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COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIR

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Wednesday, March 11, 2020

10:30 AM - Room 430

COMMENTS on SB 2383 SD1 - LESS THAN LETHAL FORCE

Aloha Chair Takayama, Vice Chair Gates and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2383 requires the department of public safety to review its policies and procedures governing the use of force, weapons, and equipment. Requires the law enforcement standards board to review the department's use of force training. Appropriates funds for training, equipment, and related records management for the department. The SD1 blanked out the appropriation amount

It provides no comfort to the families of those killed by department employees, or to the community at large, that this same department will *"review its policies and procedures governing the use of force, weapons, and equipment."* This department needs professional and independent oversight.

Community Alliance on Prisons offers comments on this measure. We support the use of less than lethal force, however, our concerns are that the bill is just a stalling tactic to delay what must be done if we want to prevent deaths by public safety employees: That is creating a REAL TRAINING ACADEMY with certified, experienced, and honest trainers.

The HCR 85 Correctional Reform Task Force worked on this issue, visited the training facility, met with PSD's trainer Marti Martinez, and invited Ms. Martinez to present at a Program Subcommittee meeting that included the community on October 18, 2016, and their Final Report¹ describes their findings:

¹ Creating Better Outcomes, Safer Communities, Training, Chapter 7 A, page 44.

https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85 ON October 18, 2016_task_force_final_report.pdf

CHAPTER 7
THE LEGISLATURE SHOULD CREATE AN ACADEMY
TO TRAIN CORRECTIONAL WORKERS AT ALL LEVELS

A. Training Correctional Staff

Hawai'i does not provide standardized education and training for correctional workers. An untrained or poorly trained staff contributes to poor outcomes, an unsafe workplace, poor morale, and an inefficient workforce. **The Task Force recommends that the State establish a Corrections Academy to ensure that the quality and type of education and training needed by correctional personnel is delivered in a standardized and effective manner.**

The representative from Probation on the first year of the Task Force was an active and engaged member with decades of experience. Before he retired, he spoke about the national meetings he regularly attended and mentioned that most jurisdictions had training academies for their employees. **Hawai'i does not have a real academy to train department employees.** Eight or nine weeks of training in takedowns, cell extractions, along with short presentations on mental health and working with vulnerable populations does not adequately train a person to address the needs of the people who are in the state's "care and custody."

Instituting a real training academy with accredited professional trainers would go far in reforming this department. The recent deaths at the capitol must be an impetus to impress upon the committee and the legislature the importance of delivering good training to protect staff and the public. Professionalizing the staff and valuing their input could go a long way in retaining good staff and attracting a better quality of recruit.

Lastly, while Community Alliance on Prisons strongly supports the use of less than lethal force, we must acknowledge that there are problems in PSD's training department. Asking the department whose director testified before the Senate PSD did their due diligence in hiring the current trainer when a news reporter could find no verification of the trainers' qualifications from any institution she listed² should give the legislature pause in allowing them to review their policies and procedures governing the use of force, weapons, and equipment.

Community Alliance on Prisons emphasizes the importance of good, accredited training that a REAL TRAINING ACADEMY could provide. The recent *preventable* deaths are a clarion call for good weapons training by public safety staff. This is a matter of life and death for people both inside and outside correctional facilities.

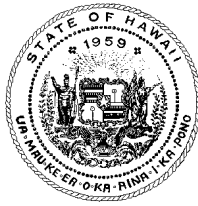
It provides no comfort to the families of those killed by department employees or to the community at large that this same department will "*review its policies and procedures governing the use of force, weapons, and equipment.*" This department needs professional and independent oversight.

Mahalo for this opportunity to offer Community Alliance on Prisons' comments on this bill.

*"A leader is best when people barely know he exists,
when his work is done, his aim fulfilled, they will say: we did it ourselves."*
Lao Tzu

² Public safety trainer a 'no show' at hearing to question her qualifications, By Lynn Kawano, September 25, 2019.
<https://www.hawaiinewsnow.com/2019/09/26/public-safety-trainer-no-show-hearing-question-her-qualifications/>

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**TESTIMONY ON SENATE BILL 2383, SENATE DRAFT 1
RELATING TO PUBLIC SAFETY.**

by
Nolan P. Espinda, Director

House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, March 11, 2020; 10:30 a.m.
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Department of Public Safety (PSD) offers comments and requests that Senate Bill (SB) 2383, Senate Draft (SD) 1 be deferred, because the department already has, and will continue, to comply with the proposed requirements, as explained below. SB 2383, SD 1 proposes to require that PSD at least annually review and update its policies and procedures governing use of force, weapons, and equipment and provide less lethal equipment and training. This measure is not necessary for the reasons further explained.

First, as required by the Commission on Accreditation for Law Enforcement Agencies (CALEA), PSD has been reviewing and revising all its policies governing the Law Enforcement Division. On December 30, 2019, the department executed the CALEA accreditation agreement, and expects to be accredited within the three-year period, ending December 2022.

Subsection 2(a) of this measure on page 2, lines 16 - 18, would mandate that PSD review and update its policies governing weapons, equipment, and use of force. As to weapons and equipment, on July 12, 2019 after consultation with the union, the department already updated, revised, and implemented Policy LAW.09.02 Weapons and Equipment Standards. Similarly, Policy LAW.09.05 Conducted Electrical Weapon (commonly known as tasers), was consulted with the union and implemented on February 5, 2020. Finally, Policy LAW.09.01 Use

of Force is in its final stages of revision before consult with the union. We intend that this revised Use of Force Policy will be implemented in approximately one month. These specific policies, along with all policies, will continuously and routinely reviewed and updated to meet, and maintain, CALEA accreditation. Based upon the above, subsection (a) as proposed is unnecessary and redundant.

Second, subsection 2(b) on page 2, line 19 – 21 would mandate that the department equip each law enforcement officer with less-than-lethal weapons. We note that this is vague because it does not specify which less lethal weapons. Further, it is also too broad because it would be unreasonable to equip each officer with his/her individual 12 gauge less lethal shotgun, especially for the hundred plus deputy sheriffs whose primary function is in the courthouse.

More importantly, all law enforcement officers are now adequately equipped with less lethal weapons, and the department will continue to assess, evaluate, and deploy equipment based upon operational needs and technological advances. Currently, each PSD law enforcement officer is issued a baton and OC. In August 2019, PSD purchased 25 Axon Taser 7 conducted electric weapons (CEW), along with 33 additional user licenses, to be deployed under a pilot initial rollout project. On February 10, 2020, Axon trained ten instructors on the CEW. In our initial rollout, we intend to train and equip select deputies from the Capitol Patrol, Airport, and Special Operations Sections.

In addition to individually issued baton, OC spray, and conducted electrical weapons, each Sheriff Division Section (e.g. Airport, courthouses, Capitol Patrol) statewide was issued 12 gauge less lethal shotguns. Pepper ball launchers were also deployed statewide to the sections in February. Since October 2019, 122 deputies statewide have been trained on the less lethal shotguns. In the same timeframe, 232 deputies have been trained in pepper ball. These efforts ensure that PSD's LEOs can immediately deploy these weapons in the field. In addition to the traditional baton and OC spray, these and other less lethal weapons ensure that PSD's law enforcement officers are well-equipped, and they and the public are well-protected. Further, the Sheriff Division has available other less lethal equipment such as dispersion devices, 37 mm less lethal launchers, and assorted less lethal munitions.

Third, subsection 2(b) on page 2, lines 19 – 21 proposes that the department shall provide less lethal training annually. CALEA standard 4.3.3 requires that all department LEOS

must qualify annually on all approved lethal weapons and electronic controlled weapons, and at least biennially, not annually as proposed by this measure, for all other less lethal weapons. PSD must annually comply with these standards to meet and maintain its CALEA accreditation, regardless of what is proposed. We do note that this proposed training requirement is not consistent with the CALEA standard for training on less lethal weapons other than the taser.

Fourth, subsection 2(c) on page 3, lines 1 – 5, proposes that the department's use of force training shall be reviewed by the Law Enforcement Standard Board. By statute, the board is responsible for establishing minimum standards for employment as a law enforcement officer and certifying persons qualified as law enforcement officers. The board is also responsible for establishing minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. In setting the minimum training standards, the board will necessarily review not just this department's, but all law enforcement agencies' training, to ensure compliance. As such, this provision is superfluous.

And lastly, subsection 2(d) on page 3, lines 6 – 8 requires the deputy director of law enforcement to be included and certified in all weapons training. Certification in weapons training is not necessary for the deputy director of law enforcement to perform his/her duties and responsibilities. The functional statement for the deputy director for law enforcement specifies that he/she administers through subordinate staff office and line divisions, programs and services for protecting the public and preserving the peace. This position directs review and assessment of programs, including goals, objectives, and priorities; directs divisional operating budgets, including staffing, contract services among other duties; establishes and directs expenditure and other management controls; and directs and coordinates implementation of policy, and operational and organizational changes, among other administrative functions. Certification in all weapons training is not necessary to perform the duties of this administrative position.

For all of the reasons specified above, the objectives of this bill are already being accomplished, and this measure is not necessary. We respectfully request that this measure be deferred.

Thank you for the opportunity to testify on this measure.