

HAWAI‘I CIVIL RIGHTS COMMISSION

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December 9, 2021

The Honorable Ronald D. Kouchi
President, and Members of the Senate
Thirty Second State Legislature
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Thirty Second State Legislature
State Capitol, Room 431
Honolulu, HI. 96813

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

For your information and consideration, I am transmitting an electronic copy of the report “*Addressing Racism in Hawai‘i: Looking back, During the Covid 19 Pandemic, and Moving Forward*” issued by the Hawai‘i Civil Rights Commission (HCRC) and required by Senate Concurrent Resolution 66, S.D. 1, H.D. 1. Hard copies will be delivered to the Legislative Reference Bureau.

In accordance with section 93-16, Hawaii Revised Statutes, the report may be viewed electronically at <http://labor.hawaii.gov/hcrc/> .

Sincerely,

William D. Hoshijo

William D. Hoshijo
Executive Director

ADDRESSING RACISM IN HAWAI'I: LOOKING BACK, DURING THE COVID-19 PANDEMIC, AND MOVING FORWARD

Submitted to the Hawai'i State Legislature
Pursuant to Senate Concurrent Resolution 66, Session Laws 2021

HAWAI'I CIVIL RIGHTS COMMISSION

Chair Liann Ebesugawa
Commissioner Joan Lewis
Commissioner William Puette
Commissioner Jon Matsuoka

Primary Researcher:

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Reported December 9, 2021

FOREWORD

This report is submitted by the Hawai‘i Civil Rights Commission (HCRC or Commission) pursuant to Senate Concurrent Resolution 66, Session Laws 2021, which directed the HCRC to identify and analyze incidents based on anti-Asian sentiment that have occurred in Hawai‘i since March, 2020, including incidents of racism, discrimination, hate crimes, and hate speech and submit a report of its findings and recommendations,

The Commission is greatly appreciative of Catherine Chen for her excellent research and writing, insight and analysis in preparing the report for Commission discussion, finalization, and approval for submission. This report would not have been possible without her assistance.

In preparation of this report, the HCRC requested information from several state and county agencies. HCRC extends its appreciation to all who provided data for this report.

We recognize that discussion of racism in Hawai‘i – historical, current, and going forward – is a complex and sensitive challenge, and that this report raises as many questions as it offers answers. We acknowledge the hard discussions that we as a state and a community that cares about justice and civil rights must engage in if we want to understand and eliminate racism. Rather than shy away from that challenge, we offer this report in the hope that it can be a catalyst for further discussion and meaningful dialogue on this persistent problem that we must face and understand if we hope to dismantle it – the problem of racism in Hawai‘i.

Liann Ebesugawa
Chair

Joan Lewis
Commissioner

William Puette
Commissioner

Jon Matsuoka
Commissioner

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Acronyms

- AA Asian Americans
- AANHPI Asian American and Native Hawaiian/Pacific Islander
- AAPI Asian American and Pacific Islander
- BJS Bureau of Justice Statistics
- CRDC Civil Rights Data Collection
- COVID-19 Coronavirus Disease of 2019 or Novel Coronavirus SARS-CoV2
- FBI Federal Bureau of Investigation
- HCRC Hawai'i Civil Rights Commission
- HPC Honolulu Police Commission
- NHPI Native Hawaiians and Pacific Islanders
- SCR Senate Concurrent Resolution

I. Introduction

During the 2021 Legislative Session, the Hawai‘i State Legislature adopted Senate Concurrent Resolution No. 66 (SCR 66), condemning and denouncing all forms of anti-Asian sentiment and all acts of racism, xenophobia, intolerance, discrimination, hate crime, and hate speech against Asian Americans and Asian individuals in the United States.¹ SCR 66 traces the history of anti-Asian sentiment nationally across the United States, from the Chinese Exclusion Act of 1882 to internment of Japanese Americans during World War II to crimes against Muslims, Sikhs, and Hindus after September 11, 2011, leading to recent anti-Asian events related to the COVID-19 pandemic. The “be it resolved” clauses of the resolution request the Hawai‘i Civil Rights Commission (HCRC) to report on incidents of anti-Asian discrimination, hate crimes, and hate speech in Hawai‘i since March 2020, and to report findings and recommendations to the Legislature.

What does “anti-Asian” or anti-Asian American and Native Hawaiian/Pacific Islander (AANHPI)² discrimination, hate crimes, and hate speech mean in the context of Hawai‘i, given Hawai‘i’s high AANHPI population? What does it look like? Where does Hawai‘i, with its own unique history, fit into the overall nation’s history of racism and discrimination? How does Hawai‘i understand racism, xenophobia, discrimination, and hate today? Ultimately, there are no easy answers to these questions, and this report does not pretend otherwise. In lieu of answers, this report offers the beginning of a conversation.

This report represents a compilation of relevant data used for secondary analysis to assess the prevalence and nature of hate crimes against Asian and Pacific Islanders in Hawai‘i. Overall, the data does not show increased “anti-Asian” or anti-AANHPI hate crimes since March 2020. However, this data represents only a limited piece of the overall narrative. In addition to underreporting and other confines of present-day data collection mechanisms, the “hate crime” framework is too narrow a lens to encompass the depth of racism and discrimination in Hawai‘i.

In this report, first, Section I gives background information on AANHPI in the United States and Hawai‘i leading up the March 2020. Section II examines Hawai‘i’s hate crime laws. Section III summarizes the available data on hate crimes, hate speech, and discrimination in Hawai‘i. Section IV contextualizes the data—and more specifically, the lack of data—delving into issues of underreporting. Section V considers what data cannot tell us, offering a brief introduction to systemic racism and the structural limits of our frameworks. Finally, Section VI offers recommendations for the future, with these recommendations representing a limited set of first steps in an ongoing path. The overall goal of these sections is to spark dialogue.

¹ S.C.R. No. 66 S.D. 1, 21st Legislature (2021), [https://www.capitol.hawaii.gov/session2021/bills/SCR66_HD1 .pdf](https://www.capitol.hawaii.gov/session2021/bills/SCR66_HD1.pdf) (Appendix A).

² See *infra* Section I.A for a discussion on the use of this term.

II. Background

A. A Note on Terminology

The terms used to identify different racial categorizations have morphed over time, just as the understanding of the categorizations themselves has evolved over time. The term “Asian American” began in 1968, coined by student activists to unify various ethnic subgroups and push back against the term “oriental,” which held colonialist and derogatory connotations.³ In the 1980s, the U.S. Census Bureau created the category “Asian Pacific Islander,” and in 1997, the Office of Management and Budget (OMB) changed the federal categories to “Asian” and “Native Hawaiian and Other Pacific Islander.”⁴

This year, the White House proclaimed May as “Asian American and Native Hawaiian/Pacific Islander Heritage Month,” using that term to identify the month for the first time.⁵ The month of May was formerly named Asian American and Pacific Islander Heritage Month and before that, Asian Pacific American Heritage Month.⁶

In full recognition of its limitations and complications, this report nonetheless uses the term Asian American and Native Hawaiian/Pacific Islander (AANHPI), not only to mirror the federal government, but also, and most importantly, to allow this report to encapsulate a range of experiences of hate and discrimination germane to Hawai‘i.

B. AANHPI in the United States and COVID-19

Nationally, the history of the United States’s AANHPI population is long. Hate against

³ Anna Purna Kambhampaty, *In 1968, These Activists Coined the Term ‘Asian American’—And Helped Shape Decades of Advocacy*, TIME (May 22, 2020), <https://time.com/5837805/asian-american-history/>.

⁴ *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, OFFICE OF MANAGEMENT AND BUDGET (Oct. 30, 1997), https://obamawhitehouse.archives.gov/omb/fedreg_1997standards. For more information, see *Census Data & API Identities*, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/resources/census-data-api-identities/> (last visited Sep. 24, 2021).

⁵ *A Proclamation on Asian American and Native Hawaiian / Pacific Islander Heritage Month, 2021*, WHITE HOUSE (Apr. 30, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/30/a-proclamation-on-asian-american-and-native-hawaiian-pacific-islander-heritage-month-2021/>

⁶ Dana Sagona, *Celebrate Asian American and Pacific Islander Heritage Month at Chatham Square Library*, NEW YORK PUBLIC LIBRARY BLOG (Apr. 21, 2017), <https://www.nypl.org/blog/2017/04/21/celebrate-asian-american>.

AANHPI communities has had a presence throughout this history, oftentimes in times of economic downturn and national strife, like the end of railroad construction in the 1870s, World War II, and the decline of the auto industry in the 1980s.⁷ Over the last decade, the population has grown significantly: between 2000 and 2019, Asian Americans (AA) were the fastest growing population at 81%, and Native Hawaiians and Pacific Islanders (NHPI) were the third-fastest growing population at 61%.⁸

Since the beginning of COVID-19, the incidents of hate and discrimination against AANHPI populations increased throughout the United States. The Center for the Study of Hate & Extremism reported, “In 2020, Anti-Asian hate crime increased 146% across 26 of America’s largest jurisdictions.”⁹ An April 2021 survey from the Pew Research Center found that 45% of Asian adults experienced an offensive incident since the beginning of COVID-19 and that a third fear threats and physical attacks.¹⁰ The coalition Stop AAPI Hate began tracking violence and harassment since March 2020 and reported a total of 9,081 incident reports through June 2021.¹¹ These reports came from all 50 states, including Hawai‘i.¹²

Many have drawn the connection between these hate incidents and COVID-19. In U.S. history, xenophobia and “othering” has often come out of epidemics.¹³ Certain political leaders

⁷ *The painful history of anti-Asian hate crimes in America*, CBS NEWS (Aug. 1, 2021),

<https://www.cbsnews.com/news/the-painful-history-of-anti-asian-hate-crimes-in-america/>

⁸ Abby Budiman & Neil G. Ruiz, *Asian Americans are the fastest-growing racial or ethnic group in the U.S.* (Apr. 9, 2021), <https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/>

⁹ *Report to the Nation: Anti-Asian Prejudice & Hate Crime*, CENTER FOR THE STUDY OF HATE AND EXTREMISM CSUSB (2021), at 3,

<https://www.csusb.edu/sites/default/files/Report%20to%20the%20Nation%20-%20Anti-Asian%20Hate%202020%20Final%20Draft%20-%20As%20of%20Apr%2030%202021%206%20PM%20corrected.pdf>.

¹⁰ Neil G. Ruiz, Khadijah Edwards & Mark Hugo Lopez, *One-third of Asian Americans fear threats, physical attacks and most say violence against them is rising*, PEW RESEARCH CENTER (Apr. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/>.

¹¹ *Stop AAPI Hate National Report 3/19/20 – 6/30/21*, STOP AAPI HATE (Aug. 12, 2021), at 1, <https://stopaapihate.org/wp-content/uploads/2021/08/Stop-AAPI-Hate-Report-National-v2-210830.pdf>.

¹² *Stop AAPI Hate National Report 3/19/20 – 2/28/21*, STOP AAPI HATE (Mar. 16, 2021), at 1, <https://stopaapihate.org/wp-content/uploads/2021/05/Stop-AAPI-Hate-Report-National-210316.pdf>.

¹³ Angela R. Gover, Shannon B. Harper, & Lynn Langton, *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AMERICAN JOURNAL OF CRIMINAL JUSTICE 647, 653 (2020) (“The COVID-19 pandemic is not the first time a public health crisis has resulted in the othering and disparate treatment of Asian Americans. When the bubonic plague began in San Francisco, CA in 1900, public health officials implemented a race-

chose to emphasize the origins of COVID-19 in Wuhan, China, in their public statements.¹⁴ About 21.7% of Stop AAPI Hate’s reported hateful language incidents were directly tied to blame for COVID-19 (“Get away from me! You have COVID!”; “Kung Flu”).¹⁵ One study using Google Trends found that “in the first half of 2020, strong correlations existed between interest in Coronavirus and bigotry towards Asian and Hispanic Americans as operationalized by search rates for racial slurs.”¹⁶

C. AANHPI in Hawai‘i and COVID-19

In Hawai‘i, the history of AANHPI populations is unique compared to other states. The colonial history of the islands begins in 1778, with the arrival of Captain James Cook, leading to diseases, a sharp decline in Native Hawaiian populations, and the illegal overthrow of the Hawaiian Kingdom in 1893.¹⁷ Beginning in the 1800s, immigrants arrived as contract laborers in difficult conditions at the plantations, with many from Asia, including China, Japan, Okinawa, Korea, and the Philippines.¹⁸ Hawai‘i has a history of race and ethnicity-based occupational stratification with roots in the plantation system, where ethnic wage scales were the rule.¹⁹ It has similar histories of segregation in housing (segregated plantation camps and segregated neighborhoods),²⁰ education (implemented both through exclusive private schools and the

based response by quarantining Chinese residents in Chinatown, the epicenter of the outbreak, while allowing white merchants to leave. More recently, East Asians across the globe experienced stigmatization during the SARS outbreak of 2002-2004.” (citations omitted)).

¹⁴ *Id.* at 653-54. (“Disregarding the WHO’s (2015) official nomenclature, President Donald Trump publicly used the terms “Chinese virus” or “China virus” for COVID-19 On the coattails of President Trump’s remarks, other political officials have also used derogatory language to blame the Chinese for causing COVID-19. For example, Senator John Cornyn (R-TX) said in a press conference on March 18th that China was to “blame” for the spread of COVID-19 because they are a “culture where people eat bats and snakes and dogs and things like that.” (citations omitted)).

¹⁵ *Stop AAPI Hate National Report 3/19/20 – 6/30/21*, STOP AAPI HATE (Aug. 12, 2021), at 7, <https://stopaapihate.org/wp-content/uploads/2021/08/Stop-AAPI-Hate-Report-National-v2-210830.pdf>.

¹⁶ Karl F. Vachuska, *Initial effects of the coronavirus pandemic on racial prejudice in the United States: Evidence from Google trends*, SOCARXIV (Mar. 29, 2020), at 1, <https://osf.io/preprints/socarxiv/bgpk3/>.

¹⁷ Imani Altemus-Williams & Marie Eriel Hobro, *Hawai‘i is not the multicultural paradise some say it is*, NATIONAL GEOGRAPHIC (May 17, 2021), <https://www.nationalgeographic.com/culture/article/hawaii-not-multicultural-paradise-some-say-it-is>.

¹⁸ *Id.*

¹⁹ LAWRENCE H. FUCHS, HAWAII PONO = HAWAII THE EXCELLENT: AN ETHNIC AND POLITICAL HISTORY (1961) at 55, 58.

²⁰ Fuchs *supra* note 19 at 66, 111.

English Standard School System),²¹ and racially exclusive private clubs.²² It also is noteworthy that of 47 men executed in Hawai‘i between 1827 and 1957, before the abolition of the death penalty, 24 (51%) were Filipino and 10 (21%) were Japanese, while only 1 (2.1%) was Haole.²³ Consequently, the “othering” and scapegoating of specific AANHPI ethnicities during times of strife was not unique to the continent. In 1900, facing a pandemic of bubonic plague that originated in China, the local Board of Health ordered “controlled burns” of Honolulu’s Chinatown, which led to an out-of-control fire that burned down Chinatown—a fifth of Honolulu—and the homes of 5,000 people.²⁴ In the 1930s, in the infamous Massie case, a White woman accused five “Hawaiians” (although they were of various AANHPI ethnicities) of rape, and when the trial resulted in a hung jury, her relatives murdered one of the defendants, Joseph Kahahawai, a Hawaiian man.²⁵ Although the trial for Kahahawai’s murder ended in convictions, the governor commuted the sentences to one hour.²⁶

Today, according to the 2020 U.S. Census, Asians account for 36.5% of Hawai‘i’s population and Native Hawaiians and other Pacific Islanders account for 10.2%.²⁷ As a result of Hawai‘i’s unique history, anti-AANHPI hate also manifests itself uniquely. As scholars have noted, “Racial demographics are also strongly related to perpetuating the existing social hierarchy in a given context.”²⁸ A discussion of anti-AANHPI hate in Hawai‘i would be

²¹ *Id.* at 263-98.

²² *Id.* at 61-62.

²³ Lawrence K. Koseki, *Capital Punishment in Hawai‘i: An Ethnic Perspective*, THE ASIAN AMERICAN MENTAL HEALTH RESEARCH CENTER 12 (May 1978). For another study on this issue, see Jonathan Y. Okamura, *Application and Abolition: Race and Capital Punishment in Territorial Hawai‘i*, UNIVERSITY OF HAWAII AT MĀNOA (2019), <https://scholarspace.manoa.hawaii.edu/bitstream/10125/64730/jokamura.pdf> (discussing in more detail the hangings after Hawai‘i officially became a U.S. territory in 1900).

²⁴ Robert Barde, *Plague and Fire: Battling Black Death and the 1900 Burning of Honolulu’s Chinatown (review)*, 60 JOURNAL OF THE HISTORY OF MEDICINE AND ALLIED SCIENCES 374, 374-75 (2005).

²⁵ Stewart Chang, *Bridging Divides in Divisive Times: Revisiting the Massie-Fortescue Affair*, 42U. HAW. L. REV. 4 (2019).

²⁶ Denby Fawcett, *The Most Infamous Legal Case in Hawaii’s History*, HONOLULU CIVIL BEAT (Jan. 5, 2016), <https://www.civilbeat.org/2016/01/denby-fawcett-the-most-infamous-legal-case-in-hawaiis-history/>.

²⁷ Brittany Lyte, *2020: Oahu’s Population Tops 1 Million for the First Time*, HONOLULU CIVIL BEAT (Aug. 12, 2021), <https://www.civilbeat.org/2021/08/2020-census-oahus-population-tops-1-million-for-the-first-time/>.

²⁸ Chanel Meyers, Katherine Aumer, Cortney Janicki, Kristin Pauker, Edward C. Chang, Sarah E. Gaither, & Amanda Williams, *Experiences with Microaggressions and Discrimination in Racially Diverse and Homogeneously White Contexts*, 26 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOLOGY 250, 255 (2020)(noting the highest status of certain Asian and multiracial groups in Hawai‘i).

incomplete without an examination of inter-AANHPI bias and violence and an examination how racism works in Hawai‘i. Diversity does not preclude racism.²⁹

Hawai‘i has seen discrimination against new waves of immigrants throughout its history.³⁰ Today, Samoans, Tongans, and Micronesians face discrimination in Hawai‘i,³¹ and the prejudice has been particularly pronounced against individuals from the nations of greater Micronesia, the Federated States of Micronesia (FSM), the Republic of Marshall Islands (RMI), and Republic of Palau.³² For example, a U.S. Department of Justice-funded study of 537 Micronesian participants from 2017 to 2018 found that out of the 39 respondents who reported being victims of a crime, 22 (56% of those who experienced a crime; about 1 in 20 of all respondents) reported that it was a crime due to bias.³³ Furthermore, 29.8% (1 in 4) of all respondents stated that they have experienced at least one prejudiced incident.³⁴

Local activists involved in protesting anti-AANHPI hate have recognized these dynamics. In March 2021, after the Atlanta shooting killings, a coalition of groups and individuals organized the "Stop Asian Hate" in Honolulu, and organizer Jeffrey Kim saw this event as necessary regardless of Hawai‘i’s high AANHPI population. He stated, “Just because you’re Asian yourself doesn’t mean that you are immune from discriminating against other Asians,” and he highlighted Hawai‘i’s mistreatment of Micronesians.³⁵ A virtual event hosted by a group of educators and indigenous rights advocates honoring the Atlanta victims also highlighted the racism against Micronesians in Hawai‘i. Organizer Sarah Brandenstein stated,

²⁹ Noe Tanigawa, *Ethnic Inequality in the Aloha State*, HAWAII PUBLIC RADIO (Oct. 10 2017), <https://www.hawaiipublicradio.org/arts-culture/2017-10-10/ethnic-inequality-in-the-aloha-state> (interviewing Professor Jon Okamura on his book *ETHNIC INEQUALITY IN HAWAII*).

³⁰ Altemus-Williams & Hobro, *supra* note 17; *see also* Jonathan Y. Okamura, *What about racial groups and boundaries (and race and racism)?*, 25 *ANTHROPOLOGICAL NOTEBOOKS* 37, 50 (2019) (noting attacks on Filipino immigrant students in the 1970s).

³¹ Altemus-Williams & Hobro, *supra* note 17.

³² Okamura, *supra* note 30 at 45-51.

³³ Rebecca Stotzer & Jocelyn Howard, *Final Summary Overview for Impacts of Social Proximity to Bias Crime among Compact of Free Association (COFA)-migrants in Hawaii*, U.S. DEPT. OF JUSTICE OFFICER OF JUSTICE PROGRAMS (Dec. 2020), at 17, <https://www.ojp.gov/pdffiles1/nij/grants/255938.pdf>.

³⁴ *Id.* at 18. *See also* *Research Brief: Bias Against Micronesians in Hawai‘i*, UNIVERSITY OF HAWAII AT MĀNOA MYRON B. THOMPSON SCHOOL OF SOCIAL WORK (Feb. 2019), https://manoa.hawaii.edu/thompson/wp-content/uploads/Research-Report-Stotzer-2019_3.pdf.

³⁵ Noe Tanigawa, *March Against Anti-Asian Hate Raises Awareness, Highlights Intersectionality*, HAWAII PUBLIC RADIO (Mar. 30, 2021), <https://www.hawaiipublicradio.org/arts-culture/2021-03-30/march-against-anti-asian-hate-raises-awareness-highlights-intersectionality>.

“One of the things I feel about the national conversations is that I feel a lot of times it is so focused on East Asians, and there is colorism involved in that.”³⁶

The impact of COVID-19 on anti-AANHPI incidents in Hawai‘i has manifested in a number of ways. First, at the beginning of the COVID-19 pandemic, there was decreased business in Honolulu’s Chinatown, with some businesses experiencing a 30 to 50 percent drop in business, as reported by Chinatown Business & Community Association president Chu Lan Shubert Kwock.³⁷ Then, before statistics on COVID-19 for all races and ethnicities were released, the Marshallese community was singled out in a government official’s comments, which was particularly concerning within the context of existing discrimination.³⁸ The full impact of COVID-19 on anti-AANHPI will likely be better understood in the coming years. The remainder of this report explores the dynamics in Hawai‘i thus far.

III. Hate Crime Legislation in Hawai‘i

Hawai‘i has codified hate crime legislation beyond federal minimums.

First, Hawai‘i provides for extended terms of imprisonment for individuals convicted as “hate crime offenders.”³⁹ The statute defines “hate crime offenders” in the following way:

The defendant intentionally selected a victim or, in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsection, "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related

³⁶ Annalisa Burgos, *Hawaii activists add Pacific Islander voices to Stop Asian Hate movement*, KITV (Mar. 27, 2021), <https://www.kitv.com/story/43564275/hawaii-activists-add-pacific-islander-voices-to-stop-asian-hate-movement>.

³⁷ *Economic Warning Signs From Coronavirus Already Appear In Islands*, HAWAII PUBLIC RADIO (Mar. 4, 2020), <https://www.hawaiipublicradio.org/local-news/2020-03-04/economic-warning-signs-from-coronavirus-already-appear-in-islands>; Nicole Tam, *As the coronavirus spreads, there's reports of discrimination targeting Asians*, KITV (Mar. 10, 2020), <https://www.kitv.com/story/41878469/as-the-coronavirus-spreads-theres-reports-of-discrimination-targeting-asians>.

³⁸ Chelsea Jensen, *DOH apologizes for director’s comments about race and ethnicity*, WEST HAWAII TODAY, <https://www.westhawaii.com/2020/05/03/hawaii-news/doh-apologizes-for-directors-comments-about-race-and-ethnicity/>.

³⁹ Haw. Rev. Stat. § 706-662(6).

expression is different from that traditionally associated with the person's sex at birth.⁴⁰

Second, Hawai‘i law establishes a hate crime data collection and public dissemination system.⁴¹ The responsibility for data collection, storage, analysis, and dissemination rests with department of the attorney general, in cooperation with “all agencies that have primary investigative, action, or program responsibility for adult or juvenile offenses, including the county police departments, the county prosecutors, the family courts, and the departments or agencies responsible for administering any correctional facilities.”⁴² The data collection scheme uses a parallel definition for “hate crime” as the “hate crime offender” definition under the sentence enhancement statute.⁴³ It defines a “hate crime” as “any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person.”⁴⁴

Third, Hawai‘i also has additional laws that are not “hate crime” statutes, and thus do not require proof of bias motivations in the same way, but nonetheless offer extra protections to protected groups. For example, Hawai‘i criminalizes the desecration of any public monument or structure, a place of worship or burial, or “[i]n a public place the national flag or any other object of veneration by a substantial segment of the public.”⁴⁵ “‘Desecrate’ means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.”⁴⁶ Also, Hawai‘i recently passed a law to offer extra protections for elderly crime victims.⁴⁷

Hawai‘i’s hate crime legislation includes a broad definition of bias motivations compared to other jurisdictions, as it protects against hate crimes on the basis of race/color, national origin, religion, sexual orientation, gender/sex, gender identity, and disability.⁴⁸ It is one of the 30 states

⁴⁰ Haw. Rev. Stat. § 706-662(6)(b).

⁴¹ Haw. Rev. Stat. §§ 846-51–54.

⁴² Haw. Rev. Stat. §§ 846-52.

⁴³ Haw. Rev. Stat. § 706-662(6).

⁴⁴ Haw. Rev. Stat. § 846-51.

⁴⁵ Haw. Rev. Stat. § 711-1107.

⁴⁶ *Id.*

⁴⁷ Relating to Crimes Against Seniors, L2021, Act 147 (2021); *see also Ige signs Law protecting kupuna*, THE GARDEN ISLE (Jul. 5, 2021), <https://www.thegardenisland.com/2021/07/05/hawaii-news/ige-signs-law-protecting-kupuna/>.

⁴⁸ *Hate Crimes Laws and Policies*, U.S. DEPT. OF JUSTICE (Aug. 2, 2021), <https://www.justice.gov/hatecrimes/laws-and-policies>.

that require some level of data collection and reporting, and it is one of the 26 states that mandatorily requires law enforcement agencies to report hate crime data to a central agency.⁴⁹

Finally, Hawaii’s hate crime laws do not require law enforcement training on the topic of hate crimes. In the United States, eighteen states currently require law enforcement hate crime training, with components including how to identify, respond to, and accurately collect data on hate crimes.⁵⁰

III. Data on Hate Crimes, Hate Speech, and Discrimination in Hawai‘i

The following section summarizes the available data on hate crimes, hate speech, and discrimination.

A. The Attorney General’s 2020 Report: Prosecutor-Level Data

Hawai‘i’s main hate crime data collection and reporting system, as mandated by Haw. Rev. Stat. §§ 846-51–54, described in Section II, culminates in the annual *Criminal Justice Data Brief, Hate Crimes in Hawai‘i*.⁵¹ The report captures prosecution-level data, rather than police-level data. The 2020 report found four hate crime incidents that reached final disposition in 2020. Three of the four reported incidents occurred before March 2020.⁵² One occurred after March 2020, which did not involve an AANHPI victim.

The new 2020 report also corrected reporting from City and County of Honolulu for 2018 and 2019, reporting four (revised from zero) and seven (revised from one) crimes respectively.⁵³ Overall, while the annual numbers of hate crimes reported per year remain in the single-digits,

⁴⁹ Movement Advancement Project, *Policy Spotlight: Hate Crime Laws* (July 2021), at 23, <https://www.lgbtmap.org/file/2021-report-hate-crime-laws.pdf>.

⁵⁰ *Id.* at 24.

⁵¹ Paul Perrone, *Hate Crimes in Hawaii, 2020*, DEPARTMENT OF THE ATTORNEY GENERAL CRIME PREVENTION & JUSTICE ASSISTANCE DIVISION (July 2021), <https://ag.hawaii.gov/cpja/files/2021/07/Hate-Crimes-in-Hawaii-2020.pdf> (Appendix B).

⁵² While outside the scope of this report, it is notable for comparison that one of these three pre-March 2020 incidents may potentially have an AANHPI victim, although the bias category appears to be religion. The race of the victim was not specified, and the offender “shouted anti-Muslim slurs at the victim.” *Id.* at 3.

⁵³ While outside the scope of this report, it is notable for comparison that the 2018 and 2019 corrected data shows one anti-AANHPI crime in 2018, in which “The offender then shouted that the victim should ‘go back to China.’” The data also reported two in 2019: one “made anti-Filipino remarks before physically assaulting them”; the second “threatened to kill the manager, and uttered a variety of anti-Filipino and anti-immigrant insults.” *Id.* at 5-6. In both of the 2019 cases, the “incident is noteworthy because it featured an offender whose criminal motivation involved the expression of bias against an ethnic group to which he also belongs.” *Id.* at 6.

the past three years represent a marked increase from the 19-year average of 2.5 cases per year since the inception of the reporting program.⁵⁴ The total number since 2002, the first year for which there is data, is 48.

The 2020 report also gives an important update on a statewide transition to the National Incident-Based Reporting System (NIBRS), the most current version of the FBI's Uniform Crime Reporting (UCR) Program. This system of reporting captures police-level data, rather than prosecutor-level data, meaning that the new system would capture cases that are reported to the police as a hate crime but are ultimately not given this categorization by the prosecutors. Honolulu transitioned in 2018, Kauai began the transition in 2021, and Hawaii and Maui are expected to begin the transition in 2021. As the report states, "Hawaii's first police-level hate crime data will be published in the coming months as a special section of the state UCR program's new, public-facing, Web-based, statistical dashboard for NIBRS crime data."⁵⁵

B. FBI Hate Crime Statistics: Police-Level Data

The FBI Hate Crime statistics record police-level hate crime data. The 2020 data is based only on data from the City and County of Honolulu, as the other countries are not yet participating in this reporting system, although are or will be in the process of transitioning to this system, as described in Section III.A. For 2020, the total number of hate crimes reported was 36. Four of were anti-Asian and one was anti-Multiple Races, Group, with the exact races unspecified. For comparison, in 2019, out of the 40 total reported hate crimes, two were anti-Asian and two were anti-Native Hawaiian or Other Pacific Islander. In 2018, out of the 44 reported hate crimes, six were anti-Asian and one was anti-Native Hawaiian or Other Pacific Islander.

The FBI's report shows a total of 120 hate crimes since 2018, the first year for which there is data.⁵⁶ This is a higher number than the Attorney General reports, which shows a total of 18 since 2018 and only a total of 48 since 2002. The 2020 Hate Crime Report stated, "NIBRS hate crime reporting is expected to eventually supersede Hawaii's current prosecutor level reporting program."⁵⁷ Once the Attorney General Hate Crime Reports fully transition to the police-level, FBI-style NIBRS from its current prosecutor-level collection systems, the Attorney General reports will likely shift to match the FBI numbers.

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

⁵⁶ *Federal Bureau of Investigation Crime Data Explorer*, <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime> (last visited Sep. 24, 2021) (Appendix C).

⁵⁷ Perrone, *supra* note 51 at 3.

C. Stop AAPI Hate: “Hate Incidents”

The coalition Stop AAPI Hate is a national coalition that collects reports on “hate incidents” rather than “hate crimes.” They explain: “We use the term hate incidents because not all occurrences are legally defined as crimes. For example: someone yelling racist slurs, while wrong and hateful, is not a crime. Though an incident may not be a crime, it can still be traumatizing and damaging. The vast majority — about 90% — of the incidents that are reported to us are not hate crimes.”⁵⁸ Stop AAPI Hate collects incident reports through an online form, available in 14 languages, and it does not pass on the information for law enforcement purposes.⁵⁹ The coalition began tracking violence and harassment since March 2020. As of July 9, 2021, there were a total of 35 incidents reported in Hawai‘i.⁶⁰ The top suspected reasons for discrimination were “race,” “ethnicity,” “gender,” and “language,” respectively. The full scope of hate and discrimination during COVID-19 may not be revealed until the future. Stop AAPI Hate’s tracking shows that some incidents that took place in 2020 were not reported until 2021.⁶¹

D. Educational Institutions

Each University of Hawai‘i campus publishes an Annual Security Report, as required by the Clery Act⁶² for recipients of federal funding. The 2021 reports, covering years 2018 through 2020, have already been published for Mānoa (including main campus, John A. Burns School of Medicine, and UH Cancer Center)⁶³ and Honolulu Community College⁶⁴: no hate crimes were reported in either of them.⁶⁵

⁵⁸ *Frequently Asked Questions*, STOP AAPI HATE, <https://stopaapihate.org/frequently-asked-questions/> (last visited Sep. 24, 2021).

⁵⁹ *Id.*

⁶⁰ Stop AAPI Hate, *Hawaii* (updated Jul. 9, 2021) (Appendix D).

⁶¹ Russell Jeung, Aggie Yellow Horse, Tara Popovic & Richard Lim, *Stop AAPI Hate National Report 3/19/20 – 2/28/21*, STOP AAPI HATE (Mar. 16, 2021), at 2, <https://stopaapihate.org/wp-content/uploads/2021/05/Stop-AAPI-Hate-Report-National-210316.pdf>

⁶² 20 U.S.C. § 1092.

⁶³ University of Hawai‘i at Mānoa, John A. Burns School of Medicine & UH Cancer Center, 2021 ANNUAL SECURITY & FIRE SAFE REPORT 50-51 (2021), <https://manoa.hawaii.edu/dps/wp-content/uploads/sites/27/2021/09/2021-UH-Manoa-Annual-Security-Fire-Safety-Report.pdf>

⁶⁴ Honolulu Community College, 2021 ANNUAL SECURITY REPORT 75 (2021), <https://www.honolulu.hawaii.edu/sites/www.honolulu.hawaii.edu/files/security-annual-report.pdf>.

⁶⁵ The most recent Annual Security Reports published online by the other University of Hawai‘i campuses also did not have any reports of hate crimes. University of Hawai‘i – Hilo, 2020 ANNUAL SECURITY & FIRE SAFE REPORT (2020), <https://hilo.hawaii.edu/security/annual-report.php#crimestats2020>; University of Hawai‘i – West O‘ahu, 2020 ANNUAL SECURITY REPORT 18-19 (Sep. 2020), https://westoahu.hawaii.edu/wp-content/uploads/docs/security/Annual_Security_Report.pdf; Leeward Community College, 2020

The Hawai'i Department of Education keeps data on protected class discrimination and harassment involving employees, but it does not break down the employee-related data by specific races or break down the data by discrimination, violence, or bullying. For school year 2019-2020, there were a total of five open and 25 closed cases in the "race" category.⁶⁶ For school year 2020-2021, there were a total of seven open and 24 closed cases in the "race" category.⁶⁷

The Hawai'i Department of Education also keeps data on student against student internal investigations involving bullying, discrimination, and violence complaints, which is broken down by specific race and ethnicities, using federal categories. For school year 2019-2020, there were a total of 201 "Asian" victims and a total of 293 "Pacific Islander" (a category that includes Native Hawaiians) victims.⁶⁸ For school year 2021-2021, there were a total of 20 "Asian" victims and a total of 19 "Pacific Islander" victims.⁶⁹

E. Police Commissions: Partiality Adjudications

The Honolulu Police Commission (HPC) adjudicates "Partiality" cases under the Honolulu Police Commission Rule 8-2, which states, "Officers and employees shall not display

ANNUAL SECURITY REPORT 47-48 (2020), <http://www.leeward.hawaii.edu/files/asr2020.pdf>; University of Hawai'i – Maui College, CAMPUS ANNUAL SECURITY REPORT 2020, at 50 (2020), <http://maui.hawaii.edu/campussecurity/2020-UHMC-ASR.pdf>; University of Hawai'i – Kaua'i Community College, 2019 ANNUAL SECURITY REPORT 21 (Dec. 30, 2020), <https://www.kauai.hawaii.edu/sites/www.kauai.hawaii.edu/files/pdf/campus-safety/2019%20-20annual-safty-report-final.pdf>; University of Hawai'i – Hawai'i Community College, 2020 ANNUAL SECURITY REPORT 40 (2020), <https://www.hawaii.hawaii.edu/sites/default/files/assets/security/docs/2020-ASR.pdf>; Kapi'olani Community College & The Culinary Institute of the Pacific, 2020 ANNUAL SECURITY REPORT 53, <https://www.kapiolani.hawaii.edu/wp-content/uploads/2020/12/ASR20.pdf>; University of Hawai'i – Windward Community College, 2020 ANNUAL SECURITY REPORT 73, <https://windward.hawaii.edu/campus-life/safety-security/annual-security-report/>.

⁶⁶ See Appendix E at 1.

⁶⁷ *Id.*

⁶⁸ See Appendix E at 2. Note that this data was summarized by the report author through a simple Excel Pivot Table of the raw data provided by HI-DOE. All categories are subject to the suppression rule, which requires that any category where the number of incidents is less than 10 be suppressed.

⁶⁹ See Appendix E at 3. The drastic difference in numbers between school year 2019-2020 and school year 2020-2021 may be due to distance learning. See, e.g., Suevon Lee, *Hawaii Schools To Continue Mostly Distance Learning Through December*, HONOLULU CIVIL BEAT (Sep. 17, 2020), <https://www.civilbeat.org/2020/09/hawaii-schools-to-continue-distance-learning-through-december/>.

favoritism, or partiality for or discriminate against a person because of race, nationality, sex, religion, influence, political persuasion or office, sexual orientation or preference, age or disability.” The Honolulu Police Commission does not maintain this data by breakdown of type of partiality alleged. In 2019, HPC adjudicated thirteen partiality cases: one sustained, ten not sustained, and two exonerated.⁷⁰ In 2020, HPC adjudicated fourteen partiality cases: twelve not sustained and two exonerated.

The Hawai‘i Police Commission’s data on 2019, 2020, and 2021 included only one case of alleged partiality, from 2020, and it was not race-based.⁷¹ The Maui Police Commission did not have anything responsive to the request for partiality cases data. The Kauai Police Commission also does not maintain any such records.

IV. Contextualizing the Data

The data does not reflect evidence of increases in anti-AANHPI incidents from before March 2020 to afterwards. Although this is important to note, the data only offers a limited picture of hate and discrimination in Hawai‘i. This section discusses in more detail the underreporting of hate crimes and then delves into potential barriers to reporting.

A. Studies Show that Hate Crimes are Underreported

Hate crimes are generally underreported across the United States. In 2020, almost a fourth of big cities, encompassing over 11 million inhabitants total, did not report a single hate crime that year.⁷² Furthermore, over 80% of almost 15,000 local law enforcement jurisdictions did not report a single hate crime.⁷³

The federal government has sought to understand these dynamics through the annual Bureau of Justice Statistics’ (BJS) National Crime Victimization Survey (NCVS), a self-reported survey of crime victimization conducted by the U.S. Census Bureau every year.⁷⁴ By comparing the NCVS survey data to police data through the FBI’s Uniform Crime Reporting (UCR), the survey annually finds underreporting of crimes to the police. The BJS’s latest national report on hate crimes, which covers 2010 to 2019, found that out of all the hate crimes self-reported by

⁷⁰ Letter (Aug. 6, 2021) (Appendix F).

⁷¹ Notice to Requester (Sep. 21, 2021) (Appendix G).

⁷² Beatrice Jin, *Biden signed a new hate crimes law — but there's a big flaw*, POLITICO (May 20, 2021), <https://www.politico.com/interactives/2021/state-hate-crime-laws/> (calling this a “statistical near-impossibility.”)

⁷³ *Id.*

⁷⁴ *Methodology*, BUREAU OF JUSTICE STATISTICS NATIONAL CRIME VICTIMIZATION SURVEY (NCVS), <https://bjs.ojp.gov/data-collection/ncvs#methodology-0> (last visited Sep. 26, 2021).

victims in the survey over the ten years, only about 44% of the hate crimes were reported to the police.⁷⁵ Of those reported to the police, only 13% were confirmed by police investigations as hate crimes.⁷⁶

The underreporting of hate crimes is related to the underreporting of crime in general. The 2019 survey⁷⁷ found that 41% of violent victimizations and 33% of property victimizations were reported to the police.⁷⁸ The BJS's NCVS surveys include data from Hawai'i residents, but they do not report Hawai'i-level data separately.

In response to the NCVS's lack of Hawai'i-specific data, the State of Hawai'i Attorney General's Office in the past has prepared Household Survey Reports that aim to be comparable to the federal NCVS survey.⁷⁹ As the report describes, "Crime victimization surveys provide informative measurements of the nature and extent of crime and, importantly, offer an alternative perspective when compared to the official statistics generated by the Uniform Crime Reporting (UCR) Program."⁸⁰ The last Household Survey Report was 2010. That report found that only about 29.1% of crimes were reported to law enforcement authorities.⁸¹ The 2010 Household Survey Report did not provide specific statistics on hate crimes. The last Household Survey Report that included hate crime statistics was 1998, and it found that 2.3% of survey respondents

⁷⁵ Grace Kena & Alexandra Thompson, *Hate Crime Victimization, 2005-2019*, U.S. DEPT. OF JUSTICE BUREAU OF JUSTICE STATISTICS (September 2021), at 2, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

⁷⁶ *Id.*

⁷⁷ This was the most recently report available at time of writing.

⁷⁸ Rachel E. Morgan, Ph.D. & Jennifer L. Truman, *Criminal Victimization, 2019*, U.S. DEPT. OF JUSTICE BUREAU OF JUSTICE STATISTICS (September 2020), at 8, <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>.

⁷⁹ Lydia Seumanu Fuatagavi & Paul Perrone, *Crime & Justice in Hawaii: 2010 Household Survey Report*, DEPT. OF THE ATTORNEY GENERAL RESEARCH & STATISTICS BRANCH (Aug. 2011), at 5, <https://ag.hawaii.gov/cpja/files/2013/01/Crime-Justice-2010.pdf> ("One goal of the survey results presented herein is to provide Hawaii-specific statistics that are directly comparable to NCVS data for the nation as a whole.").

⁸⁰ *Id.*

⁸¹ *Id.* at 11. The 70.9% that did not report to the police gave the following reasons: "[T]hey felt the police couldn't do anything about it (39.9%); the crime was not important enough (32.8%); or it could be handled another way (25.7%)." *Id.* at 6.

18 respondents) believed that they were the victims of a hate crime.⁸² About 44.4% of those hate crime were reported to the police.⁸³

B. Barriers to Reporting

There are many reasons why an individual may choose not to report hate crimes. The 2000 California Attorney General’s Civil Rights Commission on Hate Crimes, the result of 22 discussion forums across California, listed eleven reasons as why victims choose not to report hate crimes, including lack of knowledge about hate crime laws, fear of retaliation, fear of re-victimization by law enforcement, shame for being a victim of a hate crime, cultural or personal beliefs against complaining, and lack of English language proficiency and knowledge of how to report hate crimes.⁸⁴

In Hawai‘i, two decades later, these factors are still relevant. This report delves into three factors here: language access, incidents that may not rise to the level of a hate crime, and fear of reporting.

1. Language Access

One of the potential barriers to crime reporting is language access. This is particularly important to consider for anti-AANHPI hate crimes, which may be committed against immigrants and limited English proficiency (LEP) individuals.

On July 27, 2021, Honolulu Civil Beat reported that the Honolulu Police Department receives few language interpreter requests for Pacific Islanders—including interpreters provided for only three Micronesians last year—despite the fact that NHPI individuals comprise a disproportionate number of those arrested.⁸⁵ The concerns raised by these numbers are

⁸² Paul A. Perrone, Joe J. Allen, Michelle M. Kunitake, James B. Richmond, & Ryan L. Yamashiro, *Crime & Justice in Hawaii: 1998 Household Survey Report*, DEPT. OF THE ATTORNEY GENERAL RESEARCH & STATISTICS BRANCH (Aug. 2011), at 12, <https://ag.hawaii.gov/cpja/files/2013/01/Crime-Justice-1998.pdf>. The survey defined “hate crime” to its respondents as “motivated by the offender’s hatred of your sex, race, ethnicity, religion, sexual orientation, age, or handicap.” *Id.* at 44.

⁸³ *Id.* 44.

⁸⁴ Attorney General’s Civil Rights Commission on Hate Crimes, *Reporting Hate Crimes*, STATE OF CALIFORNIA ATTORNEY GENERAL (2000), at 11, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/civilrights/reportingHC.pdf>.

⁸⁵ Cassie Ordonio, *Honolulu Police Need More Interpreters For Pacific Islanders*, *Advocates Say*, HONOLULU CIVIL BEAT (Jul. 27, 2021), https://www.civilbeat.org/?p=1450479&utm_source=Civil+Beat+Master+List&utm_campaign=c466f460ca-

particularly prominent compared to the Judiciary’s interpreter statistics, which shows that 47% of interpreted cases on O’ahu are for Chuukese.⁸⁶

For reporting hate crimes through Stop AAPI Hate, although the website does offer fourteen languages, it misses key languages to Hawai‘i.⁸⁷ For example, the following languages from the State Judiciary’s top interpreted languages list are missing: Chuukese, Ilocano, Marshallese, Pohnpeian, Samoan.⁸⁸ Finally, related to language access is technology access: the inability to access a web-based reporting tool, particularly for elderly and low-income individuals, is also a limit.

2. Incidents that May Not Rise to the Level of Hate Crime

As the federal NCVS data shows, not every crime with racial posturing is captured as a hate crime. The 2020 Hawai‘i Attorney General Hate Crime Report explains the investigative challenges:

One of the challenges in these otherwise routine cases is in having sufficient investigative resources to definitively answer not only the standard question that the criminal justice system is designed to address, i.e., “Who did what to whom?” but also, “What were the offender’s thoughts, biases, and motives – what was in his or her heart and mind at the time?”⁸⁹

The shift toward police-level data reporting, which is already underway as described in Section III.A and III.B, would address some of these challenges. Over the years, there had been calls to reform how hate crimes are reported in Hawai‘i. In 2016, Hawai‘i News Now reported

EMAIL_CAMPAIGN_2021_07_26_07_55&utm_medium=email&utm_term=0_51c2dd3cf3-c466f460ca-401692153&mc_cid=c466f460ca&mc_eid=92715729d1 (reporting that The Interim Police Chief Rade Vanic acknowledged the need, stating, “We realize it continues to be a challenge.”).

⁸⁶ *Id.* In addition, the City and County of Honolulu’s Department of Prosecuting Attorney reported that from March 2020 to July 2021, the top interpreted languages for conversations between victims and the Department directly were Korean, Japanese, Ilocano, Chuukese, and Tagalog, respectively. The top interpreted languages for outside agencies working with crime victims on issues related to their cases are Chuukese, Japanese, Korean, Spanish, and Indonesian, respectively. For this report, interpreter statistics from only the City and County of Honolulu’s Department of Prosecuting Attorney could be obtained. *See* Appendix H.

⁸⁷ The fourteen languages are: English, Chinese (Traditional), Chinese (Simplified), Korean, Lao, Vietnamese, Japanese, Tagalog, Thai, Tongan, Khmer, Hmong, Punjabi, and Hindi. *Report a Hate Incident*, STOP AAPI HATE, <https://stopaapihate.org/reportincident/> (last accessed Sep. 27, 2021).

⁸⁸ *High Demand Interpreted Languages: Statewide FY 2018*, HAWAI‘I STATE JUDICIARY (Jan. 15, 2020), https://www.courts.state.hi.us/docs/services/high_demand_interpreted_languages.pdf.

⁸⁹ Perrone, *supra* note 51 at 1.

that Hawai‘i was the only state that does not participate in the FBI’s Hate Crime Statistics Program, although the state at that point was already moving toward that system.⁹⁰ In 2019, Kauai County Prosecutor Justin Kollar stated that he would support changes to report hate crimes at the police level.⁹¹ However, although this change may be helpful, there nonetheless remain challenges in applying the “hate crime” label at the police investigations level.

Not only does the investigative challenge remain, but these evidentiary shortcomings may also be a barrier to reporting in general. According to Hawai‘i Household Survey Report on crime victims from 2010, the most recent year this survey was conducted, the top reason why victims did not report crimes was because victims felt that the police could not do anything about it.⁹²

Finally, in addition to difficulty in capturing data on genuine hate crimes, tracking only hate incidents that are “crimes” offers a limited mechanism to understand the full scope of hate and discrimination in Hawai‘i. Many incidents that do not rise to the level of a hate crime nonetheless may contribute to hate and discrimination in Hawai‘i in deeply pernicious ways. For those incidents, individuals may not know to whom to report or may judge that such a report is not worth making. There are no clear channels to report incidents of racism that victims may not consider “hate crimes.”

3. Fear of Reporting

Fear is a strong barrier to reporting. The Hawai‘i Attorney General plan for training victim service providers included a 2017 report by Ho‘omaluhia that noted that victims fear that they will not be believed, fear privacy violations, and fear retaliation.⁹³ A national study from 2000 analyzing national law enforcement and advocate surveys found that the most influential barriers to reporting were fear of police contact and fear and embarrassment that police would not take their situation seriously.⁹⁴ Other studies have also shown that many do not report due to

⁹⁰ Jennifer Sinco Kelleher, *Hawaii hate crimes data reported by prosecutors, not police*, HAWAII NEWS NOW (Jun. 5, 2016), <https://www.hawaiinewsnow.com/story/32148431/hawaii-hate-crimes-data-reported-by-prosecutors-not-police/>.

⁹¹ Tom George, *Hawaii LGBT advocates question national hate crime study*, KITV (Sep. 17, 2019), <https://www.kitv.com/story/41062561/hawaii-lgbt-advocates-question-national-hate-crime-study>.

⁹² Fuatagavi & Perrone, *supra* note 79 at 13.

⁹³ *Needs Assessment for Training of Crime Victim Service Providers in the State of Hawai‘i*, HO‘OMALUHIA FAMILY VIOLENCE & SEXUAL ASSAULT INSTITUTE HAWAII BRANCH 1, 21 (Oct. 24, 2017), available at <https://ag.hawaii.gov/cpja/files/2017/12/Plans-for-Training-Victim-Service-Providers-in-Hawaii.pdf>.

⁹⁴ Jack McDevitt, Jennifer M. Balboni, Susan Bennett, Joan Weiss, Stan Orchowsky, & Lisa Walbolt, IMPROVING THE QUALITY AND ACCURACY OF BIAS CRIME STATISTICS NATIONALLY: AN

fear of the repercussions of reporting, including fear of deportation, fear of being treated with discrimination, and fear of mistreatment by the authorities.⁹⁵ This fear is especially true for marginalized communities with a history of negative police interactions.⁹⁶

Finally, cultural narratives against reporting may heighten the fear. The police and research nonprofit AAPI Data released national survey data in March 2021 that showed that AANHPI respondents were among the least likely to say that they were “very comfortable” reporting hate crimes to authorities: only 30% of AA respondents and 36% of NHPI respondents were “very comfortable” reporting hate crimes, as opposed to the overall average of 50%.⁹⁷

V. Systemic Issues of Structural Racism and Discrimination

A. What is structural racism and why look at it?

Structural racism can be defined as racism that “is not simply the result of private prejudices held by individuals, but is also produced and reproduced by laws, rules, and practices, sanctioned and even implemented by various levels of government, and embedded in the economic system as well as in cultural and societal norms.”⁹⁸

Examining structural racism is important, because although COVID-19-fueled hate attacks have targeted individuals with ancestry in East and Southeast Asia in particular, they have also exacerbated existing structures of racism and discrimination all over the world, from

ASSESSMENT OF THE FIRST TEN YEARS OF BIAS CRIME DATA COLLECTION EXECUTIVE SUMMARY AND FINAL REPORT 128-29 (2000),

https://www.tandis.odihr.pl/explore?bitstream_id=22642&handle=20.500.12389/19765&provider=iiif-image#c=0&m=0&s=0&cv=0&xywh=958%2C1942%2C640%2C752.

⁹⁵ Laura Simich & Jacob Kang-Brown, *Questioning Bias: Validating A Bias Crime Victim Assessment Tool In California And New Jersey, Summary Overview*, U.S. DEPT. OF JUSTICE OFFICE OF JUSTICE PROGRAMS 12-14 (Aug. 2018),

<https://www.ojp.gov/pdffiles1/nij/grants/252010.pdf>.

⁹⁶ *Id.* at 14 (“African American/Black participants perceived hate crimes against their group as an undeniable part of the country’s history, and expressed both anger and resignation about ongoing systemic bias.”).

⁹⁷ *AAPI Data/SurveMonkey poll: 2021 American experiences with discrimination*, SURVEYMONKEY, <https://www.surveymonkey.com/curiosity/aapi-data-2021-discrimination/> (last visited Sep. 26, 2021); see also Kimmy Yam, *Asian Americans are least likely to report hate incidents, new research shows*, NBC NEWS (Mar. 31, 2021), <https://www.nbcnews.com/news/asian-america/asian-americans-are-least-likely-report-hate-incident-new-research-n1262607>.

⁹⁸ Zinzi D. Bailey, Justin M. Feldman, & Mary T. Bassett, *How Structural Racism Works—Racist Policies as a Root Cause of U.S. Racial Health Inequities*, 384 THE NEW ENGLAND JOURNAL OF MEDICINE 768, 769 (2001).

anti-immigrant to anti-Muslim attacks.⁹⁹ Furthermore, a true understanding of “hate” in a community must consider systemic problems, including the interlocking structures of systemic racism. This is exemplified by the decision of Minnesota Attorney General Keith Ellison to not charge the killing by a police officer of Black man George Floyd as a hate crime: Ellison argued that the root cause was systemic racism, rather than individual racial motivation.¹⁰⁰ Relatedly, the suspect in the Atlanta spa shootings, that left six Asian women dead, pleaded guilty in Cherokee County in July, and the prosecutor stated that if the case had gone to trial, she would have sought hate crime enhancements for gender bias but not racial bias due to lack of evidence.¹⁰¹

In Hawai‘i, these systemic issues are as important here as anywhere else—encompassing criminal justice to school systems.¹⁰² As one of the organizers of the “Stop Asian Hate” rally in Honolulu explained to Hawai‘i Public Radio, “[A]wareness of racial discrimination in 2021 means becoming aware of its intersectionality, or the way that racism plays out in wealth, education, politics, all aspects of American life.”¹⁰³ Thus it is impossible to fully address hate crimes, discrimination, hate speech, and other such incidents without considering the environment that has allowed for their creation and maintenance.

B. Health Inequities

Leading up to the COVID-19 pandemic, NHPI communities already faced health inequities. For example, a 2016 study found that compared to other Hawai‘i patients, Micronesians were hospitalized at significantly younger ages and with sicker conditions.¹⁰⁴ A

⁹⁹ *Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide*, HUMAN RIGHTS WATCH (May 12, 2020), <https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide#> (noting, for example, COVID-19-related attacks, discrimination, and hate speech against Muslims in India, Sri Lanka, and Myanmar).

¹⁰⁰ Mychael Schnell, *Minnesota AG explains why Floyd’s death not charged as hate crime*, THE HILL (Apr. 25, 2011), <https://thehill.com/homenews/state-watch/550211-minnesota-ag-explains-why-floyd-death-not-charged-as-hate-crime>.

¹⁰¹ *The Atlanta Spa-Shooting Suspect Pleads Not Guilty in 4 Killings*, NATIONAL PUBLIC RADIO (Sep. 28, 2021), <https://www.npr.org/2021/09/28/1041137210/atlanta-spa-shooting-suspect-pleads-not-guilty-robert-aaron-long>. The Fulton County prosecutor has gone forward in the suspect’s second trial in pursuit of hate crime enhancements, and the prosecutor has stated that she believes race and gender played a role in motivation. Richard Fausset, *Suspect in Atlanta Spa Killings Pleads Not Guilty to 4 Counts of Murder*, N.Y. TIMES (Sep. 28, 2021), <https://www.nytimes.com/2021/09/28/us/atlanta-spa-killings-robert-long.html>.

¹⁰² Charles R. III Lawrence, *Local Kine Implicit Bias: Unconscious Racism Revisited (Yet Again)*, 37 U. HAW. L. REV. 457 (2015).

¹⁰³ Tanigawa, *supra* note 35.

¹⁰⁴ Megan Kiyomi Inada Hagiwara, Jill Miyamura, Seiji Yamada, & Tetine Sentell, *Younger and Sicker: Comparing Micronesians to Other Ethnicities in Hawaii*, 106 AMERICAN JOURNAL OF PUBLIC HEALTH 485 (2016).

2019 study of Chuukese community members and health care providers found barriers in the forms of difficulty navigating the health care system, lack of language access, lack of adequate insurance coverage, and most significantly, racial discrimination.¹⁰⁵

COVID-19 exacerbated those health inequities. As of August 2020, non-Hawaiian Pacific Islanders made up only 4% of Hawai‘i’s population but were 30% of its COVID-19 cases.¹⁰⁶ Non-Hawaiian Pacific Islanders were also more than twice as likely to be killed or hospitalized by COVID-19 in Hawai‘i.¹⁰⁷ The state struggled to respond to these disparities, leading immigrant leaders to mobilize and spearhead their own efforts to protect the community.¹⁰⁸ Finally, for immigrants from FSM, RMI, and Palau whose immigration status is through the Compacts of Free Association (COFA), the health challenges were exacerbated because they were not covered by Medicaid until a change in federal legislation at the end of December 2020 after decades of community activism, ten months into the pandemic.¹⁰⁹

C. Inequalities in Economic Circumstances

Census data from 2018 shows that there are marked differences in average economic circumstances by ethnicity. The ethnic groups with a higher per capita income than the state

¹⁰⁵ Megan Kiyomi Inada, Kathryn L. Braun, Parkey Mwarike, Kevin Cassel, Randy Compton, Seiji Yamada, & Tetine Sentell, *Chuukese community experiences of racial discrimination and other barriers to healthcare: Perspectives from community members and providers*, 12 SOC. MED. 3 (2019).

¹⁰⁶ Anita Hofschneider, *In Hawaii, Pacific Islander communities went overlooked as pandemic grief spread*, CENTER FOR HEALTH JOURNALISM (Apr. 22, 2021), <https://centerforhealthjournalism.org/2021/04/16/hawaii-pacific-islander-communities-went-overlooked-pandemic-grief-spread>; see also Kalei R.J. Hosaka, Max P. Castanera, & Seiji Yamada, *Structural Racism and Micronesians in Hawaii: The COVID-19 Syndemic*, ASIA-PACIFIC JOURNAL OF PUBLIC HEALTH (May 3, 2021).

¹⁰⁷ Anita Hofschneider, *Hawaii Pacific Islanders Are Twice As Likely to Be Hospitalized for COVID-19*, HONOLULU CIVIL BEAT (Nov. 20, 2020), <https://www.civilbeat.org/2020/11/hawaii-pacific-islanders-are-twice-as-likely-to-be-hospitalized-for-covid-19/>; see also Anita Hofschneider, *Health Officials Knew COVID-19 Would Hit Pacific Islanders Hard. The State Still Fell Short*, HONOLULU CIVIL BEAT (Aug. 17, 2020), <https://www.civilbeat.org/2020/08/health-officials-knew-covid-19-would-hit-pacific-islanders-hard-the-state-still-fell-short/>.

¹⁰⁸ Ku`uwehi Hiraishi, *Why Hawai‘i’s Marshallese Are Taking COVID-19 Matters Into Their Own Hands*, HAW. PUB. RADIO (Sep. 9, 2020), <https://www.hawaiipublicradio.org/post/why-hawaii-marshallese-are-taking-covid-19-matters-their-own-hands#stream/0>.

¹⁰⁹ Dan Diamond, *‘A shining moment’: Congress agrees to restore Medicaid for Pacific Islanders*, POLITICO (Dec. 20, 2020), <https://www.politico.com/news/2020/12/20/congress-restores-medicaid-pacific-islanders-449480>; see also Dina Shek & Seiji Yamada, *Health Care for Micronesians and Constitutional Rights*, 70 HAW. MED. J. 4 (2011).

average are Japanese, White, and Okinawan, respectively.¹¹⁰ On the other hand, the poverty rate for Marshallese was 51.1%, for Samoans was 20%, and for Native Hawaiians was 15%.¹¹¹ Over 20% of homeless individuals in Hawai‘i are Native Hawaiian.¹¹²

During the COVID-19 pandemic and the economic crisis that resulted from the mandatory closures, these inequalities heightened, exacerbated by unequal access to safety net benefits. There have been challenges applying for programs like Unemployment Insurance and rental assistance, due to language access, technology access, and other requirement barriers.¹¹³

D. Disparities in Policing and the Criminal Justice System

Leading up to the COVID-19 pandemic, NHPI individuals were overrepresented at every step of the policing and criminal justice systems. According to the Honolulu Police Department’s annual use of force report, NHPI were involved in over a third of police force incidents in 2019, despite making up only 25% of the population.¹¹⁴ NHPI individuals also disproportionately represent 38.1% of total arrests.¹¹⁵ The Office of Hawaiian Affairs’ report showed the overrepresentation of Native Hawaiians in the criminal justice system: for example, if determined guilty, Native Hawaiians were more likely to get a prison sentence than all other groups, and receive longer prison and probation sentences compared to other ethnic groups.¹¹⁶

¹¹⁰ Anita Hofschneider, *Racial Inequality in Hawai‘i is a Lot Worse Than You Think*, HONOLULU CIVIL BEAT (Mar. 27, 2018), <https://www.civilbeat.org/2018/03/racial-inequality-in-hawaii-is-a-lot-worse-than-you-think/>.

¹¹¹ *Demographic, Social, Economic, and Housing Characteristics for Selected Race Groups in Hawai‘i*, STATE OF HAWAII DEPT. OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM 13 (Mar. 2018),

https://files.hawaii.gov/dbedt/economic/reports/SelectedRacesCharacteristics_HawaiiReport.pdf

¹¹² U.S. Dept. of Housing and Urban Development, *HOUSING PROBLEMS AND NEEDS OF NATIVE HAWAIIANS 4* (2007), <https://www.huduser.gov/publications/pdf/hawaii.pdf>.

¹¹³ Hawai‘i Advisory Committee to the U.S. Commission on Civil Rights, *COVID-19 AND PACIFIC*

ISLANDER COMMUNITIES IN HAWAII 28, <https://www.usccr.gov/files/2021/05-19-HI-SAC-COVID-19-and-Pacific-Islanders-Report.pdf>.

¹¹⁴ Christina Jedra & Anita Hofschneider, *‘Significant’ Disparity In Use Of Force Questioned By Honolulu Police Commission*, HONOLULU CIVIL BEAT (Feb. 3, 2021), <https://www.civilbeat.org/2021/02/significant-disparity-in-use-of-force-against-some-groups-questioned-by-honolulu-police-commission/>.

¹¹⁵ *Id.* Black individuals were also overrepresented, making up 7.4% use of force incidents and 5.2% of total arrests, despite being only 4.3% of the population. *Id.*

¹¹⁶ *The Impact of the Criminal Justice System on Native Hawaiians*, OFFICE OF HAWAIIAN AFFAIRS, https://www.oha.org/wp-content/uploads/2014/11/factsheets_final_web_0.pdf (last visited Sep. 27, 2021).

These policing dynamics were replicated in the school systems as well. A University of Hawai‘i study on the Hawai‘i Department of Education found that NHPI and Black students were disproportionately referred to the police.¹¹⁷ According to CRDC data, in 2015-16, NHPI students were 30.5% of enrollment but were 52.1% of arrests and 52.6% of police referrals.¹¹⁸ According to HPD data, in 2019-2020, NHPI students were 60.1% of arrests, but only 25.1% of enrolled students where HPD reported arrests.

COVID-19 exacerbated these structural dynamics. The Honolulu Police Department arrested Micronesians, Samoans, and Blacks at disproportionate rates for violating COVID-19 stay-at-home orders.¹¹⁹ In particular, although Micronesians are only 1% of Hawai‘i’s population, they made up a full 26% of those taken into custody for violating the emergency orders.¹²⁰ Then, in April 2021, Honolulu Police Department officers killed a 16-year-old Micronesian-American minor, Iremamber Sykap, and afterwards there was an uptick in hateful comments against Micronesian individuals.¹²¹

E. Intersectionality

Understanding anti-AANHPI hate within structural racism also requires an understanding of intersectionality, a term coined by law professor Kimberlé Crenshaw over thirty years ago to describe “a lens, a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other.”¹²² Thus, individuals may be particularly vulnerable to anti-

¹¹⁷ Casey Harlow, *UH Report Finds There Is Excessive, Discriminatory Policing At O‘ahu Schools*, HAWAII PUBLIC RADIO (Mar. 25, 2021), <https://www.hawaiipublicradio.org/local-news/2021-03-25/uh-report-finds-there-is-excessive-discriminatory-policing-at-o-ahu-schools>.

¹¹⁸ Omar Bird, Noreen Kohl, Nathalie Rita, Nandita Sharma, & Rae Shih, *DISCRIMINATORY POLICING IN HAWAII’S SCHOOLS: RELIANCE ON POLICE IN HAWAII’S SCHOOLS IS EXCESSIVE, DISCRIMINATORY, AND VIOLATES NATIONAL JUVENILE JUSTICE POLICIES 3* (Mar. 24, 2021), https://docs.google.com/document/d/1RHznKxvXUusauJsNeKSGzTT0QD0qE5_GFmNV5o9ZJJ-4/edit.

¹¹⁹ Ashley Mizuo, *Racial Disparities Emerge In HPD Enforcement Of Stay-At-Home Violations*, HAWAII PUBLIC RADIO (Jun. 29, 2020), <https://www.hawaiipublicradio.org/post/racial-disparities-emerge-hpd-enforcement-stay-home-violations#stream/0>.

¹²⁰ *Id.*

¹²¹ Associated Press, *Micronesians Feel Hatred in Hawaii, Decry Police Shooting*, U.S. NEWS & WORLD REPORT (May 9, 2021), <https://www.usnews.com/news/us/articles/2021-05-09/police-shooting-highlights-anti-micronesian-racism-in-hawaii>. Only a week after the shooting of Sykap, a Black man, Lindani Myeni, was shot and killed by Honolulu Police Department officers. Michael Levenson, *No Charges for Honolulu Police Officers Who Fatally Shot South African Man*, N.Y. TIMES (Jul. 1, 2021), <https://www.nytimes.com/2021/07/01/us/police-shooting-lindani-myeni-honolulu.html>.

¹²² Katy Steinmetz, *She Coined the Term ‘Intersectionality’ Over 30 Years Ago. Here’s What It Means to Her Today*, TIME (Feb. 20, 2020), <https://time.com/5786710/kimberle-crenshaw->

AANHPI hate on both an individual and systemic level as a result of factors like homelessness, disability status, LGBTQ identity, elderly age, and gender.

First, the National Coalition for the Homeless documents bias-motivated violence against individuals experiencing homelessness across the United States, and they have documented 15 incidents total in Hawai‘i from 1999 to 2019.¹²³ The report states that homeless people are more likely to be a victim of violent crime than the general population.¹²⁴

Second, advocates for the disability community have noted the special vulnerabilities of individuals with disabilities, particularly with challenges in reporting.¹²⁵ On a national level, reported hate crimes for individuals with disabilities have increased 89% from 2013 to 2019.¹²⁶

Third, for LGBTQ victims, a powerful barrier to reporting is fear that reporting homophobic and transphobic hate crimes could lead to their identity being “outed.”¹²⁷ Transgender individuals are four times more likely to experience violent crimes than cisgender individuals, and one in four transgender women who experienced violent crimes reported that it was a hate crime.¹²⁸

Fourth, elders are particularly vulnerable to harm and “elder abuse,” defined as “an intentional act or failure to act that causes or creates a risk of harm to an older adult.”¹²⁹ In

intersectionality/ (“We tend to talk about race inequality as separate from inequality based on gender, class, sexuality or immigrant status. What’s often missing is how some people are subject to all of these, and the experience is not just the sum of its parts.”).

¹²³ National Coalition for the Homeless, 20 YEARS OF HATE 9 (Dec. 2020), https://nationalhomeless.org/wp-content/uploads/2020/12/hate-crimes-2018-2019_web.pdf.

¹²⁴ *Id.* at 4.

¹²⁵ *CRS Facilitates Virtual Dialogue to Address Hate Crimes Against Disability Community*, U.S. DEPARTMENT OF JUSTICE (updated Jul 22, 2021), <https://www.justice.gov/crs/highlights/hate-crimes-against-disability>.

¹²⁶ Movement Advancement Project, *supra* note 49 at 21.

¹²⁷ Neil Chakraborti & Dr Stevie-Jade Hardy, *LGB&T Hate Crime Reporting: Identifying Barriers and Solutions*, EQUALITY AND HUMAN RIGHTS COMMISSION 17 (2015), <https://www.equalityhumanrights.com/sites/default/files/research-lgbt-hate-crime-reporting-identifying-barriers-and-solutions.pdf>.

¹²⁸ Movement Advancement Project, *supra* note 49 at 6.

¹²⁹ *Preventing Elder Abuse*, CENTERS FOR DISEASE CONTROL AND PREVENTION (updated Jun 2, 2021), <https://www.cdc.gov/violenceprevention/elderabuse/fastfact.html>.

Hawai‘i, news reports have noted violent crimes against elders recently.¹³⁰ Elder abuse includes not only violent crimes but also long-term neglect.¹³¹

Finally, the intersection between gender and anti-AANHPI sentiment is significant, as exemplified by the Atlanta spa shootings, in which race and gender may have motivated the suspect.¹³² In Hawai‘i, studies before COVID-19 showed that 20.6% of Native Hawaiian women experience intimate partner violence, compared to 13.3% of non-Hawaiian women.¹³³ During COVID-19, Hawai‘i nonprofit Domestic Violence Action Center experienced a 46% increase in calls between March and October 2020.¹³⁴

F. Limitations of Modern Legal Frameworks

The final structural issue is the overarching limitation to our modern-day framework of law and rights. Legal scholar Eric Yamamoto described how legal outcomes that seek to combat overt racism may actually fail to change the daily experiences of individuals, leading to “intensifying dissociation of law (as it conceives of justice) from racial justice (as it is experienced by racialized groups).”¹³⁵

For example, Hawai‘i has a desecration statute, as described in Section II, but there is disconnect between the legal framework of illegal desecration and the condoned desecration of

¹³⁰ Chelsea Davis, *Rash of violent crimes against kupuna prompts push for tougher laws to protect them*, HAWAII NEWS NOW (Mar. 20, 2021), <https://www.hawaiinewsnow.com/2021/03/20/rash-crime-against-kupuna-could-spur-tougher-laws-protect-them/>; Stephanie Lum & Dillon Ancheta, *Suspect charged in brazen assault of an elderly woman in Honolulu*, HAWAII NEWS NOW (Aug. 10, 2021), <https://www.hawaiinewsnow.com/2021/08/10/elderly-woman-walking-along-s-beretania-street-knocked-down-horrible-attack/>.

¹³¹ See, e.g. Eleni Avendaño & Anita Hofschneider, *State Inspections Show History Of Neglect At Elderly Care Facility Facing Shutdown*, HONOLULU CIVIL BEAT (Apr. 29, 2021), <https://www.civilbeat.org/2021/04/state-inspections-show-history-of-neglect-at-elderly-care-facility-facing-shutdown/>.

¹³² *The Atlanta Spa-Shooting Suspect Pleads Not Guilty in 4 Killings*, *supra* note 101.

¹³³ *Fact Sheet: Domestic Violence, Sexual Violence, and Human Trafficking in Native Hawaiian Communities*, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE (Feb. 2020), <https://s3.amazonaws.com/gbv-wp-uploads/wp-content/uploads/2021/08/12221522/DVFactSheet-Native-Hawaiians-Aug-2021.pdf>.

¹³⁴ Anita Hofschneider, *Domestic Violence is On The Rise in Hawaii*, HONOLULU CIVIL BEAT (Oct. 20, 2020), <https://www.civilbeat.org/2020/10/domestic-violence-is-on-the-rise-in-hawaii/>.

¹³⁵ Eric Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 828 (1997).

Native Hawaiian sacred sites and burial grounds.¹³⁶ Furthermore, the language of “rights” can not only limit but also undermine NHPI racial justice movements, because of its historic usage. For example, in *Rice v. Cayetano*,¹³⁷ the U.S. Supreme Court invalidated a law that restricted voters for Office of Hawaiian Affairs trustees to Native Hawaiians, using the Fifteenth Amendment of the U.S. Constitution to do so.¹³⁸ With *Rice*, the Supreme Court used a formalistic analysis of civil rights to attack restorative programs.¹³⁹ It placed the inherent right of indigenous peoples to self-determination outside the U.S. civil rights framework, reaffirming a colonial narrative.¹⁴⁰

The main harms of the limits of modern legal frameworks are the ways in which they undervalue and can conflict with lived experiences. As Mililani B. Trask, the Indigenous Expert for the Pacific Basin, United Nations Forum on Indigenous Issues, stated after the *Rice* opinion was issued, “Most tragically, racial tensions and social disruption continue to escalate in Hawaii. Hawaiians continue to live and die in abject poverty and homelessness, while their vast trust assets are utilized exclusively for the public. The history of Black Americans and Native

¹³⁶ See, e.g. Vanessa Romo, *Hawai`i Protesters Block Access Road to Stop Construction of Massive Telescope*, NATIONAL PUBLIC RADIO (Jul. 15, 2019), <https://www.npr.org/2019/07/15/741990200/hawaii-protesters-block-access-road-to-stop-construction-of-massive-telescope> (“Despite its place in Native Hawaiian culture as hallowed ground that contains *ahus* — religious altars made of stones — and serves as burial grounds for many of the island’s ancestors, Mauna Kea’s summit is the ideal location for the powerful TMT, scientists say.”)

¹³⁷ 528 U.S. 495 (2000).

¹³⁸ Rose Cuison Villazor, *Problematizing the Protection of Culture and the Insular Cases*, 131 HARV. L. REV. F. 127, 140-41 (2018); see also Eric Yamamoto & Catherine C. Betts, *Disfiguring Civil Rights to Deny Indigenous Hawaiian Self-Determination: The Story of Rice v. Cayetano*, in RACE LAW STORIES 541 (Rachel F Moran & Devon Wayne Carbado eds., 2008).

¹³⁹ Kathryn Nalani Setsuko Hong, *Understanding Native Hawaiian Rights: Mistakes and Consequences of Rice v. Cayetano*, 15 ASIAN AM. L.J. 9, 10 (2008) (“Part IV examines the Supreme Court’s opinion in *Rice v. Cayetano*. First, this Section argues that the Court portrays Hawaiian history from the colonizer’s perspective, setting the mood for a resistant opinion. Second, this Section explains that the Court’s disinclination to rule on-or even to discuss-the Hawaiian people’s political status contributed to a hollowed analysis of the case. Third, this Section asserts that the Court resorted to a formalistic Fifteenth Amendment analysis to avoid essential questions that might have led to a thorough development of the issue. Fourth, this Section observes how the Court’s highly technical analysis misapplied civil rights principles and law to a case about indigenous rights. Fifth, this Section contends that the Court’s superficial treatment of ‘race’ is improperly applied to indigenous peoples, whose aboriginal classifications are necessarily tied to race.”).

¹⁴⁰ Mililani B. Trask, *Rice v. Cayetano: Reaffirming the Racism of Hawaii’s Colonial Past*, 3 ASIAN-PACIFIC LAW & POLICY JOURNAL 352 (2002). See, generally, J. Kehaulani Kauanui, *Colonialism in equality: Hawaiian sovereignty and the question of US civil rights*, 107 *South Atlantic Quarterly* 635 (2008).

Americans demonstrates that when socio-political issues relating to human liberties are ignored, the result is often violence.”¹⁴¹

Understanding the lived experience must take us away from these frameworks, including both formalistic “civil rights” and “hate crimes.” First, AANHPIs make up a majority of Hawai‘i’s population.¹⁴² Second, Hawai‘i’s immigration and social development history features significant Indigenous presence and control and exploitation by White colonizers. The dynamics of resentment are drawn from histories of manipulation, maltreatment, dispossession and disenfranchisement, that are clearly evident in the social struggles and strata of contemporary Hawai‘i. Over time the siege of colonization transformed from flagrant to less obvious displays of gentrification,¹⁴³ loss of access to and desecration of sacred places, cultural appropriation and misuse, and wholesale tourism.¹⁴⁴ Strands of history carried into present-day stir the sensitivities and passions of locals responding to the relentless encroachment of mainstream America. The lived experience of race and racism in Hawai‘i is a uniquely complex one.

Thus, most importantly, modern legal frameworks are inadequate in how they can instruct us on healing and addressing the root causes of hate crime. Scholars Katherine Aumer and Michael A. Erickson have studied how hate proliferates and can lead to the development and maintenance of extremist groups.¹⁴⁵ Other studies have shown a “justice gap” between hate crime legislation and public safety, as harsher punishments do not deter hate violence or change the underlying root causes, with little to repair the harm done to victims and the community.¹⁴⁶ Furthermore, bias in the criminal justice system—from differences in who feels empowered to file complaints for such crimes to general discrepancies in policing and prosecutorial decisions—can further results in inequities in how these “hate crime” statutes are utilized, leading to harm for the marginalized communities these laws are purported to protect.¹⁴⁷

¹⁴¹ *Id.* at 358.

¹⁴² *Quick Facts: Hawai‘i*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/HI> (last visited Nov. 2, 2021).

¹⁴³ Claire Xu, *Column: Gentrification pushes Native Hawaiians out of their homes*, STAR ADVERTISER, Oct. 21, 2021, <https://www.staradvertiser.com/2021/10/21/editorial/island-voices/column-gentrification-pushes-native-hawaiians-out-of-their-homes/>.

¹⁴⁴ Tariro Mzezewa, *Hawaii is a Paradise, but Whose?*, N.Y. TIMES, Feb. 4, 2020 (updated Jun. 11, 2021), <https://www.nytimes.com/2020/02/04/travel/hawaii-tourism-protests.html>.

¹⁴⁵ Katherine Aumer & Michael A. Erickson, *The Use of Love and Hate in Extremist Groups*, THE PSYCHOLOGY OF EXTREMISM 83 (Katherine Aumer ed., 2021).

¹⁴⁶ Mark Austin Walters, *Repairing the harms of hate crime: towards a restorative justice approach?*, Resource Material Series No. 108., 56, 57-58 (2019).

¹⁴⁷ Movement Advancement Project, *supra* note 49 at 26.

VI. Recommendations

Below is a limited set of recommendations meant to offer a series of first steps. They are not intended to be a full solution to the problem but rather the beginning stages of even understanding the problem. The dissonance between the data, as summarized in Section III above, and systemic issues, including those illustrated by the lived experiences of Hawai'i residents, as discussed in Section V above, show that there is a need for greater introspection, conversation, and understanding. We hope that the below steps, including listening sessions with community members, illuminate further recommendations in the future.

A. Data Through a Mixture of Methodologies

Recommendation 1: Critical public-facing state and local agencies should conduct listening sessions, with funding allocated by the legislature, to better understand hate, discrimination, and structural racism, as well as look for solutions from the community.

In addition to better understanding the challenges, these listening sessions are also important opportunities to gain knowledge on potential solutions. During COVID-19, NHPI leaders from communities affected by COVID-19 disparities have proactively mobilized to protect and provide for their communities.¹⁴⁸ These listening sessions also may allow for conversations about healing and addressing the underlying causes of hate and discrimination. In order for these listening sessions to be implemented efficaciously, it is recommended that the legislature allocate funding to agencies to conduct them. The determination of which agencies are the critical public-facing agencies that should implement such listening sessions is left up to the Legislature. Some examples may include: Department of Labor and Industrial Relations, Department of Education, Department of Human Services, Department of Health, county motor vehicle and licensing divisions, and county law enforcement agencies.

Recommendation 2: The Hawai'i Attorney General's office should conduct a *Household Survey Report*.

The last Household Survey Report published by the Attorney General's office was the 2010 Report, as discussed in Section IV.A. The last Household Survey Report that included hate crime information was the 1998 Report. This report, based on victim surveys, captures important crime-related data from the victims' perspectives. As the old Hawai'i Household Survey Reports and more recent federal NCVS surveys show, crime is underreported to law enforcement. These victim surveys are thus significant to the

¹⁴⁸ Hawai'i Advisory Committee to the U.S. Commission on Civil Rights, *supra* note 113 at 8.

state's understanding of public safety. Funding should be allocated for purposes of this survey and report.

Recommendation 3: Law enforcement agencies and the Attorney General should continue the migration to police-level hate crime data reporting.

As discussed further in Sections III.A and III.B, this FBI-style, police-level data aligns Hawai'i's data with federal data and presents a fuller picture of hate crime data in Hawai'i. As the Attorney General's report, *Hate Crimes in Hawaii, 2020*, describes, this migration process is ongoing.

Recommendation 4: State and local agencies, including local law enforcement, should disaggregate data.

For all institutions that receive reports of hate crimes, hate incidents, and discrimination, it is recommended that data be disaggregated between different AANHPI ethnicities.¹⁴⁹ Hawai'i has a high AANHPI population, with diverse histories and demographics within each ethnic community. AANHPIs include over 50 ethnicities, and the failure to disaggregate data collection results in invisibility, inequality, and exclusion.¹⁵⁰ Data disaggregation is necessary to accurately understand "hate" and "discrimination" within Hawai'i.

B. Lower Barriers to Crime Reporting

Recommendation 5: State and local agencies, including local law enforcement, should audit and improve language access protocols.

As Section IV.B discussed, there are many barriers to the reporting of hate crimes. One critical barrier that affects all others is language access. Government agencies should allocate funding for an audit of language access compliance protocols and ways to improve language access.

¹⁴⁹ Legislation could be one way to achieve this and other data-related recommendations, although agencies may also implement this without legislation. It is noted that in Hawai'i, hate crime data collection is codified in an entirely separate statute from hate crime sentence enhancements. Thus, any modifications to either statute would be separate. Some states do have separate definitions between hate crime and data collection statutes. For example, in Michigan, the hate crime law does not include sexual orientation, but the data collection law does. *See* Movement Advancement Project, *supra* note 49 at 24.

¹⁵⁰ Doris Ching & Amefil Agbayani, *Legacy and Recommitment to Advocacy, Equality, Justice for Asian Americans and Pacific Islanders and All Racial Groups*, 22 JOURNAL OF COLLEGE AND CHARACTER 64, 69-71 (2021).

C. Training

Recommendation 6: Local law enforcement should require regular training on hate crimes.

Training is important to effectively implement hate crime laws. Eighteen states currently require law enforcement hate crime training, with components including how to identify, respond to, and accurately collect data on hate crimes.¹⁵¹ The Attorney General’s *Hate Crimes in Hawaii, 2020* reports: “At the request of this Department, the FBI provided hate crime recognition training to Hawaii’s police departments on several occasions during the latter half of the 1990s, and conducted specialized training sessions for prosecutors in 2002 and 2020. The police also include a hate crime module in their training programs for officer recruits.”¹⁵²

Recommendation 7: State and local agencies, including local law enforcement, should require anti-discrimination training for employees, like unconscious bias and bystander intervention training.

Training is important to effectively prevent and respond to hate incidents and discrimination, in addition to hate crimes. Successful trainings require commitment to improvement by the organization. The Harvard Business Review reported that the “most effective UB [unconscious bias] training does more than increase awareness” but also teaches “attendees to manage their biases, change their behavior, and track their progress.”¹⁵³ Many agencies and organizations around the country have considered bystander intervention training since the uptick of anti-AANHPI incidents. For example, the Asian Law Caucus offered a community training in May 2021 “to stop anti-Asian/American and xenophobic harassment,”¹⁵⁴ and the California Department of Fair Employment and Housing (DFEH) co-sponsored a bystander intervention training with the Asian Law Caucus in July 2021.¹⁵⁵

¹⁵¹ Movement Advancement Project, *supra* note 49 at 24.

¹⁵² Perrone, *supra* note 51 at 2.

¹⁵³ Francesca Gino & Katherine Coffman, *Unconscious Bias Training That Works*, HARVARD BUSINESS REVIEW (Sep. – Oct. 2021), <https://hbr.org/2021/09/unconscious-bias-training-that-works>.

¹⁵⁴ Welcome to Bystander Intervention, Asian Americans Advancing Justice – Asian Law Caucus, https://www.advancingjustice-alc.org/wp-content/uploads/2021/04/ALC_-_Community-Training-May-13-2021.pdf (last visited Sep. 28, 2021).

¹⁵⁵ Department of Fair Employment and Housing, FACEBOOK (Jul. 2, 2021), <https://www.facebook.com/183801915445/photos/a.183904315445/10159225349980446/?type=3&theater>.

VII. Conclusion

Statistical information sourced from existing public records provide a framework for assessing the problem. Through this exercise we learned that the data does not lend to an intricate understanding of the lived experience of ethnic and racial relations in Hawai‘i.

Hawai‘i often prides itself on being one of the most culturally diverse places in the world. As such, Hawai‘i is particularly well-placed to study ethnic and racial relational dynamics, its triumphs and challenges, and means to advance social democracy through greater equity and understanding. In the wake of critical movements ranging from the Mauna Kea telescope protests to Black Lives Matter, a deep dive into multicultural and race-ethnic relations are more critical than ever.

We hope this effort brought forth by honest concerns about one of society’s most vitriolic issues does not begin and end with this report but opens the way for an inclusive and candid dialogue. We imagine it leading to a series of listening sessions across ethnic and racial communities to discern attitudes and perspectives that become the basis for policies and programs that foster social harmony and justice. This issue did not begin with COVID-19, and it will not end with the conclusion of the pandemic. Cultural diversity is one of Hawai‘i’s greatest assets—one that is generally appreciated but seldom studied in a methodical way. In lieu of dissecting a small and shameful piece of it, society would be better served delving into the sum of this complex and difficult process.

Appendix A

SENATE CONCURRENT RESOLUTION

CONDEMNING AND DENOUNCING ALL FORMS OF ANTI-ASIAN SENTIMENT AND ALL ACTS OF RACISM, XENOPHOBIA, INTOLERANCE, DISCRIMINATION, HATE CRIME, AND HATE SPEECH AGAINST ASIAN AMERICANS AND ASIAN INDIVIDUALS IN THE UNITED STATES AND REQUESTING THE HAWAII CIVIL RIGHTS COMMISSION TO ANALYZE AND REPORT ON ANTI-ASIAN SENTIMENT AND ACTS IN THE STATE.

1 WHEREAS, racism and discrimination towards individuals of
2 Asian origin based on unfounded fear have existed for many years
3 in the United States, manifesting in hate crimes and enactment
4 of racist laws such as:

5
6 (1) The Chinese Massacre of 1871, in which twenty Chinese
7 men were lynched by five hundred white men in Los
8 Angeles who were provoked by "yellow peril" - fear of
9 an Asian invasion and resentment of cheap labor coming
10 from China;

11
12 (2) The Chinese Exclusion Act of 1882 that banned new
13 Chinese immigrants and prevented existing Chinese
14 residents from becoming U.S. citizens until 1943,
15 instigated by the same fear against individuals of
16 Chinese descent;

17
18 (3) The internment and confiscation of property of over
19 120,000 Japanese Americans during World War II, due to
20 war propoganda depicting Asians as crafty and cunning,
21 despite many of their families fighting against the
22 Japanese as members of the United States armed forces;

23
24 (4) The 1982 symbolic murder of Vincent Chin, a Chinese
25 American, in Detroit, Michigan, by white automobile
26 workers enraged by the success of Japanese automobile
27 manufacturers in the United States at a time when
28 America was losing manufacturing jobs; and



1
2 (5) The revenge-motivated crimes against Hindus, Muslim,
3 and Sikhs, many of whom were South Asians, in the wake
4 of the September 11, 2001, terrorist attacks; and
5

6 WHEREAS, despite the undeniable history of persistent
7 discrimination, violence, and hate crimes against Asians in the
8 United States, racism against Asians is often considered
9 nonexistent, insignificant, or justified, due to a false but
10 pervasive stereotype about the Asian community being a "model
11 minority", a myth that was created during the Civil Rights era
12 to stymie racial justice movements, which suggests a fallacy
13 that Asian Americans are more successful than other ethnic
14 minorities, and therefore, they do not experience struggle,
15 racial discrimination, violence, or hate crimes; and
16

17 WHEREAS, as the coronavirus disease 2019 (COVID-19)
18 pandemic began to spread across the United States in early 2020,
19 prominent public figures and the media utilized politically-
20 charged, inflammatory, and xenophobic rhetoric when referring to
21 COVID-19 as the "Chinese virus", "Wuhan virus", and "kung flu"
22 to push an unproven theory that COVID-19 originated in a lab in
23 China; and
24

25 WHEREAS, according to a poll taken of the adult population
26 in the United States, including Alaska and Hawaii, approximately
27 three in ten Americans hold China or Chinese people responsible
28 for the pandemic; and
29

30 WHEREAS, since the outbreak of COVID-19, anti-Asian
31 sentiment surged and random crimes and hate crimes against
32 Asians skyrocketed, instigating violent attacks against
33 individuals of not only Chinese, but also of Thai, Vietnamese,
34 Filipino, Korean, Japanese, and other Asian origins; and
35

36 WHEREAS, an August 2020 report by the United Nations found
37 more than one thousand eight hundred racist incidents against
38 Asians in the United States over an eight-week period from March
39 to May 2020, and data from the New York Police Department showed
40 a one thousand nine hundred percent increase in anti-Asian hate
41 crimes in New York City in 2020; and
42



1 WHEREAS, recent local and national incidents demonstrate
2 continued anti-Asian sentiment including the Kaua'i Police Chief
3 who was found to have created a hostile work environment for
4 making remarks that mocked Asians; the killing of six women of
5 Asian descent at their workplaces in Atlanta, Georgia; and
6 brutal unprovoked attacks on elderly Asian-Americans in
7 California; and

8
9 WHEREAS, the persistent discrimination, violence, and hate
10 crimes against Asians in the United States are placing Asian
11 individuals and their families, communities, and businesses at
12 risk; and

13
14 WHEREAS, advancing inclusion and belonging for people of
15 all races, national origins, and ethnicities is critical to the
16 safety and security of the people of the United States; and

17
18 WHEREAS, rooted deeply in the culture of Hawaii is the
19 "Aloha Spirit" that is codified in section 5-7.5(a), Hawaii
20 Revised Statutes, as "the coordination of mind and heart within
21 each person" that "brings each person to the self," under which
22 "each person must think and emote good feelings to others"; and

23
24 WHEREAS, "Aloha" is "more than a word of greeting or
25 farewell or a salutation", but means "mutual regard and
26 affection and extends warmth in caring with no obligation in
27 return" and constitutes "the essence of relationships in which
28 each person is important to every other person for collective
29 existence"; now, therefore,

30
31 BE IT RESOLVED by the Senate of the Thirty-first
32 Legislature of the State of Hawaii, Regular Session of 2021, the
33 House of Representatives concurring, that this body condemns and
34 denounces all forms of anti-Asian sentiment and all acts of
35 racism, xenophobia, intolerance, discrimination, hate crimes,
36 and hate speech against Asian Americans and Asian individuals in
37 the United States; and

38
39 BE IT FURTHER RESOLVED that this body asserts the State's
40 commitment to diversity, inclusiveness, equality, and
41 compassion, in the spirit of Aloha to serve as a positive role
42 model for not only the United States but also for the people of



1 other nations, global alliances, and unions to ensure that all
2 members of the Asian community, regardless of their background,
3 spoken language, or religious beliefs, are treated with dignity
4 and equity; and
5

6 BE IT FURTHER RESOLVED that State and county departments
7 and agencies are urged to take all appropriate measures to
8 ensure that official actions, documents, and statements,
9 including those that pertain to the COVID-19 pandemic, do not
10 exhibit or contribute to racism, xenophobia, intolerance,
11 discrimination, or hate crimes against the Asian community; and
12

13 BE IT FURTHER RESOLVED that the Hawaii Civil Rights
14 Commission is requested to identify and analyze incidents based
15 on anti-Asian sentiment that have occurred in Hawaii since March
16 2020, including incidents of racism, discrimination, hate
17 crimes, and hate speech; and
18

19 BE IT FURTHER RESOLVED that the Hawaii Civil Rights
20 Commission is requested to submit a report of its findings and
21 recommendations, including any proposed legislation and any
22 other actions the Legislature could take to address and prevent
23 actions based on anti-Asian sentiment, to the Legislature no
24 later than forty days prior to the convening of the Regular
25 Session of 2022; and
26

27 BE IT FURTHER RESOLVED that certified copies of this
28 Concurrent Resolution be transmitted to the President of the
29 United States; members of Hawaii's congressional delegation;
30 Governor; Chairperson of the Hawaii Civil Rights Commission;
31 Mayor of the County of Hawaii; Mayor of the City and County of
32 Honolulu; Mayor of the County of Kauai; Mayor of the County of
33 Maui; and Chairpersons of the county councils of Hawaii,
34 Honolulu, Kauai, and Maui.
35



Appendix B

Criminal Justice Data Brief

Department of the Attorney General • Crime Prevention & Justice Assistance Division • ag.hawaii.gov/cpja

Clare E. Connors, Attorney General

Julie Ebato, Administrator
July 2021

Hate Crimes in Hawaii, 2020

*Prepared by
Paul Perrone, Chief of Research & Statistics*

Hawaii Revised Statutes §846-51 through §846-54 require the Department of the Attorney General to develop, direct, and report annually on a statewide hate crime statistics reporting program. With input and assistance from Hawaii's county prosecuting attorneys and police departments, the state program was launched on January 1, 2002.

This annual report covers hate crime cases that reached a final disposition during Calendar Year 2020. Four cases were reported to the program for this time period; details appear on page 3. Nineteen-year summary statistics are also included.

Also included in this edition are (1) a brief summary of the statewide transition to the National Incident-Based Reporting System (NIBRS) version of the FBI's Uniform Crime Reporting (UCR) Program, which requires police-level hate crime reporting and will likely lead to a major shift in Hawaii's hate crime statistics reporting program; (2) a summary of a data review project involving the Honolulu Department of the Prosecuting Attorney's hate crime reports and procedures; and (3) appended Honolulu hate crime tallies and case synopses for the 2018 and 2019 reporting years.

Definition and Background

Similar to the federal definition, the term "hate crime" is legally defined in Hawaii as "any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person" (HRS §846-51). "Gender identity or expression" was added in Hawaii in 2003, but was not included at the federal level until 2013.

It is important to note that hate crimes are not new types of offenses, but rather are traditional offenses (e.g., assault, vandalism) for which an offender's intent is at least partially based upon a bias against one or more of the protected groups.

However, they differ from most traditional offenses in the frequently complicated process of determining whether or not a hate crime has, in fact, occurred. While two heinous and highly publicized hate crimes that occurred nationally in 1998¹ offer clear-cut examples, far more common are thousands of comparatively lesser offenses that exhibit at least one hate crime characteristic (see next section), but where it is difficult to determine the true motive and intent of the offenders. One of the challenges in these otherwise routine cases is in having sufficient investigative resources to definitively answer not only the standard question that the criminal justice system is designed to address, i.e., "Who did what to whom?" but also, "What were the offender's thoughts, biases, and motives – what was in his or her heart and mind at the time?"

The use of the term "intentionally" in Hawaii's hate crime definition adds further complication, as there are specific legal standards that must be met in order to establish criminal intent.

Hate Crime Characteristics

The FBI's national program emphasizes a list of fourteen characteristics that should be considered when determining whether or not an offense is a hate crime (CJIS, 1999). These same characteristics are also utilized in the Hawaii program. A critical concept concerning these characteristics is that they are not stringent criteria, *per se* – there is no requirement as to certain key characteristics or the minimum number of characteristics that must be present in order for an offense to be determined a hate crime.

1. The offender and victim are of a different race, religion, disability, ethnicity/national origin, or sexual orientation (hereafter "group").

¹ The truck-dragging murder of James Byrd, Jr. in Texas in June, and the fatal beating of Matthew Shepard in Wyoming in October.

2. Bias-related oral comments, written statements, or gestures were made by the offender.
3. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene.
4. Certain objects, items, or things which indicate bias were used.
5. The victim is a member of a group which is overwhelmingly outnumbered by other residents in the community where the crime took place.
6. The crime occurred in an area where other hate crimes against the victim's group have occurred, and where tensions remain high against this group.
7. Several incidents occurred in the same locality, at or about the same time, and the victims were all of the same group.
8. A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.
9. The victim was engaged in activities promoting his/her group.
10. The incident coincided with a holiday or a date of particular significance to the victim's group.
11. The offender was previously involved in a similar hate crime or is a member of a hate group.
12. There are indications that a hate group was involved.
13. A historically established animosity exists between the victim's and the offender's groups.
14. The victim, although not a member of the targeted group, was a member of an advocacy group supporting the precepts of the victim group.

Hate Crime Statistics Reporting in Hawaii

Given the need for the most complete and accurate information, as well as the legal requirement to establish intent, Hawaii's hate crime statistics reporting program is set at the prosecution level. This avoids the pitfall that has occurred in many jurisdictions where the police report hate crime statistics. Specifically, the police are not able to investigate the interpersonal dynamics involved in a large number of relatively less serious offenses that exhibit at least one hate crime characteristic (especially as the overwhelming majority of these

cases would *not* ultimately be determined to be hate crimes), particularly when an offender is not identified/arrested or when the "possible hate crime" aspects of an alleged incident are ambiguous.²

By placing the point of data collection at the prosecution level, Hawaii's program avoids false positives, utilizes limited police resources much more efficiently, and is based on incidents that clearly meet the State's legal definition of hate crimes, i.e., criminal acts for which the intent of the perpetrator(s) is determined to be derived from hostility toward one or more of the protected groups. It also provides the ability to conduct statistical inquiries into case processing and outcomes, which yield important data that are generally not included in other jurisdictions' hate crime reporting.

The prosecutors' ability to make determinations of the intent behind possible hate crimes is dependent upon receiving good preliminary information from the police. In the Hawaii program, it is the police departments' responsibility to ensure that "suspected hate crime" information, when applicable, is clearly and consistently included in their incident reports.

At the request of this Department, the FBI provided hate crime recognition training to Hawaii's police departments on several occasions during the latter half of the 1990s, and conducted specialized training sessions for prosecutors in 2002 and 2020. The police also include a hate crime module in their training programs for officer recruits.

The Hawaii program's data elements generally parallel those utilized in the FBI's program (CJIS, 1999). It was necessary to modify some of the data elements to more appropriately reflect the uniqueness of Hawaii (e.g., "beach or beach park" was added as a location code). In addition, the Hawaii program collects data on charge descriptions and dispositions. A completed hate crime report is due to the program no later than the last business day of the month following one in which a case reaches its final disposition, regardless of whether or not there was a conviction. Although Hawaii law does not provide for enhanced sanctions against perpetrators of misdemeanor-level hate crimes, or against juvenile perpetrators of hate crimes, these cases must still be reported for statistical purposes.

² Although most "possible hate crimes" (i.e., cases that exhibit at least one of the 14 characteristics) are not genuine hate crimes, they must be initially treated as such. Sometimes even seemingly obvious hate crimes may be invalidated upon thorough investigation.

Similar to the FBI's quarterly summary report, an annual summary report form requiring the respective Prosecuting Attorney's (department head) signature is included in the Hawaii program. The annual summary provides the prosecutors' tally of hate crimes disposed and reported, and is useful for verifying data received by the program earlier in the year.

Case Details for 2020

A statewide total of four hate crime incidents, including three from the City and County of Honolulu and one from Maui County, were reported to Hawaii's hate crime statistics reporting program for Calendar Year 2020.

The first hate crime incident occurred in Maui County on April 13, 2019, and the case reached its final disposition on January 15, 2020. In this incident, the offender, a 40-year-old (at the time of the incident) Black male, with a current criminal history record including three misdemeanor convictions, allegedly brandished and swung a machete at the victims – a father and his three children – while uttering anti-White epithets. The offender was arrested and charged with five counts of Terroristic Threatening in the First Degree (a felony offense). Enhanced hate crime sanctions were not sought, and the case was subsequently dismissed.

The second incident occurred in the City and County of Honolulu on September 7, 2019, and the case was disposed on February 21, 2020. In this incident, the offender, a 48-year-old (at the time of the incident) Native Hawaiian male, with a current criminal history record including three felony convictions, four misdemeanor convictions, and 13 petty misdemeanor and/or violation convictions, aggressively approached the victim at a bus stop, shouted anti-Muslim slurs at the victim and challenged him to a fight, and then spat upon him. The offender was arrested and charged with one count of harassment (a petty misdemeanor) and pleaded "no contest" to the same charge. He was sentenced to three days in jail.

The third incident occurred in the City and County of Honolulu on June 17, 2020, and the case was disposed on June 29, 2020. In this incident, the offender, a 45-year-old (at the time of the incident) Native Hawaiian male, with a current criminal history record including five misdemeanor convictions and two petty misdemeanor and/or violation convictions, approached the victim at a homeless shelter and punched him on the ear after uttering an anti-White epithet. The offender was arrested

and charged with Assault in the Third Degree (a petty misdemeanor), to which he pleaded "no contest" and was sentenced to 30 days in jail.

The fourth and final hate crime incident reported for 2020 occurred in the City and County of Honolulu on May 25, 2020, and was disposed on November 2, 2020. In this incident, the offender, a 39-year-old (at the time of the incident) Native Hawaiian male, with a current criminal history record including two petty misdemeanor and/or violation convictions, engaged in a verbal argument with the victim, who was complaining about the offender's loud music and remained on his own property. The offender entered the victim's property, uttered anti-White epithets, and made a thinly-veiled verbal threat against the victim's life. The offender was arrested and charged with Terroristic Threatening in the Second Degree (a misdemeanor), and ultimately pleaded "no contest" to a charge of Harassment (also a petty misdemeanor). He was fined a total of \$200.

The National Incident-Based Reporting System (NIBRS) and the Honolulu Prosecuting Attorney's Hate Crime Cases Reported for 2018 and 2019

As part of a nationwide initiative, the City and County of Honolulu Police Department transitioned to the most current version of the FBI's Uniform Crime Reporting (UCR) Program, known as the National Incident-Based Reporting System (NIBRS), starting in 2018. NIBRS requires FBI-style, police-level hate crime reporting, which Hawaii's county police departments did not previously provide. After developing a NIBRS data repository, the state UCR program (which is also located at the Hawaii Department of the Attorney General) attained its own FBI certification in 2019. The Kauai County Police Department entered the NIBRS certification process in early 2021, and the Hawaii County Police Department and Maui County Police Department are expected to begin later in 2021. Hawaii's first police-level hate crime data will be published in the coming months as a special section of the state UCR program's new, public-facing, Web-based, statistical dashboard for NIBRS crime data. NIBRS hate crime reporting is expected to eventually supersede Hawaii's current prosecutor-level reporting program.

After launching the NIBRS data repository, state UCR program personnel began reviewing, verifying, and otherwise testing and exploring the HPD's initial NIBRS data – a process that is still

ongoing, with various data and procedural revisions and other system improvements made along the way. This is a complicated process that will continue as the other county police departments transition to NIBRS.

Reviewing and verifying the HPD's hate crime data reported through NIBRS afforded state UCR program personnel with the first opportunity to track verified hate crime arrest cases to the City and County of Honolulu's Department of the Prosecuting Attorney. One important, complicating factor to consider here is that, while police departments report hate crimes to their respective state UCR programs around the time of the initial incidents, Hawaii's prosecutors report hate crime cases to the state hate crime statistics reporting program when the cases reach their final prosecutorial/court disposition, which typically occurs months after the arrests were made by the police. And so, for example, if the police report 10 hate crime arrest cases for a given year, it should not be expected that all of those cases will necessarily reach a final disposition and be reported by the prosecutors during that same year. Sufficient time must be allowed for the natural lag that exists between the reporting points, and police cases from one year must be tracked into the subsequent year(s) for the prosecutors' cases. Hawaii's hate crime statistics reporting program was specifically designed to report on final case outcomes (see additional discussion elsewhere in this report), and during a time when there was no expectation for the police to begin NIBRS-style hate crime reporting.

Due to office/records accessibility limitations and other unprecedented burdens and priorities for Hawaii's justice agencies, the COVID-19 pandemic delayed much of the hate crime data verification and case tracking project throughout 2020, as did the changeover in Honolulu's publicly-elected Prosecuting Attorney. The project concluded with a verification of the Honolulu prosecutor's cases for 2020 as reported earlier herein, and, pursuant to a determination that several of the HPD's verified hate crime arrest cases for 2018 and 2019 had not been recognized and reported by the Honolulu prosecutor, amended tallies and case synopses for those years, as presented below. It should be added that both the prior and current administrators of the Honolulu Department of the Prosecuting Attorney were responsive, diligent, and overall very helpful in providing the necessary information and revising internal reporting procedures where indicated. Also, at the request of the prosecutor and with coordination from the state UCR program, personnel from the FBI's UCR and Civil Rights units

created and presented a specialized hate crime recognition training session for deputy prosecuting attorneys, their supervisors, and department administrators in December 2020.

Hate Crimes, 2018 (Appended) – Department of the Prosecuting Attorney, City and County of Honolulu

A total of four (revised from zero) hate crime cases reached their final disposition at the Honolulu prosecutor's office during Calendar Year 2018, as follows:

The first hate crime incident occurred on June 9, 2018, and the case was disposed on October 23, 2018. In this incident, the victim witnessed the offender, a 71-year-old (at the time of the incident) male of Chinese descent, with a current criminal history record including 16 misdemeanor convictions and 13 petty misdemeanor and/or violation convictions, challenge another unknown male to a fight, so the victim began video recording the incident. The unknown male walked away and the offender turned to the victim and verbally threatened him (and his wife, though it is not clear if she was physically present) with grave bodily harm and an anti-Black epithet. The victim called 911 and the offender was arrested and charged with Terroristic Threatening in the Second Degree (a misdemeanor), to which he pleaded "no contest" and was sentenced to one year of probation. [Note: This case involves the same offender as the one involved in the fourth 2019 case; see next page.]

The second incident occurred on August 4, 2018 and was disposed on November 7, 2018. In this incident, the offender, a 30-year-old (at the time of the incident) White male, with a current criminal history record including six petty misdemeanor and/or violation convictions, walked up to a car and spat in the driver's face after uttering an anti-Hispanic epithet. The offender was arrested and charged with one count of Terroristic Threatening in the Second Degree (a misdemeanor) and one count of Harassment (a petty misdemeanor), and was found not guilty by reason of insanity.

The third incident occurred on November 15, 2018 and was disposed on November 27, 2018. In this incident, the offender, a 35-year-old (at the time of the incident) White male, with a current criminal history record including four misdemeanor convictions and 11 petty misdemeanor and/or violation convictions, assaulted a shopping center security guard who was attempting to intervene in a disruptive incident caused by the offender. The of-

fender kicked the victim several times in the legs and groin, and poked him in the chest, while uttering multiple anti-Black epithets. The offender was arrested and charged with Assault in the Third Degree (a misdemeanor) and Criminal Property Damage in the Fourth Degree (a petty misdemeanor). He pleaded “no contest” to both charges and was sentenced to 30 days in jail.

The fourth and final incident for 2018 occurred on November 22, 2018 and was disposed on December 5, 2018. In this incident, the offender, a 39-year-old (at the time of the incident) White male, with a current criminal history record including 11 felony convictions, three misdemeanor convictions, and eight petty misdemeanor and/or violation convictions, approached the victim on a public sidewalk, and pointed a baseball bat at him while making a non-bias-related insulting comment. The victim attempted to walk away but saw the offender pull an object from a backpack, and shortly thereafter heard what sounded like three shots fired from an air gun. The victim felt something hit his collarbone that caused pain and bleeding. The offender then shouted that the victim should “go back to China.” The offender was arrested and charged with Assault in the Third Degree (a misdemeanor) and Restrictions on Use of Air Gun (a county ordinance violation). He pleaded “no contest” to both charges and was sentenced to one year of probation, including 30 days in jail.

Hate Crimes, 2019 (Appended) – Department of the Prosecuting Attorney, City and County of Honolulu

A total of seven (revised from one) hate crime cases reached their final disposition at the Honolulu prosecutor’s office during Calendar Year 2019, as follows:

The first hate crime incident occurred on March 16, 2018, and the case was disposed on February 11, 2019. In this incident, the offender, a 51-year-old (at the time of the incident) male of Filipino descent, with a current criminal history record including one misdemeanor conviction, verbally interfered with the victim’s efforts to move a television into his own apartment, while repeatedly using an anti-Black epithet in reference to the victim. An argument ensued and the offender allegedly head-butted the victim. The offender was arrested and charged with Assault in the Third Degree (a misdemeanor), but the case was later dismissed.

The second incident occurred on March 4, 2018 and was disposed on February 15, 2019. In

this incident, the offender, a 48-year-old (at the time of the incident) male of Filipino descent, with a clear criminal history record, approached the two victims, a father and son who were the offender’s neighbors, and made anti-Filipino remarks before physically assaulting them. The offender was arrested and charged with two counts of Assault in the Third Degree (a misdemeanor), and was granted a one-year deferral of a “no contest” plea. This case is notable as it featured an offender whose criminal motivation evidently involved a bias against an ethnic group to which he also belongs.

The third incident occurred on December 22, 2018 and was disposed on February 22, 2019. In this incident, the offender, a 27-year-old (at the time of the incident) male of Samoan descent, with a current criminal history record including 11 misdemeanor convictions and four petty misdemeanor and/or violation convictions, approached the victim at an open air location in downtown Honolulu and, without provocation, punched the victim, who fell to the ground. The offender continued to punch and kick the victim, while referring to the victim with an anti-Black epithet. The offender was arrested and charged with Assault in the Third Degree (a misdemeanor), to which he pleaded “no contest” and was sentenced to one year of probation.

The fourth incident occurred on January 27, 2019 and was disposed on March 6, 2019. In this incident, the offender, a 72-year-old (at the time of the incident) male of Chinese descent, with a current criminal history record including 16 misdemeanor convictions and 13 petty misdemeanor and/or violation convictions, verbally threatened to kill two of his neighbors and their dog, while wielding a golf club in a threatening manner. The offender’s verbal threats included many anti-female-homosexual epithets directed at the victims, who at the time of the incident had already been granted a court injunction against the offender in an effort to stop his ongoing harassment. The offender was arrested and charged with two counts of Terroristic Threatening in the Second Degree (a misdemeanor), and two counts of violation of a restraining order or injunction (see HRS § 604-10.5, Power to Enjoin and Temporarily Restrain Harassment; also a misdemeanor). The offender pleaded “no contest” to all charges and was sentenced to a 160-day jail term. [Note: This case involves the same offender as the one involved in the first 2018 case; see prior page.]

The fifth incident occurred on January 31, 2017, and was disposed on April 2, 2019. In this incident, the offender, a 26-year-old (at the time of

the incident) White male, with a current criminal history record including one felony conviction, two misdemeanor convictions, and one petty misdemeanor or violation conviction, followed the victim into an alley and without provocation or other interaction, stabbed the victim three times from behind before the victim's two friends pulled away the offender, who then ran off. The victim survived but sustained serious injuries that required surgery. The victim and both friends are part-Black, and one of the friends stated that two days before the stabbing incident, the offender had attempted to pick an unprovoked fight with him and uttered anti-Black epithets. The friend stated that he had never seen the offender prior to the first altercation. In addition, the offender was involved in an entirely separate criminal case that occurred approximately four months prior to the stabbing incident, during which the offender approached a Black male who was publicly preaching, and without provocation or other interaction, yelled profanities at the preacher and then punched him in the face. The totality of this information suggested to the deputy prosecuting attorney handling the stabbing case that it was a racially-motivated offense. The offender was charged with Attempted Murder in the Second Degree and pleaded guilty to the lesser charge of Assault in the First Degree. Enhanced hate crime sanctions were not sought in this felony case, and the offender was sentenced to an indeterminate 10-year term of imprisonment. [Note: This case was first reported in the *Hate Crimes in Hawaii, 2019* publication.]

The sixth incident occurred on August 5, 2019 and was disposed on August 15, 2019. In this incident, the offender, a 58-year-old (at the time of the incident) male of Filipino descent, with a current criminal history record including three misdemeanor convictions and three petty misdemeanor and/or violation convictions, threatened a fast food restaurant manager who intervened in the offender's harassment of another restaurant employee. The offender threatened to kill the manager, and uttered a variety of anti-Filipino and anti-immigrant insults. The offender was arrested and charged with Terroristic Threatening in the Second Degree (a misdemeanor), to which he pleaded "no contest" and was sentenced to one year of probation (including nine days in jail), and to undergo a mental health assessment and anger management counseling. As was the case in the second 2019 incident reported herein, this incident is noteworthy because it featured an offender whose criminal motivation involved the expression of bias against an ethnic group to which he also belongs.

The seventh and final incident for 2019 occurred on July 5, 2019 and was disposed on December 3, 2019. In this incident, the offender, a 25-year-old (at the time of the incident) male of Samoan descent, with a current criminal history record including one misdemeanor conviction and one petty misdemeanor or violation conviction, approached the victims (one male and one female, and both active duty military personnel), who were speaking together while seated on a bench outside of a bar in Waikiki, and began directing anti-White (and anti-U.S. military) insults at the victims. The offender then punched the male victim in the head, causing the victim to fall backward, and then punched the female victim as she stood up from the bench. The offender was arrested and charged with two counts of Assault in the Third Degree (a misdemeanor), pleaded "no contest" to one count, and the second count was dropped pursuant to the plea. The offender was fined \$300.

Summary Statistics, 2002-2020

A total of 48 hate crime cases were reported to Hawaii's hate crime statistics reporting program since its inception in 2002, yielding a 19-year average of 2.5 cases reported statewide per year and 0.63 cases reported per participating agency per year. The following table provides statewide and county tallies of hate crime cases reported annually to Hawaii's program:

Year	C&C of Honolulu	Hawaii County	Maui County	Kauai County	State Total
2002	2	0	0	0	2
2003	1	0	0	0	1
2004	1	0	0	0	1
2005	0	1	0	0	1
2006	6	0	0	0	6
2007	1	0	0	0	1
2008	0	1	0	0	1
2009	0	0	1	0	1
2010	2	0	0	0	2
2011	1	0	0	0	1
2012	0	0	0	0	0
2013	0	1	0	3	4
2014	0	0	0	1	1
2015	0	0	0	2	2
2016	1	0	0	2	3
2017	1	0	0	2	3
2018	4*	0	1	1	6
2019	7*	0	0	1	8
2020	3	0	1	0	4
Total	30	3	3	12	48

* Revised July 2021

Due to multiple biases expressed in some cases, the 48 hate crime cases identified above involved a total of 56 bias instances, as categorized below:

Bias Type	# of Bias Instances	% of Total Bias Instances	% within Bias Type
Race/Ethnicity/Nat'l Origin	46	82.1	
Anti-White	21	37.5	45.7
Anti-Black	11	19.6	23.9
Anti-Arab/Middle Eastern	3	5.4	6.5
Anti-Filipino	3	5.4	6.5
Anti-Hispanic	3	5.4	6.5
Anti-Japanese	2	3.6	4.3
Anti-Chinese	1	1.8	2.2
Anti-Micronesian	1	1.8	2.2
Anti-Russian	1	1.8	2.2
Sexual Orientation	6	10.7	
Anti-Homosexual (non-spezif.)	5	8.9	83.3
Anti-Female Homosexual	1	1.8	16.7
Religion	4	7.1	
Anti-Jewish	2	3.6	50.0
Anti-Muslim	2	3.6	50.0

Reference

Criminal Justice Information Services Division (October 1999). *Hate Crime Data Collection Guidelines*. U.S. Department of Justice: Federal Bureau of Investigation.

This report can be downloaded in PDF format from the Crime Prevention & Justice Assistance Division web site:

ag.hawaii.gov/cpja

Appendix C



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Location Select

Hawaii

Agency Select

e.g. Point Pleasant Police Department

Year Select

2020

FEDERAL VIEW

Hawaii

Hate [Crime Data](#) for **Hawaii** are derived from [Summary Reporting System \(SRS\)](#) reports voluntarily submitted to the FBI.

The **2020** FBI [Hate Crime](#) statistics for this state are based on data received from **1** of **4** law enforcement agencies in the state that year.

The FBI Uniform Crime Reporting Program defines [hate crime](#) as a committed criminal [offense](#) which is motivated, in whole or in part, by the offender's [bias\(es\)](#) against a race, religion, [disability](#), sexual orientation, [ethnicity](#), gender, or gender identity.



Resources

- > [Hawaii UCR Program](#)
 - > [CDE General FAQ](#)
 - > [Hate Crime Publications](#)
 - > [FBI UCR Program](#)
- > [About the data](#)
 - > [FBI Hate Crime FAQ](#)
 - > [Hate Crime 2020 Summary](#)
 - > [Download Hate Crime Data](#)

Hate Crime in Hawaii Incident Analysis



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Crime Data

Crime

Hate Crime

Expanded Homicide Data

Expanded Property Crime

Arrest

Quarterly Uniform Crime Report

Law Enforcement Collections

Documents and Downloads

Crime Data API

About

Hate Crime in Hawaii Incident Analysis

HOW THESE NUMBERS ARE CALCULATED

Year Select

2020

Include Previous Years

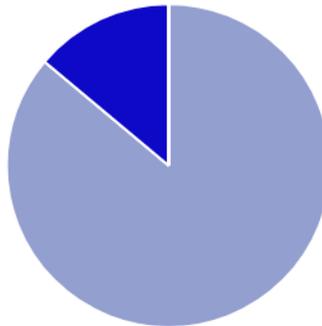
Current Year

View by: # %

Click legend to show/hide elements

DOWNLOAD

Race/Ethnicity/Ancestry: 31 Religion: 0 Sexual Orientation: 5
 Disability: 0 Gender: 0 Gender Identity: 0
 Multiple Bias: 0 Total: 36



Bias

Sort By: Category

Anti-White	15
Anti-Black or African American	10
Anti-Asian	4
Anti-Gay (Male)	3
Anti-Multiple Races, Group	1

Total 36

DOWNLOAD

SHOW MORE



Hate Crime in Hawaii Incident Analysis

HOW THESE NUMBERS ARE CALCULATED

Year Select

2019

Include Previous Years

Current Year

View by:

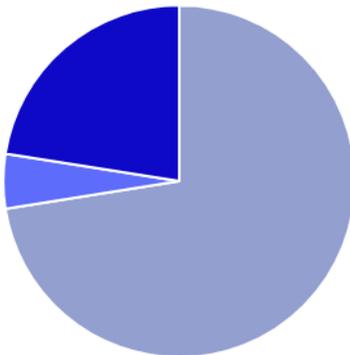
#

%

Click legend to show/hide elements

DOWNLOAD

Race/Ethnicity/Ancestry: 29 Religion: 2 Sexual Orientation: 9 Disability: 0 Gender: 0
Gender Identity: 0 Multiple Bias: 0 Total: 40



Bias

Sort By: Category

Anti-White	12
Anti-Black or African American	11
Anti-Gay (Male)	7
Anti-Native Hawaiian or Other Pacific Islander	2
Anti-Asian	2

Total

40

DOWNLOAD

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Hate Crime in Hawaii Incident Analysis

HOW THESE NUMBERS ARE CALCULATED

Year Select

2018

Include Previous Years

Current Year

View by:

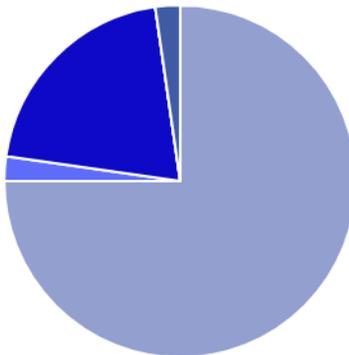
#

%

Click legend to show/hide elements

DOWNLOAD

Race/Ethnicity/Ancestry: 33 Religion: 1 Sexual Orientation: 9 Disability: 0 Gender: 0
Gender Identity: 1 Multiple Bias: 0 Total: 44



Bias

Sort By: Category

Anti-Black or African American	13
Anti-White	12
Anti-Gay (Male)	8
Anti-Asian	6
Anti-Native Hawaiian or Other Pacific Islander	1

Total

44

DOWNLOAD

SHOW MORE

Appendix D



Hawaii

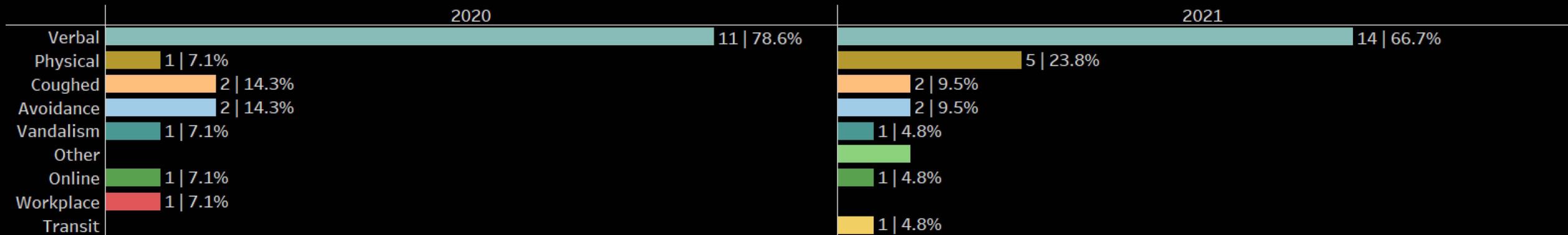
Incidents - Updated: July 9, 2021



35 Incidents Reported

Graphs below do not include incidents with null category value..

Date Ty..	Date of Incid..	Label T..	Count and Pe..		Count and Pe..		Count and Pe..		Count and Pe..		Count and Pe..		Count and Pe..		Count and Pe..		Count and Pe..					
Year of..	age g..	Age G..	Avoidance		Coughed		Online		Other		Physical		Transit		Vandalism		Verbal		Workplace			
2020	Null	Null	1	33.3%	1	33.3%									1	33.3%	1	33.3%				
		Total	1	33.3%	1	33.3%									1	33.3%	1	33.3%				
	0-17	12-17			1	100.0%																
		Total			1	100.0%																
	18-60	18-25																	1	100.0%		
		26-35	1	33.3%				1	33.3%										3	100.0%	1	33.3%
		36-45																	3	100.0%		
		46-60																	1	100.0%		
	Total	1	33.3%				1	33.3%										8	100.0%	1	33.3%	
	61-75+	61-75									1	50.0%							2	100.0%		
Total										1	50.0%							2	100.0%			
Total			2	33.3%	2	50.0%	1	33.3%			1	50.0%			1	33.3%		11	84.6%	1	33.3%	
2021	0-17	12-17					1	50.0%			1	50.0%						1	50.0%			
		Total					1	50.0%			1	50.0%						1	50.0%			
	18-60	18-25	1	100.0%	1	100.0%												1	100.0%			
		26-35						1	20.0%		1	20.0%	1	20.0%				2	40.0%			
		36-45	1	11.1%							1	11.1%						8	88.9%			
		46-60																1	100.0%			
	Total	2	20.0%	1	100.0%			1	20.0%		2	14.3%	1	20.0%				12	75.0%			
	61-75+	61-75			1	50.0%			1	50.0%	1	50.0%			1	50.0%		1	50.0%			
		75+									1	100.0%										
	Total			1	50.0%			1	50.0%		2	66.7%			1	50.0%		1	50.0%			
Total			2	20.0%	2	66.7%	1	50.0%	2	28.6%	5	26.3%	1	20.0%	1	50.0%		14	70.0%			
Grand Total			4	25.0%	4	57.1%	2	40.0%	2	28.6%	6	28.6%	1	20.0%	2	40.0%		25	75.8%	1	33.3%	





Hawaii

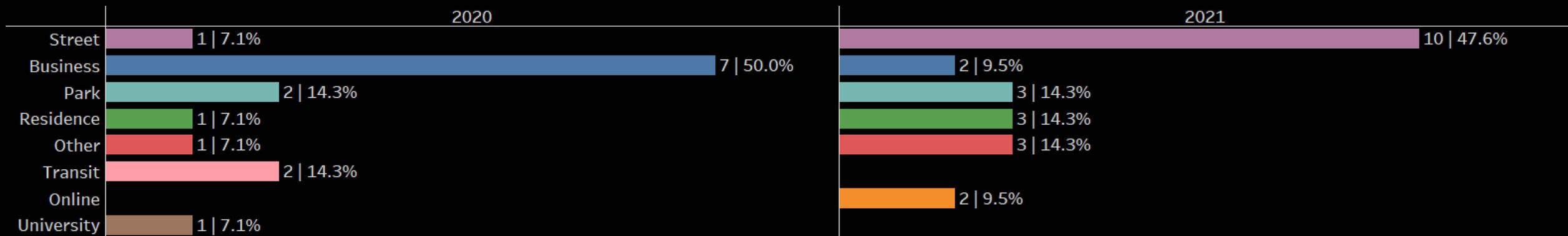
Location - Updated: July 9, 2021

35 Incidents Reported



Graphs below do not include incidents with null category value..

Date Ty..	Date of Incid..	Label T..	Count and Pe..	Business	Online	Other	Park	Residence	Street	Transit	University	
2020	Null	Null	3 100.0%				1 33.3%					
		Total	3 100.0%				1 33.3%					
	0-17	12-17							1 100.0%			
		Total							1 100.0%			
	18-60	18-25										1 100.0%
		26-35	1 33.3%				1 33.3%					
		36-45	2 66.7%								1 33.3%	
		Total	3 50.0%			1 33.3%	1 33.3%				2 50.0%	1 100.0%
	61-75+	61-75	1 50.0%						1 50.0%			
		Total	1 50.0%						1 50.0%			
2021	0-17	12-17			1 50.0%				1 50.0%			
		Total			1 50.0%				1 50.0%			
	18-60	18-25	1 100.0%									
		26-35			1 20.0%	1 20.0%	1 20.0%	1 20.0%	2 40.0%			
		36-45	1 11.1%	1 11.1%	1 11.1%	2 22.2%	1 11.1%	1 11.1%	4 44.4%			
		Total	2 20.0%	1 11.1%	2 14.3%	3 21.4%	2 14.3%	7 46.7%				
	61-75+	61-75			1 50.0%				1 50.0%	1 50.0%		
		75+								1 100.0%		
	Total			1 50.0%				1 50.0%	2 66.7%			
	Grand Total			9 42.9%	2 18.2%	4 21.1%	5 25.0%	4 22.2%	11 52.4%	2 50.0%	1 100.0%	





Hawaii

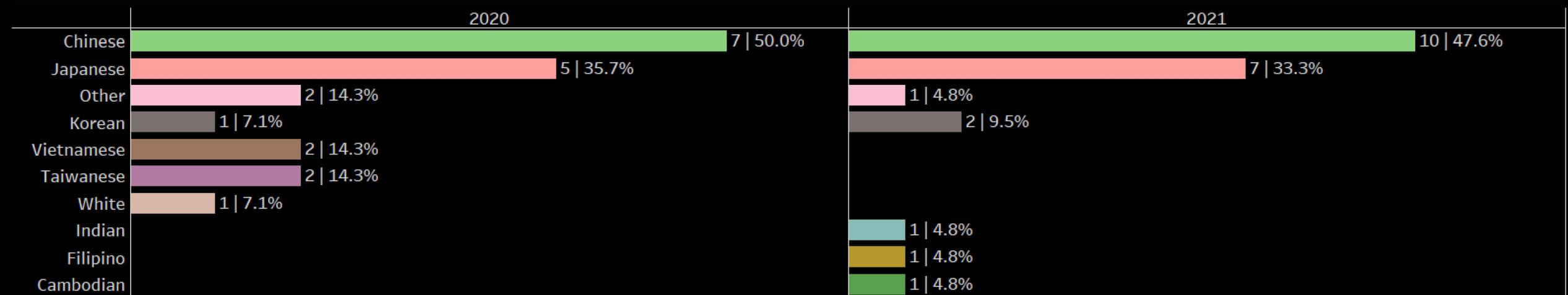
Ethnicity - Updated: July 9, 2021

35 Incidents Reported



Graphs below do not include incidents with null category value..

Date Ty..	Date of Incid..	Label T..	Count and Pe..	Cambodian	Chinese	Filipino	Indian	Japanese	Korean	Other	Taiwanese	Vietnamese	White
2020	Null	Null			2 66.7%			1 33.3%					
		Total			2 66.7%			1 33.3%					
	0-17	12-17									1 100.0%	1 100.0%	
		Total									1 100.0%	1 100.0%	
	18-60	18-25						1 100.0%	1 100.0%	1 100.0%			1 100.0%
		26-35			2 66.7%			1 33.3%				1 33.3%	
		36-45			1 33.3%			1 33.3%		1 33.3%	1 33.3%		
		46-60						1 100.0%					
		Total			3 50.0%			4 50.0%	1 100.0%	2 50.0%	1 33.3%	1 33.3%	1 100.0%
	61-75+	61-75			2 100.0%								
		Total			2 100.0%								
	Total				7 63.6%			5 45.5%	1 100.0%	2 50.0%	2 50.0%	2 50.0%	1 100.0%
2021	0-17	12-17						1 50.0%	1 50.0%				
		Total						1 50.0%	1 50.0%				
	18-60	18-25				1 100.0%							
		26-35		1 20.0%	3 60.0%			1 20.0%					
		36-45			5 55.6%		1 11.1%	3 33.3%	1 11.1%	1 11.1%			
		46-60						1 100.0%					
		Total		1 20.0%	8 57.1%	1 100.0%	1 11.1%	5 33.3%	1 11.1%	1 11.1%			
	61-75+	61-75			1 50.0%			1 50.0%					
		75+			1 100.0%								
		Total			2 66.7%			1 50.0%					
	Total			1 20.0%	10 58.8%	1 100.0%	1 11.1%	7 36.8%	2 18.2%	1 11.1%			
Grand Total				1 20.0%	17 60.7%	1 100.0%	1 11.1%	12 40.0%	3 25.0%	3 23.1%	2 50.0%	2 50.0%	1 100.0%





Hawaii

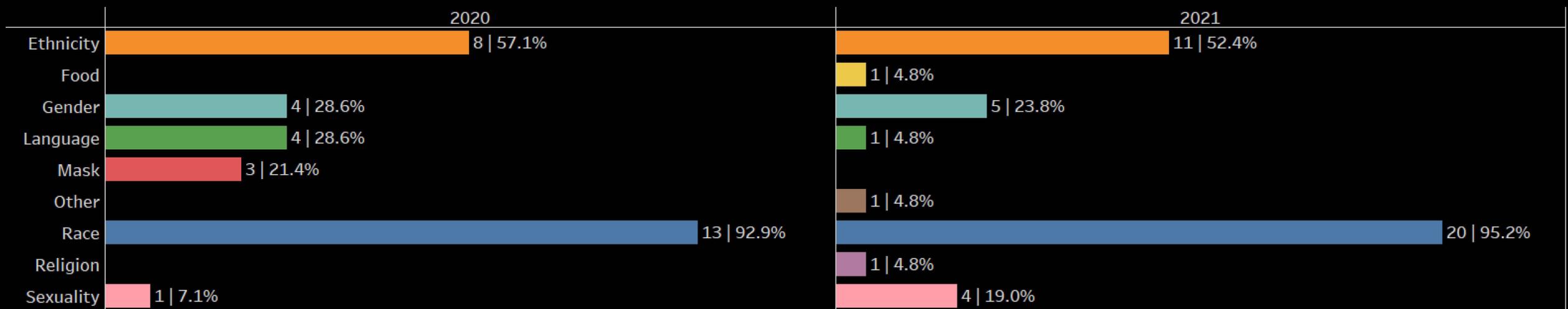
Suspected Reason for Discrimination - Updated: July 9, 2021



35 Incidents Reported

Graphs below do not include incidents with null category values.

Date Ty..	Date of Incid..	Label T..	Count and Pe..											
Year of..	age g..	Age ..	Ethnicity	Food	Gender	Language	Mask	Other	Race	Religion	Sexuality			
2020	Null	Null	2 66.7%		1 33.3%	1 33.3%	2 66.7%		2 66.7%					
		Total	2 66.7%		1 33.3%	1 33.3%	2 66.7%		2 66.7%					
	0-17	12-17								1 100.0%				
		Total								1 100.0%				
	18-60	18-25	1 100.0%		1 100.0%			1 100.0%		1 100.0%				
		26-35	1 33.3%			1 33.3%				3 100.0%		1 33.3%		
		36-45	2 66.7%		1 33.3%	1 33.3%				3 100.0%				
		46-60	1 100.0%			1 100.0%				1 100.0%				
		Total	5 62.5%		2 50.0%	3 42.9%	1 100.0%		8 100.0%		1 33.3%			
	61-75+	61-75	1 50.0%		1 50.0%					2 100.0%				
Total		1 50.0%		1 50.0%					2 100.0%					
2021	0-17	12-17	1 50.0%	1 50.0%		1 50.0%			2 100.0%		1 50.0%			
		Total	1 50.0%	1 50.0%		1 50.0%			2 100.0%		1 50.0%			
	18-60	18-25	1 100.0%							1 100.0%	1 100.0%			
		26-35	2 40.0%		1 20.0%					5 100.0%		1 20.0%		
		36-45	6 66.7%		3 33.3%					9 100.0%		2 22.2%		
		46-60								1 100.0%				
		Total	9 60.0%		4 28.6%					16 100.0%	1 100.0%	3 21.4%		
	61-75+	61-75	1 50.0%		1 50.0%				1 50.0%	1 50.0%				
		Total	1 50.0%		1 50.0%				1 50.0%	1 100.0%				
	Grand Total		19 59.4%	1 50.0%	9 36.0%	5 41.7%	3 75.0%	1 50.0%	33 94.3%	1 100.0%	5 26.3%			





Hawaii

Gender - Updated: July 9, 2021

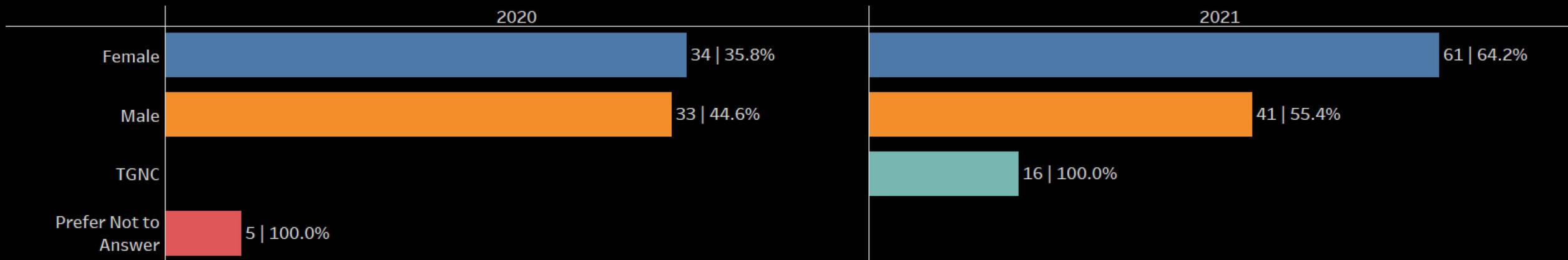
35 Incidents Reported



Date Ty.. Date of Incid.. Label T.. Count and Pe..

Graphs below do not include incidents with null category value..

Year of ..	age gro..	Age Gro..	Female	Male	Prefer Not to Answer	TGNC
2020	Null	Null		4 5.4%		
		Total		4 5.4%		
	0-17	12-17				5 100.0%
		Total				5 100.0%
	18-60	18-25	10 10.5%			
		26-35		19 25.7%		
		36-45	11 11.6%	6 8.1%		
		46-60	6 6.3%			
		Total	27 28.4%	25 33.8%		
	61-75+	61-75	7 7.4%	4 5.4%		
Total		7 7.4%	4 5.4%			
Total	Total	34 35.8%	33 44.6%	5 100.0%		
2021	0-17	12-17		7 9.5%		6 37.5%
		Total		7 9.5%		6 37.5%
	18-60	18-25	8 8.4%			
		26-35	20 21.1%	4 5.4%		
		36-45	19 20.0%	22 29.7%		10 62.5%
		46-60	4 4.2%			
	Total	51 53.7%	26 35.1%		10 62.5%	
	61-75+	61-75	10 10.5%	4 5.4%		
		75+		4 5.4%		
	Total	Total	10 10.5%	8 10.8%		
Total	Total	61 64.2%	41 55.4%		16 100.0%	
Grand Total	Total	95 100.0%	74 100.0%	5 100.0%	16 100.0%	



Appendix E

Hawai'i Department of Education: Race Cases Involving an Employee

School Year 2020-2021 (July 2020-June 2021)

Race Cases	Open Cases	Closed Cases
Employee Against Employee (Internal Investigations)	6	15
Student Against Employee (Internal Investigations)	1	1
Employee Against HIDOE (HCRC/EEOC)	0	8

School Year 2019-2020 (July 2019-June 2020)

Race Cases	Open Cases	Closed Cases
Employee Against Employee (Internal Investigations)	1	7
Student Against Employee (Internal Investigations)	4	12
Employee Against HIDOE (HCRC/EEOC)	0	6

*These numbers include all employee-related cases of race-related allegations, including non-AANHPI cases. This data is not broken down by race or ethnicity.

SUMMARY OF DATA*

Student Against Student Internal Investigations Involving AANHPI Victims, by Ethnicity
School Year 2019-2020

Race/Ethnicity (Federal Categories)	Number of Victims
Chinese	13
Filipino	129
Indo-Chinese (Ex. Cambodian, Vietnamese, Laotian)	<10
Japanese	43
Korean	<10
Other Asian	<10
AS - Asian (Subtotal)	201
Guamanian/Chamorro	<10
Micronesian (Marshallese, Pohnpeian, Chuukese)	31
Native Hawaiian	214
Other Pacific Islander	10
Samoan	28
Tongan	<10
PI - Pacific Islander (Subtotal)	293
Grand Total	494

* Data was summarized by the report author through a simple Excel Pivot Table of the raw data provided by HI-DOE. All categories subject to the suppression rule, which requires that any category where the number of incidents is less than 10 needs to be suppressed.

Student Against Student Internal Investigations Involving AANHPI Victims, by Ethnicity
School Year 2020-2021

Race/Ethnicity (Federal Categories)	Number of Victims
Filipino	13
Japanese	<10
Korean	<10
Other Asian	<10
AS - Asian	20
Micronesian (Marshallese, Pohnpeian, Chuukese)	<10
Native Hawaiian	18
PI - Pacific Islander	19
Grand Total	39

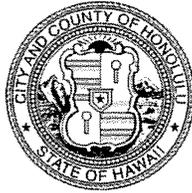
Appendix F

POLICE COMMISSION
CITY AND COUNTY OF HONOLULU

ALI'I PLACE
1060 RICHARDS STREET, SUITE 170
HONOLULU, HAWAII 96813 • AREA CODE (808) 723-7580



RICK BLANGIARDI
MAYOR



SHANNON L. ALIVADO
Chair

OUR REFERENCE

August 6, 2021

GERARD "JERRY" GIBSON
Vice-Chair

MICHAEL BRODERICK
DOUG CHIN
CARRIE K. S. OKINAGA
RICHARD PARRY



Dear Ms. [REDACTED]:

Thank you for your July 22, 2021 email to the Honolulu Police Commission (HPC).

During our telephone conversation on July 28, 2021, you requested the 2019 and 2020 statistics regarding "partiality" cases adjudicated by the HPC. The definition of Partiality under Rules of the Honolulu Police Commission Rule 8-2 states:

"Officers and employees shall not display favoritism, or partiality for or discriminate against a person because of race, nationality, sex, religion, influence, political persuasion or office, sexual orientation or preference, age or disability."

Below is a breakdown of complaints of partiality and the decisions by the HPC.

<u>Year</u>	<u>Sustained</u>	<u>Not Sustained</u>	<u>Exonerated</u>
2019	1	10	2
2020		12	2

Sustained: There is sufficient evidence to support the complainant's allegations

Not sustained: There is insufficient evidence to either prove or disprove the complainant's allegation.

Exonerated: The incident occurred, but was lawful and proper.

Should you have additional questions, please contact me at 723-7581.

Sincerely,



Executive Officer

JKSY:ey
037

c: Chief of Police
Members of the Honolulu Police Commission

Appendix G

NOTICE TO REQUESTER

TO:

(Requester's name)

FROM:

Hawaii Police Commission, _____
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: 9/13/21

DATE OF THIS NOTICE: 9/21/21

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. Statistics on bias-related cases adjudicated by the Hawaii Police Commission for 2019, 2020, 2021.
- 2.
- 3.
- 4.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

Will be granted in its entirety. Information is in the email that this notice is attached to.

Cannot be granted. Agency is unable to disclose the requested records for the following reason:

- Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
- Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
- Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))

Will be granted in part and denied in part, OR Is denied in its entirety

Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.

(Describe the portions of records that the agency will not disclose.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

Request for Information Form

TO: [REDACTED]@hawaiiicounty.gov>

Tue, Sep 21, 2021 at 8:27 PM

Ms. [REDACTED],

Please see attachment.

This is in response to your request for statistics on bias-related cases adjudicated by the Hawai'i Police Commission in the years 2019, 2020, and 2021. I searched our files and found only one case of alleged partiality. In 2020 complainant alleged that responding officers showed favoritism towards his wife because she is beautiful. The complaint was referred to the Police Chief for further investigation.

[Quoted text hidden]



[REDACTED] **Request for Records.pdf**

41K

Appendix H

**Honolulu Department of the Prosecuting Attorney Interpreter Requests:
March 2020 to July 2021**

Below are the numbers for interpreter services, document translation, and sign language interpretation from March 2020 to July 2021. There are two sets of numbers for each service category, one for the Department of the Prosecuting Attorney and one for Outside Agencies. When the Department of the Prosecuting Attorney (the Department) works directly with victims and they need interpreter/translation services, they have contractors who provide those services. When victims work with other agencies on matters related to the crime that the Department is prosecuting, those agencies will provide them with interpreter/translation services using funds from a Victims of Crime Act grant that the Department administers.

Language Interpretation

Dept. of Prosecuting Attorney		
Rank	Language	TOTAL
1	Korean	31
2	Japanese	14
3	Ilocano	10
4	Chuukese	10
5	Tagalog	8
6	Cantonese	6
	Pohnpeian	5
7	Mandarin	5
8	Marshallese	2
9	Tongan	2
10	Vietnamese	2
11	Burmese	1
12	Cambodian	1
	TOTAL	97

Outside Agencies		
Rank	Language	TOTAL
1	Chuukese	74
2	Japanese	62
3	Korean	38
4	Spanish	36
5	Indonesian	27
6	Cantonese	22
7	Vietnamese	17
8	Laotian	12
9	Mandarin	11
10	Ilocano	9
11	Tagalog	6
12	Marshallese	5
13	Thai	3
14	Pohnpeian	2
15	Samoan	2
16	Hindi	1
17	Polish	1
18	Swahili	1
19	Tongan	1
	TOTAL	330

Document Language Translation

Dept. of Prosecuting Attorney	
WRITTEN	
Language	TOTAL
English to Japanese	3
English to Korean	1
English to Spanish	2
Tagalog to English	2
Spanish to English	2
English to Mandarin	1
English to Ilocano	1
English to Tagalog	1
English to Vietnamese	1
English to Chuukese	1
English to Laotian	1
Chuukese to English	1
Japanese to English	1
Spanish to English	1
TOTAL	19

Outside Agencies	
WRITTEN	
Language	TOTAL
English to Chuukese	1
English to Kosraen	1
English to Marshallese	1
English to Pohnpeian	1
English to Japanese	1
English to Korean	1
English to Yapese	1
English to Palauan	1
Korean to English	1
Japanese to English	1
TOTAL	10

Sign Interpretation

Dept. of Prosecuting Attorney	
Sign Interpretation	
Month	TOTAL
TOTAL	0

Outside Agencies	
Sign Interpretation	
Month	TOTAL
3/5/20	1
3/12/20	1
3/11/21	1
4/22/21	1
4/29/21	1
6/17/21	1
6/24/21	1
TOTAL	7