



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1159, RELATING TO COUNTY POLICE DEPARTMENTS.

BEFORE THE:

SENATE COMMITTEES ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND
MILITARY AFFAIRS AND ON JUDICIARY

DATE: Friday, February 3, 2023 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Robert L. Rawson, Deputy Attorney General

Chairs Wakai and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

The bill is intended to ensure that county police officers who are disciplined are identified only after the arbitral and appeals processes are completed and ninety days have elapsed following the issuance of the decision.

The bill creates a possible loophole that would not require the reporting of some police officers' identities. Pursuant to section 52D-3.5, Hawaii Revised Statutes, all discipline that occurs in a calendar year must be reported by January 31 of the following year. The bill requires that the police officers' identities be reported following a ninety-day period after an arbitrator's decision and award. This, however, can occur the following year. In such instances, there would be no mechanism to identify the police officer because the discipline occurred during the required reporting period the prior year.

If the Committee wishes to close this loophole, we recommend that the following wording be added to the bill by amending section 52D-3.5(b)(5)(C) on page 3, lines 3-4, of the bill to read as:

- (C) Ninety days have elapsed following the issuance of the decision; provided that, if the end of the ninety-day period occurs after the end of the year of the report, the officer's

identity shall be disclosed in the subsequent year's report
with the date of the original discipline.

We respectfully ask the Committee to pass the bill with the recommended
amendment.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Public Safety and
Intergovernmental and Military Affairs
Honorable Glenn Wakai, Chair
Honorable Brandon J.C. Elefante, Vice Chair

RE: Testimony Opposing S.B. 1159, Relating to County Police Departments
Hearing: February 3, 2023 at 3:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **opposing S.B. 1159**.

In 2020, after the death of George Floyd in Minneapolis, the Legislature took the modest step of requiring that police departments identify officers suspended or discharged for misconduct *at the time of the suspension or discharge*. Many other states require, or after Mr. Floyd's death changed the law to require, reporting the identity of police officers when a complaint is made. For example, that is how the public knew that 17 formal complaints – regardless of the outcome of those complaints – had been filed against Derek Chauvin before George Floyd's death.

The Legislature did not go that far. Act 47, however, was intentional in drawing this line differently from the standard under the public records law. The State of Hawaii Organization of Police Officers submitted testimony to this Committee in 2019 that directly addressed the language to be changed here, highlighting that it used a different standard from HRS § 92F-14(b)(4)(b) and would “require the disclosure of an officer's name ‘upon’ suspension or discharge and **before** the grievance procedure has been exhausted.”¹ The language was not amended.

Waiting for an officer to *completely* exhaust the grievance procedure does not provide timely public oversight, which is critical to sustaining the “public trust in law enforcement” that Act 47 sought to protect. 2020 Haw. Sess. Laws Act 47, § 1 at 364. Nevertheless, unlike other jurisdictions, Act 47 did not require disclosure of an officer's identity before he or she had any opportunity to respond or pursue a grievance. Absent exceptional circumstances that warrant immediate suspension, disclosure as provided

¹ SHOPO then sued the police departments for disclosing the information, claiming that Act 47 is unconstitutional. The circuit court held that Act 47 is constitutional, and SHOPO filed an appeal that remains pending. No. CAAP-21-603.

by Act 47 means that the police department has completed an often lengthy investigation process and concluded after multiple grievance steps that the police officer's conduct was sufficiently egregious to warrant suspension or discharge.

For example, in September 2014, Sgt. Darren Cachola was seen on surveillance video beating a woman in a restaurant. According to public records regarding the incident, the Honolulu Police Department completed its investigation in August 2015—a year later. In September 2015, an Administrative Review Board held a hearing to provide Sgt. Cachola and a SHOPO representative an opportunity to address the allegations. The ARB then made a preliminary recommendation, and Sgt. Cachola was provided an opportunity to respond to that recommendation before the ARB issued its final recommendation. In November 2015, the Chief of Police then reviewed the file and made the final decision to discharge Sgt. Cachola. Sgt. Cachola did not serve as a police officer from December 5, 2015, until March 16, 2018, when an arbitration decision reduced the discharge to a suspension.

Under the current law, HPD would have reported to the Legislature in January 2016 that Sgt. Cachola had been discharged, but had a pending arbitration. Even without the annual legislative report, the fact that Sgt. Cachola or any other officer no longer works for the police department or has been placed on leave is not a secret. HRS § 92F-12(a)(14) requires disclosure of an employee's date of last employment, and OIP has long held that the public is entitled to know when an employee has a leave of absence. The current law is a measured response that provides *some* information after there has been an investigation and opportunity for the officer to respond.

Under the proposed amendment, Sgt. Cachola's name would not have been disclosed to the Legislature until January 2019—more than four years after the incident. Hiding Sgt. Cachola's name on the annual disciplinary report would just make it more difficult for the public to understand what is happening. Such unnecessary secrecy undermines the public's ability to monitor officers with a history of disciplinary issues and erodes trust in law enforcement.

There are rare instances in which a police officer's discipline has been reduced to something less than a suspension after an arbitration (*i.e.*, the name would be disclosed under current law, but not if amended). But such reduction does not mean that the officer did not commit the offending conduct or was exonerated. Nick Grube, *The Power of SHOPO: Here's How the Police Union Contract Drives Public Policy*, Honolulu Civil Beat (Dec. 1, 2021) (describing an arbitrator's reinstatement of Nicholas Masagatani after sexual assault allegations because, in part, investigators did not complete the investigation by a specified deadline).

If a police department concludes after its investigation that a police officer's conduct is sufficiently egregious to warrant suspension or discharge, the public should know — even if that discipline is later overturned for other reasons. This annual misconduct report exists because police officers are entrusted with a special role in society to enforce the laws — with deadly force when necessary — and with that special trust comes greater accountability to the public compared to other government employees.

Lastly, if this Committee insists on rolling back the transparency and accountability provided by the Legislature in 2020,² the proposal should be amended to delete new provisions (5)(B) and (C). Under those provisions, the timing of an arbitration decision may result in a police officer's name never being disclosed to the Legislature. *See* HRS § 52D-3.5(e) (requiring updated annual information until the grievance process has concluded).

There is no justification for reversing the modest step that the Legislature took in 2020 regarding the annual disciplinary reports.

Thank you again for the opportunity to testify **opposing** S.B. 1123.

² George Floyd's death provided a focal point that highlighted the need for greater public accountability in law enforcement. But his death was not the only one under questionable circumstances, and it was not the last. *E.g.*, Eric Levenson, Madeline Holcombe, & Josh Campbell, *Tyre Nichols' Death Is Just Latest Instance of Video Contradicting Police Accounts*, CNN (Jan. 31, 2023).



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

January 30, 2023

VIA ONLINE

The Honorable Glenn Wakai
Chair
The Honorable Brandon J.C. Elefante
Vice-Chair
Senate Committee on Public Safety and Intergovernmental
and Military Affairs
Hawaii State Capitol, Rooms 217, 407
415 South Beretania Street
Honolulu, HI 96813

Re: **SB 1159-Relating to County Police Departments**

Dear Chair Wakai, Vice-Chair Elefante, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and on behalf of our Union I write in strong **support** of SB 1159. This bill seeks to amend HRS §52D-3.5 to make it consistent with the due process language in HRS §92F-14.

When HRS §52D-3.5 was amended during the 2020 legislative session, SHOPO pointed out that the amendment would require the disclosure of a disciplined officer's name "upon" suspension or discharge. In other words, an officer's name would be publicly disclosed **before** the officer's due process rights were exhausted under the negotiated grievance procedure. If the grievance process subsequently overturned the disciplinary action taken against the officer, the officer would be cleared, and the disciplinary action would become null and void. However, the officer's name will have already been publicly disclosed under the existing language of §52D-3.5 because that statute requires the disclosure of the name immediately "upon" the disciplinary action being taken, but before the grievance process has concluded.

In contrast, under HRS §92F-14 the name of a suspended or discharged public employee is not disclosed until **after** that employee's grievance rights have been fully adjudicated and exhausted. Those are the due process rights given to every other public employee. In other words, the disclosure of a disciplined officer's name HRS §92F-14 does not occur until **after** the grievance process has concluded.

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The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
Senate Committee on Public Safety and Intergovernmental and Military Affairs
Re: SB 1159-Relating to County Police Departments
January 30, 2023
SHOPO Testimony Page 2

At the time the amendment to HRS §52D-3.5 was being considered, SHOPO pointed out that the amendment would create an inconsistency between HRS §92F-14 and HRS §52D-3.5 and would deprive our officers of their due process and collective bargaining rights. We further posed the question as to why the legislature was singling out our hardworking officers and depriving them of their due process rights while every other public employee was permitted to exercise their grievance rights **before** their names could be disclosed. We never received an answer to our question.

SB1159 will simply amend HRS §52D-3.5 so that its language will mirror the existing language in HRS §92F-14 and provide the same due process protections for police officers as are currently afforded to other public employees. With that, we respectfully ask that your committee unanimously support SB1159.

Respectfully submitted,

ROBERT “BOBBY” CAVACO
SHOPO President



SENATE COMMITTEE ON PUBLIC SAFETY & INTERGOVERNMENTAL & MILITARY AFFAIRS
Friday, February 3, 2023, 3pm, State Capitol Room 225 & Videoconference

SB 1159

Relating to County Police Departments

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Wakai, Vice Chair Elefante, and Committee Members:

The League of Women Voters of Hawaii has the following comments:

Does the Legislature want timely notice about police officers dismissed for gross misconduct or does the Legislature want to wait several years for completion of non-judicial grievance adjustment procedures? Waiting for completion of non-judicial grievance adjustment procedures, as proposed in SB 1159, may worsen legislative oversight. But if the Legislature wants timely notice, the League suggests amending SB 1159 to require that the Legislature be notified at the time any police officer is dismissed or suspended for several months. Police officers do not get dismissed or suspended for several months unless their department has decided that is justified by gross misconduct.

SB-1159

Submitted on: 2/2/2023 8:13:54 AM

Testimony for PSM on 2/3/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Stirling Morita	Testifying for Hawaii Chapter Society of Professional Journalists	Oppose	Written Testimony Only

Comments:

SB-1159

Submitted on: 2/1/2023 4:48:09 PM

Testimony for PSM on 2/3/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Serena Harris	Individual	Oppose	Written Testimony Only

Comments:

As a community member, I believe that it is our right and responsibility to make sure that those working to protect and serve are fulfilling their duties and not abusing our trust and the power we have placed in their hands. Oversight and transparency are the foundation for that trust between communities and those policing them. As public servants, the police should expect transparency in all aspects of their duties. I am opposed to this measure that would limit such transparency and keep the public in the dark on matters that concern our safety. Those who abuse their power and public trust should not be shielded by this bill. Please vote no.

February 2, 2023

Senator Glen Wakai, Chair
Senator Brandon Elefante, Vice Chair
Senate Committee on Public Safety
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: SB 1159—In Support

Aloha Senator Wakai, Senator Elefante and members of the Senate Committee on Public Safety:

Thank you for the opportunity to submit testimony in support of SB1159. As a concerned member of the public, I support this bill for the following reasons.

SB 1159 prevents the names of those officers whose alleged misconducts are still pending in the nonjudicial grievance process from becoming public prematurely. If the case is still pending, there is a possibility the officer can be exonerated and return to duty.

This bill ensures officers' names are not publicly besmirched by allegation with the resulting impact to their reputations, not to mention the emotional toll to the officer, their families and friends.

It's easy to second guess the actions of officers when viewing video footage. The non-judicial grievance process is meant to gather information in an effort to get to the "truth." The truth should be determined and the grievance process completed prior to the public disclosure of names. It is a great disservice to the officer, who puts his life on the line every time he goes to work—the officer should be given the benefit of a doubt.

Thank you for your consideration.

Respectfully,

Susan Yamada
Syamada37@gmail.com

