	156
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	1	0	0
	Weapons	252	209	282	254	253	263	280	278	247	282
	All Other Criminal Offenses	27,207	25,769	24,263	23,845	24,314	24,182	24,265	19,452	19,869	18,470
Total Part II Offenses		45,082	43,448	41,913	41,303	40,999	42,003	41,440	36,587	36,743	33,806
Total Index & Part II Offenses		50,271	48,227	47,541	46,968	47,084	48,382	48,130	42,887	42,712	38,691

Juvenile Part II Arrests by Offense, State of Hawaii, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	1	0	1	0	0	0	0	0	0
	Other Assault	1,103	1,058	980	943	784	668	597	547	550	470
	Sex Offenses	58	71	82	65	70	56	47	42	57	42
Property-Related	Forgery	15	2	2	2	4	5	1	1	2	2
	Fraud	35	34	11	16	15	11	26	18	11	8
	Embezzlement	3	6	1	4	2	1	0	1	2	0
	Stolen Property	23	24	13	32	18	14	23	18	16	21
	Vandalism	540	445	359	227	213	175	177	143	136	121
Drug Manufacturing/Sale	Opium or Cocaine	1	1	2	0	0	1	1	0	0	0
	Marijuana	13	23	27	21	10	11	9	16	40	10
	Synthetic Narcotic	0	3	0	3	0	2	0	0	2	1
	Nonnarcotic	6	0	0	0	0	4	0	0	0	1
Drug Possession	Opium or Cocaine	7	4	7	8	3	5	32	24	7	9
	Marijuana	545	546	580	521	550	504	479	405	343	402
	Synthetic Narcotic	6	10	10	10	6	3	3	3	12	6
	Nonnarcotic	30	13	7	9	8	13	20	22	13	25
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	5	0	0	0	0	0	0	0	0
	Other	5	8	0	7	0	0	0	0	0	0
Alcohol-Related	DUI	79	89	62	72	41	40	54	54	44	23
	Liquor Laws	303	338	309	243	117	136	90	91	111	92
	Disorderly Conduct	147	157	197	134	94	65	72	67	95	95
Other	Offenses Agst. Family/Children	2	11	11	3	0	2	1	0	0	1
	Prostitution	9	11	4	3	1	4	4	3	6	3
	Suspicion	0	0	0	0	0	0	0	0	0	7
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	38	27	34	29	32	29	29	18	26	15
	All Other Criminal Offenses	3,067	3,618	3,043	2,787	2,171	2,142	2,002	1,554	1,281	1,201
Status	Curfew	378	397	260	256	217	248	324	240	182	172
	Runaway	4,836	4,566	4,413	3,405	3,154	2,912	2,899	2,643	2,078	2,002
Total Part II Offenses		11,249	11,468	10,414	8,801	7,510	7,051	6,890	5,910	5,014	4,729
Total Index & Part II Offenses		13,430	13,608	12,654	10,750	9,299	8,690	8,278	7,180	6,237	5,592

Age and Sex of Adults Arrested for Part II Offenses
State of Hawaii, 2016

Type	Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Violent	Negligent Manslaughter	M	3	1	0	1	0	0	0	0	5	83.3%
		F	1	0	0	0	0	0	0	0	1	16.7%
	Other Assault	M	650	570	550	395	312	291	230	284	3,282	79.1%
		F	181	185	145	94	87	68	43	66	869	20.9%
	Sex Offenses	M	24	21	29	8	13	23	13	34	165	93.8%
		F	0	1	2	4	1	1	1	1	11	6.3%
Property-Related	Forgery	M	14	15	13	8	11	6	2	5	74	53.6%
		F	8	21	8	12	9	4	0	2	64	46.4%
	Fraud	M	25	31	31	36	16	18	8	10	175	68.1%
		F	13	19	11	14	18	5	1	1	82	31.9%
	Embezzlement	M	5	1	3	1	0	1	0	0	11	34.4%
		F	14	1	1	3	1	0	1	0	21	65.6%
	Stolen Property	M	16	17	12	15	13	13	4	4	94	86.2%
		F	7	1	2	2	1	1	0	1	15	13.8%
	Vandalism	M	120	61	62	35	23	29	11	18	359	80.0%
		F	23	15	13	8	9	4	5	13	90	20.0%
Drug Manufacturing/Sale	Opium or Cocaine	M	1	2	4	3	1	2	0	6	19	86.4%
		F	0	1	0	0	0	0	1	1	3	13.6%
	Marijuana	M	8	1	4	4	4	4	0	2	27	77.1%
		F	2	0	1	1	1	2	0	1	8	22.9%
	Synthetic Narcotic	M	0	0	3	1	0	0	0	0	4	80.0%
		F	0	0	0	0	0	1	0	0	1	20.0%
Drug Possession	Nonnarcotic	M	10	12	12	22	11	6	11	15	99	75.6%
		F	1	7	8	4	4	7	1	0	32	24.4%
	Opium or Cocaine	M	28	31	33	25	8	13	17	21	176	72.7%
		F	16	19	10	8	5	2	3	3	66	27.3%
	Marijuana	M	134	85	64	55	31	40	33	49	491	78.1%
		F	42	21	25	15	6	11	10	8	138	21.9%
Gambling	Synthetic Narcotic	M	6	3	1	2	1	0	0	0	13	86.7%
		F	0	1	0	0	0	0	0	1	2	13.3%
	Nonnarcotic	M	150	111	118	133	112	88	62	61	835	80.2%
		F	38	34	46	32	11	22	14	9	206	19.8%
	Bookmaking	M	0	0	2	3	2	6	5	7	25	71.4%
		F	0	1	0	2	0	2	2	3	10	28.6%
Alcohol-Related	Numbers & Lottery	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other	M	10	3	7	4	3	5	5	2	39	95.1%
		F	1	0	0	1	0	0	0	0	2	4.9%
	DUI	M	1,083	940	732	550	363	287	225	407	4,587	77.7%
		F	365	308	194	138	91	80	56	87	1,319	22.3%
Other	Liquor Laws	M	137	76	45	44	21	24	27	47	421	87.2%
		F	29	4	9	7	3	4	3	3	62	12.8%
	Disorderly Conduct	M	184	140	123	95	41	75	43	59	760	77.6%
		F	38	43	26	26	24	22	14	26	219	22.4%
	Offenses Agst. Family/Children	M	2	3	1	1	0	1	0	0	8	50.0%
		F	1	1	3	1	1	1	0	0	8	50.0%
	Prostitution	M	16	9	8	4	5	7	3	3	55	35.3%
		F	51	31	5	7	2	3	2	0	101	64.7%
	Suspicion	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Weapons	M	47	46	43	38	22	23	15	19	253	89.7%	
	F	6	4	8	4	1	1	2	3	29	10.3%	
All Other Offenses	M	2,590	2,496	2,359	1,904	1,176	1,242	1,053	1,428	14,248	77.1%	
	F	781	721	626	622	380	371	298	423	4,222	22.9%	
Total		M	5,263	4,675	4,259	3,387	2,189	2,204	1,767	2,481	26,225	77.6%
		F	1,618	1,439	1,143	1,005	655	612	457	652	7,581	22.4%
Column Percent		M	76.5%	76.5%	78.8%	77.1%	77.0%	78.3%	79.5%	79.2%	77.6%	
		F	23.5%	23.5%	21.2%	22.9%	23.0%	21.7%	20.5%	20.8%	22.4%	

Race/Ethnicity of Adults Arrested for Part II Offenses
State of Hawaii, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	1 16.7%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 66.7%	0 0.0%	0 0.0%	6 100.0%
	Other Assault	1,422 34.3%	270 6.5%	10 0.2%	59 1.4%	169 4.1%	406 9.8%	56 1.3%	63 1.5%	1,174 28.3%	180 4.3%	342 8.2%	4,151 100.0%
	Sex Offenses	74 42.0%	12 6.8%	0 0.0%	4 2.3%	10 5.7%	16 9.1%	2 1.1%	2 1.1%	34 19.3%	5 2.8%	17 9.7%	176 100.0%
Property-Related	Forgery	37 26.8%	7 5.1%	0 0.0%	3 2.2%	10 7.2%	27 19.6%	0 0.0%	3 2.2%	36 26.1%	7 5.1%	8 5.8%	138 100.0%
	Fraud	86 33.5%	11 4.3%	0 0.0%	14 5.4%	26 10.1%	29 11.3%	2 0.8%	1 0.4%	70 27.2%	7 2.7%	11 4.3%	257 100.0%
	Embezzlement	3 9.4%	1 3.1%	1 3.1%	0 0.0%	1 3.1%	8 25.0%	0 0.0%	1 3.1%	9 28.1%	6 18.8%	2 6.3%	32 100.0%
	Stolen Property	36 33.0%	5 4.6%	0 0.0%	3 2.8%	5 4.6%	16 14.7%	1 0.9%	2 1.8%	25 22.9%	6 5.5%	10 9.2%	109 100.0%
	Vandalism	158 35.2%	26 5.8%	4 0.9%	10 2.2%	15 3.3%	40 8.9%	5 1.1%	7 1.6%	120 26.7%	20 4.5%	44 9.8%	449 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	12 54.5%	1 4.5%	0 0.0%	0 0.0%	0 0.0%	2 9.1%	0 0.0%	0 0.0%	6 27.3%	1 4.5%	0 0.0%	22 100.0%
	Marijuana	22 62.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	7 20.0%	0 0.0%	0 0.0%	6 17.1%	0 0.0%	0 0.0%	35 100.0%
	Synthetic Narcotic	3 60.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	5 100.0%
	Nonnarcotic	30 22.9%	5 3.8%	0 0.0%	2 1.5%	15 11.5%	22 16.8%	0 0.0%	0 0.0%	52 39.7%	2 1.5%	3 2.3%	131 100.0%
Drug Possession	Opium or Cocaine	131 54.1%	18 7.4%	0 0.0%	2 0.8%	11 4.5%	17 7.0%	0 0.0%	4 1.7%	52 21.5%	3 1.2%	4 1.7%	242 100.0%
	Marijuana	266 42.3%	48 7.6%	2 0.3%	4 0.6%	23 3.7%	51 8.1%	1 0.2%	3 0.5%	182 28.9%	10 1.6%	39 6.2%	629 100.0%
	Synthetic Narcotic	4 26.7%	2 13.3%	0 0.0%	1 6.7%	0 0.0%	2 13.3%	0 0.0%	0 0.0%	4 26.7%	0 0.0%	2 13.3%	15 100.0%
	Nonnarcotic	288 27.7%	40 3.8%	0 0.0%	15 1.4%	74 7.1%	141 13.5%	13 1.2%	6 0.6%	378 36.3%	30 2.9%	56 5.4%	1,041 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	35 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	35 100.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	9 22.0%	0 0.0%	0 0.0%	0 0.0%	4 9.8%	12 29.3%	0 0.0%	0 0.0%	16 39.0%	0 0.0%	0 0.0%	41 100.0%
Alcohol-Related	DUI	2,293 38.8%	285 4.8%	22 0.4%	130 2.2%	489 8.3%	693 11.7%	104 1.8%	127 2.2%	1,125 19.0%	161 2.7%	477 8.1%	5,906 100.0%
	Liquor Laws	141 29.2%	18 3.7%	2 0.4%	2 0.4%	7 1.4%	34 7.0%	2 0.4%	10 2.1%	66 13.7%	24 5.0%	177 36.6%	483 100.0%
	Disorderly Conduct	406 41.5%	59 6.0%	5 0.5%	13 1.3%	22 2.2%	63 6.4%	8 0.8%	10 1.0%	205 20.9%	45 4.6%	143 14.6%	979 100.0%
Other	Offenses Agst. Family/Children	8 50.0%	0 0.0%	0 0.0%	1 6.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 25.0%	0 0.0%	3 18.8%	16 100.0%
	Prostitution	72 46.2%	35 22.4%	1 0.6%	4 2.6%	4 2.6%	16 10.3%	3 1.9%	6 3.8%	9 5.8%	2 1.3%	4 2.6%	156 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	79 28.0%	7 2.5%	0 0.0%	6 2.1%	21 7.4%	35 12.4%	3 1.1%	0 0.0%	97 34.4%	17 6.0%	17 6.0%	282 100.0%
	All Other Offenses	6,667 36.1%	761 4.1%	76 0.4%	216 1.2%	770 4.2%	2,047 11.1%	122 0.7%	195 1.1%	5,521 29.9%	713 3.9%	1,382 7.5%	18,470 100.0%
Total		12,248	1,611	123	490	1,676	3,720	322	440	9,195	1,239	2,742	33,806
Column Percent		36.2%	4.8%	0.4%	1.4%	5.0%	11.0%	1.0%	1.3%	27.2%	3.7%	8.1%	100.0%

Age and Sex of Juveniles Arrested for Part II Offenses
State of Hawaii, 2016

Type	Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Violent	Negligent	M	0	0	0	0	0	0	0	0.0%
	Manslaughter	F	0	0	0	0	0	0	0	0.0%
	Other Assault	M	3	27	76	59	67	72	304	64.7%
		F	0	10	55	30	33	38	166	35.3%
	Sex Offenses	M	1	5	10	8	4	11	39	92.9%
		F	0	1	1	1	0	0	3	7.1%
Property-Related	Forgery	M	0	0	0	0	1	0	1	50.0%
		F	0	0	0	0	0	1	1	50.0%
	Fraud	M	0	0	4	1	0	0	5	62.5%
		F	0	0	2	1	0	0	3	37.5%
	Embezzlement	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Stolen Property	M	0	2	1	7	2	8	20	95.2%
		F	0	0	0	0	1	0	1	4.8%
Drug Manufacturing/Sale	Vandalism	M	0	7	31	22	16	24	100	82.6%
		F	0	0	4	7	7	3	21	17.4%
	Opium or Cocaine	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	0	1	1	2	2	6	60.0%
		F	0	0	2	0	1	1	4	40.0%
	Synthetic Narcotic	M	0	0	0	0	1	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
Drug Possession	Nonnarcotic	M	0	0	0	0	0	1	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Opium or Cocaine	M	0	1	2	2	3	1	9	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	24	88	52	64	41	269	66.9%
		F	0	13	58	28	21	13	133	33.1%
	Synthetic Narcotic	M	0	0	1	1	0	1	3	50.0%
		F	0	1	2	0	0	0	3	50.0%
Gambling	Nonnarcotic	M	0	1	3	2	4	12	22	88.0%
		F	0	0	1	1	0	1	3	12.0%
	Bookmaking	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Numbers & Lottery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Alcohol-Related	DUI	M	0	0	0	4	2	12	18	78.3%
		F	0	0	0	0	0	5	5	21.7%
	Liquor Laws	M	0	1	14	6	19	23	63	68.5%
		F	0	1	10	5	6	7	29	31.5%
	Disorderly Conduct	M	0	7	12	13	22	21	75	78.9%
		F	0	2	7	4	5	2	20	21.1%
Other	Offenses Agst. Family/Children	M	0	0	0	0	0	0	0	0.0%
		F	0	0	1	0	0	0	1	100.0%
	Prostitution	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	1	2	3	100.0%
	Suspicion	M	0	0	4	1	0	0	5	71.4%
		F	0	0	2	0	0	0	2	28.6%
	Vagrancy	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Weapons	M	0	2	8	1	2	1	14	93.3%
		F	0	0	0	0	0	1	1	6.7%
All Other Offenses		M	5	53	195	173	194	181	801	66.7%
		F	0	24	92	105	109	70	400	33.3%
Status	Curfew	M	1	3	29	42	28	5	108	62.8%
		F	0	3	27	16	10	8	64	37.2%
Runaway		M	3	74	268	236	248	190	1,019	50.9%
		F	0	48	213	288	272	162	983	49.1%
Total		M	13	207	747	631	679	606	2,883	61.0%
		F	0	103	477	486	466	314	1,846	39.0%
Column Percent		M	100.0%	66.8%	61.0%	56.5%	59.3%	65.9%	61.0%	
		F	0.0%	33.2%	39.0%	43.5%	40.7%	34.1%	39.0%	

Race/Ethnicity of Juveniles Arrested for Part II Offenses
State of Hawaii, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	95 20.2%	24 5.1%	1 0.2%	5 1.1%	18 3.8%	66 14.0%	3 0.6%	4 0.9%	158 33.6%	21 4.5%	75 16.0%	470 100.0%
	Sex Offenses	9 21.4%	3 7.1%	0 0.0%	0 0.0%	3 7.1%	8 19.0%	0 0.0%	3 7.1%	10 23.8%	2 4.8%	4 9.5%	42 100.0%
Property-Related	Forgery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	1 50.0%	2 100.0%
	Fraud	4 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 12.5%	0 0.0%	0 0.0%	0 0.0%	2 25.0%	1 12.5%	8 100.0%
	Embezzlement	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Stolen Property	1 4.8%	0 0.0%	0 0.0%	0 0.0%	1 4.8%	4 19.0%	0 0.0%	0 0.0%	5 23.8%	1 4.8%	9 42.9%	21 100.0%
	Vandalism	32 26.4%	3 2.5%	0 0.0%	2 1.7%	6 5.0%	10 8.3%	0 0.0%	0 0.0%	38 31.4%	6 5.0%	24 19.8%	121 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	3 30.0%	0 0.0%	0 0.0%	2 20.0%	1 10.0%	0 0.0%	0 0.0%	0 0.0%	3 30.0%	1 10.0%	0 0.0%	10 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
	Nonnarcotic	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
Drug Possession	Opium or Cocaine	2 22.2%	1 11.1%	0 0.0%	0 0.0%	0 0.0%	2 22.2%	0 0.0%	0 0.0%	4 44.4%	0 0.0%	0 0.0%	9 100.0%
	Marijuana	108 26.9%	15 3.7%	2 0.5%	5 1.2%	17 4.2%	78 19.4%	2 0.5%	7 1.7%	132 32.8%	10 2.5%	26 6.5%	402 100.0%
	Synthetic Narcotic	1 16.7%	0 0.0%	0 0.0%	0 0.0%	3 50.0%	0 0.0%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	1 16.7%	6 100.0%
	Nonnarcotic	6 24.0%	0 0.0%	0 0.0%	2 8.0%	2 8.0%	4 16.0%	0 0.0%	1 4.0%	4 16.0%	0 0.0%	6 24.0%	25 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	2 8.7%	2 8.7%	0 0.0%	0 0.0%	2 8.7%	1 4.3%	1 4.3%	1 4.3%	8 34.8%	0 0.0%	6 26.1%	23 100.0%
	Liquor Laws	16 17.4%	1 1.1%	0 0.0%	2 2.2%	3 3.3%	16 17.4%	0 0.0%	4 4.3%	18 19.6%	1 1.1%	31 33.7%	92 100.0%
	Disorderly Conduct	19 20.0%	3 3.2%	1 1.1%	0 0.0%	3 3.2%	14 14.7%	3 3.2%	0 0.0%	16 16.8%	8 8.4%	28 29.5%	95 100.0%
Other	Offenses Agst. Family/Children	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
	Prostitution	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	3 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 28.6%	0 0.0%	1 14.3%	2 28.6%	0 0.0%	2 28.6%	7 100.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	3 20.0%	1 6.7%	0 0.0%	0 0.0%	0 0.0%	3 20.0%	0 0.0%	1 6.7%	4 26.7%	1 6.7%	2 13.3%	15 100.0%
	All Other Offenses	216 18.0%	55 4.6%	0 0.0%	10 0.8%	49 4.1%	169 14.1%	6 0.5%	20 1.7%	334 27.8%	33 2.7%	309 25.7%	1,201 100.0%
Status	Curfew	36 20.9%	4 2.3%	0 0.0%	1 0.6%	6 3.5%	45 26.2%	3 1.7%	4 2.3%	41 23.8%	3 1.7%	29 16.9%	172 100.0%
	Runaway	415 20.7%	87 4.3%	12 0.6%	33 1.6%	85 4.2%	314 15.7%	12 0.6%	16 0.8%	700 35.0%	89 4.4%	239 11.9%	2,002 100.0%
Total		970	199	16	62	199	739	30	62	1,481	178	793	4,729
Column Percent		20.5%	4.2%	0.3%	1.3%	4.2%	15.6%	0.6%	1.3%	31.3%	3.8%	16.8%	100.0%

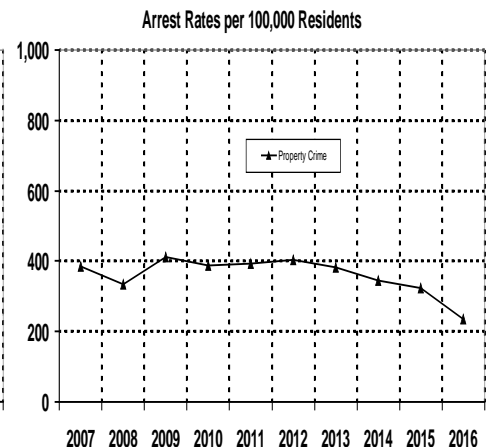
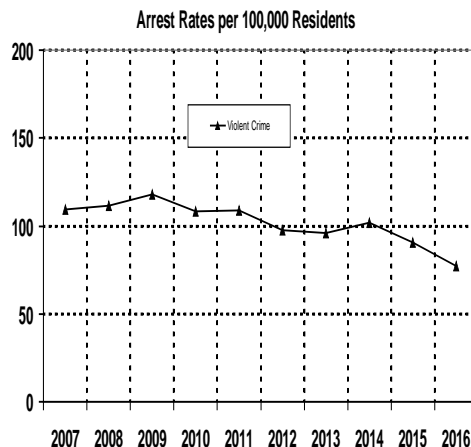
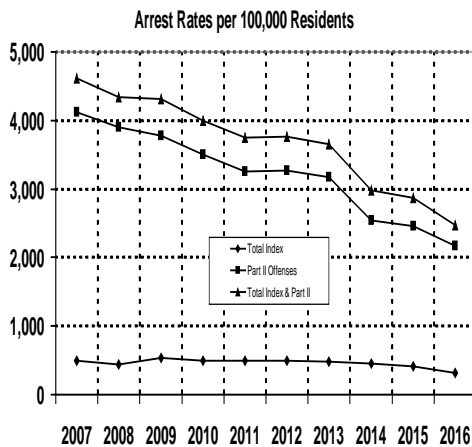
Total Arrests

City & County of Honolulu, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	4,465	4,022	4,804	4,723	4,830	4,892	4,708	4,438	4,128	3,110
Violent Crime Index	989	1,009	1,070	1,028	1,047	953	946	1,015	908	767
Murder	29	12	13	18	16	9	14	16	19	16
Rape*	78	69	98	79	93	69	74	192	112	100
Robbery	310	350	352	311	359	335	308	243	292	220
Aggravated Assault	572	578	607	620	579	540	550	564	484	431
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	1	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime Index	3,476	3,013	3,734	3,695	3,783	3,939	3,762	3,423	3,220	2,343
Burglary	289	334	271	293	318	323	254	271	257	239
Larceny-Theft	2,716	2,371	3,098	3,065	3,177	3,324	3,201	2,832	2,624	2,020
Motor Vehicle Theft	454	291	338	310	259	272	298	315	319	73
Arson	17	17	27	27	29	20	9	5	20	11

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	37,283	35,304	34,284	33,239	31,300	31,865	31,305	25,239	24,577	21,538
Total Index & Part II	41,748	39,326	39,088	37,962	36,130	36,757	36,013	29,677	28,705	24,648



Adult Arrests for Index Offenses, City & County of Honolulu, 2007-2016

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index		3,102	2,725	3,353	3,379	3,585	3,729	3,740	3,546	3,262	2,549
Violent Crime	Total Violent	770	769	866	818	849	760	764	885	761	627
	Murder	27	12	13	16	14	9	13	14	19	16
	Rape*	67	62	83	70	82	60	64	166	90	81
	Robbery	189	206	250	201	238	236	215	202	213	150
	Aggravated Assault	487	489	520	531	515	455	472	503	438	380
	Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	1	0
	Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime	Total Property	2,332	1,956	2,487	2,561	2,736	2,969	2,976	2,661	2,501	1,922
	Burglary	202	239	200	235	238	265	223	241	221	213
	Larceny-Theft	1,745	1,490	1,995	2,036	2,249	2,453	2,488	2,140	1,979	1,645
	Motor Vehicle Theft	376	217	277	278	229	241	260	275	287	56
	Arson	9	10	15	12	20	10	5	5	14	8

Juvenile Arrests for Index Offenses, City & County of Honolulu, 2007-2016

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index		1,363	1,297	1,451	1,344	1,245	1,163	968	892	866	561
Violent Crime	Total Violent	219	240	204	210	198	193	182	130	147	140
	Murder	2	0	0	2	2	0	1	2	0	0
	Rape*	11	7	15	9	11	9	10	26	22	19
	Robbery	121	144	102	110	121	99	93	41	79	70
	Aggravated Assault	85	89	87	89	64	85	78	61	46	51
	Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
	Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime	Total Property	1,144	1,057	1,247	1,134	1,047	970	786	762	719	421
	Burglary	87	95	71	58	80	58	31	30	36	26
	Larceny-Theft	971	881	1,103	1,029	928	871	713	692	645	375
	Motor Vehicle Theft	78	74	61	32	30	31	38	40	32	17
	Arson	8	7	12	15	9	10	4	0	6	3

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

Age and Sex of Adults Arrested for Index Offenses**City & County of Honolulu, 2016**

Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Murder	M	4	5	2	0	1	1	0	2	15	93.8%
	F	0	0	1	0	0	0	0	0	1	6.3%
Rape	M	20	11	13	10	13	4	4	5	80	98.8%
	F	0	1	0	0	0	0	0	0	1	1.2%
Robbery	M	49	26	18	18	7	7	7	2	134	89.3%
	F	2	4	2	1	4	1	1	1	16	10.7%
Aggravated Assault	M	58	61	39	47	27	27	18	35	312	82.1%
	F	19	8	15	8	6	2	6	4	68	17.9%
Human Trafficking - Commercial Sex Acts	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Burglary	M	40	23	26	27	12	21	13	10	172	80.8%
	F	5	6	3	4	4	7	9	3	41	19.2%
Larceny-Theft	M	276	190	159	119	86	113	88	125	1,156	70.3%
	F	123	68	66	52	55	43	38	44	489	29.7%
Motor Vehicle Theft	M	12	9	9	6	4	4	1	1	46	82.1%
	F	2	2	2	2	0	0	0	2	10	17.9%
Arson	M	0	1	0	2	1	0	0	0	4	50.0%
	F	0	1	2	1	0	0	0	0	4	50.0%
Total	M	459	326	266	229	151	177	131	180	1,919	75.3%
	F	151	90	91	68	69	53	54	54	630	24.7%
Column Percent	M	75.2%	78.4%	74.5%	77.1%	68.6%	77.0%	70.8%	76.9%	75.3%	
	F	24.8%	21.6%	25.5%	22.9%	31.4%	23.0%	29.2%	23.1%	24.7%	

Race/Ethnicity of Adults Arrested for Index Offenses
City & County of Honolulu, 2016

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	2 12.5%	1 6.3%	0 0.0%	0 0.0%	0 0.0%	3 18.8%	1 6.3%	0 0.0%	3 18.8%	3 18.8%	3 18.8%	16 100.0%
Rape	25 30.9%	13 16.0%	0 0.0%	0 0.0%	2 2.5%	9 11.1%	1 1.2%	2 2.5%	15 18.5%	6 7.4%	8 9.9%	81 100.0%
Robbery	41 27.3%	14 9.3%	0 0.0%	1 0.7%	4 2.7%	16 10.7%	0 0.0%	1 0.7%	45 30.0%	14 9.3%	14 9.3%	150 100.0%
Aggravated Assault	89 23.4%	34 8.9%	0 0.0%	3 0.8%	20 5.3%	47 12.4%	6 1.6%	7 1.8%	101 26.6%	34 8.9%	39 10.3%	380 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	58 27.2%	14 6.6%	1 0.5%	4 1.9%	15 7.0%	19 8.9%	1 0.5%	3 1.4%	70 32.9%	13 6.1%	15 7.0%	213 100.0%
Larceny-Theft	550 33.4%	77 4.7%	5 0.3%	39 2.4%	88 5.3%	189 11.5%	18 1.1%	22 1.3%	463 28.1%	82 5.0%	112 6.8%	1,645 100.0%
Motor Vehicle Theft	15 26.8%	2 3.6%	0 0.0%	3 5.4%	0 0.0%	3 5.4%	0 0.0%	0 0.0%	23 41.1%	3 5.4%	7 12.5%	56 100.0%
Arson	3 37.5%	0 0.0%	2 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 25.0%	1 12.5%	0 0.0%	8 100.0%
Total	783	155	8	50	129	286	27	35	722	156	198	2,549
Column Percent	30.7%	6.1%	0.3%	2.0%	5.1%	11.2%	1.1%	1.4%	28.3%	6.1%	7.8%	100.0%

Age and Sex of Juveniles Arrested for Index Offenses**City & County of Honolulu, 2016**

Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Murder	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Rape	M	0	1	5	3	1	8	18	94.7%
	F	0	0	1	0	0	0	1	5.3%
Robbery	M	0	3	16	18	16	15	68	97.1%
	F	0	0	1	1	0	0	2	2.9%
Aggravated Assault	M	1	2	7	7	12	7	36	70.6%
	F	0	2	5	2	2	4	15	29.4%
Human Trafficking - Commerical Sex Acts	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Burglary	M	0	2	1	7	8	6	24	92.3%
	F	0	0	0	2	0	0	2	7.7%
Larceny-Theft	M	0	11	59	54	62	42	228	60.8%
	F	0	9	43	34	30	31	147	39.2%
Motor Vehicle Theft	M	0	0	4	2	4	5	15	88.2%
	F	0	0	0	0	1	1	2	11.8%
Arson	M	0	0	1	0	0	1	2	66.7%
	F	0	0	0	1	0	0	1	33.3%
Total	M	1	19	93	91	103	84	391	69.7%
	F	0	11	50	40	33	36	170	30.3%
Column Percent	M	100.0%	63.3%	65.0%	69.5%	75.7%	70.0%	69.7%	
	F	0.0%	36.7%	35.0%	30.5%	24.3%	30.0%	30.3%	

Race/Ethnicity of Juveniles Arrested for Index Offenses**City & County of Honolulu, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Rape	3 15.8%	5 26.3%	0 0.0%	0 0.0%	1 5.3%	2 10.5%	0 0.0%	0 0.0%	3 15.8%	3 15.8%	2 10.5%	19 100.0%
Robbery	2 2.9%	3 4.3%	0 0.0%	0 0.0%	2 2.9%	11 15.7%	0 0.0%	2 2.9%	14 20.0%	14 20.0%	22 31.4%	70 100.0%
Aggravated Assault	5 9.8%	3 5.9%	0 0.0%	3 5.9%	1 2.0%	6 11.8%	0 0.0%	2 3.9%	13 25.5%	5 9.8%	13 25.5%	51 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	5 19.2%	1 3.8%	0 0.0%	0 0.0%	4 15.4%	1 3.8%	0 0.0%	0 0.0%	4 15.4%	0 0.0%	11 42.3%	26 100.0%
Larceny-Theft	56 14.9%	12 3.2%	1 0.3%	7 1.9%	23 6.1%	57 15.2%	6 1.6%	13 3.5%	107 28.5%	17 4.5%	76 20.3%	375 100.0%
Motor Vehicle Theft	3 17.6%	0 0.0%	0 0.0%	1 5.9%	1 5.9%	2 11.8%	0 0.0%	0 0.0%	6 35.3%	1 5.9%	3 17.6%	17 100.0%
Arson	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	1 33.3%	3 100.0%
Total	75	24	1	11	32	79	6	17	148	40	128	561
Column Percent	13.4%	4.3%	0.2%	2.0%	5.7%	14.1%	1.1%	3.0%	26.4%	7.1%	22.8%	100.0%

Adult Part II Arrests by Offense, City & County of Honolulu, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	5	6	8	9	7	13	1	7	5	6
	Other Assault	2,809	2,856	2,916	2,909	3,063	2,935	2,691	2,781	2,956	2,675
	Sex Offenses	190	188	164	163	161	204	132	130	126	97
Property-Related	Forgery	181	123	164	113	101	95	104	101	102	95
	Fraud	316	264	407	313	193	217	302	271	255	196
	Embezzlement	29	44	45	32	23	42	33	18	33	19
	Stolen Property	110	85	93	105	77	106	140	124	112	105
	Vandalism	326	356	333	292	314	325	300	342	315	260
Drug Manufacturing/Sale	Opium or Cocaine	45	28	17	23	7	3	19	4	0	0
	Marijuana	30	58	37	35	33	31	24	23	11	4
	Synthetic Narcotic	29	19	9	4	13	12	9	2	1	4
	Nonnarcotic	91	88	56	57	44	35	23	29	18	11
Drug Possession	Opium or Cocaine	204	153	132	92	118	103	86	51	68	66
	Marijuana	319	291	365	399	324	390	321	299	276	209
	Synthetic Narcotic	44	31	20	26	27	36	25	18	12	12
	Nonnarcotic	533	306	291	390	370	419	416	558	460	455
Gambling	Bookmaking	0	0	2	2	0	0	2	1	0	0
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	9	3	15	25	29	36	7	14	0	0
Alcohol-Related	DUI	3,872	4,233	3,960	4,199	4,034	4,803	4,539	4,531	4,496	3,973
	Liquor Laws	467	563	639	777	467	594	426	356	450	366
	Disorderly Conduct	426	470	396	441	498	464	420	463	630	498
Other	Offenses Agst. Family/Children	20	35	22	20	49	25	35	10	12	7
	Prostitution	477	382	276	268	254	280	231	216	112	94
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	136	114	128	136	125	107	121	99	89	117
	All Other Criminal Offenses	18,972	16,968	16,565	16,392	15,898	15,521	16,053	10,722	10,637	9,103
Total Part II Offenses		29,640	27,664	27,060	27,222	26,229	26,796	26,460	21,170	21,176	18,372
Total Index & Part II Offenses		32,742	30,389	30,413	30,601	29,814	30,525	30,200	24,716	24,438	20,921

Juvenile Part II Arrests by Offense, City & County of Honolulu, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	0	0	1	0	0	0	0	0	0
	Other Assault	850	756	723	714	571	523	436	401	387	380
	Sex Offenses	48	59	70	53	61	51	38	33	48	37
Property-Related	Forgery	10	1	1	0	4	2	1	1	1	0
	Fraud	17	19	4	13	13	10	22	17	9	6
	Embezzlement	2	3	1	4	2	1	0	1	1	0
	Stolen Property	21	23	12	28	18	14	23	18	16	20
	Vandalism	472	329	280	184	158	145	149	114	107	90
Drug Manufacturing/Sale	Opium or Cocaine	1	0	2	0	0	0	0	0	0	0
	Marijuana	7	11	13	3	7	6	4	1	2	3
	Synthetic Narcotic	0	0	0	2	0	1	0	0	2	1
	Nonnarcotic	4	0	0	0	0	4	0	0	0	0
Drug Possession	Opium or Cocaine	3	3	2	4	1	4	3	1	2	2
	Marijuana	216	177	258	219	265	244	211	180	191	197
	Synthetic Narcotic	3	1	7	1	2	1	1	2	12	6
	Nonnarcotic	8	4	4	7	5	7	12	14	9	23
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	0	4	0	2	0	0	0	0	0	0
Alcohol-Related	DUI	32	49	31	32	25	28	28	30	26	15
	Liquor Laws	116	108	91	88	49	51	34	22	46	31
	Disorderly Conduct	52	71	97	67	36	23	31	43	62	63
Other	Offenses Agst. Family/Children	0	2	1	0	0	1	1	0	0	0
	Prostitution	9	11	4	3	1	4	4	3	6	3
	Suspicion	0	0	0	0	0	0	0	0	0	7
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	24	17	26	15	20	17	20	11	19	10
	All Other Offenses	2,028	2,499	2,137	1,908	1,354	1,513	1,534	1,180	920	804
Status	Curfew	199	183	112	118	139	154	120	94	86	51
	Runaway	3,521	3,310	3,348	2,551	2,340	2,265	2,173	1,903	1,449	1,417
Total Part II Offenses		7,643	7,640	7,224	6,017	5,071	5,069	4,845	4,069	3,401	3,166
Total Index & Part II Offenses		9,006	8,937	8,675	7,361	6,316	6,232	5,813	4,961	4,267	3,727

Age and Sex of Adults Arrested for Part II Offenses
City & County of Honolulu, 2016

Type	Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Violent	Negligent Manslaughter	M	3	1	0	1	0	0	0	0	5	83.3%
		F	1	0	0	0	0	0	0	0	1	16.7%
	Other Assault	M	451	407	342	247	185	192	146	183	2,153	80.5%
		F	109	106	89	56	50	43	24	45	522	19.5%
	Sex Offenses	M	12	13	21	4	7	13	8	16	94	96.9%
		F	0	0	0	1	0	1	0	1	3	3.1%
Property-Related	Forgery	M	6	4	8	7	7	5	1	3	41	43.2%
		F	6	17	7	10	9	3	0	2	54	56.8%
	Fraud	M	19	22	21	29	13	17	8	6	135	68.9%
		F	8	14	9	12	14	4	0	0	61	31.1%
	Embezzlement	M	4	0	2	1	0	0	0	0	7	36.8%
		F	9	1	1	1	0	0	0	0	12	63.2%
	Stolen Property	M	16	17	12	14	13	11	4	4	91	86.7%
		F	6	1	2	2	1	1	0	1	14	13.3%
	Vandalism	M	77	37	41	19	12	15	5	9	215	82.7%
		F	12	8	9	2	2	2	3	7	45	17.3%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Marijuana	M	2	0	0	0	0	1	0	0	3	75.0%
		F	0	0	0	0	0	1	0	0	1	25.0%
	Synthetic Narcotic	M	0	0	3	1	0	0	0	0	4	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Drug Possession	Nonnarcotic	M	1	1	1	2	2	0	1	2	10	90.9%
		F	0	0	1	0	0	0	0	0	1	9.1%
	Opium or Cocaine	M	13	10	8	5	2	3	3	9	53	80.3%
		F	3	6	2	1	1	0	0	0	13	19.7%
	Marijuana	M	67	38	26	17	9	7	5	10	179	85.6%
		F	12	4	6	3	2	1	1	1	30	14.4%
Gambling	Synthetic Narcotic	M	6	2	1	1	1	0	0	0	11	91.7%
		F	0	0	0	0	0	0	0	1	1	8.3%
	Nonnarcotic	M	63	57	57	57	55	32	33	41	395	86.8%
		F	13	12	12	5	2	9	4	3	60	13.2%
	Bookmaking	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Alcohol-Related	Numbers & Lottery	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	DUI	M	785	683	519	366	235	171	137	204	3,100	78.0%
		F	278	220	130	87	52	51	29	26	873	22.0%
Other	Liquor Laws	M	100	64	39	35	16	19	22	31	326	89.1%
		F	13	3	9	5	1	4	2	3	40	10.9%
	Disorderly Conduct	M	131	84	60	30	13	40	17	20	395	79.3%
		F	22	28	13	7	10	8	3	12	103	20.7%
	Offenses Agst. Family/Children	M	0	1	0	0	0	0	0	0	1	14.3%
		F	0	1	2	1	1	1	0	0	6	85.7%
	Prostitution	M	8	8	4	3	3	4	0	1	31	33.0%
		F	37	18	4	3	0	0	1	0	63	67.0%
	Suspicion	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Weapons	M	24	22	14	16	13	6	5	8	108	92.3%	
	F	1	3	1	2	1	0	0	1	9	7.7%	
All Other Offenses	M	1,454	1,278	1,141	969	573	606	502	730	7,253	79.7%	
	F	326	326	263	224	168	177	147	219	1,850	20.3%	
Total			M	3,242	2,749	2,320	1,824	1,159	1,142	897	14,610	79.5%
			F	856	768	560	422	314	306	214	3,762	20.5%
Column Percent			M	79.1%	78.2%	80.6%	81.2%	78.7%	78.9%	80.7%	79.5%	
			F	20.9%	21.8%	19.4%	18.8%	21.3%	21.1%	19.3%	20.5%	

Race/Ethnicity of Adults Arrested for Part II Offenses
City & County of Honolulu, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	1 16.7%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 66.7%	0 0.0%	0 0.0%	6 100.0%
	Other Assault	795 29.7%	233 8.7%	3 0.1%	47 1.8%	130 4.9%	246 9.2%	53 2.0%	49 1.8%	704 26.3%	163 6.1%	252 9.4%	2,675 100.0%
	Sex Offenses	32 33.0%	7 7.2%	0 0.0%	3 3.1%	8 8.2%	12 12.4%	0 0.0%	0 0.0%	19 19.6%	4 4.1%	12 12.4%	97 100.0%
Property-Related	Forgery	22 23.2%	6 6.3%	0 0.0%	2 2.1%	10 10.5%	18 18.9%	0 0.0%	3 3.2%	21 22.1%	7 7.4%	6 6.3%	95 100.0%
	Fraud	61 31.1%	11 5.6%	0 0.0%	14 7.1%	23 11.7%	22 11.2%	2 1.0%	1 0.5%	46 23.5%	7 3.6%	9 4.6%	196 100.0%
	Embezzlement	1 5.3%	1 5.3%	0 0.0%	0 0.0%	0 0.0%	5 26.3%	0 0.0%	1 5.3%	4 21.1%	6 31.6%	1 5.3%	19 100.0%
	Stolen Property	33 31.4%	4 3.8%	0 0.0%	3 2.9%	5 4.8%	16 15.2%	1 1.0%	2 1.9%	25 23.8%	6 5.7%	10 9.5%	105 100.0%
	Vandalism	73 28.1%	19 7.3%	3 1.2%	8 3.1%	12 4.6%	26 10.0%	3 1.2%	7 2.7%	57 21.9%	18 6.9%	34 13.1%	260 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	2 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	4 100.0%
	Synthetic Narcotic	2 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 25.0%	4 100.0%
	Nonnarcotic	1 9.1%	1 9.1%	0 0.0%	1 9.1%	3 27.3%	4 36.4%	0 0.0%	0 0.0%	0 0.0%	1 9.1%	0 0.0%	11 100.0%
Drug Possession	Opium or Cocaine	29 43.9%	11 16.7%	0 0.0%	2 3.0%	5 7.6%	3 4.5%	0 0.0%	3 4.5%	10 15.2%	3 4.5%	0 0.0%	66 100.0%
	Marijuana	71 34.0%	31 14.8%	2 1.0%	3 1.4%	7 3.3%	15 7.2%	1 0.5%	3 1.4%	45 21.5%	9 4.3%	22 10.5%	209 100.0%
	Synthetic Narcotic	2 16.7%	2 16.7%	0 0.0%	1 8.3%	0 0.0%	2 16.7%	0 0.0%	0 0.0%	3 25.0%	0 0.0%	2 16.7%	12 100.0%
	Nonnarcotic	91 20.0%	30 6.6%	0 0.0%	11 2.4%	39 8.6%	53 11.6%	9 2.0%	4 0.9%	159 34.9%	29 6.4%	30 6.6%	455 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	1,229 30.9%	258 6.5%	14 0.4%	116 2.9%	403 10.1%	538 13.5%	94 2.4%	108 2.7%	769 19.4%	143 3.6%	301 7.6%	3,973 100.0%
	Liquor Laws	78 21.3%	18 4.9%	2 0.5%	2 0.5%	5 1.4%	23 6.3%	2 0.5%	9 2.5%	44 12.0%	23 6.3%	160 43.7%	366 100.0%
	Disorderly Conduct	144 28.9%	44 8.8%	2 0.4%	9 1.8%	12 2.4%	31 6.2%	6 1.2%	7 1.4%	92 18.5%	38 7.6%	113 22.7%	498 100.0%
Other	Offenses Agst. Family/Children	2 28.6%	0 0.0%	0 0.0%	1 14.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 42.9%	0 0.0%	1 14.3%	7 100.0%
	Prostitution	38 40.4%	27 28.7%	1 1.1%	3 3.2%	4 4.3%	8 8.5%	1 1.1%	3 3.2%	6 6.4%	2 2.1%	1 1.1%	94 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	23 19.7%	4 3.4%	0 0.0%	2 1.7%	10 8.5%	17 14.5%	3 2.6%	0 0.0%	32 27.4%	14 12.0%	12 10.3%	117 100.0%
	All Other Offenses	2,452 26.9%	551 6.1%	21 0.2%	158 1.7%	508 5.6%	1,168 12.8%	95 1.0%	114 1.3%	2,597 28.5%	630 6.9%	809 8.9%	9,103 100.0%
Total		5,182	1,258	48	387	1,184	2,209	270	314	4,641	1,103	1,776	18,372
Column Percent		28.2%	6.8%	0.3%	2.1%	6.4%	12.0%	1.5%	1.7%	25.3%	6.0%	9.7%	100.0%

Age and Sex of Juveniles Arrested for Part II Offenses
City & County of Honolulu, 2016

Type	Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Violent	Negligent	M	0	0	0	0	0	0	0	0.0%
	Manslaughter	F	0	0	0	0	0	0	0	0.0%
	Other Assault	M	3	20	56	51	54	57	241	63.4%
		F	0	7	42	27	30	33	139	36.6%
	Sex Offenses	M	1	1	5	10	5	4	35	94.6%
		F	0	1	1	0	0	0	2	5.4%
Property-Related	Forgery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Fraud	M	0	0	3	0	0	0	3	50.0%
		F	0	0	2	1	0	0	3	50.0%
	Embezzlement	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Stolen Property	M	0	2	1	6	2	8	19	95.0%
		F	0	0	0	0	1	0	1	5.0%
	Vandalism	M	0	4	24	15	13	20	76	84.4%
		F	0	0	3	4	6	1	14	15.6%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	0	1	0	0	1	2	66.7%
		F	0	0	0	0	0	1	1	33.3%
	Synthetic Narcotic	M	0	0	0	0	1	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
Drug Possession	Nonnarcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Opium or Cocaine	M	0	0	0	1	0	1	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	8	54	26	27	24	139	70.6%
		F	0	6	27	14	7	4	58	29.4%
Drug Possession	Synthetic Narcotic	M	0	0	1	1	0	1	3	50.0%
		F	0	1	2	0	0	0	3	50.0%
	Nonnarcotic	M	0	0	3	2	3	12	20	87.0%
		F	0	0	1	1	0	1	3	13.0%
Gambling	Bookmaking	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Numbers & Lottery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Alcohol-Related	Other	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	DUI	M	0	0	0	3	2	8	13	86.7%
		F	0	0	0	0	0	2	2	13.3%
Alcohol-Related	Liquor Laws	M	0	0	6	1	11	11	29	93.5%
		F	0	0	1	0	0	1	2	6.5%
	Disorderly Conduct	M	0	0	5	12	20	18	55	87.3%
		F	0	0	1	3	3	1	8	12.7%
Other	Offenses Agst. Family/Children	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Prostitution	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	1	2	3	100.0%
	Suspicion	M	0	0	4	1	0	0	5	71.4%
		F	0	0	2	0	0	0	2	28.6%
	Vagrancy	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Weapons	M	0	1	5	1	1	1	9	90.0%
		F	0	0	0	0	0	1	1	10.0%
All Other Offenses		M	1	36	135	122	134	128	556	69.2%
		F	0	17	58	69	61	43	248	30.8%
Status	Curfew	M	0	0	12	20	1	0	33	64.7%
		F	0	2	9	6	1	0	18	35.3%
Status	Runaway	M	3	63	191	154	172	128	711	50.2%
		F	0	44	169	223	172	98	706	49.8%
Total		M	8	139	511	421	445	428	1,952	61.7%
		F	0	78	318	348	282	188	1,214	38.3%
Column Percent		M	100.0%	64.1%	61.6%	54.7%	61.2%	69.5%	61.7%	
		F	0.0%	35.9%	38.4%	45.3%	38.8%	30.5%	38.3%	

Race/Ethnicity of Juveniles Arrested for Part II Offenses
City & County of Honolulu, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	69 18.2%	22 5.8%	0 0.0%	4 1.1%	13 3.4%	47 12.4%	3 0.8%	4 1.1%	128 33.7%	21 5.5%	69 18.2%	380 100.0%
	Sex Offenses	8 21.6%	3 8.1%	0 0.0%	0 0.0%	3 8.1%	5 13.5%	0 0.0%	3 8.1%	9 24.3%	2 5.4%	4 10.8%	37 100.0%
Property-Related	Forgery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Fraud	2 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	0 0.0%	0 0.0%	2 33.3%	1 16.7%	6 100.0%
	Embezzlement	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Stolen Property	1 5.0%	0 0.0%	0 0.0%	0 0.0%	1 5.0%	4 20.0%	0 0.0%	0 0.0%	4 20.0%	1 5.0%	9 45.0%	20 100.0%
	Vandalism	22 24.4%	2 2.2%	0 0.0%	2 2.2%	5 5.6%	4 4.4%	0 0.0%	0 0.0%	30 33.3%	5 5.6%	20 22.2%	90 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	1 33.3%	0 0.0%	0 0.0%	2 66.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
	Nonnarcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Drug Possession	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%	0 0.0%	0 0.0%	2 100.0%
	Marijuana	42 21.3%	9 4.6%	1 0.5%	4 2.0%	10 5.1%	40 20.3%	1 0.5%	6 3.0%	62 31.5%	9 4.6%	13 6.6%	197 100.0%
	Synthetic Narcotic	1 16.7%	0 0.0%	0 0.0%	0 0.0%	3 50.0%	0 0.0%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	1 16.7%	6 100.0%
	Nonnarcotic	6 26.1%	0 0.0%	0 0.0%	2 8.7%	2 8.7%	3 13.0%	0 0.0%	1 4.3%	4 17.4%	0 0.0%	5 21.7%	23 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	0 0.0%	1 6.7%	0 0.0%	0 0.0%	2 13.3%	0 0.0%	1 6.7%	1 6.7%	5 33.3%	0 0.0%	5 33.3%	15 100.0%
	Liquor Laws	1 3.2%	0 0.0%	0 0.0%	0 0.0%	1 3.2%	3 9.7%	0 0.0%	1 3.2%	4 12.9%	1 3.2%	20 64.5%	31 100.0%
	Disorderly Conduct	6 9.5%	3 4.8%	0 0.0%	0 0.0%	0 0.0%	6 9.5%	0 0.0%	0 0.0%	12 19.0%	8 12.7%	28 44.4%	63 100.0%
Other	Offenses Agst. Family/Children	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Prostitution	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	3 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 28.6%	0 0.0%	1 14.3%	2 28.6%	0 0.0%	2 28.6%	7 100.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	2 20.0%	1 10.0%	0 0.0%	0 0.0%	0 0.0%	2 20.0%	0 0.0%	1 10.0%	1 10.0%	1 10.0%	2 20.0%	10 100.0%
	All Other Offenses	108 13.4%	47 5.8%	0 0.0%	8 1.0%	39 4.9%	80 10.0%	6 0.7%	18 2.2%	200 24.9%	30 3.7%	268 33.3%	804 100.0%
Status	Curfew	6 11.8%	3 5.9%	0 0.0%	0 0.0%	2 3.9%	4 7.8%	3 5.9%	3 5.9%	13 25.5%	2 3.9%	15 29.4%	51 100.0%
	Runaway	250 17.6%	67 4.7%	8 0.6%	27 1.9%	54 3.8%	237 16.7%	12 0.8%	10 0.7%	480 33.9%	78 5.5%	194 13.7%	1,417 100.0%
Total		526	158	9	49	135	440	26	49	958	160	656	3,166
Column Percent		16.6%	5.0%	0.3%	1.5%	4.3%	13.9%	0.8%	1.5%	30.3%	5.1%	20.7%	100.0%

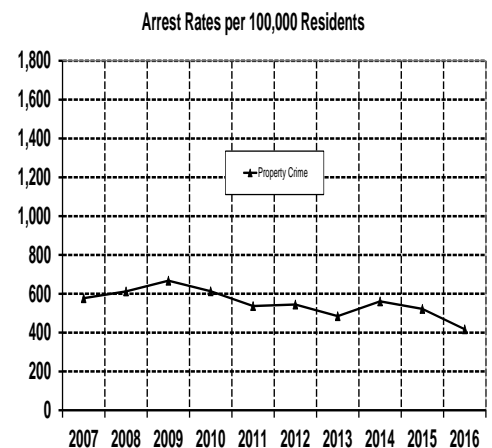
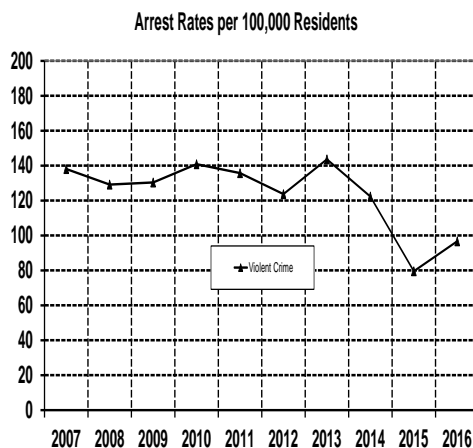
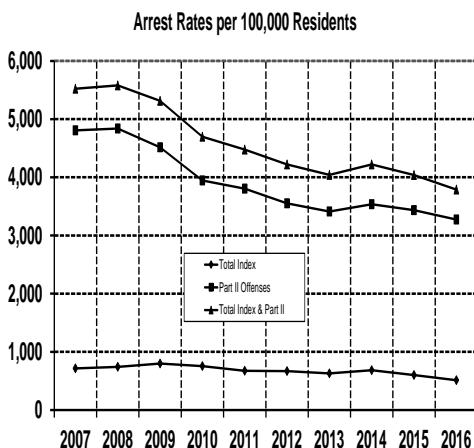
Total Arrests

Hawaii County, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	1,238	1,303	1,402	1,424	1,259	1,264	1,199	1,318	1,181	1,009
Violent Crime Index	239	227	229	266	254	234	274	236	156	190
Murder	3	5	2	3	2	5	9	5	11	9
Rape*	24	24	16	25	20	9	12	21	6	16
Robbery	40	35	44	57	42	55	58	44	30	34
Assault	172	163	167	181	190	165	195	166	107	131
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	2	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime Index	999	1,076	1,173	1,158	1,005	1,030	925	1,082	1,025	819
Burglary	168	174	187	170	126	142	121	142	135	115
Larceny-Theft	704	799	864	894	795	774	704	800	683	581
Motor Vehicle Theft	115	94	119	91	80	110	97	137	198	114
Arson	12	9	3	3	4	4	3	3	9	9

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	8,320	8,503	7,933	7,447	7,116	6,720	6,510	6,824	6,741	6,432
Total Index & Part II	9,558	9,806	9,335	8,871	8,375	7,984	7,709	8,142	7,922	7,441



Adult Arrests for Index Offenses, Hawaii County, 2007-2016

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index		904	941	1,060	1,118	1,023	1,090	1,011	1,153	1,063	921
Violent Crime	Total Violent	212	195	207	237	237	226	264	224	151	185
	Murder	2	5	2	3	2	5	9	5	11	9
	Rape*	22	22	14	22	18	8	9	19	6	15
	Robbery	33	23	37	41	37	54	56	44	28	34
	Aggravated Assault	155	145	154	171	180	159	190	156	104	127
	Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	2	0
	Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime	Total Property	692	746	853	881	786	864	747	929	912	736
	Burglary	105	111	146	134	97	122	101	129	125	103
	Larceny-Theft	496	554	622	676	615	633	553	669	593	518
	Motor Vehicle Theft	88	73	83	68	70	106	90	128	187	106
	Arson	3	8	2	3	4	3	3	3	7	9

Juvenile Arrests for Index Offenses, Hawaii County, 2007-2016

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index		334	362	342	306	236	174	188	165	118	88
Violent Crime	Total Violent	27	32	22	29	17	8	10	12	5	5
	Murder	1	0	0	0	0	0	0	0	0	0
	Rape*	2	2	2	3	2	1	3	2	0	1
	Robbery	7	12	7	16	5	1	2	0	2	0
	Aggravated Assault	17	18	13	10	10	6	5	10	3	4
	Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
	Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime	Total Property	307	330	320	277	219	166	178	153	113	83
	Burglary	63	63	41	36	29	20	20	13	10	12
	Larceny-Theft	208	245	242	218	180	141	151	131	90	63
	Motor Vehicle Theft	27	21	36	23	10	4	7	9	11	8
	Arson	9	1	1	0	0	1	0	0	2	0

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

Age and Sex of Adults Arrested for Index Offenses

Hawaii County, 2016

Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Murder	M	0	2	1	0	1	2	0	1	7	77.8%
	F	0	0	0	0	0	1	1	0	2	22.2%
Rape	M	4	1	4	1	2	3	0	0	15	100.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Robbery	M	11	5	2	5	0	0	1	0	24	70.6%
	F	3	1	4	1	1	0	0	0	10	29.4%
Aggravated Assault	M	19	17	16	16	11	10	10	9	108	85.0%
	F	3	2	2	2	2	2	3	3	19	15.0%
Human Trafficking - Commercial Sex Acts	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Burglary	M	19	23	13	7	6	11	3	5	87	84.5%
	F	4	2	2	2	3	2	0	1	16	15.5%
Larceny-Theft	M	67	67	44	46	27	27	18	37	333	64.3%
	F	40	26	24	25	17	23	9	21	185	35.7%
Motor Vehicle Theft	M	21	15	15	10	6	2	4	1	74	69.8%
	F	8	9	5	2	1	2	4	1	32	30.2%
Arson	M	0	0	1	2	0	0	2	3	8	88.9%
	F	1	0	0	0	0	0	0	0	1	11.1%
Total	M	141	130	96	87	53	55	38	56	656	71.2%
	F	59	40	37	32	24	30	17	26	265	28.8%
Column Percent	M	70.5%	76.5%	72.2%	73.1%	68.8%	64.7%	69.1%	68.3%	71.2%	
	F	29.5%	23.5%	27.8%	26.9%	31.2%	35.3%	30.9%	31.7%	28.8%	

Race/Ethnicity of Adults Arrested for Index Offenses**Hawaii County, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoaan	Other Pacific Islander	Total
Murder	3 33.3%	1 11.1%	0 0.0%	0 0.0%	1 11.1%	0 0.0%	0 0.0%	0 0.0%	3 33.3%	1 11.1%	0 0.0%	9 100.0%
Rape	5 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 20.0%	0 0.0%	0 0.0%	7 46.7%	0 0.0%	0 0.0%	15 100.0%
Robbery	11 32.4%	1 2.9%	0 0.0%	0 0.0%	1 2.9%	3 8.8%	0 0.0%	0 0.0%	18 52.9%	0 0.0%	0 0.0%	34 100.0%
Aggravated Assault	50 39.4%	3 2.4%	0 0.0%	1 0.8%	2 1.6%	17 13.4%	2 1.6%	0 0.0%	42 33.1%	6 4.7%	4 3.1%	127 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	43 41.7%	7 6.8%	2 1.9%	0 0.0%	3 2.9%	4 3.9%	1 1.0%	0 0.0%	42 40.8%	1 1.0%	0 0.0%	103 100.0%
Larceny-Theft	227 43.8%	5 1.0%	10 1.9%	4 0.8%	19 3.7%	45 8.7%	1 0.2%	0 0.0%	186 35.9%	2 0.4%	19 3.7%	518 100.0%
Motor Vehicle Theft	36 34.0%	1 0.9%	1 0.9%	1 0.9%	1 0.9%	8 7.5%	0 0.0%	0 0.0%	54 50.9%	2 1.9%	2 1.9%	106 100.0%
Arson	3 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 11.1%	0 0.0%	0 0.0%	5 55.6%	0 0.0%	0 0.0%	9 100.0%
Total	378	18	13	6	27	81	4	0	357	12	25	921
Column Percent	41.0%	2.0%	1.4%	0.7%	2.9%	8.8%	0.4%	0.0%	38.8%	1.3%	2.7%	100.0%

Age and Sex of Juveniles Arrested for Index Offenses**Hawaii County, 2016**

Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Murder	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Rape	M	0	0	0	1	0	0	1	100.0%
	F	0	0	0	0	0	0	0	0.0%
Robbery	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Aggravated Assault	M	0	0	1	2	1	0	4	100.0%
	F	0	0	0	0	0	0	0	0.0%
Human Trafficking - Commerical Sex Acts	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Burglary	M	0	2	3	1	3	3	12	100.0%
	F	0	0	0	0	0	0	0	0.0%
Larceny-Theft	M	0	3	16	13	5	8	45	71.4%
	F	0	3	5	2	6	2	18	28.6%
Motor Vehicle Theft	M	0	0	0	3	3	1	7	87.5%
	F	0	0	0	0	0	1	1	12.5%
Arson	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Total	M	0	5	20	20	12	12	69	78.4%
	F	0	3	5	2	6	3	19	21.6%
Column Percent	M	0.0%	62.5%	80.0%	90.9%	66.7%	80.0%	78.4%	
	F	0.0%	37.5%	20.0%	9.1%	33.3%	20.0%	21.6%	

Race/Ethnicity of Juveniles Arrested for Index Offenses**Hawaii County, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Rape	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	1 100.0%
Robbery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Aggravated Assault	0 0.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 25.0%	0 0.0%	2 50.0%	4 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	5 41.7%	0 0.0%	0 0.0%	0 0.0%	1 8.3%	2 16.7%	0 0.0%	0 0.0%	3 25.0%	0 0.0%	1 8.3%	12 100.0%
Larceny-Theft	19 30.2%	1 1.6%	0 0.0%	0 0.0%	4 6.3%	5 7.9%	0 0.0%	0 0.0%	21 33.3%	1 1.6%	12 19.0%	63 100.0%
Motor Vehicle Theft	2 25.0%	0 0.0%	0 0.0%	0 0.0%	1 12.5%	1 12.5%	0 0.0%	0 0.0%	3 37.5%	1 12.5%	0 0.0%	8 100.0%
Arson	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Total	26	2	0	0	6	8	0	0	28	2	16	88
Column Percent	29.5%	2.3%	0.0%	0.0%	6.8%	9.1%	0.0%	0.0%	31.8%	2.3%	18.2%	100.0%

Adult Part II Arrests by Offense, Hawaii County, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	11	12	5	5	5	9	5	0	0	0
	Other Assault	771	761	786	728	680	599	570	617	585	528
	Sex Offenses	27	33	44	27	22	48	24	31	25	41
Property-Related	Forgery	29	22	28	12	17	18	18	19	14	17
	Fraud	81	109	87	67	72	60	55	33	28	35
	Embezzlement	17	18	15	14	8	5	6	4	7	10
	Stolen Property	5	8	5	4	5	13	14	16	9	0
	Vandalism	96	98	84	127	106	73	70	71	80	85
Drug Manufacturing/Sale	Opium or Cocaine	14	13	12	5	4	6	4	7	15	9
	Marijuana	166	96	98	98	89	57	70	43	41	18
	Synthetic Narcotic	5	6	2	5	4	4	0	1	0	1
	Nonnarcotic	52	48	60	64	85	53	61	73	59	38
Drug Possession	Opium or Cocaine	49	30	6	9	5	25	23	17	29	23
	Marijuana	204	177	198	193	154	101	95	129	126	157
	Synthetic Narcotic	4	7	11	3	4	7	7	11	11	2
	Nonnarcotic	257	153	140	127	183	210	236	221	268	210
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	13	15	2	4	3	27	6	0	0	9
Alcohol-Related	DUI	1,371	1,311	1,344	1,441	1,379	1,419	1,301	1,136	1,026	1,080
	Liquor Laws	133	378	599	191	58	70	99	81	76	43
	Disorderly Conduct	157	136	177	182	177	207	197	252	214	226
Other	Offenses Agst. Family/Children	0	7	4	1	3	3	0	2	1	0
	Prostitution	30	28	31	25	30	12	15	18	28	17
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	1	0	0
	Weapons	52	45	53	39	39	37	35	78	66	60
	All Other Criminal Offenses	3,104	3,343	2,803	2,846	2,897	2,793	2,767	3,117	3,294	3,184
Total Part II Offenses		6,648	6,854	6,594	6,217	6,029	5,856	5,678	5,978	6,002	5,793
Total Index & Part II Offenses		7,552	7,795	7,654	7,335	7,052	6,946	6,689	7,131	7,065	6,714

Juvenile Part II Arrests by Offense, Hawaii County, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	1	0	0	0	0	0	0	0	0
	Other Assault	72	107	79	91	84	46	41	38	41	24
	Sex Offenses	1	5	2	4	2	1	0	6	6	0
Property-Related	Forgery	0	0	0	0	0	2	0	0	0	1
	Fraud	11	5	3	2	1	0	2	1	2	0
	Embezzlement	0	0	0	0	0	0	0	0	0	0
	Stolen Property	1	1	1	4	0	0	0	0	0	0
	Vandalism	18	46	31	16	22	21	9	6	7	13
Drug Manufacturing/Sale	Opium or Cocaine	0	0	0	0	0	0	0	0	0	0
	Marijuana	6	7	10	4	2	3	2	2	1	2
	Synthetic Narcotic	0	1	0	1	0	1	0	0	0	0
	Nonnarcotic	1	0	0	0	0	0	0	0	0	1
Drug Possession	Opium or Cocaine	4	1	0	0	0	0	0	1	0	0
	Marijuana	125	127	125	137	158	87	91	61	53	64
	Synthetic Narcotic	1	2	1	2	1	1	2	1	0	0
	Nonnarcotic	4	2	2	2	2	4	7	3	3	0
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	3	0	0	0	0	0	0	0	0	0
Alcohol-Related	DUI	19	15	16	15	11	8	14	11	11	6
	Liquor Laws	59	79	94	49	16	18	14	13	14	6
	Disorderly Conduct	45	34	48	38	29	18	12	5	19	12
Other	Offenses Agst. Family/Children	0	0	0	0	0	0	0	0	0	1
	Prostitution	0	0	0	0	0	0	0	0	0	0
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	5	5	2	5	8	1	1	1	0	0
	All Other Offenses	341	294	267	260	213	213	145	137	109	110
Status	Curfew	79	64	50	27	13	7	10	20	9	15
	Runaway	877	853	608	573	525	433	482	540	464	384
Total Part II Offenses		1,672	1,649	1,339	1,230	1,087	864	832	846	739	639
Total Index & Part II Offenses		2,006	2,011	1,681	1,536	1,323	1,038	1,020	1,011	857	727

Age and Sex of Adults Arrested for Part II Offenses Hawaii County, 2016

Type	Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Violent	Negligent Manslaughter	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other Assault	M	83	72	71	60	53	33	23	34	429	81.3%
		F	17	24	10	12	13	9	8	6	99	18.8%
	Sex Offenses	M	7	5	3	3	1	3	3	9	34	82.9%
		F	0	1	2	3	1	0	0	0	7	17.1%
Property-Related	Forgery	M	4	2	2	0	2	0	0	0	10	58.8%
		F	2	3	1	0	0	1	0	0	7	41.2%
	Fraud	M	3	7	6	3	2	1	0	1	23	65.7%
		F	2	2	1	2	3	1	0	1	12	34.3%
	Embezzlement	M	0	1	1	0	0	1	0	0	3	30.0%
		F	4	0	0	2	1	0	0	0	7	70.0%
	Stolen Property	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vandalism	M	20	12	10	9	6	7	1	2	67	78.8%
		F	4	1	2	2	6	0	1	2	18	21.2%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	1	0	0	1	1	0	3	6	66.7%
		F	0	1	0	0	0	0	1	1	3	33.3%
	Marijuana	M	2	1	1	3	1	2	0	2	12	66.7%
		F	2	0	1	1	0	1	0	1	6	33.3%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	1	0	0	1	100.0%
Drug Possession	Nonnarcotic	M	3	6	3	5	5	1	2	2	27	71.1%
		F	0	3	1	1	4	2	0	0	11	28.9%
	Opium or Cocaine	M	2	2	3	2	1	2	3	1	16	69.6%
		F	1	3	0	1	0	0	1	1	7	30.4%
	Marijuana	M	23	17	12	19	7	6	12	18	114	72.6%
		F	11	7	8	4	0	4	5	4	43	27.4%
Gambling	Synthetic Narcotic	M	0	1	0	0	0	0	0	0	1	50.0%
		F	0	1	0	0	0	0	0	0	1	50.0%
	Nonnarcotic	M	37	19	20	28	24	15	8	5	156	74.3%
		F	10	7	12	14	2	4	3	2	54	25.7%
	Bookmaking	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Alcohol-Related	Numbers & Lottery	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	1	2	1	2	1	0	7	77.8%
		F	1	0	0	1	0	0	0	0	2	22.2%
	DUI	M	155	154	123	97	75	66	49	121	840	77.8%
		F	44	51	36	32	16	15	15	31	240	22.2%
Other	Liquor Laws	M	5	5	3	7	4	2	3	8	37	86.0%
		F	2	0	0	2	1	0	1	0	6	14.0%
	Disorderly Conduct	M	32	19	24	26	11	12	11	23	158	69.9%
		F	10	7	7	10	12	10	3	9	68	30.1%
	Offenses Agst. Family/Children	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Prostitution	M	0	0	1	0	0	0	2	0	3	17.6%
		F	5	5	1	3	0	0	0	0	14	82.4%
	Suspicion	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Total	Weapons	M	6	10	8	8	5	7	4	2	50	83.3%
		F	2	0	4	0	0	1	1	2	10	16.7%
Column Percent	All Other Offenses	M	429	411	339	303	205	204	169	236	2,296	72.1%
		F	155	168	129	159	88	61	59	69	888	27.9%
		M	811	745	631	575	404	365	291	467	4,289	74.0%
		F	272	284	215	249	147	110	98	129	1,504	26.0%
		M	74.9%	72.4%	74.6%	69.8%	73.3%	76.8%	74.8%	78.4%	74.0%	
		F	25.1%	27.6%	25.4%	30.2%	26.7%	23.2%	25.2%	21.6%	26.0%	

Race/Ethnicity of Adults Arrested for Part II Offenses
Hawaii County, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	231 43.8%	11 2.1%	3 0.6%	3 0.6%	14 2.7%	56 10.6%	0 0.0%	0 0.0%	183 34.7%	3 0.6%	24 4.5%	528 100.0%
	Sex Offenses	22 53.7%	3 7.3%	0 0.0%	0 0.0%	1 2.4%	2 4.9%	2 4.9%	0 0.0%	8 19.5%	0 0.0%	3 7.3%	41 100.0%
Property-Related	Forgery	5 29.4%	0 0.0%	0 0.0%	1 5.9%	0 0.0%	4 23.5%	0 0.0%	0 0.0%	7 41.2%	0 0.0%	0 0.0%	17 100.0%
	Fraud	15 42.9%	0 0.0%	0 0.0%	0 0.0%	1 2.9%	3 8.6%	0 0.0%	0 0.0%	15 42.9%	0 0.0%	1 2.9%	35 100.0%
	Embezzlement	1 10.0%	0 0.0%	1 10.0%	0 0.0%	1 10.0%	2 20.0%	0 0.0%	0 0.0%	4 40.0%	0 0.0%	1 10.0%	10 100.0%
	Stolen Property	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vandalism	37 43.5%	1 1.2%	1 1.2%	1 1.2%	0 0.0%	8 9.4%	1 1.2%	0 0.0%	28 32.9%	2 2.4%	6 7.1%	85 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	7 77.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 11.1%	1 11.1%	0 0.0%	9 100.0%
	Marijuana	10 55.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 22.2%	0 0.0%	0 0.0%	4 22.2%	0 0.0%	0 0.0%	18 100.0%
	Synthetic Narcotic	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
	Nonnarcotic	12 31.6%	1 2.6%	0 0.0%	1 2.6%	3 7.9%	5 13.2%	0 0.0%	0 0.0%	16 42.1%	0 0.0%	0 0.0%	38 100.0%
Drug Possession	Opium or Cocaine	15 65.2%	2 8.7%	0 0.0%	0 0.0%	3 13.0%	0 0.0%	0 0.0%	0 0.0%	3 13.0%	0 0.0%	0 0.0%	23 100.0%
	Marijuana	67 42.7%	4 2.5%	0 0.0%	0 0.0%	7 4.5%	16 10.2%	0 0.0%	0 0.0%	57 36.3%	0 0.0%	6 3.8%	157 100.0%
	Synthetic Narcotic	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 100.0%
	Nonnarcotic	70 33.3%	5 2.4%	0 0.0%	2 1.0%	18 8.6%	23 11.0%	0 0.0%	0 0.0%	89 42.4%	0 0.0%	3 1.4%	210 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	4 44.4%	0 0.0%	0 0.0%	0 0.0%	2 22.2%	1 11.1%	0 0.0%	0 0.0%	2 22.2%	0 0.0%	0 0.0%	9 100.0%
Alcohol-Related	DUI	589 54.5%	16 1.5%	5 0.5%	5 0.5%	60 5.6%	71 6.6%	3 0.3%	0 0.0%	220 20.4%	15 1.4%	96 8.9%	1,080 100.0%
	Liquor Law s	22 51.2%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 7.0%	0 0.0%	0 0.0%	12 27.9%	0 0.0%	6 14.0%	43 100.0%
	Disorderly Conduct	127 56.2%	7 3.1%	3 1.3%	1 0.4%	7 3.1%	4 1.8%	2 0.9%	0 0.0%	59 26.1%	2 0.9%	14 6.2%	226 100.0%
Other	Offenses Agst. Family/Children	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Prostitution	9 52.9%	4 23.5%	0 0.0%	0 0.0%	0 0.0%	1 5.9%	0 0.0%	0 0.0%	2 11.8%	0 0.0%	1 5.9%	17 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	25 41.7%	2 3.3%	0 0.0%	3 5.0%	4 6.7%	4 6.7%	0 0.0%	0 0.0%	20 33.3%	2 3.3%	0 0.0%	60 100.0%
	All Other Offenses	1,370 43.0%	76 2.4%	27 0.8%	12 0.4%	112 3.5%	265 8.3%	11 0.3%	0 0.0%	1,136 35.7%	27 0.8%	148 4.6%	3,184 100.0%
Total		2,640	132	40	29	233	472	19	0	1,867	52	309	5,793
Column Percent		45.6%	2.3%	0.7%	0.5%	4.0%	8.1%	0.3%	0.0%	32.2%	0.9%	5.3%	100.0%

Age and Sex of Juveniles Arrested for Part II Offenses

Hawaii County, 2016

Type	Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Violent	Negligent	M	0	0	0	0	0	0	0	0.0%
	Manslaughter	F	0	0	0	0	0	0	0	0.0%
	Other Assault	M	0	1	4	0	4	6	15	62.5%
		F	0	1	4	2	0	2	9	37.5%
	Sex Offenses	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Property-Related	Forgery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	1	1	100.0%
	Fraud	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Embezzlement	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Stolen Property	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Vandalism		M	0	0	3	3	2	1	9	69.2%
		F	0	0	1	2	1	0	4	30.8%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	0	0	0	1	1	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	0	0	0	0	0	1	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
Drug Possession	Opium or Cocaine	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	7	13	9	17	3	49	76.6%
		F	0	1	8	2	2	2	15	23.4%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Gambling	Bookmaking	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Numbers & Lottery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Alcohol-Related	DUI	M	0	0	0	1	0	3	4	66.7%
		F	0	0	0	0	0	2	2	33.3%
	Liquor Laws	M	0	0	0	1	2	3	6	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Disorderly Conduct	M	0	0	3	0	1	0	4	33.3%
		F	0	1	5	0	1	1	8	66.7%
Other	Offenses Agst. Family/Children	M	0	0	0	0	0	0	0	0.0%
		F	0	0	1	0	0	0	1	100.0%
	Prostitution	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Suspicion	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Weapons	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
All Other Offenses		M	2	3	22	12	13	13	65	59.1%
		F	0	4	11	9	12	9	45	40.9%
Status	Curfew	M	0	0	3	6	4	0	13	86.7%
		F	0	0	1	0	1	0	2	13.3%
	Runaway	M	0	3	55	59	56	47	220	57.3%
		F	0	2	22	40	60	40	164	42.7%
Total		M	2	14	103	91	100	78	388	60.7%
		F	0	9	53	55	77	57	251	39.3%
Column Percent		M	100.0%	60.9%	66.0%	62.3%	56.5%	57.8%	60.7%	
		F	0.0%	39.1%	34.0%	37.7%	43.5%	42.2%	39.3%	

Race/Ethnicity of Juveniles Arrested for Part II Offenses
Hawaii County, 2016

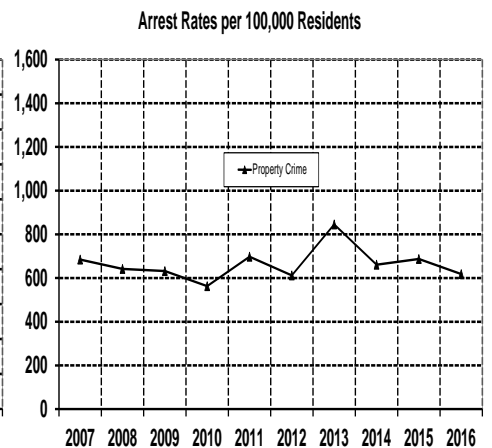
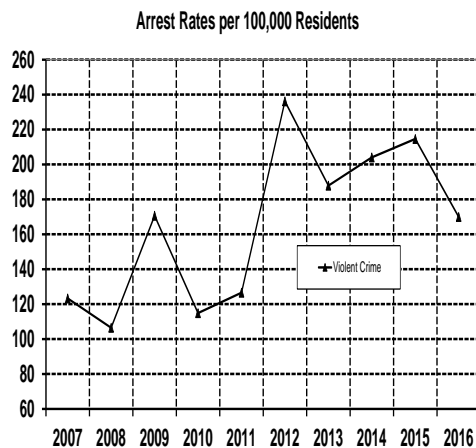
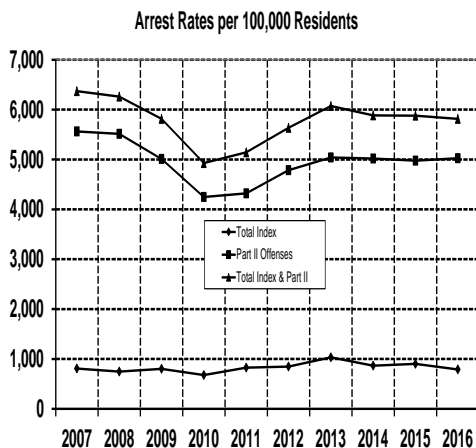
Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoaan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	4 16.7%	1 4.2%	1 4.2%	1 4.2%	3 12.5%	1 4.2%	0 0.0%	0 0.0%	12 50.0%	0 0.0%	1 4.2%	24 100.0%
	Sex Offenses	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Property-Related	Forgery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
	Fraud	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Embezzlement	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Stolen Property	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vandalism	6 46.2%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 15.4%	0 0.0%	0 0.0%	3 23.1%	1 7.7%	1 7.7%	13 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	2 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
Drug Possession	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	24 37.5%	1 1.6%	1 1.6%	0 0.0%	4 6.3%	9 14.1%	0 0.0%	0 0.0%	20 31.3%	1 1.6%	4 6.3%	64 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	1 16.7%	1 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 50.0%	0 0.0%	1 16.7%	6 100.0%
	Liquor Law s	1 16.7%	1 16.7%	0 0.0%	0 0.0%	0 0.0%	2 33.3%	0 0.0%	0 0.0%	2 33.3%	0 0.0%	0 0.0%	6 100.0%
	Disorderly Conduct	5 41.7%	0 0.0%	1 8.3%	0 0.0%	1 8.3%	1 8.3%	0 0.0%	0 0.0%	4 33.3%	0 0.0%	0 0.0%	12 100.0%
Other	Offenses Agst. Family/Children	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
	Prostitution	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	All Other Offenses	30 27.3%	2 1.8%	0 0.0%	0 0.0%	2 1.8%	11 10.0%	0 0.0%	0 0.0%	47 42.7%	2 1.8%	16 14.5%	110 100.0%
Status	Curfew	3 20.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 13.3%	0 0.0%	0 0.0%	3 20.0%	0 0.0%	7 46.7%	15 100.0%
	Runaw ay	130 33.9%	15 3.9%	3 0.8%	0 0.0%	25 6.5%	22 5.7%	0 0.0%	0 0.0%	155 40.4%	11 2.9%	23 6.0%	384 100.0%
Total		206	21	6	1	35	50	0	0	251	16	53	639
Column Percent		32.2%	3.3%	0.9%	0.2%	5.5%	7.8%	0.0%	0.0%	39.3%	2.5%	8.3%	100.0%

Total Arrests Maui County, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	1,146	1,075	1,148	1,039	1,290	1,236	1,650	1,403	1,487	1,299
Violent Crime Index	175	153	244	176	198	264	300	331	354	280
Murder	0	1	1	3	1	4	1	3	5	7
Rape*	13	5	16	21	26	18	19	24	33	27
Robbery	29	30	54	35	33	76	57	63	75	32
Aggravated Assault	133	117	173	117	138	166	223	241	241	214
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime Index	971	922	904	863	1,092	972	1,350	1,072	1,133	1,019
Burglary	195	194	190	159	170	163	225	215	255	239
Larceny-Theft	602	599	613	613	803	699	972	723	718	584
Motor Vehicle Theft	164	116	96	88	112	106	144	130	150	184
Arson	10	13	5	3	7	4	9	4	10	12

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	7,894	7,922	7,165	6,511	6,760	7,709	8,047	8,144	8,208	8,280
Total Index & Part II	9,040	8,997	8,313	7,550	8,050	8,945	9,697	9,547	9,695	9,579



Adult Arrests for Index Offenses, Maui County, 2007-2016

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index		836	755	869	862	1,123	1,076	1,508	1,269	1,321	1,142
Violent Crime	Total Violent	141	127	200	162	187	227	275	309	328	255
	Murder	0	1	1	3	1	4	1	3	5	6
	Rape*	13	5	16	21	26	17	14	23	31	25
	Robbery	15	26	35	35	28	52	50	55	65	30
	Aggravated Assault	113	95	148	103	132	154	210	228	227	194
	Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
	Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime	Total Property	695	628	669	700	936	849	1,233	960	993	887
	Burglary	127	125	161	129	147	146	207	197	209	194
	Larceny-Theft	457	424	427	490	680	605	889	645	631	516
	Motor Vehicle Theft	101	75	77	78	104	94	131	117	144	168
	Arson	10	4	4	3	5	4	6	1	9	9

Juvenile Arrests for Index Offenses, Maui County, 2007-2016

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index		310	320	279	177	167	160	142	134	166	157
Violent Crime	Total Violent	34	26	44	14	11	37	25	22	26	25
	Murder	0	0	0	0	0	0	0	0	0	1
	Rape*	0	0	0	0	0	1	5	1	2	2
	Robbery	14	4	19	0	5	24	7	8	10	2
	Aggravated Assault	20	22	25	14	6	12	13	13	14	20
	Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
	Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime	Total Property	276	294	235	163	156	123	117	112	140	132
	Burglary	68	69	29	30	23	17	18	18	46	45
	Larceny-Theft	145	175	186	123	123	94	83	78	87	68
	Motor Vehicle Theft	63	41	19	10	8	12	13	13	6	16
	Arson	0	9	1	0	2	0	3	3	1	3

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

Age and Sex of Adults Arrested for Index Offenses**Maui County, 2016**

Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Murder	M	2	0	1	1	0	1	0	0	5	83.3%
	F	0	0	0	1	0	0	0	0	1	16.7%
Rape	M	5	2	5	5	5	0	1	1	24	96.0%
	F	0	0	0	1	0	0	0	0	1	4.0%
Robbery	M	7	3	7	4	0	3	0	1	25	83.3%
	F	3	0	1	0	1	0	0	0	5	16.7%
Aggravated Assault	M	26	37	26	18	7	11	16	12	153	78.9%
	F	10	8	12	3	4	0	3	1	41	21.1%
Human Trafficking - Commercial Sex Acts	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Burglary	M	54	31	15	21	13	13	10	6	163	84.0%
	F	11	5	5	1	2	2	3	2	31	16.0%
Larceny-Theft	M	90	88	49	41	12	24	13	19	336	65.1%
	F	42	38	21	28	15	15	6	15	180	34.9%
Motor Vehicle Theft	M	35	39	20	13	3	9	6	5	130	77.4%
	F	18	8	8	2	2	0	0	0	38	22.6%
Arson	M	1	0	3	0	0	1	2	1	8	88.9%
	F	0	0	0	1	0	0	0	0	1	11.1%
Total	M	220	200	126	103	40	62	48	45	844	73.9%
	F	84	59	47	37	24	17	12	18	298	26.1%
Column Percent	M	72.4%	77.2%	72.8%	73.6%	62.5%	78.5%	80.0%	71.4%	73.9%	
	F	27.6%	22.8%	27.2%	26.4%	37.5%	21.5%	20.0%	28.6%	26.1%	

Race/Ethnicity of Adults Arrested for Index Offenses**Maui County, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	2 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 33.3%	0 0.0%	0 0.0%	2 33.3%	0 0.0%	0 0.0%	6 100.0%
Rape	13 52.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	5 20.0%	0 0.0%	1 4.0%	5 20.0%	0 0.0%	1 4.0%	25 100.0%
Robbery	10 33.3%	0 0.0%	0 0.0%	1 3.3%	1 3.3%	1 3.3%	0 0.0%	0 0.0%	10 33.3%	1 3.3%	6 20.0%	30 100.0%
Aggravated Assault	64 33.0%	7 3.6%	1 0.5%	0 0.0%	3 1.5%	28 14.4%	0 0.0%	0 0.0%	71 36.6%	2 1.0%	18 9.3%	194 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	82 42.3%	1 0.5%	0 0.0%	1 0.5%	4 2.1%	29 14.9%	0 0.0%	0 0.0%	66 34.0%	1 0.5%	10 5.2%	194 100.0%
Larceny-Theft	217 42.1%	13 2.5%	0 0.0%	4 0.8%	16 3.1%	66 12.8%	0 0.0%	3 0.6%	166 32.2%	2 0.4%	29 5.6%	516 100.0%
Motor Vehicle Theft	52 31.0%	3 1.8%	0 0.0%	1 0.6%	2 1.2%	13 7.7%	0 0.0%	1 0.6%	77 45.8%	5 3.0%	14 8.3%	168 100.0%
Arson	3 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 22.2%	0 0.0%	1 11.1%	3 33.3%	0 0.0%	0 0.0%	9 100.0%
Total	443	24	1	7	26	146	0	6	400	11	78	1,142
Column Percent	38.8%	2.1%	0.1%	0.6%	2.3%	12.8%	0.0%	0.5%	35.0%	1.0%	6.8%	100.0%

Age and Sex of Juveniles Arrested for Index Offenses**Maui County, 2016**

Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Murder	M	0	0	0	0	1	0	1	100.0%
	F	0	0	0	0	0	0	0	0.0%
Rape	M	0	0	1	1	0	0	2	100.0%
	F	0	0	0	0	0	0	0	0.0%
Robbery	M	0	0	1	1	0	0	2	100.0%
	F	0	0	0	0	0	0	0	0.0%
Aggravated Assault	M	0	2	2	2	2	8	16	80.0%
	F	0	0	0	0	2	2	4	20.0%
Human Trafficking - Commerical Sex Acts	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Burglary	M	1	1	8	4	13	10	37	82.2%
	F	0	1	3	0	1	3	8	17.8%
Larceny-Theft	M	0	2	7	7	14	11	41	60.3%
	F	0	1	7	8	5	6	27	39.7%
Motor Vehicle Theft	M	0	0	2	3	1	1	7	43.8%
	F	0	0	0	1	5	3	9	56.3%
Arson	M	0	0	0	1	1	0	2	66.7%
	F	0	0	0	1	0	0	1	33.3%
Total	M	1	5	21	19	32	30	108	68.8%
	F	0	2	10	10	13	14	49	31.2%
Column Percent	M	100.0%	71.4%	67.7%	65.5%	71.1%	68.2%	68.8%	
	F	0.0%	28.6%	32.3%	34.5%	28.9%	31.8%	31.2%	

Race/Ethnicity of Juveniles Arrested for Index Offenses**Maui County, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
Rape	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 100.0%
Robbery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%
Aggravated Assault	7 35.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 15.0%	0 0.0%	1 5.0%	7 35.0%	1 5.0%	1 5.0%	20 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	7 15.6%	0 0.0%	0 0.0%	0 0.0%	3 6.7%	11 24.4%	0 0.0%	2 4.4%	17 37.8%	0 0.0%	5 11.1%	45 100.0%
Larceny-Theft	19 27.9%	0 0.0%	0 0.0%	0 0.0%	1 1.5%	13 19.1%	0 0.0%	1 1.5%	26 38.2%	2 2.9%	6 8.8%	68 100.0%
Motor Vehicle Theft	4 25.0%	1 6.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 6.3%	3 18.8%	5 31.3%	0 0.0%	2 12.5%	16 100.0%
Arson	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	1 33.3%	3 100.0%
Total	37	1	0	0	4	31	1	7	58	3	15	157
Column Percent	23.6%	0.6%	0.0%	0.0%	2.5%	19.7%	0.6%	4.5%	36.9%	1.9%	9.6%	100.0%

Adult Part II Arrests by Offense, Maui County, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	0	0	0	0	0	0	0	0	0
	Other Assault	441	467	464	484	489	490	532	598	560	588
	Sex Offenses	38	23	35	36	31	32	35	20	21	27
Property-Related	Forgery	96	68	54	36	17	18	10	12	8	18
	Fraud	71	54	49	19	12	6	4	11	8	11
	Embezzlement	31	57	25	32	0	0	0	0	0	0
	Stolen Property	5	8	22	8	0	0	0	0	0	0
	Vandalism	42	34	47	50	47	54	70	67	40	46
Drug Manufacturing/Sale	Opium or Cocaine	10	3	2	3	2	9	12	14	11	10
	Marijuana	18	44	30	32	17	41	42	30	39	13
	Synthetic Narcotic	7	27	50	22	0	0	0	0	0	0
	Nonnarcotic	32	2	0	24	59	55	102	110	95	69
Drug Possession	Opium or Cocaine	34	25	35	51	109	134	194	176	207	140
	Marijuana	168	183	247	275	245	306	314	319	304	204
	Synthetic Narcotic	59	204	221	108	1	0	0	2	1	0
	Nonnarcotic	200	8	15	68	153	216	266	318	344	292
Gambling	Bookmaking	0	0	0	21	11	32	31	13	21	35
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	57	107	41	29	53	2	38	40	22	32
Alcohol-Related	DUI	921	880	698	727	831	874	990	800	723	692
	Liquor Law s	211	193	152	142	98	97	105	64	60	35
	Disorderly Conduct	276	248	246	172	131	119	128	148	129	182
Other	Offenses Agst. Family/Children	14	15	20	6	6	5	12	8	11	8
	Prostitution	9	3	1	27	13	15	6	20	7	44
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	42	34	76	50	64	98	106	84	76	83
	All Other Criminal Offenses	4,085	3,978	3,601	3,215	3,824	4,533	4,311	4,752	5,096	5,279
Total Part II Offenses		6,867	6,665	6,131	5,637	6,213	7,136	7,308	7,606	7,783	7,808
Total Index & Part II Offenses		7,703	7,420	7,000	6,499	7,336	8,212	8,816	8,875	9,104	8,950

Juvenile Part II Arrests by Offense, Maui County, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	0	0	0	0	0	0	0	0	0
	Other Assault	46	62	55	24	17	15	37	42	32	25
	Sex Offenses	8	3	2	2	1	0	5	0	0	2
Property-Related	Forgery	5	1	1	2	0	0	0	0	1	0
	Fraud	5	5	4	1	0	0	1	0	0	0
	Embezzlement	1	1	0	0	0	0	0	0	0	0
	Stolen Property	1	0	0	0	0	0	0	0	0	0
	Vandalism	21	24	18	3	6	2	10	5	5	8
Drug Manufacturing/Sale	Opium or Cocaine	0	1	0	0	0	0	1	0	0	0
	Marijuana	0	5	4	14	1	2	3	1	20	1
	Synthetic Narcotic	0	2	0	0	0	0	0	0	0	0
	Nonnarcotic	1	0	0	0	0	0	0	0	0	0
Drug Possession	Opium or Cocaine	0	0	5	2	1	1	29	20	5	5
	Marijuana	148	172	139	118	66	125	123	127	69	89
	Synthetic Narcotic	2	5	2	7	3	1	0	0	0	0
	Nonnarcotic	3	6	1	0	0	2	1	5	1	1
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	0	0	0	0	0	0	0	0	0	0
Alcohol-Related	DUI	24	19	13	16	2	4	8	10	5	2
	Liquor Laws	116	122	101	85	34	52	28	42	34	37
	Disorderly Conduct	28	37	37	13	15	3	11	6	0	2
Other	Offenses Agst. Family/Children	0	9	10	3	0	1	0	0	0	0
	Prostitution	0	0	0	0	0	0	0	0	0	0
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	8	3	3	8	4	10	6	5	6	3
	All Other Offenses	354	461	323	357	262	170	147	72	82	94
Status	Curfew	76	114	64	92	27	68	188	119	77	95
	Runaway	180	205	252	127	108	117	141	84	88	108
Total Part II Offenses		1,027	1,257	1,034	874	547	573	739	538	425	472
Total Index & Part II Offenses		1,337	1,577	1,313	1,051	714	733	881	672	591	629

Age and Sex of Adults Arrested for Part II Offenses
Maui County, 2016

Type	Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Violent	Negligent Manslaughter	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other Assault	M	69	64	88	56	43	36	37	46	439	74.7%
		F	38	29	27	18	14	10	5	8	149	25.3%
	Sex Offenses	M	3	2	3	0	4	6	1	7	26	96.3%
		F	0	0	0	0	0	0	1	0	1	3.7%
Property-Related	Forgery	M	2	7	2	1	1	1	1	2	17	94.4%
		F	0	0	0	1	0	0	0	0	1	5.6%
	Fraud	M	1	2	1	1	0	0	0	1	6	54.5%
		F	2	2	1	0	0	0	0	0	5	45.5%
	Embezzlement	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Stolen Property	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vandalism	M	8	7	5	2	3	5	2	1	33	71.7%
		F	4	3	1	1	1	2	1	0	13	28.3%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	0	3	3	0	1	0	3	10	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Marijuana	M	4	0	3	1	3	1	0	0	12	92.3%
		F	0	0	0	0	1	0	0	0	1	7.7%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Drug Possession	Nonnarcotic	M	5	3	7	15	2	4	7	11	54	78.3%
		F	0	4	4	2	0	5	0	0	15	21.7%
	Opium or Cocaine	M	12	15	21	16	5	7	11	10	97	69.3%
		F	11	9	8	5	4	2	2	2	43	30.7%
	Marijuana	M	27	20	22	17	14	21	10	19	150	73.5%
		F	15	8	10	6	4	6	2	3	54	26.5%
Gambling	Synthetic Narcotic	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	42	27	36	33	29	32	15	12	226	77.4%
		F	11	11	14	9	3	8	6	4	66	22.6%
	Bookmaking	M	0	0	2	3	2	6	5	7	25	71.4%
		F	0	1	0	2	0	2	2	3	10	28.6%
Alcohol-Related	Numbers & Lottery	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other	M	10	3	6	2	2	3	4	2	32	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	DUI	M	102	86	67	77	37	43	35	68	515	74.4%
		F	38	31	23	15	19	13	10	28	177	25.6%
Other	Liquor Laws	M	19	2	0	1	0	3	0	3	28	80.0%
		F	7	0	0	0	0	0	0	0	7	20.0%
	Disorderly Conduct	M	13	31	25	35	12	18	8	10	152	83.5%
		F	5	5	3	6	0	4	6	1	30	16.5%
	Offenses Agst. Family/Children	M	2	1	1	1	0	1	0	0	6	75.0%
		F	1	0	1	0	0	0	0	0	2	25.0%
Other	Prostitution	M	8	1	2	1	2	3	1	2	20	45.5%
		F	9	8	0	1	2	3	1	0	24	54.5%
	Suspicion	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Other	Weapons	M	10	14	15	13	3	7	5	9	76	91.6%
		F	2	1	2	1	0	0	1	0	7	8.4%
	All Other Offenses	M	611	710	752	537	350	377	328	390	4,055	76.8%
		F	250	179	202	204	94	108	77	110	1,224	23.2%
Total		M	948	995	1,061	815	512	575	470	603	5,979	76.6%
		F	393	291	296	271	142	163	114	159	1,829	23.4%
Column Percent		M	70.7%	77.4%	78.2%	75.0%	78.3%	77.9%	80.5%	79.1%	76.6%	
		F	29.3%	22.6%	21.8%	25.0%	21.7%	22.1%	19.5%	20.9%	23.4%	

Race/Ethnicity of Adults Arrested for Part II Offenses
Maui County, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	250 42.5%	13 2.2%	3 0.5%	3 0.5%	10 1.7%	52 8.8%	1 0.2%	12 2.0%	179 30.4%	11 1.9%	54 9.2%	588 100.0%
	Sex Offenses	15 55.6%	2 7.4%	0 0.0%	0 0.0%	0 0.0%	1 3.7%	0 0.0%	2 7.4%	5 18.5%	1 3.7%	1 3.7%	27 100.0%
Property-Related	Forgery	4 22.2%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	5 27.8%	0 0.0%	0 0.0%	6 33.3%	0 0.0%	2 11.1%	18 100.0%
	Fraud	3 27.3%	0 0.0%	0 0.0%	0 0.0%	1 9.1%	2 18.2%	0 0.0%	0 0.0%	4 36.4%	0 0.0%	1 9.1%	11 100.0%
	Embezzlement	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Stolen Property	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vandalism	19 41.3%	6 13.0%	0 0.0%	0 0.0%	0 0.0%	2 4.3%	1 2.2%	0 0.0%	15 32.6%	0 0.0%	3 6.5%	46 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	5 50.0%	1 10.0%	0 0.0%	0 0.0%	0 0.0%	1 10.0%	0 0.0%	0 0.0%	3 30.0%	0 0.0%	0 0.0%	10 100.0%
	Marijuana	10 76.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 15.4%	0 0.0%	0 0.0%	1 7.7%	0 0.0%	0 0.0%	13 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	10 14.5%	3 4.3%	0 0.0%	0 0.0%	8 11.6%	11 15.9%	0 0.0%	0 0.0%	33 47.8%	1 1.4%	3 4.3%	69 100.0%
Drug Possession	Opium or Cocaine	79 56.4%	4 2.9%	0 0.0%	0 0.0%	3 2.1%	13 9.3%	0 0.0%	1 0.7%	36 25.7%	0 0.0%	4 2.9%	140 100.0%
	Marijuana	95 46.6%	11 5.4%	0 0.0%	1 0.5%	5 2.5%	15 7.4%	0 0.0%	0 0.0%	67 32.8%	1 0.5%	9 4.4%	204 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	93 31.8%	5 1.7%	0 0.0%	0 0.0%	8 2.7%	52 17.8%	4 1.4%	2 0.7%	105 36.0%	1 0.3%	22 7.5%	292 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	35 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	35 100.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	5 15.6%	0 0.0%	0 0.0%	0 0.0%	2 6.3%	11 34.4%	0 0.0%	0 0.0%	14 43.8%	0 0.0%	0 0.0%	32 100.0%
Alcohol-Related	DUI	379 54.8%	11 1.6%	0 0.0%	7 1.0%	18 2.6%	64 9.2%	7 1.0%	17 2.5%	110 15.9%	2 0.3%	77 11.1%	692 100.0%
	Liquor Law s	20 57.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 2.9%	0 0.0%	1 2.9%	5 14.3%	1 2.9%	7 20.0%	35 100.0%
	Disorderly Conduct	86 47.3%	8 4.4%	0 0.0%	3 1.6%	1 0.5%	19 10.4%	0 0.0%	3 1.6%	44 24.2%	5 2.7%	13 7.1%	182 100.0%
Other	Offenses Agst. Family/Children	5 62.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 12.5%	0 0.0%	2 25.0%	8 100.0%
	Prostitution	24 54.5%	4 9.1%	0 0.0%	1 2.3%	0 0.0%	7 15.9%	2 4.5%	3 6.8%	1 2.3%	0 0.0%	2 4.5%	44 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	24 28.9%	0 0.0%	0 0.0%	1 1.2%	5 6.0%	12 14.5%	0 0.0%	0 0.0%	37 44.6%	1 1.2%	3 3.6%	83 100.0%
	All Other Offenses	2,435 46.1%	110 2.1%	27 0.5%	28 0.5%	92 1.7%	498 9.4%	15 0.3%	81 1.5%	1,538 29.1%	50 0.9%	405 7.7%	5,279 100.0%
Total		3,561	179	30	44	153	803	30	122	2,204	74	608	7,808
Column Percent		45.6%	2.3%	0.4%	0.6%	2.0%	10.3%	0.4%	1.6%	28.2%	0.9%	7.8%	100.0%

Age and Sex of Juveniles Arrested for Part II Offenses

Maui County, 2016

Type	Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Violent	Negligent	M	0	0	0	0	0	0	0	0.0%
	Manslaughter	F	0	0	0	0	0	0	0	0.0%
	Other Assault	M	0	0	7	3	3	5	18	72.0%
		F	0	1	2	1	1	2	7	28.0%
	Sex Offenses	M	0	0	0	2	0	0	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
Property-Related	Forgery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Fraud	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Embezzlement	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Stolen Property	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Vandalism		M	0	1	0	2	0	2	5	62.5%
		F	0	0	0	1	0	2	3	37.5%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	0	0	1	0	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Drug Possession	Opium or Cocaine	M	0	0	1	1	3	0	5	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	4	14	9	15	8	50	56.2%
		F	0	6	14	9	8	2	39	43.8%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	0	0	0	0	1	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
Gambling	Bookmaking	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Numbers & Lottery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Alcohol-Related	DUI	M	0	0	0	0	0	1	1	50.0%
		F	0	0	0	0	0	1	1	50.0%
	Liquor Laws	M	0	0	7	4	4	8	23	62.2%
		F	0	1	6	4	1	2	14	37.8%
	Disorderly Conduct	M	0	0	0	0	0	2	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
Other	Offenses Agst. Family/Children	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Prostitution	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Suspicion	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Weapons	M	0	1	1	0	1	0	3	100.0%
		F	0	0	0	0	0	0	0	0.0%
	All Other Offenses	M	0	5	18	14	20	17	74	78.7%
		F	0	1	10	0	2	7	20	21.3%
Status	Curfew	M	1	3	14	14	21	5	58	61.1%
		F	0	1	15	8	6	7	37	38.9%
	Runaway	M	0	4	15	13	15	5	52	48.1%
		F	0	0	15	14	19	8	56	51.9%
Total		M	1	18	77	63	83	53	295	62.5%
		F	0	10	62	37	37	31	177	37.5%
Column Percent		M	100.0%	64.3%	55.4%	63.0%	69.2%	63.1%	62.5%	
		F	0.0%	35.7%	44.6%	37.0%	30.8%	36.9%	37.5%	

Race/Ethnicity of Juveniles Arrested for Part II Offenses
Maui County, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	9 36.0%	1 4.0%	0 0.0%	0 0.0%	1 4.0%	3 12.0%	0 0.0%	0 0.0%	8 32.0%	0 0.0%	3 12.0%	25 100.0%
	Sex Offenses	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 100.0%
Property-Related	Forgery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Fraud	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Embezzlement	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Stolen Property	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vandalism	0 0.0%	1 12.5%	0 0.0%	0 0.0%	0 0.0%	1 12.5%	0 0.0%	0 0.0%	3 37.5%	0 0.0%	3 37.5%	8 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Drug Possession	Opium or Cocaine	2 40.0%	1 20.0%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	0 0.0%	5 100.0%
	Marijuana	21 23.6%	4 4.5%	0 0.0%	1 1.1%	2 2.2%	20 22.5%	1 1.1%	1 1.1%	32 36.0%	0 0.0%	7 7.9%	89 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	1 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%
	Liquor Law s	8 21.6%	0 0.0%	0 0.0%	2 5.4%	1 2.7%	4 10.8%	0 0.0%	3 8.1%	8 21.6%	0 0.0%	11 29.7%	37 100.0%
	Disorderly Conduct	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%
Other	Offenses Agst. Family/Children	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Prostitution	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 66.7%	0 0.0%	0 0.0%	3 100.0%
	All Other Offenses	19 20.2%	1 1.1%	0 0.0%	0 0.0%	0 0.0%	11 11.7%	0 0.0%	1 1.1%	46 48.9%	0 0.0%	16 17.0%	94 100.0%
Status	Curfew	20 21.1%	1 1.1%	0 0.0%	1 1.1%	2 2.1%	38 40.0%	0 0.0%	1 1.1%	24 25.3%	1 1.1%	7 7.4%	95 100.0%
	Runaw ay	14 13.0%	4 3.7%	1 0.9%	1 0.9%	3 2.8%	13 12.0%	0 0.0%	6 5.6%	48 44.4%	0 0.0%	18 16.7%	108 100.0%
Total		95	13	1	5	9	95	1	12	174	1	66	472
Column Percent		20.1%	2.8%	0.2%	1.1%	1.9%	20.1%	0.2%	2.5%	36.9%	0.2%	14.0%	100.0%

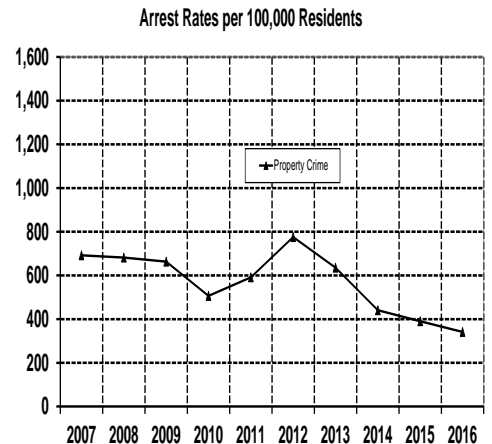
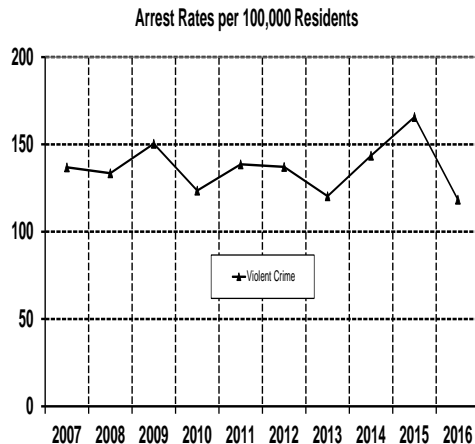
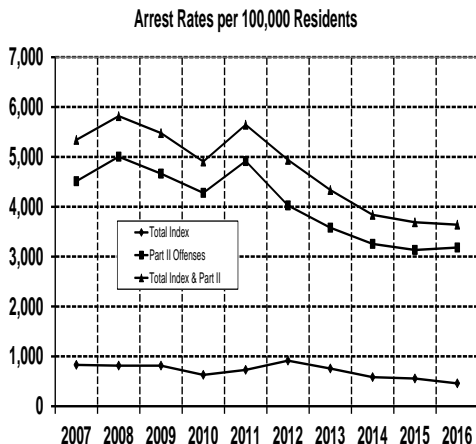
Total Arrests

Kauai County, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index Arrests	521	519	514	428	495	626	521	411	396	330
Violent Crime Index	86	85	95	84	94	94	83	101	118	85
Murder	1	1	1	1	1	0	1	1	1	3
Rape*	13	11	6	7	3	8	2	4	6	7
Robbery	11	8	10	7	13	10	9	11	15	7
Aggravated Assault	61	65	78	69	77	76	71	85	96	68
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Property Crime Index	435	434	419	344	401	532	438	310	278	245
Burglary	73	93	70	49	64	67	57	44	29	43
Larceny-Theft	306	297	315	270	304	437	346	235	228	180
Motor Vehicle Theft	48	39	31	25	32	25	34	31	17	18
Arson	8	5	3	0	1	3	1	0	4	4

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Part II Offenses	2,834	3,187	2,945	2,907	3,333	2,760	2,468	2,290	2,231	2,285
Total Index & Part II	3,355	3,706	3,459	3,335	3,828	3,386	2,989	2,701	2,627	2,615



Adult Arrests for Index Offenses, Kauai County, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	347	358	346	306	354	484	431	332	323	273
Total Violent	71	68	82	67	83	82	69	86	91	80
Violent Crime										
Murder	1	1	1	1	1	0	1	1	1	3
Rape*	11	11	6	6	3	6	1	4	5	6
Robbery	10	7	7	5	13	10	9	10	13	7
Aggravated Assault	49	49	68	55	66	66	58	71	72	64
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Total Property	276	290	264	239	271	402	362	246	232	193
Property Crime										
Burglary	50	66	51	40	51	64	49	40	26	41
Larceny-Theft	200	198	190	184	200	318	279	180	187	141
Motor Vehicle Theft	18	25	20	15	19	18	33	26	16	9
Arson	8	1	3	0	1	2	1	0	3	2

Juvenile Arrests for Index Offenses, Kauai County, 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Index	174	161	168	122	141	142	90	79	73	57
Total Violent	15	17	13	17	11	12	14	15	27	5
Violent Crime										
Murder	0	0	0	0	0	0	0	0	0	0
Rape*	2	0	0	1	0	2	1	0	1	1
Robbery	1	1	3	2	0	0	0	1	2	0
Aggravated Assault	12	16	10	14	11	10	13	14	24	4
Human Trafficking - Commercial Sex Acts	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Human Trafficking - Involuntary Servitude	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Total Property	159	144	155	105	130	130	76	64	46	52
Property Crime										
Burglary	23	27	19	9	13	3	8	4	3	2
Larceny-Theft	106	99	125	86	104	119	67	55	41	39
Motor Vehicle Theft	30	14	11	10	13	7	1	5	1	9
Arson	0	4	0	0	0	1	0	0	1	2

*The FBI's revised definition for this offense was implemented in 2014; see page 3 for more information.

Age and Sex of Adults Arrested for Index Offenses

Kauai County, 2016

Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Murder	M	1	0	1	1	0	0	0	0	3	100.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Rape	M	0	1	1	2	1	0	1	0	6	100.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Robbery	M	2	2	1	1	1	0	0	0	7	100.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Aggravated Assault	M	7	3	8	11	3	2	5	10	49	76.6%
	F	2	2	2	3	1	1	2	2	15	23.4%
Human Trafficking - Commercial Sex Acts	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0	0	0.0%
Burglary	M	2	6	10	6	4	2	1	2	33	80.5%
	F	3	1	2	1	1	0	0	0	8	19.5%
Larceny-Theft	M	22	18	17	6	14	7	7	8	99	70.2%
	F	12	10	9	2	3	1	5	0	42	29.8%
Motor Vehicle Theft	M	2	1	1	0	1	1	0	0	6	66.7%
	F	2	0	1	0	0	0	0	0	3	33.3%
Arson	M	0	0	0	0	1	0	0	0	1	50.0%
	F	0	0	0	1	0	0	0	0	1	50.0%
Total	M	36	31	39	27	25	12	14	20	204	74.7%
	F	19	13	14	7	5	2	7	2	69	25.3%
Column Percent	M	65.5%	70.5%	73.6%	79.4%	83.3%	85.7%	66.7%	90.9%	74.7%	
	F	34.5%	29.5%	26.4%	20.6%	16.7%	14.3%	33.3%	9.1%	25.3%	

Race/Ethnicity of Adults Arrested for Index Offenses**Kauai County, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Murder	2 66.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	3 100.0%
Rape	4 66.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	0 0.0%	1 16.7%	0 0.0%	0 0.0%	6 100.0%
Robbery	5 71.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 14.3%	0 0.0%	0 0.0%	1 14.3%	0 0.0%	0 0.0%	7 100.0%
Aggravated Assault	38 59.4%	0 0.0%	0 0.0%	0 0.0%	5 7.8%	8 12.5%	0 0.0%	0 0.0%	13 20.3%	0 0.0%	0 0.0%	64 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	25 61.0%	0 0.0%	0 0.0%	1 2.4%	4 9.8%	1 2.4%	0 0.0%	1 2.4%	9 22.0%	0 0.0%	0 0.0%	41 100.0%
Larceny-Theft	73 51.8%	2 1.4%	0 0.0%	3 2.1%	2 1.4%	25 17.7%	0 0.0%	1 0.7%	28 19.9%	3 2.1%	4 2.8%	141 100.0%
Motor Vehicle Theft	2 22.2%	1 11.1%	0 0.0%	1 11.1%	1 11.1%	0 0.0%	0 0.0%	0 0.0%	4 44.4%	0 0.0%	0 0.0%	9 100.0%
Arson	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 100.0%
Total	150	3	0	5	12	36	0	2	58	3	4	273
Column Percent	54.9%	1.1%	0.0%	1.8%	4.4%	13.2%	0.0%	0.7%	21.2%	1.1%	1.5%	100.0%

Age and Sex of Juveniles Arrested for Index Offenses

Kauai County, 2016

Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Murder	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Rape	M	0	0	0	0	1	0	1	100.0%
	F	0	0	0	0	0	0	0	0.0%
Robbery	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Aggravated Assault	M	0	1	1	0	1	0	3	75.0%
	F	0	0	1	0	0	0	1	25.0%
Human Trafficking - Commerical Sex Acts	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Human Trafficking - Involuntary Servitude	M	0	0	0	0	0	0	0	0.0%
	F	0	0	0	0	0	0	0	0.0%
Burglary	M	0	0	1	0	0	0	1	50.0%
	F	1	0	0	0	0	0	1	50.0%
Larceny-Theft	M	0	6	4	3	2	3	18	46.2%
	F	0	1	8	2	4	6	21	53.8%
Motor Vehicle Theft	M	0	2	0	1	0	1	4	44.4%
	F	0	0	1	1	1	2	5	55.6%
Arson	M	0	0	1	0	0	1	2	100.0%
	F	0	0	0	0	0	0	0	0.0%
Total	M	0	9	7	4	4	5	29	50.9%
	F	1	1	10	3	5	8	28	49.1%
Column Percent	M	0.0%	90.0%	41.2%	57.1%	44.4%	38.5%	50.9%	
	F	100.0%	10.0%	58.8%	42.9%	55.6%	61.5%	49.1%	

Race/Ethnicity of Juveniles Arrested for Index Offenses**Kauai County, 2016**

Offense / Row %	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoaan	Other Pacific Islander	Total
Murder	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Rape	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
Robbery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Aggravated Assault	3 75.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 100.0%
Human Trafficking - Commercial Sex Acts	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Human Trafficking - Involuntary Servitude	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Burglary	2 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%
Larceny-Theft	12 30.8%	2 5.1%	0 0.0%	0 0.0%	0 0.0%	13 33.3%	0 0.0%	0 0.0%	10 25.6%	0 0.0%	2 5.1%	39 100.0%
Motor Vehicle Theft	2 22.2%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 44.4%	0 0.0%	0 0.0%	3 33.3%	0 0.0%	0 0.0%	9 100.0%
Arson	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%
Total	20	2	0	0	1	19	0	0	13	0	2	57
Column Percent	35.1%	3.5%	0.0%	0.0%	1.8%	33.3%	0.0%	0.0%	22.8%	0.0%	3.5%	100.0%

Adult Part II Arrests by Offense, Kauai County, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	0	0	0	0	0	0	3	0	0
	Other Assault	308	281	287	306	325	352	335	366	328	360
	Sex Offenses	14	5	10	10	12	17	16	12	24	11
Property-Related	Forgery	8	10	5	4	2	4	5	7	11	8
	Fraud	8	21	12	8	16	13	12	16	18	15
	Embezzlement	10	7	1	1	3	1	9	3	7	3
	Stolen Property	0	0	0	0	0	0	2	5	2	4
	Vandalism	40	62	57	51	49	48	43	56	57	58
Drug Manufacturing/Sale	Opium or Cocaine	0	0	0	0	0	0	1	0	3	3
	Marijuana	0	0	0	1	0	0	1	1	2	0
	Synthetic Narcotic	0	0	0	0	0	0	0	0	1	0
	Nonnarcotic	5	10	5	5	3	8	3	12	11	13
Drug Possession	Opium or Cocaine	5	2	3	12	9	10	2	3	5	13
	Marijuana	61	47	63	57	78	52	64	45	45	59
	Synthetic Narcotic	0	0	0	4	1	3	0	0	0	1
	Nonnarcotic	78	50	48	38	55	61	38	58	73	84
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	0	0	0	0	0	0	0	0	0
	Other	1	0	0	0	0	0	0	0	0	0
Alcohol-Related	DUI	246	198	235	226	185	209	233	240	235	161
	Liquor Law s	13	28	25	31	19	7	15	66	24	39
	Disorderly Conduct	56	45	49	47	46	66	60	62	75	73
Other	Offenses Agst. Family/Children	6	3	5	5	2	8	2	0	2	1
	Prostitution	0	0	4	0	3	0	1	0	1	1
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	22	16	25	29	25	21	18	17	16	22
	All Other Criminal Offenses	1,046	1,480	1,294	1,392	1,695	1,335	1,134	861	842	904
Total Part II Offenses		1,927	2,265	2,128	2,227	2,528	2,215	1,994	1,833	1,782	1,833
Total Index & Part II Offenses		2,274	2,623	2,474	2,533	2,882	2,699	2,425	2,165	2,105	2,106

Juvenile Part II Arrests by Offense, Kauai County, 2007-2016

Type	Specific Offense	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Violent	Negligent Manslaughter	0	0	0	0	0	0	0	0	0	0
	Other Assault	135	133	123	114	112	84	83	66	90	41
	Sex Offenses	1	4	8	6	6	4	4	3	3	3
Property-Related	Forgery	0	0	0	0	0	1	0	0	0	1
	Fraud	2	5	0	0	1	1	1	0	0	2
	Embezzlement	0	2	0	0	0	0	0	0	1	0
	Stolen Property	0	0	0	0	0	0	0	0	0	1
	Vandalism	29	46	30	24	27	7	9	18	17	10
Drug Manufacturing/Sale	Opium or Cocaine	0	0	0	0	0	1	0	0	0	0
	Marijuana	0	0	0	0	0	0	0	12	17	4
	Synthetic Narcotic	0	0	0	0	0	0	0	0	0	0
	Nonnarcotic	0	0	0	0	0	0	0	0	0	0
Drug Possession	Opium or Cocaine	0	0	0	2	1	0	0	2	0	2
	Marijuana	56	70	58	47	61	48	54	37	30	52
	Synthetic Narcotic	0	2	0	0	0	0	0	0	0	0
	Nonnarcotic	15	1	0	0	1	0	0	0	0	1
Gambling	Bookmaking	0	0	0	0	0	0	0	0	0	0
	Numbers & Lottery	0	5	0	0	0	0	0	0	0	0
	Other	2	4	0	5	0	0	0	0	0	0
Alcohol-Related	DUI	4	6	2	9	3	0	4	3	2	0
	Liquor Law s	12	29	23	21	18	15	14	14	17	18
	Disorderly Conduct	22	15	15	16	14	21	18	13	14	18
Other	Offenses Agst. Family/Children	2	0	0	0	0	0	0	0	0	0
	Prostitution	0	0	0	0	0	0	0	0	0	0
	Suspicion	0	0	0	0	0	0	0	0	0	0
	Vagrancy	0	0	0	0	0	0	0	0	0	0
	Weapons	1	2	3	1	0	1	2	1	1	2
	All Other Criminal Offenses	344	364	316	262	342	246	176	165	170	193
Status	Curfew	24	36	34	19	38	19	6	7	10	11
	Runaw ay	258	198	205	154	181	97	103	116	77	93
Total Part II Offenses		907	922	817	680	805	545	474	457	449	452
Total Index & Part II Offenses		1,081	1,083	985	802	946	687	564	536	522	509

Age and Sex of Adults Arrested for Part II Offenses
Kauai County, 2016

Type	Offense	Sex	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	Total	Row %
Violent	Negligent Manslaughter	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other Assault	M	47	27	49	32	31	30	24	21	261	72.5%
		F	17	26	19	8	10	6	6	7	99	27.5%
	Sex Offenses	M	2	1	2	1	1	1	1	2	11	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Property-Related	Forgery	M	2	2	1	0	1	0	0	0	6	75.0%
		F	0	1	0	1	0	0	0	0	2	25.0%
	Fraud	M	2	0	3	3	1	0	0	2	11	73.3%
		F	1	1	0	0	1	0	1	0	4	26.7%
	Embezzlement	M	1	0	0	0	0	0	0	0	1	33.3%
		F	1	0	0	0	0	0	1	0	2	66.7%
	Stolen Property	M	0	0	0	1	0	2	0	0	3	75.0%
		F	1	0	0	0	0	0	0	0	1	25.0%
	Vandalism	M	15	5	6	5	2	2	3	6	44	75.9%
		F	3	3	1	3	0	0	0	4	14	24.1%
Drug Manufacturing/Sale	Opium or Cocaine	M	1	1	1	0	0	0	0	0	3	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Drug Possession	Nonnarcotic	M	1	2	1	0	2	1	1	0	8	61.5%
		F	1	0	2	1	0	0	1	0	5	38.5%
	Opium or Cocaine	M	1	4	1	2	0	1	0	1	10	76.9%
		F	1	1	0	1	0	0	0	0	3	23.1%
	Marijuana	M	17	10	4	2	1	6	6	2	48	81.4%
		F	4	2	1	2	0	0	2	0	11	18.6%
Gambling	Synthetic Narcotic	M	0	0	0	1	0	0	0	0	1	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	8	8	5	15	4	9	6	3	58	69.0%
		F	4	4	8	4	4	1	1	0	26	31.0%
	Bookmaking	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
Alcohol-Related	Numbers & Lottery	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	DUI	M	41	17	23	10	16	7	4	14	132	82.0%
		F	5	6	5	4	4	1	2	2	29	18.0%
Other	Liquor Laws	M	13	5	3	1	1	0	2	5	30	76.9%
		F	7	1	0	0	1	0	0	0	9	23.1%
	Disorderly Conduct	M	8	6	14	4	5	5	7	6	55	75.3%
		F	1	3	3	3	2	0	2	4	18	24.7%
	Offenses Agst. Family/Children	M	0	1	0	0	0	0	0	0	1	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Prostitution	M	0	0	1	0	0	0	0	0	1	100.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Suspicion	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0	0	0.0%
	Weapons	M	7	0	6	1	1	3	1	0	19	86.4%
		F	1	0	1	1	0	0	0	0	3	13.6%
	All Other Offenses	M	96	97	127	95	48	55	54	72	644	71.2%
		F	50	48	32	35	30	25	15	25	260	28.8%
Total		M	262	186	247	173	114	122	109	134	1,347	73.5%
		F	97	96	72	63	52	33	31	42	486	26.5%
Column Percent		M	73.0%	66.0%	77.4%	73.3%	68.7%	78.7%	77.9%	76.1%	73.5%	
		F	27.0%	34.0%	22.6%	26.7%	31.3%	21.3%	22.1%	23.9%	26.5%	

Race/Ethnicity of Adults Arrested for Part II Offenses
Kauai County, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	146 40.6%	13 3.6%	1 0.3%	6 1.7%	15 4.2%	52 14.4%	2 0.6%	2 0.6%	108 30.0%	3 0.8%	12 3.3%	360 100.0%
	Sex Offenses	5 45.5%	0 0.0%	0 0.0%	1 9.1%	1 9.1%	1 9.1%	0 0.0%	0 0.0%	2 18.2%	0 0.0%	1 9.1%	11 100.0%
Property-Related	Forgery	6 75.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 25.0%	0 0.0%	0 0.0%	8 100.0%
	Fraud	7 46.7%	0 0.0%	0 0.0%	0 0.0%	1 6.7%	2 13.3%	0 0.0%	0 0.0%	5 33.3%	0 0.0%	0 0.0%	15 100.0%
	Embezzlement	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	3 100.0%
	Stolen Property	3 75.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 100.0%
	Vandalism	29 50.0%	0 0.0%	0 0.0%	1 1.7%	3 5.2%	4 6.9%	0 0.0%	0 0.0%	20 34.5%	0 0.0%	1 1.7%	58 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	0 0.0%	2 66.7%	0 0.0%	0 0.0%	3 100.0%
	Marijuana	0 0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	7 53.8%	0 0.0%	0 0.0%	0 0.0%	1 7.7%	2 15.4%	0 0.0%	0 0.0%	3 23.1%	0 0.0%	0 0.0%	13 100.0%
Drug Possession	Opium or Cocaine	8 61.5%	1 7.7%	0 0.0%	0 0.0%	0 0.0%	1 7.7%	0 0.0%	0 0.0%	3 23.1%	0 0.0%	0 0.0%	13 100.0%
	Marijuana	33 55.9%	2 3.4%	0 0.0%	0 0.0%	4 6.8%	5 8.5%	0 0.0%	0 0.0%	13 22.0%	0 0.0%	2 3.4%	59 100.0%
	Synthetic Narcotic	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
	Nonnarcotic	34 40.5%	0 0.0%	0 0.0%	2 2.4%	9 10.7%	13 15.5%	0 0.0%	0 0.0%	25 29.8%	0 0.0%	1 1.2%	84 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	96 59.6%	0 0.0%	3 1.9%	2 1.2%	8 5.0%	20 12.4%	0 0.0%	2 1.2%	26 16.1%	1 0.6%	3 1.9%	161 100.0%
	Liquor Law s	21 53.8%	0 0.0%	0 0.0%	0 0.0%	2 5.1%	7 17.9%	0 0.0%	0 0.0%	5 12.8%	0 0.0%	4 10.3%	39 100.0%
	Disorderly Conduct	49 67.1%	0 0.0%	0 0.0%	0 0.0%	2 2.7%	9 12.3%	0 0.0%	0 0.0%	10 13.7%	0 0.0%	3 4.1%	73 100.0%
Other	Offenses Agst. Family/Children	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
	Prostitution	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	7 31.8%	1 4.5%	0 0.0%	0 0.0%	2 9.1%	2 9.1%	0 0.0%	0 0.0%	8 36.4%	0 0.0%	2 9.1%	22 100.0%
	All Other Offenses	410 45.4%	24 2.7%	1 0.1%	18 2.0%	58 6.4%	116 12.8%	1 0.1%	0 0.0%	250 27.7%	6 0.7%	20 2.2%	904 100.0%
Total		865	42	5	30	106	236	3	4	483	10	49	1,833
Column Percent		47.2%	2.3%	0.3%	1.6%	5.8%	12.9%	0.2%	0.2%	26.4%	0.5%	2.7%	100.0%

Age and Sex of Juveniles Arrested for Part II Offenses
Kauai County, 2016

Type	Offense	Sex	0-9	10-12	13-14	15	16	17	Total	Row %
Violent	Negligent Manslaughter	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Other Assault	M	0	6	9	5	6	4	30	73.2%
		F	0	1	7	0	2	1	11	26.8%
	Sex Offenses	M	0	0	0	1	0	1	2	66.7%
		F	0	0	0	1	0	0	1	33.3%
Property-Related	Forgery	M	0	0	0	0	1	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Fraud	M	0	0	1	1	0	0	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Embezzlement	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Stolen Property	M	0	0	0	1	0	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Vandalism	M	0	2	4	2	1	1	10	100.0%
		F	0	0	0	0	0	0	0	0.0%
Drug Manufacturing/Sale	Opium or Cocaine	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	0	0	0	1	0	1	25.0%
		F	0	0	2	0	1	0	3	75.0%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Drug Possession	Opium or Cocaine	M	0	1	1	0	0	0	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
	Marijuana	M	0	5	7	8	5	6	31	59.6%
		F	0	0	9	3	4	5	21	40.4%
	Synthetic Narcotic	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Nonnarcotic	M	0	1	0	0	0	0	1	100.0%
		F	0	0	0	0	0	0	0	0.0%
Gambling	Bookmaking	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Numbers & Lottery	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Other	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
Alcohol-Related	DUI	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Liquor Laws	M	0	1	1	0	2	1	5	27.8%
		F	0	0	3	1	5	4	13	72.2%
	Disorderly Conduct	M	0	7	4	1	1	1	14	77.8%
		F	0	1	1	1	1	0	4	22.2%
Other	Offenses Agst. Family/Children	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Prostitution	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Suspicion	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Vagrancy	M	0	0	0	0	0	0	0	0.0%
		F	0	0	0	0	0	0	0	0.0%
	Weapons	M	0	0	2	0	0	0	2	100.0%
		F	0	0	0	0	0	0	0	0.0%
	All Other Offenses	M	2	9	20	25	27	23	106	54.9%
		F	0	2	13	27	34	11	87	45.1%
Status	Curfew	M	0	0	0	2	2	0	4	36.4%
		F	0	0	2	2	2	1	7	63.6%
	Runaway	M	0	4	7	10	5	10	36	38.7%
		F	0	2	7	11	21	16	57	61.3%
Total		M	2	36	56	56	51	47	248	54.9%
		F	0	6	44	46	70	38	204	45.1%
Column Percent		M	100.0%	85.7%	56.0%	54.9%	42.1%	55.3%	54.9%	
		F	0.0%	14.3%	44.0%	45.1%	57.9%	44.7%	45.1%	

Race/Ethnicity of Juveniles Arrested for Part II Offenses
Kauai County, 2016

Type	Offense	White	Black	Indian	Chinese	Japanese	Filipino	Korean	Other Asian	Hawaiian	Samoan	Other Pacific Islander	Total
Violent	Negligent Manslaughter	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other Assault	13 31.7%	0 0.0%	0 0.0%	0 0.0%	1 2.4%	15 36.6%	0 0.0%	0 0.0%	10 24.4%	0 0.0%	2 4.9%	41 100.0%
	Sex Offenses	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 66.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 100.0%
Property-Related	Forgery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	1 100.0%
	Fraud	2 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 100.0%
	Embezzlement	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Stolen Property	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	1 100.0%
	Vandalism	4 40.0%	0 0.0%	0 0.0%	0 0.0%	1 10.0%	3 30.0%	0 0.0%	0 0.0%	2 20.0%	0 0.0%	0 0.0%	10 100.0%
Drug Manufacturing/Sale	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Marijuana	1 25.0%	0 0.0%	0 0.0%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	2 50.0%	0 0.0%	0 0.0%	4 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Drug Possession	Opium or Cocaine	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 100.0%
	Marijuana	21 40.4%	1 1.9%	0 0.0%	0 0.0%	1 1.9%	9 17.3%	0 0.0%	0 0.0%	18 34.6%	0 0.0%	2 3.8%	52 100.0%
	Synthetic Narcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Nonnarcotic	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 100.0%
Gambling	Bookmaking	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Numbers & Lottery	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Other	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Alcohol-Related	DUI	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Liquor Law s	6 33.3%	0 0.0%	0 0.0%	0 0.0%	1 5.6%	7 38.9%	0 0.0%	0 0.0%	4 22.2%	0 0.0%	0 0.0%	18 100.0%
	Disorderly Conduct	8 44.4%	0 0.0%	0 0.0%	0 0.0%	2 11.1%	5 27.8%	3 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	18 100.0%
Other	Offenses Agst. Family/Children	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Prostitution	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Suspicion	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Vagrancy	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
	Weapons	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 100.0%
	All Other Offenses	59 30.6%	5 2.6%	0 0.0%	2 1.0%	8 4.1%	67 34.7%	0 0.0%	1 0.5%	41 21.2%	1 0.5%	9 4.7%	193 100.0%
Status	Curfew	7 63.6%	0 0.0%	0 0.0%	0 0.0%	2 18.2%	1 9.1%	0 0.0%	0 0.0%	1 9.1%	0 0.0%	0 0.0%	11 100.0%
	Runaw ay	21 22.6%	1 1.1%	0 0.0%	5 5.4%	3 3.2%	42 45.2%	0 0.0%	0 0.0%	17 18.3%	0 0.0%	4 4.3%	93 100.0%
Total		143	7	0	7	20	154	3	1	98	1	18	452
Column Percent		31.6%	1.5%	0.0%	1.5%	4.4%	34.1%	0.7%	0.2%	21.7%	0.2%	4.0%	100.0%

APPENDIX A

DEFINITIONS

AGGRAVATED ASSAULT: An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury; attempted murder. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed. Attacks by personal weapons, such as hands, fists, feet, etc., which result in serious or aggravated injury.

ARSON: Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

ASSAULT: An unlawful attack by one person upon another. Includes Aggravated Assault (Part I Offense) and Other Assaults (Part II Offense).

BURGLARY: The unlawful entry of a structure to commit a felony or a theft. Includes forcible entry, unlawful entry where no force is used, and attempted forcible entry where no entry occurs.

CARGO THEFT: Criminal taking of any cargo, in whole or in part, while moving in commerce at all points between the point of origin and the final destination, regardless of any temporary stop while awaiting transshipment or otherwise.

CLEARANCE: An offense is "cleared" either by arrest or exceptional means. An offense is cleared by arrest when at least one person is arrested; charged with the commission of the offense; and turned over to the court for prosecution. An offense is cleared by exceptional means when the identity of the offender is known; there is enough evidence to support an arrest, charge, and turning over to the court for prosecution; the exact location of the offender is known; and, for reasons outside the control of law enforcement, the offender cannot be arrested, charged, and prosecuted. Examples of offenses cleared by exceptional means include suicide of the offender, double murder, deathbed confession, and denied extradition. It should be noted that the number of offenses and not the number of persons arrested is used to count clearances. Several offenses may be cleared by the arrest of one person; or the arrest of several people may clear only one offense.

CRIME INDEX: The ten Part I Offenses reported in the Uniform Crime Reporting Program to represent the status of crime in the United States: murder and non-negligent manslaughter (the latter term is not used in Hawaii), rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, arson, human trafficking: commercial sex acts, and human trafficking: involuntary servitude.

CRIME RATE: The number of crimes per 100,000 population (usually the resident population) is obtained using the following equation:

$$Crime\ Rate = \left(\frac{Number\ of\ Crimes}{Resident\ Population} \right) \times 100,000$$

More accurate crime rates (e.g., the number of rapes per 100,000 females or the number of motor vehicle thefts per 100,000 vehicles) are not reported in *Crime in the U.S.* and, therefore, are not used in *Crime in Hawaii*.

CRIMINAL HOMICIDE: The willful (nonnegligent) killing of one human being by another or the killing of another person through gross negligence. Includes Murder and Nonnegligent Manslaughter (the latter term is not used in Hawaii), and Manslaughter by Negligence.

DE FACTO POPULATION: The number of persons physically present in an area, regardless of military status or usual place of residence. Includes visitors present and excludes residents temporarily absent.

HUMAN TRAFFICKING – COMMERCIAL SEX ACTS: Inducing a person by force, fraud, or coercion to participate in commercial sex acts, or in which the person induced to perform such act(s) has not attained 18 years of age.

HUMAN TRAFFICKING – INVOLUNTARY SERVITUDE: The obtaining of a person(s) through recruitment, harboring, transportation, or provision, and subjecting such persons by force, fraud, or coercion into involuntary servitude, peonage, debt bondage, or slavery (not to include commercial sex acts).

JUVENILE: Person under the age of 18.

LARCENY-THEFT: The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Includes pocket-picking, purse-snatching, shoplifting, theft from motor vehicles, theft of motor vehicle parts and accessories, theft of bicycles, etc. Does not include embezzlement, forgery, or motor vehicle theft.

MOTOR VEHICLE THEFT: The theft or attempted theft of a motor vehicle, including automobiles, trucks, buses, motorcycles, motor scooters, snowmobiles, etc.

MURDER: The willful (nonnegligent) killing of one human being by another.

NONVIOLENT OFFENSES: Include the offense categories of larceny-theft, burglary, and auto theft. Often referred to as Property Offenses (excluding robbery).

PART I OFFENSES: Offenses which make up the Crime Index: murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, arson, human trafficking: commercial sex acts, and human trafficking: involuntary servitude; plus the offense of manslaughter by negligence.

PART II OFFENSES: All criminal offenses not classified as Part I Offenses. Also included are the juvenile status offenses of curfew/loitering violation and runaway. See Appendix B for specific Part II Offense definitions.

PROPERTY OFFENSES: Include larceny-theft, burglary, auto theft, and arson. Robbery is classified as a violent crime due to the use or threat of force.

RAPE (revised): Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Statutory rape (without force) and other sex offenses are not included in this category.

Rape (legacy): The carnal knowledge of a female forcibly and against her will. Sexual assaults against males are not included in this category.

RESIDENT POPULATION: The number of persons whose usual place of residence is in an area, regardless of physical location on the estimated census date. Includes military personnel stationed or homeported in the area and excludes persons of local origin attending school or in military service outside the area.

ROBBERY: The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim(s) in fear. While robbery has the attributes of a property crime, it is grouped with violent crimes due to the additional attribute of force or the threat of force.

VIOLENT OFFENSES: Include the offense categories of murder, rape, robbery, aggravated assault, human trafficking: commercial sex acts, and human trafficking: involuntary servitude.

APPENDIX B

PART II OFFENSES

CRIMINAL OFFENSES

ASSAULT, OTHER: Assaults and attempted assaults where no weapon was used or which did not result in serious or aggravated injury to the victim. Examples include simple assault, assault and battery, resisting or obstructing an officer, intimidation, coercion, and hazing.

DISORDERLY CONDUCT: Committing a breach of the peace. Includes affray; unlawful assembly; disturbing the peace; disturbing meetings; and blasphemy, profanity, and obscene language.

DRIVING UNDER THE INFLUENCE: Driving or operating any vehicle or common carrier while drunk or under the influence of intoxicants.

DRUG ABUSE VIOLATIONS: Include all violations of state and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of illegal drugs.

EMBEZZLEMENT: Misappropriation or misapplication of money or property entrusted to one's care, custody, or control.

FORGERY AND COUNTERFEITING: All offenses dealing with the making, altering, uttering, or possession of, with intent to defraud, anything false in the semblance of what is true.

FRAUD: Fraudulent conversion and obtaining money or property by false pretenses. Includes bad checks (except forgeries and counterfeiting), confidence games, and unauthorized withdrawal of money from an automatic teller machine.

GAMBLING: Promoting, permitting, or engaging in illegal gambling. Includes 3 subcategories: bookmaking, numbers and lottery, and "other" gambling.

LIQUOR LAWS: Include unlawful manufacture, sale, transporting, furnishing, possessing intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor; and drinking on a train or public conveyance. Do not include Drunkenness and Driving Under the Influence.

MANSLAUGHTER BY NEGLIGENCE: The killing of another person through gross negligence. Manslaughter by negligence is considered a Part I Offense but is not included in the Crime Index.

OFFENSES AGAINST THE FAMILY AND CHILDREN: Include all charges of nonsupport and neglect or abuse of family and children. Examples include desertion, abandonment, or nonsupport of spouse or child; neglect or abuse of spouse or child; and nonpayment of alimony.

PROSTITUTION AND COMMERCIALIZED VICE: Sex offenses of a commercialized nature, broken down into three subcategories: prostitution; assisting or promoting prostitution; and purchasing prostitution. These offense types are included in the prostitution and commercialized vice category: keeping a bawdy house, disorderly house, or house of ill fame; pandering, procuring, transporting, or detaining women for immoral purposes, etc.; and all attempts.

SEX OFFENSES: Include indecent exposure, incest, statutory rape (no force), other offenses against common decency and morals, and all attempts. Do not include rape, prostitution, and commercialized vice.

STOLEN PROPERTY: Buying, receiving, and possessing stolen property, including attempts.

VAGRANCY: Persons arrested on grounds of "suspicion" may be prosecuted on this charge. Includes vagrancy, begging, loitering (persons 18 and over), and vagabondage.

VANDALISM: The willful or malicious destruction, injury, disfigurement, or defacement of any public or private property, real or personal, without consent of the owner or person having custody or control by cutting, tearing, breaking, marking, painting, drawing, covering with filth, or any other such means as may be specified by local law.

WEAPONS OFFENSES: Include unlawful manufacture, sale, or possession of deadly weapons; unlawful carrying of deadly weapons, concealed or openly; using, manufacturing, etc. silencers; furnishing deadly weapons to a minor; and all attempts to commit any of the above.

ALL OTHER OFFENSES: Include all other state and local offenses (excluding traffic violations) not included elsewhere. Examples are:

- Admitting minors to improper places
- Abduction and compelling to marry
- Bigamy and polygamy
- Blackmail and extortion
- Combination in restraint of trade; trusts, monopolies
- Contempt of court
- Criminal anarchism
- Discrimination, unfair competition
- Kidnapping
- Marriage within prohibited degrees
- Offenses contributing to juvenile delinquency, such as employment of children in immoral vocations or practices
- Perjury and subornation of perjury
- Possession, repair, manufacture, etc. of burglar's tools
- Possession of drug paraphernalia
- Possession or sale of obscene literature, pictures, etc.
- Public nuisances
- Riot and rout
- Trespass
- Unlawfully bringing drugs and liquor into state prisons, hospitals, etc.; furnishing to convicts
- Violations of state regulatory laws and municipal ordinances
- Violation of quarantine
- Truancy (noncriminal juvenile status offense)
- Ungovernability (noncriminal juvenile status offense)
- All offenses not otherwise classified
- All attempts to commit any of the above

NONCRIMINAL OFFENSES

STATUS OFFENSES (PERSONS UNDER 18): Noncriminal acts or conduct which are offenses only when committed or engaged in by juveniles; include curfew violation and runaways.

CURFEW AND LOITERING: Included are violations of local curfew or loitering ordinances.

RUNAWAYS: Apprehension for protective custody as defined by local statute.

NONCRIMINAL ARREST CATEGORY

SUSPICION: While “suspicion” is not an offense, it may be the grounds for many arrests in those jurisdictions where the law permits. After examination by law enforcement officers, the prisoner is either formally charged or released. Those formally charged are entered in one of the Index or Part II offense classes. This class is limited to “suspicion” arrests where persons arrested are released by the police.

APPENDIX C**CARGO THEFT***

Cargo theft occurs when cargo or a shipment is stolen during the supply chain, and before it gets to the end-user or the business.

Cargo theft occurs in conjunction with the following offenses: robbery, theft from a building, theft from a motor vehicle, all other larceny, fraud, impersonation, extortion and blackmail, burglary, motor vehicle theft, embezzlement, and bribery. Attempts to steal a cargo load are not counted as cargo theft.

**Cargo Theft Incidents
State of Hawaii, 2014-2016**

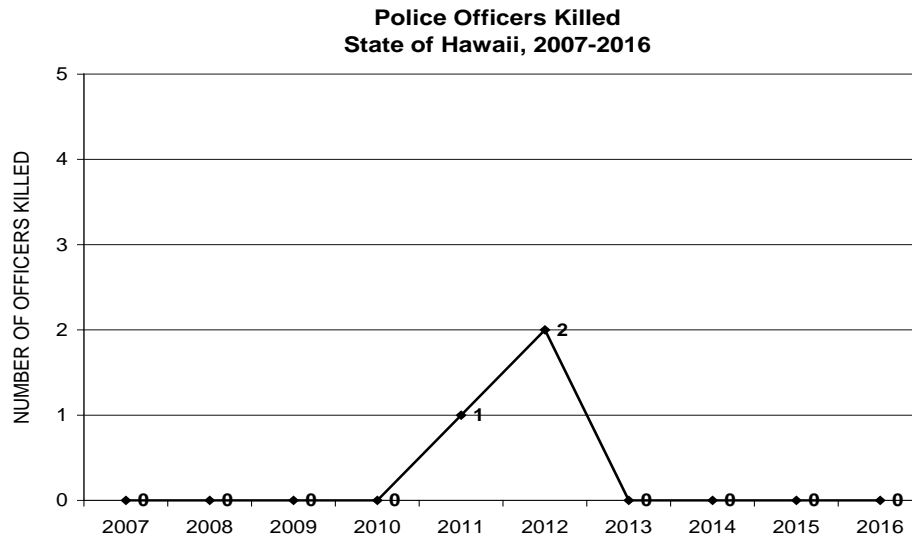
	2014	2015	2016
City & County of Honolulu	0	0	0
Hawaii County	0	0	0
Maui County	1	0	0
Kauai County	0	0	0
State of Hawaii	1	0	0

No cargo theft offenses were reported in the State of Hawaii in 2016.

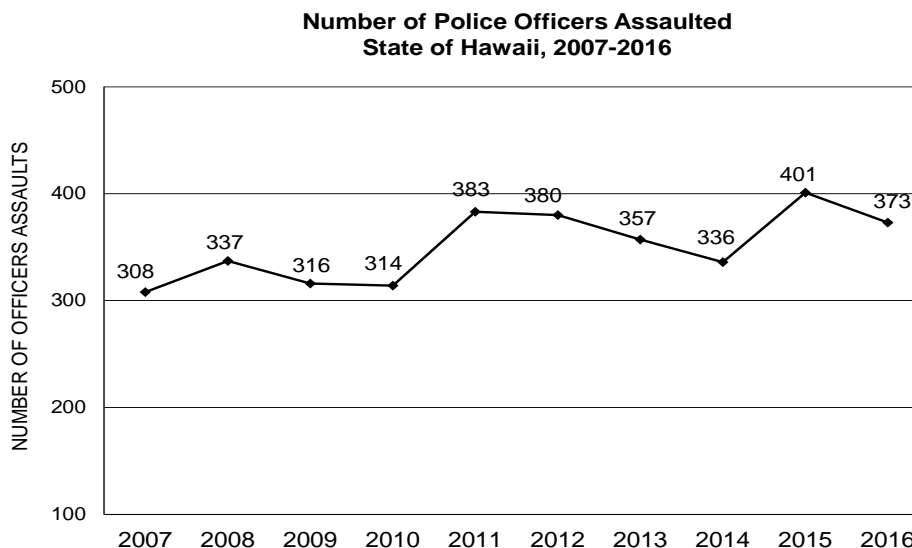
**On January 1, 2014, the State of Hawaii began collecting data for cargo theft. See page 3 for more information.*

APPENDIX D**POLICE OFFICERS KILLED AND ASSAULTED
AND
POLICE DEPARTMENT EMPLOYEE STATISTICS**

There were no police officers killed in the State of Hawaii in 2016. The chart below shows the trend of officers killed over the course of the prior decade.

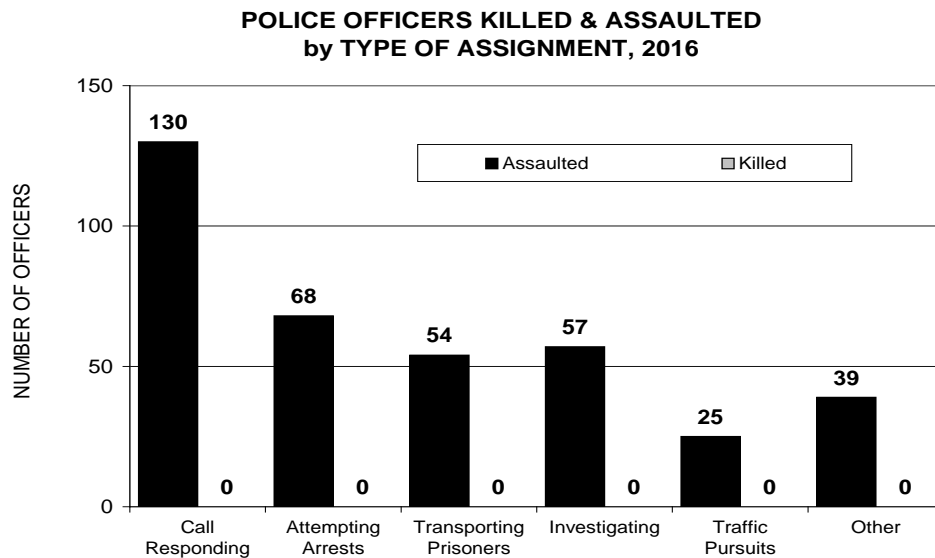


The number of police officers assaulted in the line of duty in the State of Hawaii decreased in 2016. The graph below demonstrates the trend of assaults on officers over the last 10 years. The number of assaults on police officers followed a generally stable trend, with an average of 351 assaults occurring per year. The most notable increases occurred in 2011 and 2015.

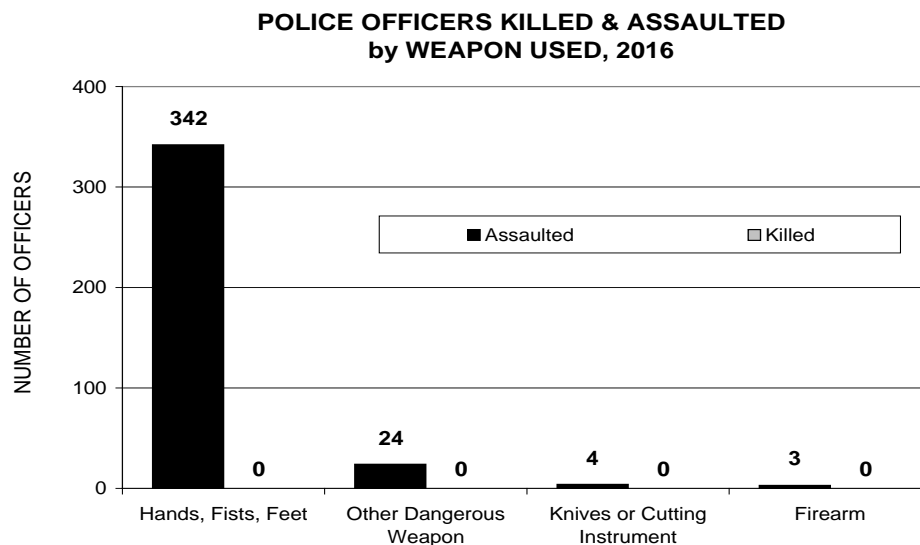


By county, assaults on officers during 2015 were distributed as follows: 78.3% (292) in the City & County of Honolulu, 9.7% (36) in Maui County, 6.4% (24) in Hawaii County, and 5.6% (21) in Kauai County.

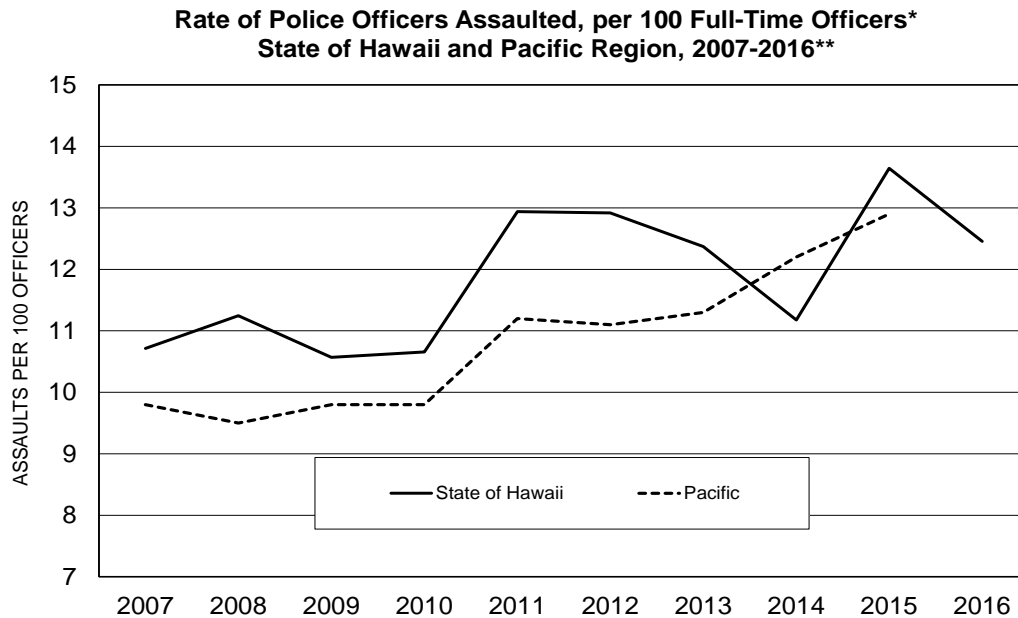
Most of the assaults on police officers during 2016 occurred when the officers were responding to disturbance calls (130, 34.9%). Police officers attempting arrests posed the second greatest risk (68, 18.2%). Fifty-seven (15.3%) assaults on police officers occurred while investigating suspicious persons. Fifty-four (14.5%) assaults occurred while handling or transporting prisoners and 39 (10.5%) occurred when officers were performing “other” (i.e., responding to civil disorders, interacting with mentally deranged persons, etc.) types of duties. Traffic pursuits and stops accounted for 25 (6.7%) of the assaults.



The use of “strongarm” physical force is most often the means of assault on police officers. In 2016, 91.7% (342) of the assaulted officers were attacked by hands, fists, or other bodily means. The following chart shows the breakdown of weapons used in assaults in 2016.

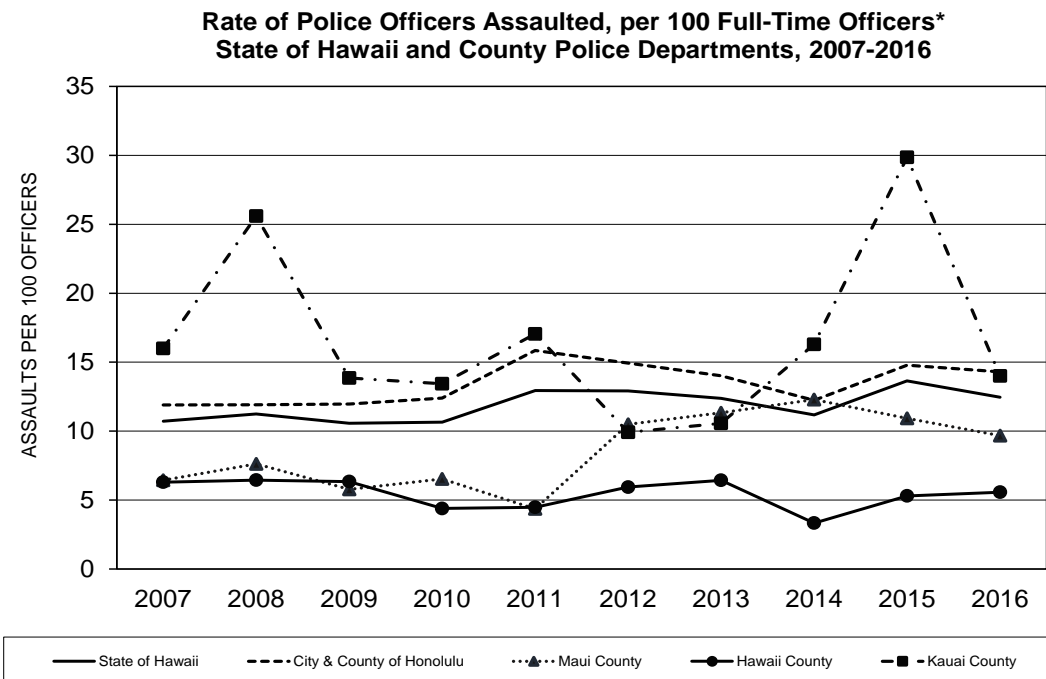


On October 31, 2016, 2,995 full-time police officers were employed by the county police departments. The 373 assaults on police officers resulted in a rate of 12.5 attacks per 100 police officers statewide.



**Figure for "Pacific" region for the *Crime in the United States, 2016* report not available as of the date of this publication.

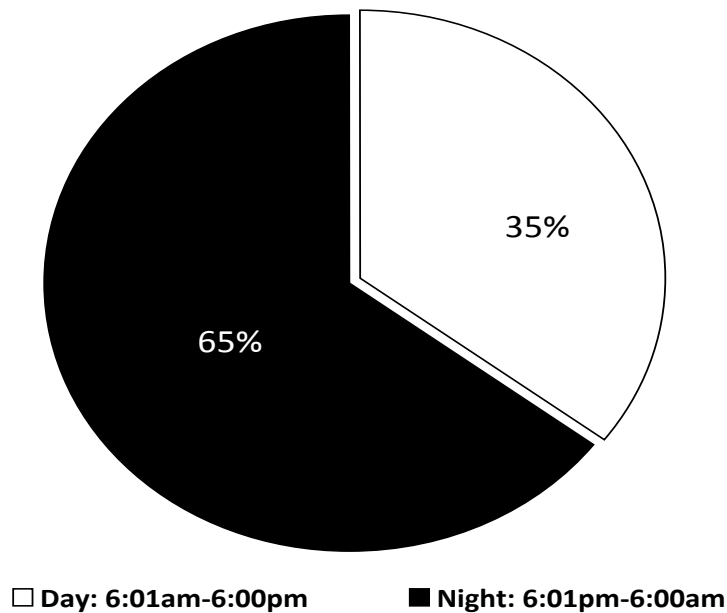
A total of 292 (78.3%) of the 373 officers assaulted statewide in 2016 were assaulted in the City & County of Honolulu, yielding an assault rate of 14.3 per 100 police officers, the highest rate in the State of Hawaii. Kauai County reported a rate of 14.0 assaults per 100 officers, and the rates of assaults on police officers in Maui County and Hawaii County were 9.7 and 5.6 per 100 officers, respectively.



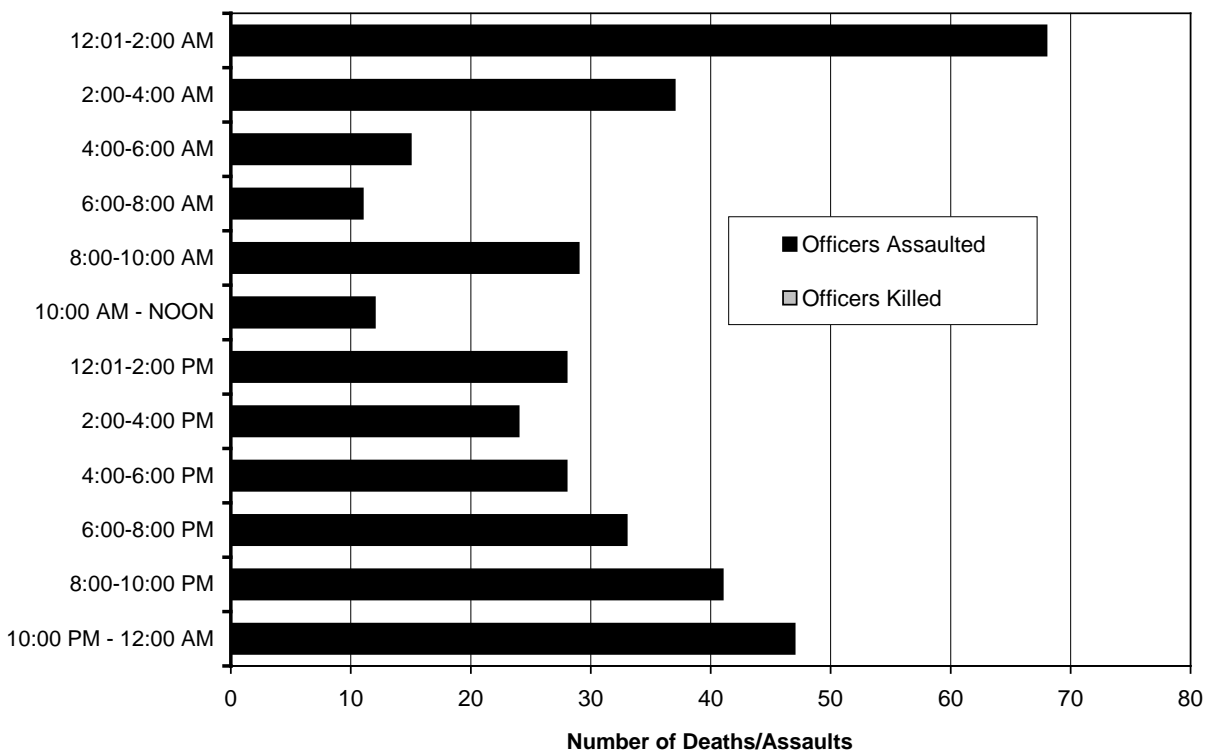
* "Full-time officers" refers to all full-time sworn law enforcement officers. This total does not include special officers, merchant police or others who are not paid from law enforcement funds. "Pacific" refers to the FBI geographic category of the "Pacific States." Included in this category are Alaska, California, Hawaii, Oregon, and Washington.

During 2016, 65% (241) of all assaults on police officers occurred between 6:01 p.m. and 6:00 a.m., and the balance of 35% (132) assaults occurred between 6:01 a.m. and 6:00 p.m.

Assaults on Police Officers, Day vs. Night



Time of Day Officers Killed/Assaulted



Police Department Employees as of October 31**State of Hawaii, 2007-2016**

Year	State Total			City & County of Honolulu			Hawaii County		
	Total Employees	Police Officers	Civilians	Total Employees	Police Officers	Civilians	Total Employees	Police Officers	Civilians
2016	3,779	2,995	784	2,537	2,042	495	559	431	128
2015	3,765	2,939	826	2,539	1,995	544	557	434	123
2014	3,776	3,006	770	2,578	2,093	485	543	420	123
2013	3,658	2,886	772	2,433	1,956	477	571	435	136
2012	3,720	2,942	778	2,531	2,057	474	552	421	131
2011	3,733	2,960	773	2,544	2,063	481	551	424	127
2010	3,725	2,947	778	2554	2,066	488	536	410	126
2009	3,802	2,990	812	2610	2,105	505	561	426	135
2008	3,795	2,997	798	2620	2,125	495	552	419	133
2007	3,675	2,875	800	2,543	2,042	501	543	397	146

Year	Maui County			Kauai County		
	Total Employees	Police Officers	Civilians	Total Employees	Police Officers	Civilians
2016	486	372	114	197	150	47
2015	475	366	109	194	144	50
2014	467	358	109	188	135	53
2013	462	353	109	192	142	50
2012	462	343	119	175	121	54
2011	462	344	118	176	129	47
2010	460	337	123	175	134	41
2009	454	329	125	177	130	47
2008	447	328	119	176	125	51
2007	418	311	107	171	125	46

APPENDIX E

POPULATION ESTIMATES

State and county resident population estimates for *Crime in Hawaii 2016* are from the U.S. Census Bureau.

The United States census of population is taken as of April 1 in each year ending in zero. Intercensal population estimates are made as of July 1 in each non-census year. Estimates based on the just-completed census are also made for July 1 of census years. While the FBI continues to use exact census populations to calculate crime rates in census years, the *Crime in Hawaii* reports use July 1 estimated populations to determine crime rates for all years. In so doing, a regular progression of estimates taken at 12-month intervals is available to more accurately reflect crime rate trends.

Population Estimates, 2007-2016

YEAR	STATE OF HAWAII	CITY & COUNTY OF HONOLULU	HAWAII COUNTY	MAUI COUNTY	KAUAI COUNTY
2016	1,428,557	995,572	196,392	164,771	71,822
2015	1,431,603	999,307	196,167	164,926	71,203
2014	1,419,561	994,034	192,937	162,229	70,361
2013	1,404,054	984,683	190,767	159,652	68,952
2012	1,392,313	975,875	189,115	158,760	68,563
2011	1,374,810	963,465	187,053	156,485	67,807
2010	1,360,301	950,268	188,811	153,246	67,976
2009	1,288,198	906,349	175,691	142,994	63,164
2008	1,288,198	905,034	175,784	143,691	63,689
2007	1,283,388	905,601	173,057	141,902	62,828



2017 Service Efforts & Accomplishments Report

Office of the City Auditor • City and County of Honolulu • State of Hawai'i

Report No. 18-01 / March 2018

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Calls for Service

Chapter 20 - Honolulu Police Department

Over the last five years, the percentage of HPD Calls for 911 Service increased 23% from 701,604 in FY 2013 to 862,053 in FY 2017 and increased 17% from 737,355 in FY 2016. According to the department, overall increase in calls for service can be attributed to the rise in the number of offenses requiring immediate police assistance and other emergency situations. Additionally, the increase usage of cell phones may generate multiple calls for service by several individuals reporting the same incident such as a motor vehicle collision.

The percentage of False Alarms decreased 11% over the last five years from 30,517 in FY 2013 to 27,306 in FY 2017. According to the department, the decrease in the False Alarms can be attributed to alarm users being assessed a service charge for false alarms.

Over the past five years, the average response time for Priority 1 calls has increased a total of 0.13 minutes from 7.24 minutes in FY 2013 to 7.37 minutes in FY 2017. Priority 1 calls include emergencies and in-progress cases. The average response time for Priority 2 calls decreased 2.27 minutes from 12.24 in FY 2013 to 9.57 minutes in FY 2017. Priority 2 calls include forgery, fraud, vandalism, weapons, prostitution, drugs, gambling, driving while intoxicated, etc.

	Priority 1 Average Response (minutes) ¹	Priority 2 Average Response (minutes) ¹
FY 2013	7.24	12.24
FY 2014	7.33	12.03
FY 2015	7.27	11.59
FY 2016	7.34	10.15
FY 2017	7.37	9.57
Change from last year	<1%	-6%
Change over last 5 years	2%	-22%

Source: Honolulu Police Department. ¹Response time is measured from receipt of the 911 call to arrival at the scene.

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- Requires a text enabled/capable cellular phone. It is necessary that Location Services on the phone be turned on.
- Text messages only. No group messages, photos, videos or emojis will be accepted.
- Text messages must be brief and easily understood.
- Use plain English. No abbreviations, short cuts or slangs.
- Text to 9-1-1 services may not be available everywhere and at all times.
- No guarantee a text message will be sent or received.
- Voice call preferred. Text only when you cannot make a call.

www.hawaiiextto911.com

Source: Honolulu Police Department

Text-to-911 Program enables those who are unable to call for help with a voice call to text calls for service directly to the 911 call center. This feature is a way for members of the public to discreetly request for help from the HPD when it may be unsafe to make a voice call. It is also useful for those who are deaf/hearing impaired or are in an area with unreliable cellular connectivity. This service also allows for easier access to the HPD services.

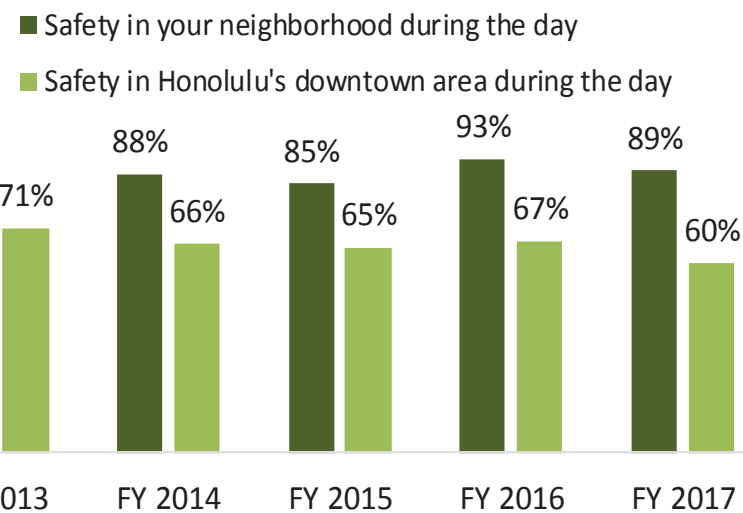
Crime

Police data for reporting Part 1 and Part 2 offenses are in accordance with the FBI Uniform Crime Reporting (FBI-UCR) guidelines.¹ Part 1 Offenses decreased 13% from FY 2016. HPD explained that this may be due to several factors, including economic and social factors and changes in laws and ordinances.

The percentage of Adult Arrests and Juvenile Arrests declined significantly over the last five years by 43% and 69% respectively in FY 2017. The department attributes the decrease due to the reflection of the November 2016 change in record management system.

In FY 2017, 89% of Honolulu residents reported that they feel *very* or *somewhat safe* in their neighborhoods during the day. This is similar to the benchmark for jurisdictions with populations over 300,000 and 4% lower than FY 2016. In FY 2017, 60% of Honolulu residents reported feeling *very* or *somewhat safe* in downtown Honolulu during the day. The ratings for neighborhood safety and downtown safety are similar to the benchmark for jurisdictions with populations over 300,000, and the latter is 7% lower than FY 2016.

Citizen Ratings for Feeling Safety During the Day (% Very or Somewhat Safe)



Source: 2017 National Citizen Survey (Honolulu)

	Actual Offenses			Arrests			Clearance Rates for Part 1 Offenses			
	Part 1 Offenses	Part 2 Offenses ³	Total Offenses	Adult Arrests	Juvenile Arrests	Total Arrests	Homicide	Rape	Robbery	Larceny Theft
FY 2013	33,400	56,648	90,048	29,522	5,698	35,220	73.3%	51.0%	30.7%	15.2%
FY 2014 ²	34,175	56,772	90,947	30,804	5,654	36,458	91.0%	40.0%	28.0%	16.0%
FY 2015 ²	30,960	57,700	88,660	31,671	4,754	36,425	31.0%	29.0%	24.0%	15.0%
FY 2016	35,228	59,132	94,360	23,911	3,863	27,774	108.0%	51.0%	27.0%	13.0%
FY 2017	30,612	58,241	88,853	16,791	1,749	18,540	95.0%	30.0%	20.0%	9.0%
Change from last year	-13%	-2%	-6%	-30%	-55%	-33%	-13%	-21%	-7%	-4%
Change over last 5 years	-8%	3%	-1%	-43%	-69%	-47%	22%	-21%	-11%	-6%

Source: Honolulu Police Department. ¹ The department complies with FBI Uniform Crime Reporting guidelines in reporting Part 1 and Part 2 offenses. Part 1 includes murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Part 2 includes all other offenses, such as other assaults, forgery, fraud, vandalism, weapons, prostitutions, other sex offenses, drug crimes, gambling, family offenses, liquor laws, driving while intoxicated, and disorderly conduct. ² Estimated. Data reported for the period between March 2014 and June 30, 2014; July 2014 to November 2014 unavailable. ³ Data provided are the actual numbers.

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Traffic Services

Chapter 20 - Honolulu Police Department

The Traffic Division is responsible for promoting the safe and efficient movement of traffic on the public roadways through educational programs, traffic management, enforcement of traffic laws, and investigating death and critical injury collisions and felony traffic crimes.



HPD and AARP Supporting Traffic Awareness

Source: Honolulu Police Department



Source: Honolulu Police Department Website

The HPD continued its Safer Roads Campaign, which is an ongoing effort by the department and community groups to reduce the rate and severity of traffic collisions. Efforts to deter hazardous driving ranged from speed enforcement in affected corridors to monitoring places where racers congregate. Total fatalities decreased 64% from 42 in FY 2016 to 15 in FY 2017, and those with critical injuries decreased 31% from 45 in FY 2016 to 31 in FY 2017.

	Death and Serious Injury			Motor Vehicle Collisions				Enforcement			Citizen Survey
	Fatalities	Critical Injury	Failure to Render Aid ¹	Major ²	Minor	Non-Traffic	Total	OVUII Arrests ³	Moving Citations	Hands-Free Law Violations	Traffic Enforcement
FY 2013	63	43	8	5,108	17,360	7,597	30,065	4,277	119,672	13,586	33%
FY 2014	54	27	10	6,560	18,627	6,195	31,382	4,742	110,721	6,786	34%
FY 2015	52	56	3	4,719	16,733	7,291	28,743	4,665	136,022	10,813	34%
FY 2016	42	45	7	4,247	13,706	6,478	24,431	4,274	135,851	11,928	30%
FY 2017	15	31	15	6,059	22,791	3,016	31,866	4,008	142,241	9,123	33%
Change from last year	-64%	-31%	114%	43%	66%	-53%	30%	-6%	5%	-24%	3%
Change over last 5 years	-76%	-28%	88%	19%	31%	-60%	6%	-6%	19%	-33%	0%

Source: Honolulu Police Department. ¹Failure to Render Aid is a felony involving serious injury to the victim. ²A major motor vehicle collision involves injury or damage of \$3,000 or more. ³"OVUII" refers to the offense of Operating a Vehicle Under the Influence of an Intoxicant.

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The problem of feral pigs

By **MICHAEL BRESTOVANSKY** *Hawaii Tribune-Herald* (<https://www.hawaiitribune-herald.com/author/michael-brestovansky/>) |
Monday, December 25, 2017, 10:05 a.m.

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APPENDIX 254

Although feral pig populations on the Big Island appear to remain steady, for some residents, swine incursions will make the holiday a brown Christmas.

Hunting and trapping seem to be continuing to serve their purpose in maintaining pig numbers at an acceptable level across the island, said Ian Cole, natural area specialist for the Hawaii Island Division of Forestry and Wildlife.

ADVERTISING



However, Cole said, doing a thorough pig population census is next to impossible, and the nature of wild pigs may make them appear more numerous in certain areas than in others.

"It's difficult. Homeowners in Puna might tell you pigs are running amok, and at the same time, hunters will say there are no pigs on the mountain," Cole said.

Cole said that, because of pigs' constant pursuit of forage and food, they do not stay in one place long enough to obtain an accurate census.

Broadly, however, Cole said that a relative shortage of food in the highlands may have encouraged greater numbers of pigs to seek food closer to populated areas, noting that the Division of Forestry and Wildlife received a spate of calls regarding pigs on private property several weeks ago.

Hawaiian Beaches resident Larry Hovious said his property has attracted the unwanted attention of several pigs recently, with several of the animals tearing apart his lawn in search of earthworms.

"It's been every other day for the last two or three weeks," Hovious said. "I've lived here for 13, 14 years, and it's the first time it's ever really been an issue."

Hovious said he wasn't sure whether the pigs had caused problems for his neighbors, but noted that the animals appeared particularly attracted to a specific section of his yard, theorizing that the patch of land is particularly earthworm-rich.

No pig management program has existed in Hawaii County since 2008, when the yearlong Feral Pig Control Pilot Project ended. That program, a state Department of Agriculture project with a budget of \$250,000, established a list of vetted hunters who would trap and kill pigs when they were reported on private property so their blood could be taken for disease monitoring.

While that project has ended, the list of hunters from that program remains, and is

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referred to when residents complain of wild pigs on their property, Cole said.

However, some think that the absence of management programs has made a pig's ear of the situation.

"There's too many pigs and not enough hunters to trap them," said Tom Lodge, chair of Hawaii County's Game Management Advisory Commission.

Cole acknowledged that hunters are often swamped by calls regarding wild pigs, as many residents seem to report the animals at around the same time.

Meanwhile, Cole said the Division of Forestry and Wildlife had previously lent pig traps to residents, but no longer does so after residents failed to return them.

Lodge said the animals are forced into contact with people more often because they are not able to access less-populated areas in the forest. Fences on state land prevent pigs from entering protected forest areas because they can do significant damage to low-lying plants and seedlings as well as soil-dwelling insects and animals as they root for food.

While Lodge said he has not seen any evidence that pigs damage the forest, Cole said wild pig-related environmental damage is well-documented. The U.S. Department of Agriculture recognizes wild pigs as a destructive invasive species and has a number of programs to control them throughout the country.

Cole said the state's liberal hunting regulations should continue to sufficiently manage the pig population, although he admitted the animals will be a perennial nuisance to residents.

ADVERTISING

The advertisement is a vertical rectangle with a black background. At the top, it features the HomeStreet Bank logo in white and blue, followed by a large blue square containing the white text '[CD]'. Below this, the text 'Featured Certificate of Deposit' is written in a light blue font. A solid blue horizontal band contains the text '7-MONTH CD' in white. Below the band, the text '2.00%' is displayed in large white font, with 'APY*' in smaller white font underneath. At the bottom left, there is a blue button with the white text 'Learn more'. At the bottom right, the FDIC logo is visible, along with a small icon of a house and the text '*Annual Percentage Yield'.

"Whenever you create a new lot, you've just displaced more pigs," Cole said. "And then you bring in so many hundreds of pounds of soil for a lawn, and they come in and say, 'Thanks for making this yard for me.'"

Email Michael Brestovansky at mbrestovansky@hawaiitribune-herald.com

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HAWAII NEWS

Puna residents complain of squatters, looters and thieves

By [Kevin Dayton](#)

Posted June 28, 2018

June 28, 2018

Updated June 28, 2018 3:08pm

1 / 2



GEORGE F. LEE / GLEE@STARADVERTISER.COM

A no-trespassing sign was posted Tuesday at this Leilani Estates home on Malama Street.

Looting and squatting in vacant houses is a growing problem in some of the Puna neighborhoods that have been evacuated and closed off to the public because of the Kilauea eruption, according to area residents.

Robert Petricci, a longtime Lower Puna resident, said his home on Pohoiki Road was in good shape when he left it, but “there are people running around in



there, going house to house and looting our homes, and we can't get in there and defend them."

That comment at a public meeting at the Pahoehoe High School cafeteria Tuesday evening prompted scattered applause from the audience of about 200 Puna residents.

Petricci said outsiders are entering the evacuation zone on boats that land at Pohoiki Harbor. "We need the National Guard down there at Pohoiki checking ID's, and we've been trying to get this for a while now before it happened, and it's getting worse and worse and worse."

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"I'm upset because my house was OK, and it didn't have to end up this way, and it's this way because we can't get any help," Petricci said. "I'm here begging you to do something about that because I want to go back to my house."

Hawaii County Civil Defense Administrator Talmadge Magno said people "shouldn't be in there looting," but did not offer any immediate, specific suggestions for residents.

Minutes later John Hendricks, who said his family lost homes in Kapoho and in the Leilani Estates subdivision, told Magno that his son's house in Leilani burned down while his son was in the hospital. There was live vegetation all around the house, and Hendricks said he doesn't believe the fire was caused by lava.



"What are you guys really doing about squatters?" he asked. "I mean, they burn houses down, they steal. Leilani is full of squatters and thieves and people, and you can't get rid of them. ... What are you guys gonna do?"

Magno suggested residents report squatters to the police, but Hendricks said that wasn't possible because no one was home to report the intruders. Magno noted that residents are still entering and leaving Leilani Estates to retrieve their belongings.

"So, basically nothing," Hendricks interrupted, and abruptly ended the exchange by telling Magno "thank you," and walking away from a microphone set up for residents to ask questions at the meeting.

Also expressing concern about squatters was Tanya Chuoke, president of the community association for the Black Sand Beach Subdivision. There have been no lava flows in that subdivision, but it is close to Leilani Estates, and residents need passes to access the subdivision from Highway 130.

"Squatting is rampant in our neighborhood," she told Magno, adding that residents need a "toolbox" of legal strategies to help them cope with intruders who simply move into vacant homes.

The subdivision has about 1,000 lots and normally has about 100 residents, but only about 70 remain because people have left or moved to an emergency shelter in Pahoia, Chuoke said in an interview.

"We've always had a bit of a problem with squatters, but now that certain people have left their homes, a bunch of looters are coming into the subdivision and raiding these empty houses," she said. Solar panels, water pumps and gas water heaters — items generally outside the homes — are common targets for thieves, she said.

Chuoke said that in one case a neighbor obtained a power of attorney from an absent homeowner to evict a squatter from a home, but police "didn't do anything with the guy, they basically just shooed him out, which means he probably went into another house somewhere that we don't know about."

Hawaii County Police Maj. Samuel Jelsma, district commander for Puna, said police have heard unconfirmed accounts of looting in the Kapoho area, but it was only recently that two residents were "able to verify that indeed their homes have been entered and items removed."

"The problem remains that this area is not accessible by vehicle traffic and the only access is by boat, air, or an extended walk in over a hardened lava flow," Jelsma said in an emailed response to questions. "An additional issue is the fact that the area has not been designated an evacuation area, the Pohoiki Boat Ramp also is technically not closed. So potentially there is a mix of residents and looters freely roaming the area."



That is unlike the designated exclusion area in Leilani Estates, where people found in the area can be cited or arrested, Jelsma wrote. He said there are plans in the works for re-establishing a police checkpoint a half-mile from Opihikao on Highway 137 to cut off walking access, but "the majority of the people accessing the area are believed to be arriving by boat," he wrote.

"Keeping a constant 24-hour presence in Pohoiki and Kapoho for either the National Guard or police would be an expensive and potentially hazardous commitment," Jelsma wrote. The risks would include dangerous fumes as the lava enters the ocean, and fast-moving lava flows.

It also would be expensive because helicopters would be needed to ferry police, supplies and equipment to and from the area, he said.

Squatters are an ongoing problem in the Puna district and the issue is further complicated when foreclosed homes are owned by mainland banks, which means police have no "victims" to report the trespassers, Jelsma said.

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TOP NEWS

Honolulu's 911 system overwhelmed during panic

By [Dan Nakaso](#)

Posted January 13, 2018

January 13, 2018

Updated January 17, 2018 12:22pm



GEORGE F. LEE / GLEE@STARADVERTISER.COM

Honolulu Mayor Kirk Caldwell addressed the media this afternoon at the City and County Emergency Operations Cen

Honolulu's 911 dispatch system was overwhelmed with more than 5,000 telephone calls — “more than they could handle” — in response to this morning's false alert of a missile attack, Mayor Kirk Caldwell said today, but no injuries or accidents appear to be related to the ensuing panic and confusion.

Honolulu Police Chief Susan Ballard said about 2,500 callers to 911 could not get through and operators will get back to them to ensure there were no actual

emergencies.

Caldwell said the only report of damage he heard of occurred "when a guy in a golf cart" damaged his cart following the alert.

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Police officers were notified within minutes that the alert was false, Ballard said. City officials chose to follow existing protocol and waited for state officials who issued the alert to correct the mistake, Ballard said.

But officers used their public address systems to calm people on their beats, Ballard said.

Two fire trucks were handling medical emergencies when the false alert went out at 8:07 a.m. today, Honolulu Fire Chief Manuel "Manny" Neves said. They then returned to their stations.

"Everybody stood their post," Neves said.

At the same time, TheBus had 320 buses and Handi-Van vehicles on the road, said Roger Morton, CEO of Oahu Transit Services, Inc.

In response to some social media reports that bus passengers were ordered off, Morton said some drivers did urge passengers to get off the bus and seek shelter. And some drivers drove passengers to the police sub-station in Waianae to seek shelter.

"I'm not going to say there weren't miscommunications," Morton said.

No. 12-17808

In The United States Court of Appeals
For The Ninth Circuit

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAI'I, et al.,

Defendants-Appellees.

**On Appeal from the United States District Court
for the District of Hawaii, Case No. 1:12-cv-00336-HG-BMK
Honorable United States District Judge Helen Gillmor**

**BRIEF OF AMICUS CURIAE HAWAII FIREARMS COALITION
IN OPPOSITION TO PETITION FOR REHEARING *EN BANC* AND
IN SUPPORT OF APPELLANT AND DENIAL OF REHEARING**

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I. STATEMENT OF AMICUS CURIAE

Amicus Curiae Hawaii Firearms Coalition (HFC), a non-profit, member driven organization incorporated under the laws of the State of Hawaii with its principal place of business in Honolulu, Hawaii, submits this brief in opposition to the petition for rehearing *en banc* filed on September 14, 2018 (Dkt. No. 155).

HFC has an interest in this case because an erroneous *en banc* reversal of the panel opinion will unconstitutionally deprive Hawaii citizens of the right to adequately defend themselves, their family, and their property. HFC believes that it is widely known in the State of Hawaii and the County of Hawaii, that the State of Hawaii and the County of Hawaii have historically refused to even consider issuing a permit to carry a firearm to an otherwise qualified citizen, except security officers, and that this conduct deprives Hawaii citizens of their right to self-defense pursuant to the Second Amendment.

HFC seeks a rule of law that is uniquely tailored to Hawaii Island's rural circumstances, which are explained below and in the attached declarations of retired Hawaii County Police Lieutenant Don Watson and Retired Hawaii County Police Officer Thomas Fratinardo. *See* HCFAdd-1 and *See* HFCAdd-3, respectively. HFC seeks a rule of law that does not prohibit citizens from defending themselves, and advances legal protections for liberty, free speech, and the bearing of arms. Hawaii Firearms Coalition promotes legislative and legal

action, as well as research, publishing, and advocacy, in support of people's civil liberties. Hawaii Firearms Coalition litigates firearm-regulation cases, and it has consistently advocated for a principled interpretation of the United States Constitution to prevent government from violating the basic civil rights of its citizens.

Members of HFC have provided informed analysis in a variety of firearm-related cases, including *Fisher vs. Louis Kealoha, et al.*, 855 F. 3d 1067 (9th Cir. 2017), *Roberts vs. City and County of Honolulu*, Civ. No. 15-00467 ACK-RLP, and *Roberts vs. Ballard, et al.*, Civ. No. 18-00125. As discussed in the Argument below, the right to armed self-defense and due process are among our basic civil rights.¹

¹ This brief was not authored in whole or in part by any party's counsel. No party, counsel, or other person — other than amicus curiae and its counsel — contributed money intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief. Fed. R. App. Rule 29, 9th Cir. Rule 29-2.

II. SUMMARY OF ARGUMENT

Hawaii County, Hawaii, is a sprawling, rural, 4,028.4 square mile county²; located in the southeast corner of the Hawaiian Archipelago³, the most remote island chain in the world.⁴ Hawaii County is made up entirely of Hawaii Island, also aptly known as the, “Big Island” or just “Hawaii Island”. Hawaii Island is very unique and unlike anywhere else in the world, boasting 10 of the world’s 14 climate zones.⁵ One would have to travel from Alaska to Costa Rica to find the same number of climatic zones found within Hawaii Island. It is located 214 miles by air from the state capital, Honolulu, approximately 2,400 miles by air from the continental United States, and approximately 4,500 by air from North

² This figure is approximate, Hawaii County is the only county in the United States that continues to grow. Recently, a 6.9 magnitude earthquake precipitated the eruption of Kilauea Volcano on Hawaii Island’s east side. Over several months these vents sent molten lava roaring through villages and destroying more than 700 homes in Leilani Estates, Kapoho, and neighboring communities before dumping into the Pacific Ocean. 850 acres, or 1.36 square miles of new land were created along the southeastern coast.

³ The Hawaiian Island archipelago stretches some 1,500 miles from South Point, on Hawaii Island, northwest to Kure Island, which is located just northwest of the most northwest inhabited Hawaiian Island, Midway Island.

⁴ Western Pacific Regional Fishery Management Council, [wpccouncil.org, \(http://www.wpcouncil.org/managed-fishery-ecosystems/hawaii-archipelago/\)](http://www.wpcouncil.org/managed-fishery-ecosystems/hawaii-archipelago/) (accessed 11/17/18).

⁵ D. Paiva, “Hawaii has 10 of the world's 14 climate zones: An explorer's guide to each of them,” [hawaiiimagazine.com](http://hawaiiimagazine.com/content/hawaii-has-10-worlds-14-climate-zones-explorers-guide-each-them), Nov. 10, 2015 (<https://www.hawaiiimagazine.com/content/hawaii-has-10-worlds-14-climate-zones-explorers-guide-each-them>) (accessed 11/17/18).

Korea.⁶ Hawaii Island has the world's most active volcano, Kilauea; so barren and unforgiving that NASA chose Hawaii Island volcanoes for training to simulate the surface of the moon and the isolation of Mars.⁷ Hawaii has two snow capped mountains, both over 13,500 feet high, and 266 miles of rugged, remote coastline.

Hawaii County's 4,028 square miles are made up of 9 districts; South Kona, North Kona, South Kohala, North Kohala, Hamakua, North Hilo, South Hilo, Puna, and Ka'u.⁸ With its 922 square miles, Ka'u District alone is more than twice the size of Los Angeles County, but with a population of only 8,500.⁹

Hawaii County has no freeways, and relies almost entirely on two lane highways¹⁰. *See* HFCAdd-4, 6. Roads can become blocked and communities isolated by lava flows. A relatively large segment of the population lives "off grid" in remote, rural, sparsely populated areas with very few police officers available. *See* HFCAdd-4. Some areas lack county water and rely on rain water

⁶ "Hilo to ..." timeanddate.com (<https://www.timeanddate.com/worldclock/distances.html?n=1083>) (accessed 11/17/18).

⁷ AP, "Mars mission isolation simulation on Hawaii volcano ending," cbsnews.com, Sept. 15, 2015 (<https://www.cbsnews.com/news/mars-mission-isolation-simulation-hawaii-volcano-ending/>) (accessed 11/17/18).

⁸ "Big Island of Hawaii Districts, (<https://www.to-hawaii.com/big-island/districts.php>) (accessed 11/17/18).

⁹ "Hawaii County, Hawaii," (https://en.wikipedia.org/wiki/Hawaii_County,_Hawaii#Geography) (accessed 11/17/18).

¹⁰ The highway near the airport area in Kona is being widened.

catchment, some lack electricity and rely on solar energy, and some lack telephone service. *See* HFCAdd-4. Many lack all three utilities. Various populated and unpopulated areas of Hawaii Island, including major highways and recreational areas, have spotty or non-existent cellphone coverage. *See* HFCAdd-4.

Frequently, it is impossible for citizens to contact emergency assistance without traveling several miles or more to get cellphone reception. *See* HFCAdd-4.

Once police are contacted, police response times may take over one hour. *See* HFCAdd-5. Because of the unique, volcanic, rural nature of Hawaii Island, the citizen's of Hawaii Island cannot always rely on police protection and must always be prepared to defend themselves and their families.

Hawaii County is a uniquely rural, outlier jurisdiction. Hawaii County citizen's live in a unique environment. Dangerous situations must be addressed quickly, and because the police department frequently cannot give timely assistance, Hawaii County citizens must defend themselves and their families. We agree with the panel and Mr. Young that HRS §134-9 is not properly tailored to the unique needs of the citizens of Hawaii County and cannot pass any type of scrutiny, including intermediate scrutiny. Rehearing *En Banc* should be denied.

III. ARGUMENT

A. The Big Island is Big and Rural

1. The Big Island is Big

Hawaii Island's 4,028 square miles account for two thirds¹¹ of Hawaii State's 6,422.6¹² square miles. This means that Hawaii Island is almost twice the size of all the other Hawaii islands combined. Hawaii Island is the largest island in the United States, even larger than Kodiak Island, Alaska,¹³ and has five active volcanoes¹⁴.

Rising 13,803 feet above sea level, Mauna Kea is slightly taller than Mauna Loa and is the State's highest point.¹⁵ Mauna Kea is dormant. With its remote, high elevation, dry environment, and stable airflow, Mauna Kea's summit is one of

¹¹ "Big Island of Hawaii Travel Guide," to-hawaii.com, (<https://www.to-hawaii.com/big-island/>) (last accessed 11/17/18).

¹² Hawaii State also includes 4,508 square miles of water, for a total area of 10,931 square miles. The land mass of the islands is 6,423 square miles. *See* "Hawaii," worldatlas.com, (<https://www.worldatlas.com/webimage/countrys/namerica/usstates/hilandst.htm>) (last accessed 11/17/18).

¹³ https://en.wikipedia.org/wiki/List_of_islands_of_the_United_States_by_area, (last accessed 11/17/18).

¹⁴ Kilauea, Mauna Loa, Hualalai, Mauna Kea and Lo'ihi. Between 1912 and 2018, there have been at least 50 Kilauea eruptions, 12 Mauna Loa eruptions, and one Hualalai intrusion of magma. Mauna Kea most recently erupted only about 4,000 years ago. Lo'ihi, the submarine volcano is located off the south coast of Kilauea, erupted twice between 1950 and 1996.

¹⁵ Mauna Kea Visitor Information Center, "Visiting the Summit", ifa.hawaii.edu, (<http://www.ifa.hawaii.edu/info/vis/visiting-mauna-kea/visiting-the-summit.html>) (accessed 11/17/2018).



13,803 foot snow capped Mauna Kea, from Kona¹⁶



Mauna Kea snow and observatories, Kilauea Volcano erupting in background¹⁷

the best sites in the world for astronomical observation.¹⁸ Mauna Loa and Mauna Kea are frequently snow capped in the winter months.

2. Hawaii Island is 98% Rural

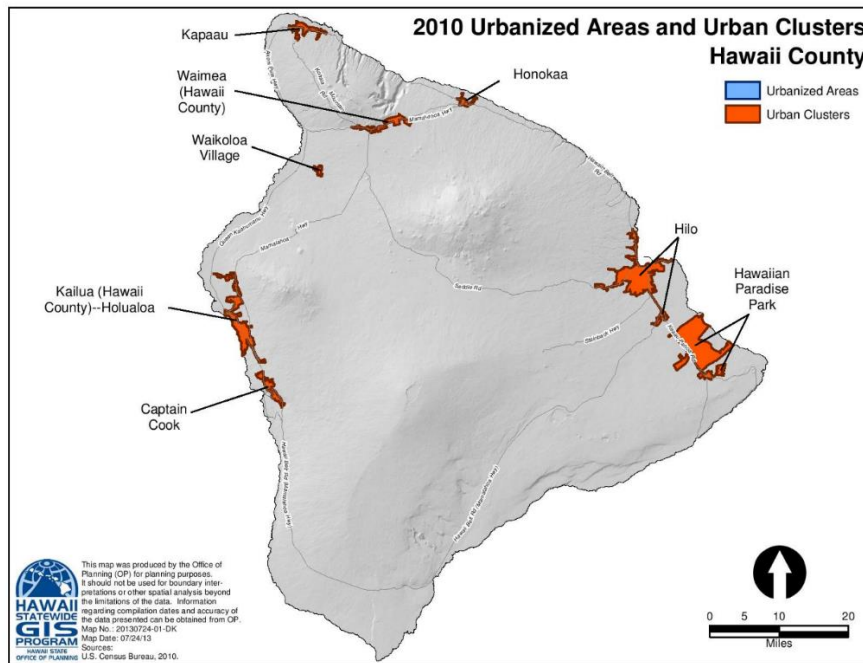
According to the State of Hawaii, Hawaii County has, “3,942 square miles of rural land where 70,300 people reside [with] an average of 18 people ... in every square mile”, and “87 square miles of urban land where 114,800 people reside,

¹⁶ C. Herreria, “Hawaii Had More Snow This Week Than Denver Or Chicago Has Had All Year” huffingtonpost.com, Mar. 4, 2017 (https://www.huffingtonpost.com/entry/hawaii-snow-denver-chicago_us_58bale31e4b05cf0f400c753) (accessed 11/18/18).

¹⁷ D. Rice “Flake news: It's snowing in Hawaii” usatoday.com, Feb. 6, 2018 (<https://www.usatoday.com/story/weather/2018/02/06/snow-hawaii/312741002/>) (accessed 11/18/18).

¹⁸ Mauna Kea Visitor Information Center, “Visiting the Summit”, ifa.hawaii.edu, (<http://www.ifa.hawaii.edu/info/vis/visiting-mauna-kea/visiting-the-summit.html>) (accessed 11/17/2018).

[with] an average of 1,300 people live in every square mile”. *See* HFCAdd-9, Urban and Rural Areas in the State of Hawaii, by County: 2010, Hawaii State Data Center. Thus, Hawaii County is 98% rural¹⁹. Hawaii County’s rural area has fewer persons per square mile than any state in the 9th Circuit, except Alaska (one person per square mile) and Montana (seven persons per square mile).²⁰ Yet, fifty-nine years after statehood, the State of Hawaii and Hawaii County still refuses to issue permits to carry in Hawaii County.



See HFCAdd-16.

¹⁹ 3,942 square miles divided by 4,028 square miles equals 97.9 %.

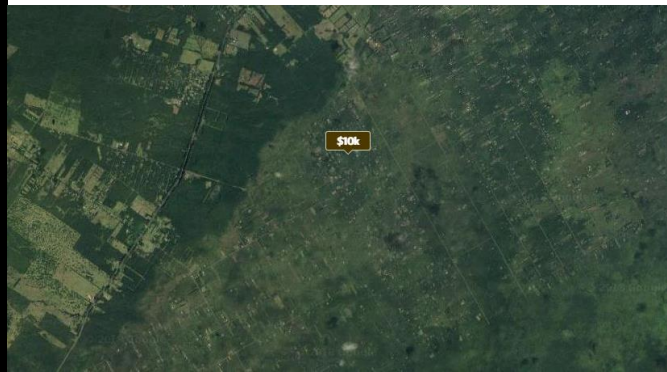
²⁰ “50 States Populations (2010 Census)”, netstate.com, (http://www.netstate.com/states/tables/state_population_2010.htm) (accessed 11/17/18).

Many homes on Hawaii Island are “off grid”. Off grid homes may rely on water catchment, solar electricity, and septic tanks. Some have attachment to the electrical grid, but nothing else. Many have no postal delivery and no telephone service. Cellphone coverage across the entire island can be spotty or non-existent. Homes with no cellphone coverage are completely isolated from the outside world.

A few geographically large neighborhoods consist entirely of poorly maintained dirt or gravel roads narrowly cut through dense ohia²¹ and fern forests, with no street lighting. The rough gravel roads are narrowly cut through dense Ohia and fern forests.



Amakihi Street, Typical Rural Street, Mountain View, Hawaii Island.²²



Satellite view of Amakihi St., with realty sales marker. *See* footnote 17.

²¹ Ohia is a species of flowering evergreen tree in the myrtle family that is endemic to Hawaii. Its height varies, 65 to 80 ft tall in favorable situations, and a much smaller shrub when growing in boggy soils or rocky ground.

²² F. Bertram, HawaiiLife.com (<https://www.hawaiilife.com/fawnbertram/listings/amakihi-st-mountain-view-hi-96771>) (accessed 11/17/18).

These neighborhoods are sporadically populated with small to medium sized homes, usually on one to twenty acre lots. Most lots in these neighborhoods are unoccupied and have never been cleared or developed and remain in their natural forested state. Others were developed, then abandoned, and are now overgrown with vegetation. Most often, the dense forest has tall, spindly ohia trees that are surrounded by thick, impassable ferns. Many homes are set back in these tropical forests and cannot be seen from the road. The distance between occupied lots may be one half mile or more. There are no mail boxes to mark the location of driveways. Small, unmarked dirt driveways cut into the forest can be very difficult for police officers to find, especially on dark, rainy nights. Citizens living in these neighborhoods and in need of assistance must somehow describe the location of their property to 911 dispatch *See* HFCAdd-4 .

Many recreational areas on Hawaii Island are very remote and accessible only by four-wheel drive. *Id.* These remote areas can be found in the mountains and along the coast. *Id.* It may be impossible for a citizen to obtain police protection in these areas, because there is often no cellphone reception and no means to contact the police. *Id.* Even if there is cellphone coverage, it may take hours for a police officer to get the call, drive to the main station in his District, obtain a four-wheel drive, drive to the general location, find a passable four-wheel

drive road, and then travel slowly on the four-wheel drive road to the location.

Id.

3. Hawaii Island's Active Volcanoes Create Lava Flows That Isolate Communities and Prevent Police Protection

Kilauea Volcano is the world's most active volcano and has been erupting almost continuously since 1983. Kilauea's eruptions and lava flows have physically isolated citizens by surrounding inhabited areas with impassable lava. The 2018 eruption covered 13 square miles of land, destroyed over 700 homes and added 850 acres (1.36 square miles) of new coastal land to the island²³.



²³ J. Magin, "Number of homes destroyed by Kilauea eruption reaches 700, Hawaii County officials say," bizjournals.com, July 9, 2018 (<https://www.bizjournals.com/pacific/news/2018/07/09/number-of-homes-destroyed-by-kilauea-eruption.html>) (accessed 11/17/18); E. Klemmeti, "Kilauea's Summit Collapsed Into Itself" blogs.discoverymagazine.com, Oct. 17, 2018 (http://blogs.discoverymagazine.com/rockyplanet/2018/10/17/watch-kilaueas-summit-collapse-into-itself/#.W_BfoThKi70) (accessed 11/17/18).

Hawaii Island lava flows are a recurrent problem, blocking roads and isolating communities and residents from emergency assistance. Gas masks can be needed to protect residents from toxic fumes.²⁴

Rising 13,380 feet above sea level, Mauna Loa is the world's largest active volcano.²⁵ By adding another 16,400 feet from the sea bed to sea level²⁶, at 30,085 feet, Mauna Loa is the tallest mountain on earth.²⁷ *Id.* Mauna Loa has erupted 33 times since its first well-documented historical eruption in 1843. *Id.* Mauna Loa produces large, voluminous flows that have reached the ocean eight times since 1868. *Id.* Mauna Loa is certain to erupt again with large, voluminous flows. *Id.* According to media reports, Mauna Loa's 1984 lava flow came within four miles of Hilo, the county seat²⁸.

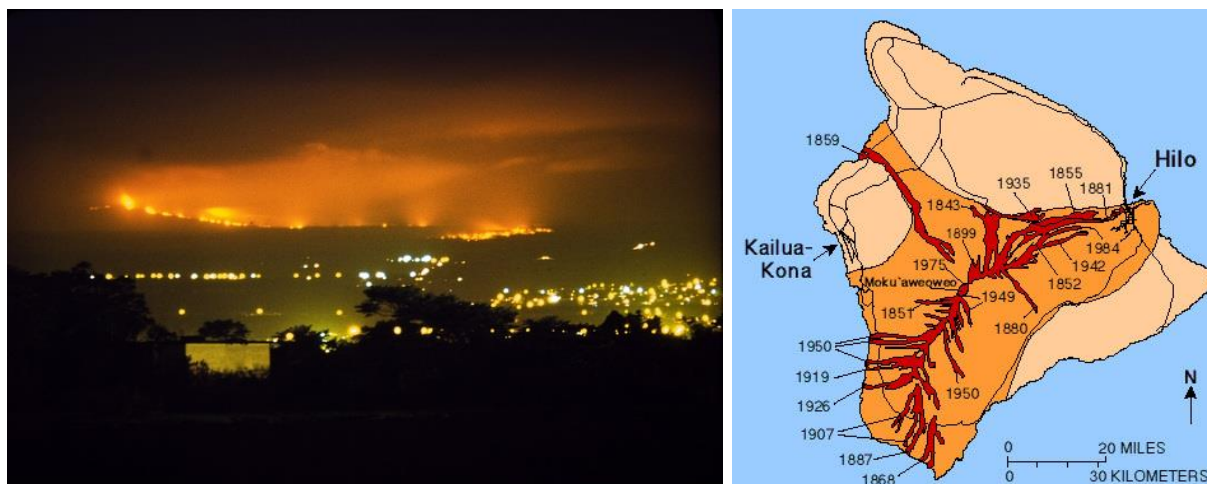
²⁴ CNN, "In pictures: Hawaii's Kilauea volcano erupts," cnn.com, (<https://www.cnn.com/interactive/2018/05/us/hawaii-kilauea-volcano-eruption-cnnphotos/>) (accessed 11/17/18).

²⁵ United States Geological Survey, "Mauna Loa", volcanoes.usgs.gov, (https://volcanoes.usgs.gov/volcanoes/mauna_loa/).

²⁶ The islands rise directly from deep ocean water. The Pacific Ocean is 16,000 feet deep just 16 miles from the area where Kilauea's lava entered the ocean in 2018.

²⁷ Combining the volcano's extensive submarine flanks 16,400 ft to the sea floor and 13,680 ft subaerial height, Mauna Loa rises 30,085 ft from sub marine base to summit, greater than the 29,029 ft elevation of Mount Everest from sea level to its summit. *Id.*

²⁸ J. Burnett, "Recalling 1984, when lava nearly reached Hilo," westhawaiiitoday.com, September 18, 2015 (<http://www.westhawaiiitoday.com/2015/09/18/hawaii-news/recalling-1984-when-lava-nearly-reached-hilo/>) (accessed 11/17/18).



1984 Mauna Kea lava flowing toward Hilo²⁹. Simplified map of historical lava flows at Mauna Loa volcano³⁰.

Over the past 50 years, lava flows have cut off roads and isolated communities. According to the Hawaii Volcanoes National Park website,

“... [T]ens of thousands of [] archeological sites have been buried under lava since 1969.

Since 1986, lava has flowed repeatedly over Chain of Craters Road/Highway 130. The Park's acreage has been increased by hundreds of acres and nearly 9 miles (14.5 km) of road have been inundated by the flows. In June 1989, Waha'ula Visitor Center and associated buildings were burnt and covered by lava. The Waha'ula Heiau was surrounded by lava more than once and finally buried entirely in August 1997. The Kamoamoa village site, heiau, campground, picnic area, and black sand beach were covered by lava in November 1992.”

Hawaii Volcanoes National Park, “Drive Chain of Craters Road,” nps.gov, (https://www.nps.gov/havo/planyourvisit/ccr_tour.htm) (accessed 11/17/18).

²⁹ J. Burnett, “Recalling 1984, when lava nearly reached Hilo,” westhawaiiitoday.com, September 18, 2015 (<http://www.westhawaiiitoday.com/2015/09/18/hawaii-news/recalling-1984-when-lava-nearly-reached-hilo/>) (accessed 11/17/18).

³⁰ Hawaii Center for Volcanology, “General Info,” (<http://www.soest.hawaii.edu/gg/HCV/mloa-eruptions.html>) (accessed 11/17/18).



Caterpillar high sprocket D-10 bull dozers attempting to clear Chain of Craters Road covered by pre-2018 lava flow, to create escape route for Hawaii Island communities isolated by 2018 lava flow. Built in 1965, Chain of Crater Road has had segments blocked by Kilauea lava flows 41 of the past 53 years³¹. Started in May, 2018, the reinvigorated project to clear Chain of Craters Road and create an emergency escape route for Puna residents is not complete.

4. Police Protection Is Insufficiently Responsive

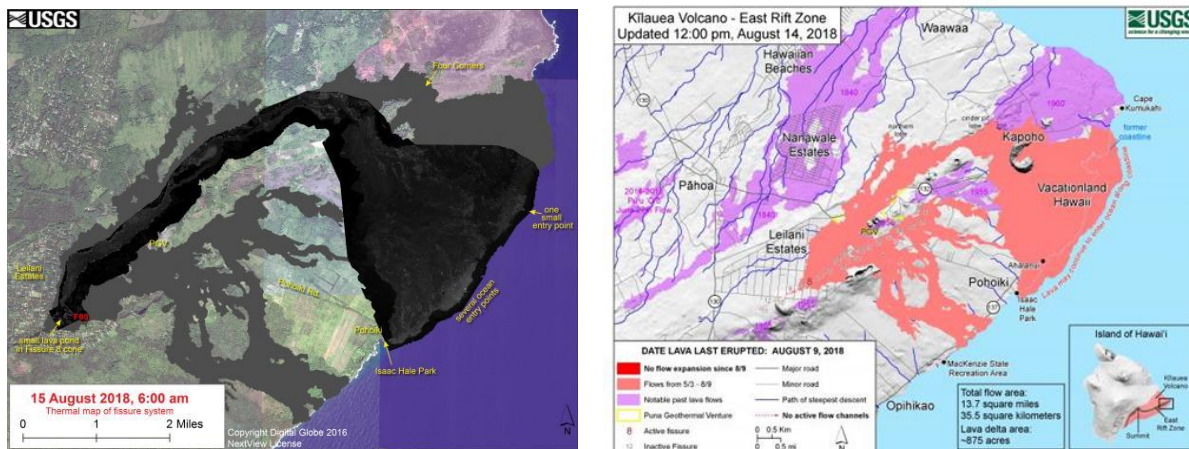
Only 200,381 people live on Hawaii Island's 4,030 square miles, with many in remote, rural areas. The population density is only 46 persons per square mile.³² But, see HFCAdd-10, showing 18 persons per square mile. This compares

³¹ State of Hawaii, Department of Transportation, "WORK BEGINS ON CHAIN OF CRATERS-KALAPANA ROAD EVACUATION ROUTE", [hidot.hawaii.gov](http://hidot.hawaii.gov/blog/2018/05/30/work-begins-on-chain-of-craters-kalapana-road-evacuation-route/), May 30, 2018 (<http://hidot.hawaii.gov/blog/2018/05/30/work-begins-on-chain-of-craters-kalapana-road-evacuation-route/>) (accessed 11/17/18).

³² U.S. Census Bureau QuickFacts: Hawaii County, Hawaii, <https://www.census.gov/quickfacts/hawaiicountyhawaii>.

with 1,586.7 persons per square mile on Oahu³³ and 2,419.9 persons per square mile³⁴ in Los Angeles County. While L.A. is a great big freeway, there are no freeways on Hawaii Island. For the most part, a single two lane highway encircles the island, and a one two lane road bisects the island. *See* HFCAdd-5, 6.

When a main thoroughfare is blocked by either lava flows, auto accidents, or landslides caused by frequent heavy rains, alternative routes are sometimes not available and police cannot respond to calls for help, leaving citizens unprotected and vulnerable to attack.



Images of Recent Lava Flows on Hawaii Island, showing neighborhoods cutoff by lava 20 feet thick.³⁵

³³ Unites States Census Bureau, “Quick Facts, Honolulu County” (<https://www.census.gov/quickfacts/honolulucountyhawaii>) (accessed 11/18/19).

³⁴ Unites States Census Bureau, “Quick Facts, Los Angeles County” (<https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia/PST045217#PST045217>) (accessed 11/18/19).

³⁵ USGS, “Maps,” Aug. 15, 2018. (https://volcanoes.usgs.gov/volcanoes/kilauea/multimedia_maps.html) (accessed 11/17/18).

5. Wild Animals

a. Wild Pigs

Wild pigs are very common in Hawaii and on Hawaii Island and can weigh more than 250 pounds and boar can have tusks more than five inches long. *See* HFCAdd-5 . *Id.* These boar usually live in the forest, but are commonly seen on the road and in urban areas³⁶. *Id.* They can be very dangerous, and deadly when cornered. *Id.* Wild pigs often come into residential property to forage³⁷.



Wild pig sows and piglets in Hilo³⁸. This boar was taken in Hawaii³⁹.

³⁶ T. Unefuku, “Mililani Mauka residents frustrated over influx of wild pigs,” khon2.com, June 4, 2015 (https://www.khon2.com/news/local-news/mililani-mauka-residents-frustrated-over-influx-of-wild-pigs_20180309114435954/1025678944) (accessed 11/17/18).

³⁷ M. BRESTOVANSKY, “The problem of feral pigs,” HawaiiTribune-Herald.Com, Monday, December 25, 2017 (<https://www.hawaiitribune-herald.com/2017/12/25/hawaii-news/the-problem-of-feral-pigs/>) (accessed 11/17/18).

³⁸ M. BRESTOVANSKY, “The problem of feral pigs,” HawaiiTribune-Herald.Com, Monday, December 25, 2017 (<https://www.hawaiitribune-herald.com/2017/12/25/hawaii-news/the-problem-of-feral-pigs/>) (accessed 11/17/18).

³⁹ J. McAdams, “With feral hog populations exploding all over the United States, there are a lot of great places to hunt hogs,” wideopenspaces.com, January 4, 2018

Pig hunters use dog packs to track and corner the pigs. *Id.* The pigs are killed by stabbing the pig in the heart while the dogs harass the pig and hold it down. *Id.* Almost all pig hunters carry permitted handguns for protection from the pigs. *Id.* Hawaii County residents who are not hunting and not a security guard are not permitted to carry firearms for protection against these wild pigs.

Pig hunters and hikers have access to, and often use the same trails. *Id.* Pig hunters cannot hunt in all areas accessible to hikers, but hikers can usually hike in most areas designated as hunting areas. *Id.* When the dogs chase a pig, the pig will sometimes run to a trail in order to run faster. *Id.* Hikers hiking on these trails are in great danger of being attacked by these wild pigs. *Id.* Workers on Mauna Ranch have been attacked and injured by wild pigs. *Id.*

b. Wild Dogs

During the pig hunt, dogs often get lost and are abandoned. *Id.* These lost dogs become feral and can be very dangerous and can form packs. *Id.* Wild and domestic dogs have been known to attack and kill people, older horses, domestic farm sheep, and livestock. *Id.* In 2016 a man was killed by dogs in Kalihi, on Oahu.⁴⁰ A year later, two hunting dogs attacked and nearly killed two dogs on a

(<https://www.wideopenspaces.com/top-10-states-to-hunt-hogs-in-the-us/>) (accessed 11/17/18).

⁴⁰ B. Namata, "Homeless man killed by dogs owned by Kalihi business," khon2.com, August 2, 2016 (<https://www.khon2.com/news/local-news/medical->

hike with their owner.⁴¹ Just one month before that, a Honolulu Airport security officer shot and killed a dog when the dog broke its chain and came after the guard.⁴² If the security guard had not been armed, he could have been seriously injured, or killed.

B. Hawaii County Has Never Issued an Open Carry Permit

California and Hawaii are the only restrictive “may issue” states in the 9th Circuit. However, “may issue” as applied to Hawaii is a misnomer. In Hawaii, “may issue” actually means “will not and has not issued”. The facts support this.

Carry permits have never been issued in Hawaii County to non-security-guard citizens. Notwithstanding numerous opportunities to do so, neither the State of Hawaii nor the County of Hawaii has offered a declaration or documentation that a carry permit has ever been issued in the County of Hawaii to anyone other than a security guard. As the panel opinion pointed out, “[c]ounsel for the County acknowledged as much at oral argument, stating that, to his knowledge, no

[examiner-says-dog-behind-kalihi-homeless-mans-death/1025878566](#)) (accessed 11/17/18).

⁴¹ M. Miyashima, “Two dogs survive vicious attack by hunting dogs on hiking trail,” kitv.com, August 14, 2017, updated: Saturday, October 27th 2018, (<http://www.kitv.com/story/36135809/two-dogs-survive-vicious-mauling-by-hunting-dogs-on-hiking-trail>) (accessed 11/17/18).

⁴² Fox News, “Hawaii woman's dog shot, killed at Honolulu airport,” foxnews.com, Mar. 31, 2017 (<https://www.foxnews.com/us/hawaii-womans-dog-shot-killed-at-honolulu-airport>) (accessed 11/17/18).

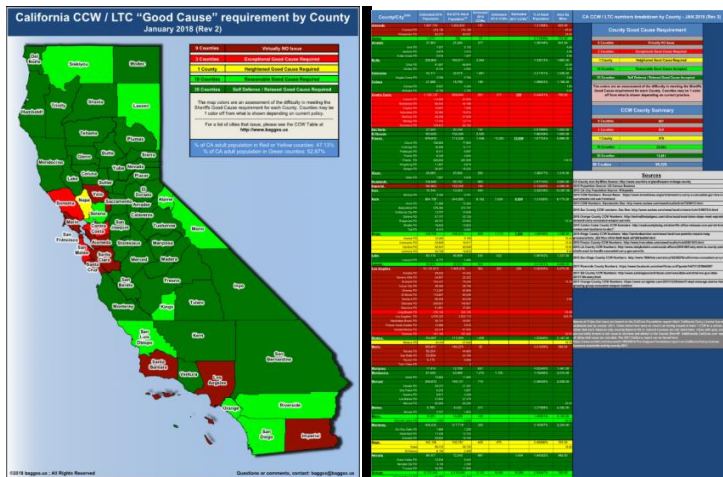
one other than a security guard—or someone similarly employed—had ever been issued an open carry license.” Panel Opinion at 51. See also, Oral Arg. at 13:18-13:29, 16:30-17:28. Hawaii Attorney General’s recently rendered Opinion 18-1 utterly fails to provide any reference to Hawaii County, or any other county, ever actually issuing an open carry permit to a non-security-guard citizen. *See* HFCAdd-19.

With Opinion 18-1 the State of Hawaii and the County of Hawaii, through the State, attempt to convince this Honorable Court that HRS §134-9 and Hawaii County Police Department Rules and Regulations Governing the Issuance of Licenses to Carry Concealed and Unconcealed Weapons currently, and historically, allow the issuance of carry permits to non-security-guard citizens. However, curiously, the State fails to include any reference to open carry permits to non-security-guards that were actually issued over the past 20 years. *See* HFCAdd-19. This secret, undisclosed, undocumented number of open carry permits issued in Hawaii County is apparently zero, or so low that divulgence now would undermine their specious argument that HRS §134-9 is not a total ban on the issuance of carry permits to non-security-guard citizens.

C. Even California Issues Carry Permits in Rural Counties

Even under the California scheme, “may issue” really means “will issue” in most rural counties. California allows its individual counties to draft their own

policies to implement California's carry statutes⁴³. In California's rural counties, an otherwise qualified applicant need only state that the purpose of the carry permit is for self-defense. Of California's 58 counties, 34 counties only require an otherwise qualified applicant to merely "check" "self-defense" on the application form to be issued a carry permit, and nine counties issue carry permits to applicants that show reasonable good cause. *See* HFCAdd-29 - 34. Two counties require an applicant to show heightened good cause, four counties require an applicant to show exceptional good cause, and nine counties do not issue carry permits to regular, otherwise qualified applicants. *See* HFCAdd-29 – 34. All 43 California counties that routinely issue carry permits are rural counties, so is Hawaii County.



See HFCAdd -29 - 30 for larger map; *See* also HFCAdd -31-34 for larger chart.

⁴³ K.Stone, "Sheriff Gore Aims to Issue More Concealed Gun Permits in San Diego County" timesofsandiego.com, Nov. 17, 2017 (<https://timesofsandiego.com/politics/2017/11/17/sheriff-gore-aims-to-issue-more-concealed-gun-permits-in-san-diego-county/>) (accessed 11/17/2018).

Montana, Idaho, Arizona and Alaska are rural and do not require a permit to carry. Washington, Oregon and Nevada are predominately rural and are “shall issue” states. As shown above, most rural California counties, pursuant to county policy, are “shall issue” counties. Hawaii County is also rural; yet, Hawaii County has never issued a carry permit to a non-security-guard. Hawaii County is an outlier and rehearing *en banc* should be denied.

III. Conclusion

The Petition for rehearing en banc should be denied.

Respectfully submitted, this the 18th day of November, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 3,868 words, excluding the parts of the brief exempted by Federal rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

DATED: Honolulu, Hawaii, November 18, 2018.

/s/ Donald Wilkerson
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CERTIFICATE OF SERVICE

On this, 18th day of November, 2018, I served the foregoing Brief by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 18th day of November, 2018.

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No. 12-17808

**In the
United States Court of Appeals for the Ninth Circuit**

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,

v.

STATE OF HAWAII, *ET AL.*,
Defendants-Appellees.

**On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor**

**Brief *Amicus Curiae* of
Gun Owners of America, Gun Owners Foundation,
The Heller Foundation, Virginia Citizens Defense League,
Conservative Legal Defense and Education Fund, and
Restoring Liberty Action Committee
in Opposition to Petition for Rehearing *En Banc***

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DISCLOSURE STATEMENT

The *amici curiae* herein, Gun Owners of America, Gun Owners Foundation, The Heller Foundation, Virginia Citizens Defense League, Conservative Legal Defense and Education Fund, and Restoring Liberty Action Committee, through their undersigned counsel, submit this Disclosure Statement pursuant to Federal Rules of Appellate Procedure 26.1, 29(a)(4)(A).

With the exception of Restoring Liberty Action Committee, which is an educational organization, all of these *amici curiae* are non-stock, nonprofit corporations, none of which has any parent company, and no person or entity owns them or any part of them. The *amici curiae* are represented herein by Herbert W. Titus, who is counsel of record, Robert J. Olson, William J. Olson, and Jeremiah L. Morgan of William J. Olson, P.C., 370 Maple Avenue West, Suite 4, Vienna, Virginia 22180-5615. *Amicus curiae* Restoring Liberty Action Committee is also represented herein by Joseph W. Miller, P.O. Box 83440, Fairbanks, Alaska 99708.

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INTEREST OF *AMICI CURIAE*

Gun Owners of America, Gun Owners Foundation, The Heller Foundation, Virginia Citizens Defense League, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (“IRC”). Restoring Liberty Action Committee is an educational organization. Each entity is dedicated, *inter alia*, to the correct construction, interpretation, and application of the law.¹

ARGUMENT

I. HAWAII’S CARRY BAN IS, INDEED, “LONGSTANDING,” DATING TO THE ISLANDS’ TIME AS A MONARCHY, WHEN SOVEREIGN KINGS AND QUEENS DENIED THEIR SUBJECTS ACCESS TO ARMS.

Hawaii’s Petition for Rehearing triumphantly declares that “Hawaii has regulated the public carry of firearms for over 150 years,” pointing to various enactments in 1852, 1927, and 1934. Pet. at 3-4. The Petition alleges that “[r]estrictions on the open carry of firearms have been widespread for more than

¹ Counsel for both parties have consented to the filing of this brief *amicus curiae*, pursuant to Rule 29(a), Federal Rules of Appellate Procedure. No party’s counsel authored the brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting the brief. No person other than these *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

a century,” and then cites the Third Circuit’s decision in Drake v. Filko, 724 F.3d 426 (3rd Cir. 2013) (Pet. at 16), which addressed New Jersey law, for the proposition that Hawaii’s restrictions therefore must be considered “longstanding” and thus “presumptively lawful.” *See Drake* at 433.

This is quite an assertion. Although New Jersey has been a state for 231 years and was a colony for over a century before that, for most of Hawaii’s history, the island nation had no republican form of government — rather, it was a monarchy, ruled by kings and queens. Even after later transitioning to a constitutional monarchy, the Kingdom of Hawaii Constitution of 1840² did not recognize a right of the people to bear arms. Quite to the contrary, it declared unequivocally that the “four Governors over these Hawaiian Islands ... shall have charge of ... the arms and all the implements of war.” Kingdom of Hawaii Constitution of 1840, “Governors.” Consistent with an exclusive claim to arms, the 1840 Constitution declared that the king “is the sovereign of all the people and all the chiefs.” *Id.*, “Prerogatives of the King.”

The Hawaii stranglehold on arms was easy to accomplish, since native Hawaiians had no experience with firearms prior to the arrival of Europeans in

² *See* <http://www.hawaii-nation.org/constitution-1840.html>.

the late 1700s. Indeed, traders and settlers selectively doled out firearms in order to “unite[] Hawaii’s eight main islands into a single kingdom [under] Kamehameha I....”³ Thereafter, native Hawaiians continued to be disarmed, as more and more settlers arrived, with generally only the European-installed government (and select Caucasian inhabitants) being permitted to possess arms.⁴ The monopoly on arms was later used to solidify American control over the Hawaiian Islands through the “Bayonet Constitution” of 1887.⁵

This is hardly a noble pedigree to apply when determining the right of a sovereign people to keep and bear arms as a bulwark against tyranny. *See* District of Columbia v. Heller, 554 U.S. 570, 598 (2008). Rather, Hawaii’s monarchical history undermines its claims, making it an extreme outlier among

³ J. Greenspan, “[Hawaii’s Monarchy Overthrown with U.S. Support, 120 Years Ago](#),” History.com (Jan. 17, 2013).

⁴ *See, e.g.*, “[Odd Fighting Units: The Honolulu Rifles during the Hawaii Rebellions, 1887-1895](#),” Warfare History Blog (Aug. 13, 2012) (“The downfall of both the Kingdom of Hawaii and the independent Hawaiian republic in 1893 & 1895 respectively were both directly linked to actions of the Honolulu Rifles brigade.”)

⁵ “[1887: Bayonet Constitution](#),” *National Geographic* (“The new constitution was written by a group of white businessmen and lawyers who wanted the kingdom to be part of the United States. This group, called the Hawaiian League, was supported by an armed militia called the Honolulu Rifles.”).

the states — embracing a view of its rulers and people that was utterly rejected by our Declaration of Independence and the Constitution of 1787.

It was (i) not until 1898 that the United States annexed Hawaii as a territory, (ii) not until 1950 that the current state constitution was adopted (including language mirroring the Second Amendment),⁶ and (iii) not until 1959 that Hawaii was granted statehood — more than a century after California, whose laws the Court examined in Peruta v. Cnty. of San Diego, 824 F.3d 919 (9th Cir. 2016). In short, Hawaii’s history on firearm regulation is utterly irrelevant here. Rather than being embraced as “longstanding” and/or “presumptively lawful,” Hawaii’s antiquated firearms regulatory scheme should be rejected out of hand — a relic of history, not unlike the sovereign prerogatives of King George, against which this country’s Second Amendment was designed to protect. This Court should decline the government of Hawaii’s invitation to embrace its racist history of disarmament of persons like Plaintiff, “who is part native Hawaiian and part descendant of Japanese plantation workers....”⁷

⁶ See HRS Const. Art. I, § 17; *see also* State v. Mendoza, 920 P.2d 357, 362 (Ha. 1996).

⁷ D. Trotta, “[Unlikely pair could usher gun rights case to U.S. Supreme Court](#),” *Reuters* (Aug. 8, 2018).

II. THE PANEL’S DECISION IS BY NO MEANS IN “OPEN DEFIANCE OF” PERUTA.

A. Peruta’s Historical Analysis Was Limited to Concealed Carry.

The Petition asserts that the panel decision “engag[ed] in what can only be called open defiance of *Peruta*.” Pet. at 15. Specifically, the Petition claims that the panel decision rejected the reasoning from Peruta, relying on virtually the same historical sources rejected there and rejecting those relied on in Peruta, and cherry picked from state precedents to suit its fancy, arriving at a conclusion insupportable from this Court’s prior decision. *Id.* at 15-16. For example, the Petition notes that the panel “found ... that the Statute of Northampton was of little use in construing the Second Amendment...” *Id.* at 15.

To be sure, the panel did reject the government’s invitation to “incorporate wholesale [the] understanding ... that the English right to carry weapons openly was limited for centuries by the 1328 Statute of Northampton ... into our Constitution’s Second Amendment.” Young v. Hawaii, 896 F.3d 1044, 1063 (9th Cir. 2018). Instead, the panel noted that “our aim here is not merely to discover the rights of the English,” concluding that “the 1689 English right to have arms was *less protective* than its American counterpart.” *Id.* at 1065 (emphasis original). However, contrary to what the Petition argues, the panel’s

historical analysis is perfectly consistent with Peruta. As Appellant’s Opposition brief notes, “*Peruta* expressly disclaimed resolution of the very question presented in this case,” and it was perfectly reasonable for the panel to “treat[] certain historical sources as more persuasive on open carry than *Peruta* found them on concealed carry.” *Id.* at 13-14.

Indeed, in chronicling the English application of the Statute of Northampton, Peruta cited numerous royal orders and proclamations spanning several centuries, noting how “Elizabeth I continued her father’s prohibition against **concealed** weapons,” explaining how various restrictions focused on weapons that could be “easily **concealed**,” discussing the story of a man arrested after he ““went armed **under his garments**,”” and citing various regulations that prohibited the ““bearing of Weapons **covertly**”” and weapons that ““were liable to be **concealed**....”” Peruta at 930-32 (emphasis added). Summarizing its analysis of English history, the Court concluded that, “when our Second Amendment was adopted, English law had for centuries prohibited carrying concealed ... arms in public,” while noting that prohibitions on open carry were, at best, only “**occasional**[].” *Id.* at 932 (emphasis added). Thus, as the English sources focused mainly on concealed rather than open carry, it was only natural

for the panel to find them less instructive in this open carry case than they were in Peruta.

B. The English Tradition Does Not Inform the Boundaries of the Second Amendment.

The Petition for Rehearing would have this Court believe that a proper understanding of the Second Amendment begins and ends with the English historical tradition. Apparently Petitioners see no difference between the English Bill of Rights’ double qualification “suitable to their conditions and as allowed by law,” and the Second Amendment’s categorical prohibition found in the words “shall not be infringed.” Yet the significance of this difference in protections reflects the English tradition where the king had been sovereign, contrasted with the American system premised on the sovereignty of the people — and the necessity of an armed citizenry in order to keep it that way. As Thomas Cooley explained, “The [Second] amendment ... was adopted with some **modification and enlargement** from the English Bill of Rights of 168[9]....” T.Cooley, The General Principles of Constitutional Law in the United States of America at 298 (Little Brown & Company, Boston: 1898) (emphasis added).

Peruta correctly noted that McDonald v. City of Chicago, 561 U.S. 742 (2010), described the Second Amendment as a “‘pre-existing right.’” *Id.* at 929.

Likewise, Heller rejected the idea that the right “is ... in any manner dependent upon that instrument [the Bill of Rights] for its existence.” *Id.* at 592. But just as Second Amendment rights do not rely on this nation’s founding documents for their existence, neither do they rely on the Statute of Northampton. Rather, the right of self-defense is “endowed by [our] Creator.” *See* Declaration of Independence. Indeed, Heller noted that the English Bill of Rights was “the **predecessor** to our Second Amendment” (*id.* at 593, emphasis added) — but not its **source**. McDonald characterized the right to keep and bear arms as “an **inalienable** right that **pre-existed** the Constitution’s adoption” (*id.* at 3060 (emphasis added)). That certainly is no authority to use the English tradition as the starting and ending point when examining the scope of the uniquely American right.

Rather, an inalienable right is “pre-existing” precisely because it exists independent of **any** government, document, or written guarantee. As Heller noted, Blackstone called it “‘the **natural right** of resistance and self-preservation.’” *Id.* at 594. And, putting it perhaps even more specifically, McDonald “understood the Bill of Rights to declare inalienable rights that **pre-existed all government** ... it declared rights that no legitimate government could

abridge.” *Id.* at 3079. It would be simply wrong, as the Petition demands, to limit the scope of the Second Amendment by reference to English history.

Finally, the Petition faults the panel for failing to find the same “strong historical consensus” against open carry that this Court did against concealed carry in Peruta, arguing that alone resolves this case. Pet. at 14. *See Peruta* at 927. Of course, as the panel correctly noted, “[o]ur lodestars are ‘text and history.’” Young, 896 F.3d at 1051 (*citing Heller*, 554 U.S. at 595). But whereas the Petition would have this Court jump straight to the history, arguing that it is conclusive, the panel “start[ed], as we must, with the text.” *Id.* at 1052.

As the Second Amendment protects not only the right to “keep arms” but also to “bear arms,” the panel obviously recognized that second guarantee **must mean something**. Thus, the panel looked to Heller which, although addressing a ban on “keeping” arms, nevertheless stated unequivocally that “[a]t the time of the founding, as now, to ‘bear’ meant to ‘carry,’” and “[w]hen used with ‘arms’ ... the term has a meaning that refers to carrying for a particular purpose — confrontation.” Heller at 584. The Heller Court concluded that the Second Amendment right to “bear arms” protects the ability to ““wear, bear, or carry

... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person.””” *Id.* Thus, noting that “[t]he prospect of confrontation is, of course, not limited to one’s dwelling,” the panel concluded that there must be some right to bear arms outside the home. *Id.* at 1052. Since Peruta concluded the right to “bear arms” does not encompass a right to bear them concealed, the panel looked to historical sources (*id.* at 1052-61) that demonstrated “[t]he right to bear arms must include, at the least, the right to carry a firearm openly for self-defense.” *Id.* at 1061. That is an eminently correct conclusion, hardly a surprising one, and certainly presents no reason for *en banc* review.

CONCLUSION

For the foregoing reasons, the Petition for Rehearing *En Banc* should be denied.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Brief *Amicus Curiae* of Gun Owners of America, *et al.*, in Opposition to Petition for Rehearing *En Banc*, was made, this 19th day of November, 2018, by the Court's Case Management/ Electronic Case Files system upon the attorneys for the parties.

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No. 12-17808

**In The United States Court of Appeals
for the Ninth Circuit**

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAII; NEIL ABERCROMBIE, in his capacity as Governor of the State of Hawaii; DAVID MARK LOUIE I, Esquire, in his capacity as State Attorney General; COUNTY OF HAWAII, as a sub-agency of the State of Hawaii; WILLIAM P. KENOI, in his capacity as Mayor of the County of Hawaii; HILO COUNTY POLICE DEPARTMENT, as a sub-agency of the County of Hawaii; HARRY S. KUBOJIRI, in his capacity as Chief of Police; JOHN DOES, 1-25; JANE DOES, 1-25; DOE CORPORATIONS, 1-5; DOE ENTITIES, 1-5,

Defendants-Appellees.

Appeal from a Judgment of the United States District Court
for the District of Hawaii
The Hon. Helen W. Gillmor, District Judge
Case No. 1:12-cv-00336-HG-BMK

***AMICUS CURIAE* BRIEF OF SECOND AMENDMENT FOUNDATION,
INC., IN OPPOSITION TO PETITION FOR REHEARING *EN BANC***

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F. R. APP. P. 26.1 CORPORATE DISCLOSURE STATEMENT

Amicus curiae Second Amendment Foundation, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

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Second Amendment Foundation, Inc.

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***AMICUS CURIAE* BRIEF OF SECOND AMENDMENT FOUNDATION, INC., IN
OPPOSITION TO PETITION FOR REHEARING *EN BANC***

INTEREST OF *AMICUS CURIAE*¹

Founded in 1974, Second Amendment Foundation, Inc. (“SAF”) is a non-profit tax-exempt educational foundation, with over 650,000 members and supporters throughout the United States. Through its legal action programs, SAF is a leading defender of Second Amendment rights. Among its notable achievements, SAF prevailed before the United State Supreme Court in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), establishing that the Fourteenth Amendment applies the right to keep and bear arms as against states and localities. SAF’s significant legal victories also include (but are not limited to) *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012); *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017); *Ezell v. City of Chicago*, 846 F.3d 888 (7th Cir. 2017); *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011);

¹ All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting the brief. No person, other than *amicus curiae*, its members or its counsel, contributed money that was intended to fund the

and *Palmer v. District of Columbia*, 59 F. Supp. 3d 173 (D.D.C. 2014).

Additionally, SAF sponsors and assists landmark civil rights cases where it cannot appear directly as a plaintiff, *see, e.g., Binderup v. Att’y Gen.*, 836 F.3d 336 (3d Cir. 2016) (*en banc*), and frequently participates as an *amicus curiae* before the United States Supreme Court, the lower federal courts, and state courts.

SAF has significant expertise and unique insight relating to issues raised by the petition which merit further development. SAF and its members also have a direct interest in the outcome of this matter. The panel decision directly impacts the status of Second Amendment rights, and affects the lives of law-abiding, responsible citizens who wish to access their fundamental right to keep and bear arms.

This case is but the latest of many addressing the issue of the public carrying of firearms for self-defense purposes. Some Courts, like the panel majority in this case, correctly view this a right equal to that of possessing a firearm in one’s home. Others view such a right as

preparation or submission of this brief.

lesser or non-existent. SAF is well-positioned to assist the Court in elucidating how the panel majority was correct and its decision requires no further review. Accordingly, SAF respectfully moves this Court to accept the filing of the attached *amicus curiae* brief in opposition to an *en banc* rehearing.

INTRODUCTION

Amicus agrees with the panel majority both that the core Second Amendment right includes “the right to carry a firearm openly for self-defense[.]” *Young v. Hawaii*, 896 F.3d 1044, 1070 (9th Cir. 2018), and that a “limitation on the open carry of firearms to those ‘engaged in the protection of life and property’ violates the core of the Second Amendment and is void.” *Id.* at 1071. The panel opinion is consistent with both Supreme Court precedent (*See District of Columbia v. Heller*, 554 U.S. 570 (2008); *See also McDonald v. City of Chicago*, 561 U.S. 42 (2010)), and Circuit precedent (*See Peruta v. County of San Diego*, 824 F.3d 919, 939 (9th Cir. 2016) (*en banc*) (“There may or may not be a Second Amendment right for a member of the general public to carry a

firearm openly in public. The Supreme Court has not answered that question, and we do not answer it here.”).

For those reasons, the panel majority was entirely correct in its analysis, and *en banc* review in this case should be denied. However, Plaintiffs raised other arguments as well, which the panel majority did not need to address (having ruled in favor of Plaintiff’s Second Amendment argument), and the panel dissent chose not to address, notwithstanding voting against the Second Amendment right. But if the dissent had addressed the Plaintiff’s remaining arguments, then Plaintiff would have prevailed as well, and the offending statutes would have been stricken, because the Hawaii regulatory scheme for the public carrying of firearms also violates Plaintiff’s due process rights under the Fourteenth Amendment to the United States Constitution.

Since Plaintiffs also had a meritorious Fourteenth Amendment Due Process claim in addition to the meritorious Second Amendment claim, *en banc* review in this case should not be granted.

ARGUMENT

I. THE ENFORCEMENT OF H.R.S. § 134-9(a) VIOLATES THE PLAINTIFF’S FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS RIGHTS.

“Under the Due Process Clause of the Fourteenth Amendment, no State shall ‘deprive any person of life, liberty, or property, without due process of law.’ The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2697 (2015) (citing *Duncan v. Louisiana*, 391 U.S. 145, 147-149 (1968)).

The Due Process Clause “imposes procedural constraints on governmental decisions that deprive individuals of liberty or property interests.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The property interests that due process protects extend beyond tangible property and include anything to which a plaintiff has a ‘legitimate claim of entitlement.’” *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 576-77 (1972). “A legitimate claim of entitlement is created ‘and [its] dimensions are defined by existing rules or understandings

that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Id.* at 577.

The District Court correctly noted that in assessing a Fourteenth Amendment procedural due process claim, “[f]irst, a court must determine whether a liberty or property interest exists entitling a plaintiff to due process protections. If a constitutionally protected interest is established, courts employ a three-part balancing test to determine what process is due.” *Young v. Hawaii*, 911 F.Supp.2d 972, 993 (D.Haw. 2012) (citing *Hewitt v. Grabicki*, 794 F.2d 1373, 1380 (9th Cir. 1986)). *See also Nozzi v. Housing Authority of the City of Los Angeles*, 806 F.3d 1178, 1190-1191 (9th Cir. 2015).

The well-settled balancing test was explained in *Mathews*, 424 U.S. 319, 335 (1976):

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved

and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. *See also Gilbert v. Homar*, 520 U.S. 924, 931-32 (1997).

“Due process ‘is not a technical conception with a fixed content unrelated to time, place[,] and circumstances[;]’ instead, it ‘is flexible and calls for such procedural protections as the particular situation demands.’ *Mathews*, 424 U.S. at 334 (citations omitted).

II. THE PUBLIC CARRY OF FIREARMS FOR SELF-DEFENSE IS A LIBERTY INTEREST WHICH ENTITLES THE PLAINTIFF TO DUE PROCESS PROTECTIONS.

Viewing the first element, the panel majority correctly determined a liberty interest in the bearing of arms for self-defense outside of the home. *Heller* was in no way limited in its holding to the home.

Although “the need for defense of self, family, and property is *most acute*” in the home, *Heller*, 554 U.S. at 628 (emphasis added), and the Second Amendment right is secured “*most notably*” for self-defense within the home,” *McDonald*, 561 U.S. at 781 (emphasis added), the

Second Amendment is no different from other rights. For example, “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed,” *Payton v. New York*, 445 U.S. 573, 585 (1980). *See also Silverman v. United States*, 365 U.S. 505, 511 (1961) (“At the [Fourth Amendment’s] very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion”). However, no one would suggest that a person’s Fourth Amendment rights do not extend outside her home.

Indeed, the *Heller* Court held that to “bear” arms meant to “carry” them. *Heller*, 554 U.S. at 584.

To “bear arms,” as used in the Second Amendment, is to “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.

Id. (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

The right to armed self-defense in public, which can of course be regulated within constitutional limits, was recognized by the panel

majority in this case, by the Seventh Circuit in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), by the District of Columbia Circuit in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), and assumed *arguendo* in many other cases (*See, e.g., Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013); *Drake v. Filko*, 724 F.3d 426, 431 (3d Cir. 2013); *Kachalsky v. Cty. Of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012)). Even the *Peruta en banc* decision does not contradict this conclusion, as that Court specifically did not address the open carry issue. *Peruta*, 824 F.3d at 927.

The right to the public carry of firearms for self-defense is also a liberty interest apart from the Second Amendment, however, because of the historical understanding, as the panel majority noted, that: “everyone is at liberty to keep or carry a gun, if he does not use it for the [unlawful] destruction of game.” *Young*, 896 F.3d at 1054 (quoting 2 William Blackstone, *Commentaries on the Laws of England* 441 (Edward Christian ed., 1795), and that “the right of the people to keep and bear arms” is the ‘true palladium of liberty.’” *Young*, 896 F.3d at

1053 (quoting 1 St. George Tucker, *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States; and of the Commonwealth of Virginia* app. n.D. at 300 (Phil., William Young Birch & Abraham Small 1803)).

On a more personal level, Plaintiff has a liberty interest in his ability to defend himself in the event of a physical assault, and in the protection of his life and health. Besides the constitutional injuries suffered by deprivation of Plaintiff's rights, the personal deprivation in being harmed by a violent attacker, because the Government prohibited him from being able to protect himself, is among the most compelling one could suffer.

Therefore, though the District Court erroneously concluded no liberty interest was at stake, *Young*, 911 F.Supp.2d at 993, and the panel did not address the issue, in fact H.R.S. § 134-9(a) does implicate Plaintiff's liberty interest in the exercise of his Second Amendment rights, and in a proper analysis the Court would then move on to the *Mathews* balancing test.

III. PLAINTIFFS MEET THE ELEMENTS OF THE *MATHEWS* TEST.

1. *Plaintiff's private interest in the public carry of firearms is negatively affected by the official action.*

The private interest has been described above, as Plaintiff's liberty interest in the ability to publicly carry arms outside the home for self-defense is fundamental. This is why the panel majority was correct and this Court should deny Defendants' *en banc* request, as the Supreme Court has now repeatedly held that "[the very enumeration of the right takes out of the hands of government-even the Third Branch of Government-the power to decide on a case-by-case basis whether the right is really worth insisting upon." *Heller*, 554 U.S. at 634; *McDonald*, 561 U.S. at 791. Though *Heller* was of course referring to the Second Amendment right to bear arms, the parallel is instructive.

This Circuit has described this element as giving an examination "in particular, to the 'degree of potential deprivation that may be created.'" *Nozzi*, 806 F.3d at 1193 (quoting *Mathews*, 424 U.S. at 341).

As Plaintiff's liberty interest in the public carry of arms (whether

concealed or open) for self-defense is fundamental, the private interest at issue is undeniably affected by the failure of H.R.S. § 134-9(a) to afford Plaintiff *any* procedural due process, thus completely depriving Plaintiff of the right at all. Therefore, the first *Mathews* element is met and weighs in Plaintiff's favor.

2. *The risk of an erroneous deprivation of such interest through the procedures used is enormous, and the probable value of additional or substitute procedural safe-guards is great.*

The “exceptional case” requirement for obtaining a concealed carry license, which is a completely arbitrary decision subject to the whim of the Chief of Police, renders H.R.S. § 134-9(a) devoid of due process and is, therefore, unconstitutional. *See Largent v. Texas*, 318 U.S. 418, 422 (1943) (striking ordinance allowing speech permit where mayor “deems it proper”). Worse, under the statute one can only obtain an open carry license when one demonstrates “the urgency or the need” *and* one is “engaged in the protection of life and property.” The County Defendant admitted that no one other than a security guard, or someone similarly employed, has ever received such a license.” *See Young*, 896 F.3d at

1070. “The typical, law-abiding citizen in the State of Hawaii is therefore entirely foreclosed from” bearing arms for self-defense. *Id.* at 1071.

This makes the discretionary power of the relevant government official even more stark and unfair to the law-abiding citizen, who literally has no recourse under the statute, whether judicial, appellate or even administrative, against the Chief’s decision. That decision, no matter how unfair or unfounded, is final.

Though discussing the Second Amendment right at the time, the panel majority could have been speaking of the Due Process right when it held: “[a]n individual right that does not apply to the ordinary citizen would be a contradiction in terms; its existence instead would wax and wane with the whims of the ruling majority.” *Id.*

There is a parallel to prior restraint doctrine in this case, as both involve a right that enjoys lesser status when its exercise is only at the government’s whim:

It is settled by a long line of recent decisions of this Court that an ordinance which. . . makes the peaceful

enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.

Staub v. City of Baxley, 355 U.S. 313, 322 (1958) (citations omitted).

While the prior restraint doctrine is not specifically before this Court, when the liberty interest exists only at the pleasure of County law enforcement, and the ability to exercise the interest is never granted, or is granted under such limited circumstances that the ordinary resident has virtually no chance to do so, then the risk of an erroneous deprivation is enormous.

Following this reasoning, for example, Rhode Island’s Supreme Court “will not countenance any system of permitting under the Firearms Act that would be committed to the unfettered discretion of an executive agency.” *Gadomski v. Tavares*, 113 A.3d 387, 390 (R.I. 2015) (quotation omitted). The Court held that “[t]o prevent such an occurrence, we opined that ‘certain procedural steps must be employed to allow a meaningful review’ of licensing decisions by this Court.” *Id.*

at 390 (quoting *Mosby v. Devine*, 851 A.2d 1031, 1051 (R.I. 2004)).

“One does not need to be an expert in American history to understand the fault inherent in a gun-permitting system that would allow a licensing body *carte blanche* authority to decide who is worthy of carrying a concealed weapon.” *Mosby*, 851 A.2d at 1050.

There are also similarities to *People v. Zerillo*, 219 Mich. 635 (1922), where the Michigan Supreme Court struck down a statute prohibiting aliens from possessing revolvers without their Sheriff’s consent, because the licensing discretion was held to be a destruction of a constitutional right to bear arms. “The exercise of a right guaranteed by the Constitution cannot be made subject to the will of the sheriff. The part of the act under which the prosecution was planted is not one of regulation but is one of prohibition and confiscation.” *Id.* at 639. “The [provision] making it a crime for an unnaturalized, foreign-born resident to possess a revolver, unless so permitted by the sheriff, contravenes the guaranty of such right in the Constitution of the State and is void.” *Id.* at 642.

The Ninth Circuit held in *Peruta* that the concealed carry of firearms is outside of the Second Amendment right and that it does not, in a vacuum, trigger a liberty interest. But it is also axiomatic that if the Court is going to rely on the concealed carry permit as a permissible alternative to the liberty interest of open carry, then that concealed carry permit process must comply with the Plaintiff's Due Process rights. Instead, it fails completely.

The Ninth Circuit addressed Due Process deprivation in *Nozzi*, which involved the reduction of subsidies to Section 8 beneficiaries. In discussing the risk of erroneous deprivation, the Court held “[W]hen notice is a person’s due, process which is a mere gesture is not due process.” *Nozzi*, 806 F.3d at 1194. The defendant sent a flyer that purportedly complied, but the Court noted: “[t]he flyer was, without doubt, entirely insufficient to meet this standard. In no respect does it reasonably inform its intended recipients of the changes to the payment standard, the meaning of those changes, or, most important, their effect upon the recipient.” *Id.*

Similarly, in H.R.S. § 134-9(a) there is no fair notice of what qualifies as an exceptional case, and no opportunity for review of the Chief of Police's unilateral decision, so the risk of an erroneous derivation is high.

3. *The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail, is minimal or non-existent.*

Amending the application process to comport with due process would impose only the imposition of some appellate process and guidelines. In deciding this matter, this Court should consider that the policies *sub judice* were put in place before *Heller* and *McDonald*. See *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 53 (1936) (“the judicial scrutiny must of necessity take into account the entire legislative process, including the reasoning and findings upon which the legislative action rests”). Thus, the Chief was under the erroneous assumption that these policies were not affecting fundamental rights or liberty interests. As described, *supra*, these laws do affect Plaintiff's liberty interests and, therefore, must comport with Plaintiff's Due

Process rights under the Fourteenth Amendment. This failure to provide due process, resulting in the deprivation of a liberty interest, must be corrected by the Defendants. The deprivation of the People's rights and liberties is not in the government interest, and compelling the State or County to provide a fair process to apply for, and appeal the denial of, a concealed (or open) carry permit does not burden the Defendants, either fiscally or administratively.

A useful comparison can be seen in *Firearms Records Bureau v. Simkin*, 466 Mass. 168 (Mass. 2013). In *Simkin*, a New Hampshire had an out-of-state Massachusetts license to carry firearms. After a doctor's visit where plaintiff used a pseudonym to protect his privacy and gave an incorrect address, told the medical assistant prior to disrobing that he was armed and needed to secure his firearms. Employees of the office were "alarmed" and "concerned for their safety" and someone called the police. *Id.* at 169-70. The state firearm bureau decided that, because of this incident, Simkin was no longer a "suitable person" to have a firearm license. *Id.* at 170-71. Simkin sued and the trial judge

overturned the denial, holding that (1.) “suitability” was not a stated disqualifying factor for a license, (2.) Simkin’s unrestricted firearms license meant he was doing nothing wrong during the alleged incident by having or securing a firearm, and (3.) he was doing nothing illegal at the time of the incident. *Id.* at 171. The Appellate Court reversed, holding his “unusual” behavior at the doctor’s office meant he was “unsuitable,” which the Court held applied to temporary non-resident licenses like that possessed by Simkin. *Id.* at 172.

The Massachusetts Supreme Court first agreed with the state that the “suitability” requirement applied to Simkin’s temporary non-resident license. *Id.* at 175-177. However, the Court noted the state has broad discretion and considerable latitude to determine if applicant was a suitable person, but there was no definition of “suitable person” in the statutes. *Id.* at 179. This meant that the state could deny a license for “for a variety of reasons, including conduct that falls outside of the enumerated disqualifiers and conduct that falls short of criminal behavior.” *Id.* at 180. Ultimately, the Court agreed with the trial court

and overruled the Appellate Court:

A revocation will be overturned as arbitrary or capricious where “no reasonable ground” exists to support it. G. L. c. 140, § 131 (f). *See Chardin, supra* at 317. Even when viewed in their totality, Simkin’s arguably unusual but otherwise innocuous actions did not provide a “reasonable ground” to deem him no longer a “suitable person” to carry firearms. This is particularly the case where the Executive Office of Public Safety and Security or its designee has not promulgated any regulations governing suitability, and therefore has provided applicants and license holders with little guidance on what it means to be a “suitable person.” In the absence of any such regulations, individual suitability determinations become more susceptible to attack on the ground that they are arbitrary and capricious.

Id at 181-82.

Because Simkin had a license to carry multiple firearms, he was not “unsuitable” for doing so. Though someone may be “alarmed” by someone else carrying a firearm, Simkin was not “unsuitable” because someone was alarmed by Simkin doing exactly what he was licensed to do. And there was no regulation prohibiting Simkin from using a pseudonym at a doctor’s office. Therefore, the license revocation was overturned. *Id.* at 182-83.

Though the Massachusetts “suitability” standard was further defined by statute in 2015 (*See* G. L. c. 140, § 131 (d); *See also Chief of Police of the City of Worcester v. Holden*, 470 Mass. 845, 855 (Mass. 2015)), *Simkin* is still analogous to the present case, and therefore has persuasive value.

This was noted in *Gould v. Morgan*, 2018 U.S. App. LEXIS 31129, *33 (1st Cir. 2018), where the First Circuit noted that “the Hawaii law struck down by the Ninth Circuit created a regime under which not a single unrestricted license for public carriage had ever been issued.” *Id.* (citing *Young*, 896 F.3d at 1071, n.21). Further, the *Gould* Court stated the concealed carry licensing regime in Massachusetts “provided for administrative or judicial review of any license denial, . . . a safeguard conspicuously absent from Hawaii’s laws.” *Gould*, 2018 U.S. App. LEXIS 31129 at *33 (quoting *Young*, 896 F.3d at 1072).

This is not the only previous occasion Hawaii’s attitude towards the public carry of firearms has been called out. In *Fisher v. Kealoha*, 855 F.3d 1067 (9th Cir. 2017), the plaintiff challenged his federal

firearms prohibitor for a misdemeanor domestic violence conviction under 18 U.S.C. § 922(g)(9). He raised an as-applied challenge, and also argued that, “as a matter of statutory construction, section 922(g)(9) applies only in states where each of the mechanisms listed in section 921(a)(33)(B)(ii) (expungement, set-aside, pardon, and civil rights restoration) are available to restore Second Amendment rights.” *Id.* at 1069. The Court rejected these arguments, and also declined to consider a due process challenge to Hawaii’s gubernatorial pardon process, which plaintiff raised for the first time on appeal. *Id.* at 1071.

However, in concurrence, the *Fisher* Court noted:

Hawaii’s procedure for restoring Second Amendment rights is notably slender: The governor can pardon someone. But gubernatorial clemency is without constraint; as Blackstone put it, an executive’s mercy springs from “a court of equity in his own breast.” 4 William Blackstone, *Commentaries* *390. This unbounded discretion sits in uneasy tension with how rights function. A right is a check on state power, a check that loses its force when it exists at the mercy of the state. Government whim is the last refuge of a precarious right. And while Fisher’s case gives us no occasion to seek better refuge, others will.

Id. at 1072 (Kozinski, J., concurring).

While neither the *Gould* nor *Fisher* Courts addressed the due process issue, these observations about Hawaii underscores why the due process issue should not be ignored in this case. Even if the Court were inclined to agree with the panel dissent, Plaintiff should nonetheless prevail because the completely arbitrary standard for obtaining either a concealed or open carry license in the County of Hawaii, coupled with the facts that it is both virtually impossible to get either type of carry license in the County of Hawaii, means that the Plaintiff (and anyone else who wishes to exercise the public carry of firearms) is completely denied due process by the Defendants. Though the panel did not consider the question, the Plaintiff's Fourteenth Amendment rights were violated, and is an additional basis for Plaintiff to prevail in this matter. Because the panel's result was correct, this Court should decline further review.

CONCLUSION

The Defendants-Appellee's Petition for Rehearing *en banc* should be denied.

Dated: November 19, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Circuit Rule 29-2, the foregoing amicus brief in opposition to a petition for rehearing *en banc*:

1. Contains 4,195 words; and
2. Has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century font, which complies with Fed. R. App. P. 32 (a)(5)-(6).

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9th Circuit Case Number(s)

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No. 12-17808 [DC# 12-00336-HG-BMK]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, Jr.,
Plaintiff - Appellant,

vs.

STATE OF HAWAII, et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII
Helen Gillmor, District Judge, Presiding

BRIEF *AMICI CURIAE* OF THE MADISON SOCIETY, INC.,
CALGUNS FOUNDATION, FIREARMS POLICY COALITION, INC.,
AND FIREARMS POLICY FOUNDATION,
IN OPPOSITION TO APPELLEES'
PETITION FOR REHEARING EN BANC

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November 19, 2018

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CORPORATE DISCLOSURE STATEMENT

The Madison Society, Inc., has no parent corporations. No publicly traded company owns more than 10% *amicus* corporation's stock.

The Calguns Foundation, Inc., has no parent corporations. No publicly traded company owns more than 10% *amicus* corporation's stock.

The Firearms Policy Coalition, Inc., has no parent corporations. No publicly traded company owns more than 10% *amicus* corporation's stock.

The Firearms Policy Foundation, has no parent corporations. No publicly traded company owns more than 10% *amicus* corporation's stock.

Dated: November 19, 2018

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Statement of *Amici Curiae*

The Madison Society Foundation, Inc., (MSF) is a not-for-profit 501(c)(3) corporation based in California. It promotes and preserves the purposes of the Constitution of the United States, in particular the right to keep and bear arms. MSF provides the general public and its members with education and training on this important right. MSF contends that this right includes the right to carry firearms in public (subject only to constitutionally valid regulation) for self-defense.

The Calguns Foundation (CGF) is a 501(c)(3) non-profit organization incorporated under the laws of California with its principal place of business in Sacramento, California. CGF is dedicated to promoting education for all stakeholders about California and federal firearm laws, rights and privileges, and defending and advancing the rights of California gun owners.

Firearms Policy Coalition, Inc. (FPC) is a 501(c)(4) non-profit organization incorporated under the laws of Delaware with its principal place of business in Sacramento, California, with members throughout the United States, including the State of Hawaii. FPC serves its members and the public through direct legislative advocacy, grassroots advocacy, legal efforts, research, education, and other programs. The

purposes of FPC include defending the United States Constitution and the People's rights, privileges, and immunities deeply rooted in the Nation's history and tradition, especially the fundamental right to keep and bear arms.

Firearms Policy Foundation (FPF) is a 501(c)(3) non-profit organization incorporated under the laws of Delaware with its principal place of business in Sacramento, California, with members residing throughout the United States, including in the State of Hawaii. FPF serves to defend and advance constitutional rights through charitable purposes, with a focus on the fundamental, individual right to keep and bear arms.

Amicus Relationship to Parties

No counsel for any party in this matter has authored this brief in whole or in part. No party or counsel for any party has contributed money intended to fund the preparation of this brief. No person(s), other than *amici curiae* and its members have funded the preparation of the brief.

Consent to File

All parties have consented to the filing of this brief.

Introduction

For good or ill, the Second and Fourteenth Amendment share more than just an enumerated status in our Constitutional order. They share a similar treatment by the factions that debate our constitutional philosophy, including factions within our Courts.

Statement of the Case

Appellant Young's claim is that Hawaii's virtual ban on any mode of carrying firearms outside the home, violates his Second Amendment right to bear (carry) arms for self-defense.

This circuit issued a prior en banc decision relating to the public bearing of arms. *Peruta v. County of San Diego (Peruta II)*, 824 F.3d 919 (2016) (en banc). *Peruta II* overturned a three-judge panel's decision striking down a concealed carry licensing regime, see *Peruta v. County of San Diego (Peruta I)*, 742 F.3d 1144 (9th Cir. 2014).

In *Peruta II*, the Court took up a challenge to San Diego's regulations related to the concealed carrying of handguns outside of the home. 824 F.3d at 924. At the time of the decision, California law generally prohibited the carrying firearms in public, whether concealed or openly. See Cal. Penal Code §§ 25400, 25850, 26350. But San Diego County purported to license the carrying of a concealed firearm only

upon the demonstration of “good cause” – while rejecting self-defense without a showing of particularized need, as “good cause.” See *Peruta II*, 824 F.3d at 926. In upholding San Diego’s policies, the en banc court held that “the Second Amendment right to keep and bear arms does not include, in any degree, the right of a member of the general public to carry concealed firearms in public.” *Id.* at 939.

The en banc panel explicitly left unresolved the question of whether the Second Amendment encompasses a right to open carry. See *id.* [“There may or may not be a Second Amendment right for a member of the general public to carry a firearm openly in public. The Supreme Court has not answered that question, and we do not answer it here.”]

This case takes up where the prior decisions left off. *Young v. Hawaii* presents the issue of whether the Second Amendment encompasses a right to carry firearms openly, in public, for the purpose of self-defense.

Second and Fourteenth Amendment - Analysis

The Second and Fourteenth Amendments have more in common than the latter’s incorporation of the former as explained in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). They both have gone through periods of dormancy, misunderstanding, resistance, and resurrection.

The Fourteenth Amendment, ratified after the conflagration of our civil war, promised due process, equal protection, and a universal participation in the privileges and/or immunities for all who live in our republic. Though almost a century late to the constitutional lexicon, it purported to enshrine already existing natural rights that enure to the benefit of all Americans. *See*: Blackman, SYMPOSIUM: LIBERTARIAN LEGAL THOUGHT: Back to the Future of Originalism, 16 Chap. L. Rev. 325, Winter, 2013. *Cf.*, Hamburger, Natural Rights, Natural Law, and American Constitutions, 102 Yale L. J. 907, 918-919 (1993).

Dr. Martin Luther King, Jr., echoed this sentiment of inherent natural rights, even as he criticized this government's breach of those promises. "When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men - yes, black men as well as white men - would be guaranteed the unalienable rights of life, liberty and the pursuit of happiness..." MLK Speech, Civil Rights March, Washington, D.C., 28 August 1963.

Dr. King could have been lamenting the dormancy of these pre-existing natural rights that were betrayed in *Dred Scott v. Sandford*, 60

U.S. (19 How.) 393 (1857), with its finding that decedents of African Slaves lack standing in federal courts to adjudicate rights: “to go where they pleased at every hour of the day or night [...], the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.” *Id.*, at 417.

Or, he could have been calling foul at the way fundamental rights appeared to be almost purposefully misunderstood in *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), *United States v. Cruikshank*, 92 U.S. 542 (1875), and *Presser v. Illinois*, 116 U.S. 252 (1886).

MLK, Jr., might have also been referring to the final passive-aggressive resistance of the Courts in *The Civil Rights Cases*, 109 U.S. 3 (1883). And then came the final abandonment of any pretext of a coherent interpretive theory of the Fourteenth Amendment that came with sophistry of *Plessy v. Ferguson*, 163 U.S. 537 (1896).

The Fourteenth Amendment would only begin its resuscitation and resurrection from its *Plessy-Phase* dormancy 58 years later in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Whether that resurrection is complete (or ongoing) is still an open question more

than 60 years after *Brown* overturned *Plessy*'s "Separate But Equal" doctrine. *See Obergefell v. Hodges*, __ U.S. __, 135 S. Ct. 2584 (2015).

The Second Amendment shares much with its constitutional cousin the Fourteenth Amendment.

In the case that woke up the Second Amendment, *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court found that the text guaranteed an "Individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As we said in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L. Ed. 588 (1876), "[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed" (underline added.) *Id.*, at 592.¹

¹ Part of the strange journey that both the Fourteenth and Second Amendment share is their explication by cases [like *Cruikshank*, *Dred*

In other words, the substantive right to be armed in the Second Amendment, and the substantive/procedural rights of due process and equal protection set forth in the Fourteenth are *a priori* rights. They are metaphysically independent of our Declaration of Independence or The Constitution and its Amendments.

Of course, some of the reasons for the Second Amendment's constitutional dormancy in our courts until 2008 (and 2010) are somewhat different from the slumber, betrayal, revival, betrayal, and current revival of the rights protected by the Fourteenth Amendment – at least when cataloguing the life-cycle of those rights for the white population. But in the case of minorities seeking to exercise these rights, they are mirror images of each other that march lock-step through history. See Justice Thomas' concurring opinion in *McDonald v. City of Chicago*, 561 U.S. 742, 805 (2010).

The Second Amendment even has its own rogues' gallery of cases that misinterpreted the underlying right of self-defense. In addition to the cases cited above, *e.g.*, *Dred Scott*, *Cruikshank*, and *Presser*, that

Scott Slaughterhouse, etc.] that leap back and forth between canon and anti-canon, depending on whether the particular commentator is trying to a particular theory of constitutional interpretation.

overlap with the Fourteenth Amendment, it would be neglectful to exclude *United States v. Miller*, 307 U.S. 174 (1939). *Miller* was the only U.S. Supreme Court case that even came close to (mis)interpreting the Second Amendment until 2008's *Heller* decision. *Miller* (a poorly written and poorly reasoned decision) had come to stand for the proposition that the Second Amendment was a collective right that could only be exercised by members of a state-sanctioned militia. The *Heller* Court was dubious of even this claim.

Miller did not hold that and cannot possibly be read to have held that. The judgment in the case upheld against a Second Amendment challenge two men's federal indictment for transporting an unregistered short-barreled shotgun in interstate commerce, in violation of the National Firearms Act, 48 Stat. 1236. It is entirely clear that the Court's basis for saying that the Second Amendment did not apply was not that the defendants were "bear[ing] arms" not "for . . . military purposes" but for "nonmilitary use," post, at 637, 171 L. Ed. 2d, at 685. Rather, it was that the type of weapon at issue was not eligible for Second Amendment protection: "In the absence of any evidence tending to show that the possession or use of a [short-barreled shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." 307 U.S., at 178, 59 S. Ct. 816, 83 L. Ed. 1206 (emphasis added). "Certainly," the Court continued, "it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common

defense." *Ibid.* Beyond that, the opinion provided no explanation of the content of the right.

District of Columbia v Heller, 554 at 621

The *Miller* Court went on:

This holding is not only consistent with, but positively suggests, that the Second Amendment confers an individual right to keep and bear arms (though only arms that "have some reasonable relationship to the preservation or efficiency of a well regulated militia"). Had the Court believed that the Second Amendment protects only those serving in the militia, it would have been odd to examine the character of the weapon rather than simply note that the two crooks were not militiamen.

District of Columbia v Heller, 554 at 622

This mode of analysis by the *Heller* Court, so clear to all of us now in 2018, did not prevent this Circuit from misunderstanding the Second Amendment's DNA as a fundamental individual right in the cases of *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002); *Hickman v. Block*, 81 F.3d 98 (9th Cir.1996); and *Fresno Rifle & Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723 (9th Cir. 1992).

Even after the Supreme Court issued its *Heller* decision, this circuit vacated a 3-judge panel's opinion finding the Second Amendment was incorporated against state actors through the

Fourteenth Amendment. And it did so in a rare – *sua sponte* – call for an en banc rehearing. *Nordyke v. King*, 575 F.3d 890 (9th Cir. 2009)(en banc). That particular case languished until *McDonald v. City of Chicago*, 561 U.S. 742, was published in 2010. The *McDonald* Court went on to hold that the original 3-judge panel had gotten incorporation essentially correct.

Since then, several other circuit courts (with a cluster of cases from this circuit) have issued Second Amendment decisions that have drawn rebukes from various Justices of the Supreme Court. These recalcitrant circuits have been called out for their lack of conformity in dissents from denial of certiorari. *See: Jackson v. City & Cnty. of San Francisco*, ___ U.S. ___, 135 S. Ct. 2799 (2015); *Friedman v. City of Highland Park*, ___ U.S. ___, 136 S. Ct. 447 (2015); *Peruta v. California*, ___ U.S. ___, 137 S. Ct. 1995 (2017), *Silvester v. Becerra*, ___ U.S. ___, 138 S. Ct. 945 (2018).

It is an open question whether the Circuit Courts are limping along as best they can (mis)interpreting the Second Amendment out of an inertia, borne of some brand of judicial conservatism – or whether they are staging an open rebellion against the plain text of Supreme Court precedent. Either possibility is still preventable.

The Second Amendment need not succumb to the *Plessy-Phase* of dormancy that was visited on the Fourteenth Amendment by *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), *United States v. Cruikshank*, 92 U.S. 542 (1875), *Presser v. Illinois*, 116 U.S. 252 (1886), *The Civil Rights Cases*, 109 U.S. 3 (1883), and *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Argument

Background Checks [*Silvester*], Assault Weapon Possession [*Friedman*], and Safe Storage and Ammo Laws [*Jackson*], have the virtue of being novel and of having not been mentioned in *Heller* or *McDonald*. That is not the case with regard to the singular issue of “bearing arms.”

The *Heller* Court unequivocally found that “[a]t the time of the founding, as now, to “bear” meant to “carry.” See Johnson 161; Webster; T. Sheridan, A Complete Dictionary of the English Language (1796); 2 Oxford English Dictionary 20 (2d ed. 1989) (hereinafter Oxford). When used with “arms,” however, the term has a meaning that refers to carrying for a particular purpose – confrontation. In *Muscarello v. United States*, 524 U.S. 125, 118 S. Ct. 1911, 141 L. Ed.

2d 111 (1998), in the course of analyzing the meaning of "carries a firearm" in a federal criminal statute, Justice Ginsburg wrote that "[s]urely a most familiar meaning is, as the Constitution's Second Amendment . . . indicate[s]: 'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'" *Id.*, at 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (dissenting opinion) (quoting Black's Law Dictionary 214 (6th ed. 1990)). We think that Justice Ginsburg accurately captured the natural meaning of "bear arms." *Heller* at 583.

After dispelling the notion that "bear arms" had an exclusively military connotation, the *Heller* Court went on to state: "Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." *Id.*, at 592.

Finally: “There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.*, at 595. (Emphasis added.)

Based on the text and history of the Second Amendment, controlling Supreme Court precedent, and the result obtained in *Peruta v. County of San Diego (Peruta II)*, 824 F.3d 919 (2016) (en banc) [concealed carry may be banned in lieu of open carry], the original 3-judge panel issued a presumptively correct, well-reasoned opinion. "An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a).

Neither *Heller* nor *McDonald* suggested that the Second Amendment should evolve into a vain and idle parchment. This Circuit's binding precedent compels adjudication of Second Amendment claims in *pari materia* with First Amendment claims. *U.S. v. Chovan*, 735 F.3d 1127 (9th Cir. 2013); *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014). The Supreme Court having found that some form of carry for self-defense purposes is baked into the Second Amendment, coupled with this Circuit having previously

foreclosed a constitutional challenge to concealed carry, the only remaining available mode of bearing arms consistent with the Second Amendment is in the manner prayed for by Mr. Young.

Conclusion

Appellees petition for en banc rehearing should be denied.

November 19, 2018

/s/ Donald Kilmer
For Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of this Circuit because it consists of 2533 words and because this brief has been prepared in proportionally spaced typeface using WordPerfect Version X8 in Century Schoolbook 14 point font.

Dated: November 19, 2018

/s/ Donald Kilmer
Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

On November 19, 2018, I served the foregoing BRIEF *AMICI CURIAE* OF THE MADISON SOCIETY, INC., CALGUNS FOUNDATION, FIREARMS POLICY COALITION, INC., AND FIREARMS POLICY FOUNDATION, IN OPPOSITION TO APPELLEES' PETITION FOR REHEARING EN BANC by electronically filing it with the Court's ECF/CM system, which generated a Notice of Filing and effects service upon counsel for all parties in the case. I declare under penalty of perjury that the foregoing is true and correct. Executed November 19, 2018.

/s/ Donald Kilmer
Attorney for Amicus Curiae

No. 12-17808

**In the United States Court of Appeals
for the Ninth Circuit**

George K. Young, Jr.

Plaintiff-Appellant,

v.

State of Hawaii, et al.

Defendants-Appellees.

**Appeal from a Judgment of United States District Court
For the District of Hawaii
Civ. No. 12-00336-HG-BMK
United States District Court Judge Helen Gillmor**

Appellant's Opposition to Appellees' Petition for Rehearing *En Banc*

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Ky. Const. art. XIII, § 2514

Introduction

The Panel Opinion in this case correctly concluded that “the right to bear arms must guarantee *some* right to self-defense in public,” and “that section 134-9 eviscerates [this] core Second Amendment right.” Panel Opinion at 46, 53. As the Panel thoroughly explained, that conclusion is compelled by the constitutional text, the history surrounding it, and centuries of precedent—including the Supreme Court’s decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 130 S.Ct. 3020 (2010), neither of which Defendants’ petition even mention. The Panel Opinion is also consistent with this Court’s decision in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (*en banc*) (“*Peruta II*”), which explicitly refused to address whether the Second Amendment protects a right to carry a handgun openly—a reservation that undoubtedly factored into the Supreme Court’s decision not to review that case.

Contrary to Defendants’ contentions, the Panel Opinion does not “establish[] a circuit split,” Petition at 13, as the only case to consider the kind of flat ban on public carry held it to be unconstitutional. Indeed, the only holding that would create a circuit split would be the one that sustains Hawaii’s complete ban on carrying outside the home as the D.C. Circuit, First Circuit and the Seventh Circuit have expressly held that the Second Amendment applies outside the home and every other circuit to consider the issue has assumed that to be the case. No circuit has ever held

that the right does not apply outside the home. The Panel's decision is consistent with all these decisions.

Rather than try to reconcile their position with *Heller* or the text and history of the Second Amendment, Defendants insist that the Panel misinterpreted section 134-9 and the statute does not actually flatly ban public carry. That argument is both legally wrong and is, in any event, far too little and far too late. It is far too late because Defendants are the ones who repeatedly told the courts in this case that section 134-9 as implemented by the County of Hawaii precludes anyone but security guards from obtaining a carry permit. That is not just an inference that the Panel drew from stray remarks at oral argument, let alone a novel interpretation that the Panel embraced over the objections of Defendants. Both the County and the State have repeatedly taken that position all the way up until their *en banc* petition. And with good reason, as records published by the Attorney General himself confirm that the County has not granted a single permit to anyone other than a private security guard for (at least) the past eighteen years.

Moreover, the Attorney General's belated change of heart has nothing to do with the standards for *en banc* review. At best, this new position would provide a basis for Panel rehearing. More realistically, if Defendants wish to revise Hawaii law in a manner that actually allows Mr. Young to carry a handgun, he would wholeheartedly welcome that change in the law. The Attorney General's opinion is

not such a law or even binding on Hawaii's courts. Until Hawaii provides a real world means for an ordinary, law-abiding citizen like Mr. Young to carry a handgun for self-defense, there is no basis to disturb the Panel's eminently correct conclusion that section 134-9 "violates the core of the Second Amendment and is void." Panel Opinion at 53.

I. Defendants Are Judicially Estopped Regarding Their New Position on Open Carry, Which at any Rate Only Undermines Their Case for *En Banc* Review

Defendants begin by insisting that *en banc* review is warranted because the Panel "[t]ravel[ed] far beyond the appropriate role of a federal court" when it interpreted section 134-9 as "authoriz[ing] open-carry licenses only for 'security guards' and other individuals whose job duties entail the protection of life and property." Petition at 8. That accusation is extraordinarily unfounded. The Panel did not adopt some novel interpretation of section 134-9; it just accepted the view of the statute that *Defendants themselves* have advanced throughout this litigation.

In its first amicus brief before this Court supporting the County, the State told the Court: "**Unconcealed** carry licenses may be granted only when the applicant 'is engaged in the protection of life and property,' **e.g. security guards**, and where the 'urgency or need' is so indicated." State of Hawaii's Amicus Brief at 3. [Docket #35]. The County likewise represented in its Answering Brief that carry applications are governed by rules and regulations that it attached as an appendix to its answering

brief—rules and regulations that, by their terms, allow open carry permits to be issued *only* to employees of a security guard or private detective company. *See* Answering Brief Exhibit A. [Docket #32-3]. Indeed, those regulations are even more restrictive than that, clarifying that open carry even by security guards is permissible only when the license-holder is “in the actual performance of his duties or within the area of his assignment.” YoungAdd-001 to 021. At oral argument, County Counsel openly conceded that this is indeed the County’s policy, that he was unaware of any regulation or guidance document that interprets H.R.S. §134-9 to allow a private citizens obtain a carry permit, and that he was unaware of instance in which a handgun carry permit, either open or concealed carry, had ever been issued to a private citizen. *See* Oral Arg. at 13:18-13:29, 16:30-17:28.

Those concessions were appropriate, as the Attorney General has released records on the grant rates for applications for a license to carry a firearm (whether openly or concealed) in Hawaii since at least 2000—records that expressly separate applicants into two categories: “private security firms” and “private citizens.” While the records report that the vast majority of applications by private security guards are granted, only *one* “private citizen” in the entirety of the State of Hawaii has been granted a carry license *in the past seven years* and the County has issued none.

The AG’s opinion falsely claims that these figures “state only the number of private individuals who applied for (and were granted or denied) a concealed carry

license; they do not state the number of private individuals who applied for (and were granted or denied) an unconcealed carry license.¹” In fact, issuing counties in Hawaii are required to “make a report to the department of the attorney general of all permits and licenses issued or revoked by the authority as of the last day of the preceding month.” H.R.S. §134-14 (emphasis added). And discovery in *Baker v. Kealoha*, 679 F. App'x 625 (9th Cir. 2017), another recent case challenging Hawaii’s carry laws, demonstrated that applications are marked in monthly reports as either security or citizen without any mention of whether the applications were for open or concealed. *See* YoungAdd-025 to 036 (showing all permits issued were “security” related and none were issued for “citizens”)².

The notion that the Panel “rewr[o]te state law,” Petition at 8, is thus hogwash. Rather, the Attorney General is attempting to rewrite state law through an opinion (issued a mere three days before Defendants’ *en banc* petition was due) and taking a position that is contrary to how Section 134-9 has always been applied.³ In such

¹ *See* AG’s opinion at 6.

² This discovery also revealed that the City and County of Honolulu has no written procedure as to how to issue a permit. *See* YoungAdd-22.

³ Notably, the California Attorney General’s office will not issue opinions on pending litigation because “the issuance of an Attorney General’s opinion while litigation is pending on the issue might be considered as an attempt to interfere with or influence the litigation”. *See* <http://ag.ca.gov/opinions/faqs.php> (last visited 11/5/2018). Apparently, the Hawaii Attorney General does not share that concern.

circumstances, Defendants are judicially estopped from their eleventh-hour attempt to rewrite H.R.S. §134-9 in this case. In *New Hampshire v. Maine*, 532 U.S. 742 (2001), the Supreme Court established a test for judicial estoppel, asking (1) whether a party's later position is "clearly inconsistent" with its earlier position; (2) whether the party succeeded in persuading a court to accept its earlier position, such that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled[]"; (3) and whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *Id.* at 743. All three factors are satisfied here.

First, the Hawaii Attorney General's current position is flatly "inconsistent" with prior arguments presented to this Court and to the district court. Defendants convinced the district court that "*Heller* and *McDonald* establishes only a narrow individual right to keep an operable handgun at home for self-defense." *Young v. Hawaii*, 911 F. Supp.2d 972, 988 (D. Haw. 2012).⁴ Defendants (including the State of Hawaii) defended that ruling in this Court.⁵ The inconsistency is self-apparent.

⁴ The district court also held that Mr. Young's due process rights were not violated because he had "no fundamental interest in carrying a weapon." *Young*, 911 F. Supp. 2d at 992. The Panel did not reach this question. Panel Opinion at 59, n 22.

⁵ See Brief of County of Hawaii at 5 (filed May 24, 2013) ("*Heller* was not intended to extend the protections found in the Second Amendment to any area outside the

Second, it is equally clear that acceptance of the Attorney General's position would necessarily mean that both this Court and the district court were seriously "misled" by Hawaii. Both the district court and the Panel expressly relied on Defendants' own representations about constraints imposed by section 134-9. The Panel relied on those representations in holding that section 134-9's limitations on the issuance of open carry licenses violate the Second Amendment. Panel Opinion at 59.

Third, acceptance of the Attorney General's new position would be seriously unfair and result in prejudice to Mr. Young who has litigated this case for many years contesting Hawaii's longstanding insistence that the Second Amendment right is limited to the home. Indeed, the Defendants' *Alice In Wonderland* approach to litigation makes a mockery of these proceedings. It would set a terrible precedent to allow any litigant, let alone a state, to swing for the fences, and then avoid an adverse decision by belatedly suggesting, on rehearing, a less restrictive interpretation it had never advanced before. Defendants are playing games with the Court and with Mr. Young and that cannot be accepted.

home."); Amicus Brief of State of Hawaii at 4 (filed May 31, 2013) ("*Heller* thus did not extend the Second Amendment to the carrying of handguns outside the home, **in public.**") (emphasis as in original).

Moreover, Defendants ask this Court to accept the Attorney General's latest interpretation at face value. Yet, the case on which they rely actually makes clear that Attorney General opinions "are not binding" as a matter of Hawaii law, *Kepo 'o v. Watson*, 87 Haw. 91, 99 n.9 (1998). Defendants skip over that holding in their petition. The Supreme Court likewise has "warn[ed] against accepting as 'authoritative' an Attorney General's interpretation of state law." *Stenberg v. Carhart*, 530 U.S. 914, 940 (2000). Indeed, this Court has refused to accord deference to more limited "litigation positions" in other contexts. *Alaska v. Federal Subsistence Bd.*, 544 F.3d 1089, 1095 (9th Cir. 2008) (holding that the court owed "no deference" to an agency's non-binding "litigation position" interpretation that was "developed during the course of the present case."); *Presidio Historical Ass'n v. Presidio Trust*, 811 F.3d 1154, 1166 (9th Cir. 2016) (rejecting any "special deference" to "a convenient litigating position" where it was proffered "the first time on appeal").

The Attorney General's non-binding opinion is, if anything, even less entitled to deference here as it was transparently issued solely for the purpose of seeking rehearing in this case. For all the reasons courts are skeptical of voluntary cessation of illegal government conduct, *see, e.g., Bell v. City of Boise*, 709 F.3d 890, 898 (9th Cir. 2013), courts should be even more skeptical of an announced change of position that not only is contrary to prior representations, but does not actually stop the illegal

conduct, much less result in the issuance of new licenses. It is, rather, simply an illegitimate effort to wipe off the books an unfavorable precedent addressing the state's actual conduct and actual litigation position. Hawaii is free to respond to the Panel's decision by amending or clarifying section 134-9 legislatively, just as the District of Columbia responded to the Supreme Court's decision in *Heller* with new legislation. *See Heller v. DC*, 670 F.3d 1244 (D.C. Cir. 2011). Only then will there be an actual statute that may (or may not) actually present the issues raised by Hawaii in its Petition.⁶ Until then, this Court may not issue an advisory opinion on a statutory scheme not before it. *Flast v. Cohen*, 392 U.S. 83, 96 (1968).

II. The Panel's Opinion Does Not Create a Circuit Split

Defendants next insist that *en banc* is warranted because the Panel Opinion is an “outlier” decision that “establishes a circuit split.” Petition at 13. That assertion is nonsense. To be sure, the Second, Third, and Fourth Circuits in *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); and *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), have all sustained the “good cause” carry statutes at issue in those cases. Yet, in sustaining

⁶ The Panel is better suited to address Defendants' half-hearted suggestion (in a footnote) that certification to the Hawaii Supreme Court may be warranted—a suggestion that Defendants notably have never before made during the six years that this case has been pending. That suggestion should be deemed waived by the State's failure to raise it until now.

a “good cause” requirement, each of these decisions *also* expressly “assumed ... that the Amendment covered *some* carrying.” *Wrenn v. District of Columbia*, 864 F.3d 650, 663 (D.C. Cir. 2017) (emphasis in original).

Similarly, and most recently, the First Circuit in *Gould v. Morgan*, 2018 U.S. App. LEXIS 31129 (1st Cir. 2018) sustained a “good cause” requirement under Massachusetts law, but in so holding, stated that “we view *Heller* as implying that the right to carry a firearm for self-defense guaranteed by the Second Amendment is not limited to the home.” (Slip op. at *22).⁷ That holding in *Gould* and the assumption that the right extended outside the home made in *Kachalsky*, *Drake* and *Woollard* are at war with Hawaii’s position that the right is confined to the home. This Court is not confronted with such a “good cause” regime here.

Rather, the Panel decided this case on the well-founded premise that Hawaii imposed “an effective ban on the public carry of firearms.” Panel Opinion at 54. To date, the *only* other circuit to have considered such a complete ban is the Seventh Circuit in *Moore v. Madigan*, 702 F.3d 933, 935-37 (7th Cir. 2012), where the court struck down such general ban under the Second Amendment. That decision was followed in *People v. Aguilar*, 2 N.E.3d 321, 327 (Ill. 2013). The Panel’s decision

⁷ In so holding, the court in *Gould* distinguished that case from this case, noting that “[n]or do the Boston and Brookline policies result in a total ban on the right to public carriage of firearms” and that the Massachusetts law, unlike the Hawaii law, “did not disguise an effective ban on the public carry of firearms.” (Slip op. at *33).

in this case is in full accord with *Moore* and *Aguilar*, a point the Panel took pains to stress. Panel Opinion at 13 n.4, 54. Since all the other circuit decisions concern “good cause” requirements that allowed *some* carry, there is no split *at all* among the circuits on the question of whether states may impose a complete ban on carry outside the home. *See* Panel Opinion at 54-55 (“the reasoning of the Second, Third, and Fourth Circuits suggests that they too would invalidate a firearms carry regime as restrictive as Hawaii’s”). *See also Gould*, slip op. at *33 (noting that “[t]hose regimes’ —like the regime at issue here—‘provided for administrative or judicial review of any license denial, ... a safeguard conspicuously absent from Hawaii’s laws’” (quoting *Young* Panel Opinion at 54).

In contrast, if Hawaii’s “effective ban” is sustained *en banc*, such a decision *would* create a direct inter-circuit conflict with the actual holding in *Moore* that a flat ban on carrying outside the home is facially unconstitutional. Such a holding would also directly conflict with the threshold holdings in *Gould* and *Wrenn* that the Second Amendment applies outside the home (a flat ban can only be constitutional if the right is limited to the home). It has long been the rule in this Circuit, as well as in sister circuits, that such conflicts should be *avoided*, not unnecessarily created.

See Hale v. Arizona, 993 F.2d 1387, 1393 (9th Cir. 1993) (*en banc*) (“For prudential reasons, we avoid unnecessary conflicts with other circuits....”).⁸

Specifically, in 2011 (which is the year Mr. Young applied for a handgun carry permit) there were 251,000 active permits in Massachusetts (*Gould*), 32,000 in New Jersey (*Drake*) and 12,000 in Maryland (*Woollard*). *See* YoungAdd-116.⁹ In Hawaii, by contrast, there were *zero* permits issued in 2011 and there have been *zero* permits issued since that time. As the Panel noted:

[T]he Second Circuit flatly insisted, “New York’s proper cause requirement does not operate as a complete ban on the possession of handguns in public. *Kachalsky*, 701 F.3d at 91. Likewise, the Third Circuit observed that New Jersey’s regime provided “clear and specific” standards, “accompanied by specific procedures that provide ‘safeguards against arbitrary official action.’” *Drake*, 724 F.3d at 435 (footnote omitted) (quoting *Siccardi v. State*, 59 N.J. 545, 555 (1971)); see also *Woollard*, 712 F.3d at 869, 881 & n.10 (distinguishing

⁸ To be sure, there is a conflict between the holding in *Wrenn* that a “good cause” requirement is facially unconstitutional, and the holdings in *Gould*, *Woollard*, *Kachalsky* and *Drake*, that a “good cause” requirement facially comports with the Second Amendment. But as the Panel explained (Panel Opinion at 53), that conflict is not presented here by a Hawaii statute that imposes a complete ban, regardless of “good cause.” *See also* Panel Opinion at 52 n.21 (noting that “not a single concealed carry license has ever been granted by the County”). *See also Gould*, slip op. at *33 (“the Hawaii law struck down by the Ninth Circuit created a regime under which not a single unrestricted license for public carriage had ever been issued”).

⁹ The GAO Study did not list a number for New York (*Kachalsky*) because the only data available in New York is likely inaccurate since “New York has no mechanism to purge inactive files.” *See* YoungAdd-118, footnote d.

Maryland’s law, which allowed for licenses on a showing of a “good and substantial reason,” from the outright ban invalidated by *Moore*, 702 F.3d at 940). And each of the good cause regimes that were upheld provided for administrative or judicial review of any license denial, *Kachalsky*, 701 F.3d at 87; *Drake*, 724 F.3d at 429; *Woollard*, 712 F.3d at 870, a safeguard conspicuously absent from Hawaii’s laws. Panel Opinion at 54.

In fact, “[c]ounsel for the County acknowledged as much at oral argument, stating that, to his knowledge, no one other than a security guard—or someone similarly employed—had ever been issued an open carry license.” Panel Opinion at 51. Thus, even assuming the “good cause” laws at issue in other Circuits comport with the Second Amendment, County of Hawaii’s carry policies are not based on “good cause” rather, as the *zero*-issue rate illustrates, reflect a *complete* ban on carry. In short, if there is any “outlier” here, it is Defendants, who have advanced a position that *no* circuit has embraced and which three circuits (*Wrenn*, *Gould* and *Moore*) have expressly rejected at the threshold.

III. The Panel’s Opinion is Consistent with *Peruta II*

Defendants next argue that *en banc* is warranted because the Panel Opinion “openly defies the *en banc* Court’s decision in *Peruta*.” Petition at 13. That is wrong because, as even Defendants admit, *Peruta* expressly disclaimed resolution of the very question presented this case: “In light of our holding, we need not, and do not, answer the question of whether or to what degree the Second Amendment might or might not protect a right of a member of the general public to carry firearms openly

in public.” *Peruta II*, 824 F.3d at 971. And *Peruta* certainly could not have resolved the constitutionality of section 134-9, as *Peruta* involved California law.

Defendants wrongly claim that the Panel Opinion “openly defies” *Peruta* because it treats certain historical sources as more persuasive on open carry than *Peruta* found them on concealed carry. Petition at 15. The Panel ably explained why the different question in this case warranted a different analysis. For instance, while Defendants protest that *Peruta* found *Bliss v. Commonwealth*, 12 Ky. 90 (1822), “of limited probative value because it was later overturned by constitutional amendment,” Petition at 14, the Panel explained that this constitutional amendment overturned *Bliss* only with respect to its “strict approach to restraints on the *concealed* carry of firearms,” and “left untouched the premise in *Bliss* that the right to bear arms protects *open* carry.” Panel Opinion at 20; *see also* Ky. Const. art. XIII, § 25 (amending state constitution to allow the legislature to “pass laws to prevent persons from carrying *concealed* arms” (emphasis added)). The Panel can hardly be faulted for finding *Bliss* persuasive authority with respect to a question that *Peruta* expressly declined to answer.

Indeed, Defendants’ view that *Peruta* declares *Bliss* and whole host of other Nineteenth Century cases irrelevant “outliers” is impossible to square with *Heller*, which favorably invoked *Bliss* and many of the other carry cases that Defendants would prefer the Panel had ignored. *See, e.g., Heller*, 554 U.S. at 585 n.9. The

Supreme Court also shared the Panel’s view (Panel Opinion at 38-39, 65-66) that the Statute of Northampton and other “bedrock English law[s],” Petition at 14, narrowly prohibited only “terrorizing people with dangerous or unusual weapons,” not all manner of public carry. *Heller*, 554 U.S. at 623; *see also id.* at 627 (noting “historical tradition of prohibiting the carrying of dangerous and unusual weapons”).

Yet remarkably, Defendants do not even mention *Heller* in their Petition, much less *Heller*’s treatment of these points. *Heller* cannot be so blithely ignored. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996) (“When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound.”); *See also Caetano v. Massachusetts*, 136 S.Ct. 1027 (2016) (summarily vacating lower court decision for failure to follow *Heller*’s reasoning).

IV. This Case is of Tremendous Importance to Mr. Young

Defendants are right about one thing: this case is tremendously important to Mr. Young. After three federal cases, against all odds, with the assistance of pro bono counsel¹⁰, and after more than 10 years of litigation, Mr. Young is entitled to have his application actually considered, rather than summarily rejected under Hawaii’s flat ban. He has not sought to invalidate section 134 in its entirety or any

¹⁰ <https://www.reuters.com/article/us-usa-guns-hawaii/unlikely-pair-could-ushe-gun-rights-case-to-u-s-supreme-court-idUSKBN1KT13B> (last visited 11/05/2018).

of its other conditions on obtaining a carry permit, but rather seeks only to invalidate Hawaii's reservation of the right to openly carry a handgun to those "engaged in the protection of life and property," a term which Hawaii has always restricted to security guards. Panel Opinion at 51. It should not take more than a decade to get a definitive answer to a question as straightforward as whether a flat ban on carrying outside the home is constitutional. Enough is enough.

Conclusion

The Petition for rehearing and rehearing *en banc* should be denied.

Respectfully submitted, this the 8th day of November, 2018.

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CERTIFICATE OF SERVICE

On this, the 8th day of November 2018, I served the foregoing pleading by electronically filing it with the Court's CM/ECF system which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 8th day of November 2018.

s/ Alan Alexander Beck

No. 12-17808

IN THE
**United States Court of Appeals
for the Ninth Circuit**

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,
v.
STATE OF HAWAII, ET AL,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor

**REPLY IN SUPPORT OF
PETITION FOR REHEARING *EN BANC***

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INTRODUCTION

Since Defendants filed their petition for rehearing *en banc*, the need for this Court's review has grown only stronger: The First Circuit has issued a decision expressly rejecting the logic of the panel below, and siding with "the weight of circuit court authority" in holding that the "core" of the Second Amendment does not include a right to open carry. *Gould v. Morgan*, -- F.3d --, 2018 WL 5728640, at *8-9 (1st Cir. Nov. 2, 2018). Every county in Hawaii has filed a brief agreeing with the Attorney General that the panel badly misconstrued Hawaii law. Amicus Br. of City and County of Honolulu *et al.* 2-6. And eleven States, including California and Oregon, have urged this Court to grant rehearing *en banc* and correct the panel's "erroneous and far-reaching decision," which gravely threatens the States' ability "to protect their residents from the scourge of gun violence." Amicus Br. of New Jersey *et al.* 2.

Young, in contrast, has offered no valid reason for this Court to leave the panel's erroneous decision intact: Young's claim that Defendants are "estopped" from challenging the panel's misreading of state law is belied by the very filings he cites. His contention that there is no circuit split contradicts the panel's own recognition that it was departing from the views of "several of our sister circuits." Add. 48-49. And his assertion that there is no inconsistency between this decision

and *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (*en banc*), cannot withstand even causal comparison of the two opinions.

In short, the panel issued a decision at odds with four other circuits, in open defiance of this Court's precedent, on an issue of enormous constitutional importance, based on a blatant misreading of state law. It is difficult to conceive of a more urgent case for *en banc* review. The petition should be granted.

ARGUMENT

I. The Panel Badly Misconstrued Hawaii's Open-Carry Law.

Young contends that the panel did not err by construing Haw. Rev. Stat. § 134-9 as limited to private security officers. Opp. 5. But despite devoting nearly half his brief to this argument, Young does not make even the barest attempt to square the panel's construction with the text, structure, or history of the law. That is because the panel's interpretation is indefensible: Every available indicia of statutory meaning refutes the panel's cramped interpretation, *see* Add. 79-82, and the Attorney General of Hawaii and every county in the State has now explained that it does not interpret or apply Hawaii law the way the panel read it. *Id.*; *see* Amicus Br. of City and County of Honolulu *et al.* 2-6.

Lacking any argument on the merits, Young contends that Defendants are barred from contesting the panel's erroneous reading of state law because "*Defendants themselves ... advanced*" the same interpretation "throughout this

litigation.” Opp. 3. That is false. In the sole sentence from the State’s brief that Young cites to support this claim, the State listed “security guards” as *an example* of persons who could obtain open-carry licenses under state law, not the *only* persons who could do so. *See* Amicus Br. of State of Hawaii 3 (“*Unconcealed* carry licenses may be granted only when the applicant ‘is engaged in the protection of life and property,’ *e.g. security guards*” (emphases in original)). Furthermore, when asked at oral argument whether Section 134-9 limits unconcealed-carry licenses to private security officers, the County’s attorney answered—twice—that it does not. *See* Oral Argument Recording at 15:36-16:33. One of the judges in the panel majority then acknowledged that was Defendants’ position. *Id.* at 16:34-16:42 (Judge Ikuta: “So you’re saying that the statute’s susceptible of an interpretation of not being a security guard.”).

Young also claims that the County’s *regulation* limits unconcealed-carry licenses to security guards. Opp. 3-4. Even if that were true, it would be irrelevant; it is the State’s law, not the County’s regulation, that the panel struck down in part. *See* Add. 52-53, 59. In any event, that claim, too, is false. The language of the County’s regulation mirrors the language of the state statute. *See* Answering Br. of County of Hawaii App. A at 7-8. And at oral argument, the County’s attorney clarified that the regulation does not limit open-carry licenses to private security guards. *See* Oral Argument Recording at 16:43-17:02.

Because Defendants have not changed their position, Young's estoppel argument is wholly without merit. Defendants are not estopped from pressing a position consistent with the one they have taken throughout this litigation. Young's remaining arguments about the panel's interpretation of state law are therefore beside the point, *see* Opp. 4-9, but they are also meritless.

First, there is no basis for Young's statement that past practice supports the panel's interpretation. Opp. 4. As Young concedes, some non-security guards have been granted carry licenses even in the short time period during which the Attorney General has collected statistics. *Id.*; *see* Add. 82. Young claims that he can infer from information obtained through discovery in a different case that counties marked carry applications as either "security" or "citizen." Opp. 5. Putting aside the fact that considering such non-record evidence is wholly improper on a motion to dismiss, this evidence actually undermines Young's theory: It suggests that "citizens" were understood to be eligible for carry licenses without regard for "whether the applications were for open or concealed [carry]." *Id.*

Second, Young is wrong to suggest the Hawaii Attorney General acted improperly by issuing an opinion clarifying the meaning of state law. Opp. 8-9. The Attorney General issued that opinion because until the panel decision no court or other authority had ever suggested the law was limited to security guards. *See*

Add. 77, 81. The Attorney General’s opinion was warranted to ensure that counties adhered to a correct interpretation of state law. Far from having no practical effect, as Young charges, Opp. 8-9, this opinion has caused every county in the State to clarify that it intends to follow the same interpretation. Amicus Br. of City and County of Honolulu *et al.* 2-6.

The Attorney General was certainly aware—and acknowledged—that Defendants “intend[ed] to seek panel rehearing or rehearing *en banc* of [the panel] decision.” Add. 77. Contrary to Young’s overheated rhetoric, however, there is nothing inappropriate about issuing a legal opinion in this posture. Courts often vacate and remand opinions in light of formal interpretations rendered by executive agencies while litigation is ongoing. *See, e.g., Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 1239 (2017) (vacating and remanding Fourth Circuit opinion “for further consideration in light of the guidance document issued by the Department of Education and Department of Justice” shortly before Supreme Court oral argument). What would be remarkable is for the Court to heed Young’s advice, and allow the invalidation of a century-old statute based on a reading at

odds with its text and history and contradicted by the State's own Attorney General.¹

II. The Panel's Decision Splits From The Decisions Of At Least Four Circuits.

Rehearing *en banc* is also warranted because the panel decision splits from the decisions of four Circuits. Since the rehearing petition was filed, the First Circuit has joined the Second, Third, and Fourth Circuits in holding that the core of the Second Amendment does not include a right to carry firearms outside the home, and upholding reasonable restrictions on carry under intermediate scrutiny. *Gould*, 2018 WL 5728640, at *8, *10; *see* Pet. 11. The panel below, in contrast, sided with the D.C. Circuit in holding that the right to open carry is part of the "core" of the Second Amendment, and that restrictions on open carry should be analyzed under strict scrutiny. Add. 50-51.

Nonetheless, Young dismisses the contention that there is a circuit split, calling the very claim "nonsense." Opp. 9. The panel disagreed. It rejected the

¹ If this Court was unsure whether the Attorney General and *all* of the counties have correctly interpreted the state law, the proper course would be certification to the Hawaii Supreme Court. Young asserts that this suggestion comes too late, but until the panel issued its opinion, it was not clear that it would stray so far from the statute's text. In any event, this Court has previously ordered certification *sua sponte* in the face of a controlling question of state law. *Perry v. Schwarzenegger*, 628 F.3d 1191, 1193 (9th Cir.), *request for certification granted*, No. S189476 (Cal. Feb. 16, 2011), *certified question answered sub nom. Perry v. Brown*, 265 P.3d 1002 (Cal. 2011).

view of “several of our sister circuits” that *District of Columbia v. Heller*, 554 U.S. 570 (2008), “limit[s] the [Second] Amendment’s core to the home,” explaining that it was “unpersuaded” by their reasoning. Add. 48-49. The dissent likewise observed that “[t]hree other[] [Circuits] have reached contrary conclusions.” Add. 61. And the First Circuit noted that while “the weight of circuit court authority” holds that the core of the Second Amendment does not include a right to public carry, the Ninth Circuit and the D.C. Circuit “have formulated broader conceptions of the core of the Second Amendment.” *Gould*, 2018 WL 5728640, at *8-9.

Young claims that all of these Circuits would strike down a statute that “imposed ‘an effective ban on the public carry of firearms.’” Opp. 10. But Hawaii law does not impose such a ban. Section 134-9 authorizes open-carry permits upon a showing of adequate cause, much like the laws upheld by the First, Second, Third, and Fourth Circuits. *See* Add. 83-84. Furthermore, it is undisputed that Hawaii law authorizes private citizens to obtain *concealed*-carry permits. *See* Haw. Rev. Stat. § 134-9. Circuits have upheld other states’ laws because they contained comparable authorization for concealed carry, without even considering whether open-carry permits were available (which, in many states, they are not). *See, e.g., Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 83-84 (2d Cir. 2012). Young cites *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), but that case struck down Illinois’ law only because it forbade *all* public carry, open or concealed—a

law with no analogue in Hawaii or any other State. *Id.* at 940 (“Illinois is the *only* state that maintains a flat ban on carrying ready-to-use guns outside the home”).²

In any event, the Ninth Circuit has not just struck down Hawaii’s law. It has established a constitutional rule that will impose strict scrutiny on any public-carry law that Hawaii—or California or Oregon or any other State—enacts in the future. That holding will severely hamstring the ability of States to regulate the use of deadly weapons in their borders, and subject them to restrictions that New York, New Jersey, Maryland, and now Massachusetts do not face. Amicus Br. of New Jersey *et al.* 2-3.

III. The Panel Flouted The *En Banc* Court’s Decision In *Peruta*.

Young also cannot square the panel’s opinion with this Court’s *en banc* decision in *Peruta*. At every turn, the panel relied on historical sources that *Peruta* rejected, disclaimed historical sources *Peruta* embraced, and engaged in modes of analysis that *Peruta* foreclosed. *See* Pet. 15-16.

Young claims there is no conflict between *Peruta* and the panel decision because *Peruta* “involved California law” and declined to resolve whether

² Young offers statistics purporting to show that Hawaii does not grant enough open-carry licenses. Opp. 12-13. Again, this extra-record evidence is wholly improper in a motion-to-dismiss posture, particularly given that it is contradicted by Hawaii’s own records. *See* Add. 81-82; Amicus Br. of City and County of Honolulu *et al.* 5-6.

restrictions on open carry are constitutional. Opp. 13-14. These distinctions are empty. This Court does not issue decisions that apply to one State only. And panels are bound by the reasoning of *en banc* decisions, not just their precise dispositions.

Young also contends that the panel explained why it was treating “certain historical sources as more persuasive on open carry than *Peruta* found them on concealed carry.” Opp. 14. But virtually every reason the panel gave for discounting sources that *Peruta* credited (or crediting sources that *Peruta* discounted) was irreconcilable with *Peruta*’s treatment of those same materials. Pet. 15-16. For instance, the panel deemed *State v. Buzzard*, 4 Ark. 18 (1842), and its progeny of “little instructive value” in interpreting the Second Amendment because they did not recognize “an individual right” to firearms. Add. 24-26. The dissenters and the panel opinion in *Peruta* offered the same reasoning. See *Peruta*, 824 F.3d at 954 n.7 (Callahan, J., dissenting); *Peruta v. Cty. of San Diego*, 742 F.3d 1144, 1156, 1159-60 (9th Cir. 2014). The *en banc* majority, however, disagreed: It cited those cases as evidence of how “an *overwhelming majority* of the states to address the question . . . understood the right to bear arms.” *Peruta*, 824 F.3d at 936.

Young himself offers only a single case—*Bliss v. Commonwealth*, 12 Ky. 90 (1822)—that he claims the panel appropriately treated differently than *Peruta*. Yet

Peruta rejected *Bliss* not for reasons specific to concealed-carry laws, but because *Bliss* was quickly “overturn[ed]” by constitutional amendment. *Peruta*, 824 F.3d at 936. Furthermore, it noted that several nineteenth-century courts “specifically discussed, and disagreed with, *Bliss*,” *id.*, including *Buzzard*, the decision rejecting an unqualified right to open carry that the panel majority “set aside,” Add. 26.

To camouflage these problems, Young ignores *Peruta* and turns to *Heller*, claiming that it “favorably invoked *Bliss*” and “shared the Panel’s view” of the Statute of Northampton. Opp. 14-15. But the *Peruta* court expressly considered *Heller*’s treatment of the Statute of Northampton and found that it supported the *en banc* Court’s reading. 824 F.3d at 932 (citing *Heller*, 554 U.S. at 593-594). Moreover, *Heller*’s “invo[cation]” of *Bliss* consists of a single mention in a stringcite in a footnote. See 554 U.S. at 585 n.9. That cannot justify the panel’s open defiance of this Court’s recent and closely on-point *en banc* precedent.

IV. This Issue Is Profoundly Important.

Young does not dispute this case’s profound importance. The panel struck down a provision of a nearly century-old law and held that restrictions on open-carry must be subjected to strict scrutiny. As multiple *amici* have explained, that holding would “needlessly jeopardize public safety” throughout Hawaii, Amicus Br. of City and County of Honolulu *et al.* 11; “make it more difficult for police officers to protect the public,” Amicus Br. of Giffords Center 16; cast into doubt a

“wide-ranging history of regulations similar to Hawaii’s,” Amicus Br. of Everytown for Gun Safety 8-9; and threaten the ability of numerous States to “protect their residents from gun violence,” Amicus Br. of New Jersey *et al.* 1.

Young nonetheless claims that rehearing should be denied so that he can “have his application actually considered, rather than summarily rejected under Hawaii’s flat ban.” Opp. 15. But Hawaii residents already have that right. The plain text of Hawaii law, an official opinion of the Attorney General, and every county in the State have stated, over and over again, that a law-abiding citizen is eligible to obtain an open-carry permit under Haw. Rev. Stat. § 134-9. The fact that Young doggedly refuses to accept the existence of that right does not provide reason for this Court to leave intact the panel’s evisceration of state authority to regulate firearms.

CONCLUSION

For the foregoing reasons, and those set forth in the petition, rehearing *en banc* should be granted, the panel decision should be vacated, and the case should be remanded to the district court so that it can be reassessed based on an accurate understanding of Hawaii law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 5(c)(1) and 32(c)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 5(c) and 32(f), it contains 2,586 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

/s/ Neal K. Katyal
Neal K. Katyal

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2018, I filed the foregoing Reply in Support of Petition for Rehearing *En Banc* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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