



SB2196

Measure Title:	RELATING TO THE LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD.
Report Title:	Law Enforcement Officer Independent Review Board; Establishment; Law Enforcement Officer; Law Enforcement Agency; Department of the Attorney General; Appropriation (\$)
Description:	Establishes the law enforcement officer independent review board within the department of the attorney general to investigate deaths while in law enforcement custody and shootings involving a law enforcement officer where an individual is injured. Appropriates funds.
Companion:	
Package:	None
Current Referral:	PSM/JDL, WAM
Introducer(s):	ESPERO, L. THIELEN, Baker, Shimabukuro

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
and
JUDICIARY AND LABOR**

**Wednesday, February 10, 2016
8:30 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 2196
RELATING TO THE LAW ENFORCEMENT OFFICER
INDEPENDENT REVIEW BOARD**

Senate Bill 2196 proposes to establish the Law Enforcement Officer Independent Review Board within the Department of the Attorney General to investigate deaths while in law enforcement custody and shootings involving a law enforcement officer where an individual is injured and appropriates funds. **The Department of Land and Natural Resources (Department) has no objection to the reporting requirements or review process described in this measure.**

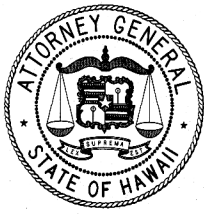
The Department believes that this bill would allow for greater transparency of its law enforcement operations and accountability for law enforcement actions taken by its law enforcement officers. The establishment of a Law Enforcement Officer Independent Review Board would benefit agencies such as our Division of Conservation and Resources Enforcement with an additional layer of independent review of actions taken.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA W. KALUHIWA
FIRST DEPUTY

JEFFREY. T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 2196, RELATING TO LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS, AND SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, February 10, 2016 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Landon M.M. Murata, Deputy Attorney General

Chairs Nishihara and Keith-Agaran and Members of the Committees:

The Department of the Attorney General (“Department”) supports the intent of this bill, and raises these comments regarding the scope of the Law Enforcement Officer Independent Review Board (“Board”)’s review, the review process, the nature and effect of the Board’s recommendations, and confidentiality.

The Scope of the Board’s Review

As an initial matter, this bill is unclear or inconsistent as to what types of cases fall under the scope of the Law Enforcement Officer Independent Review Board (“Board”)’s review. Most areas of this bill use the terms “death while in custody of a law enforcement agency or shooting involving a law enforcement officer where an individual is injured.” However, the title to new section 28-C on page 3, lines 14-15, refers to “deaths while in custody or use of excessive force by a law enforcement officer.” This second version of the scope of the Board’s reviewing authority is broader and less objective than the initial version. For the sake of clarity, the scope of the Board’s reviewing authority should be specifically and consistently set forth throughout the bill.

While many independent review boards operate nationwide, most appear to operate at the municipal level. Some operate out of the law enforcement agencies (“LEA”) themselves. The first state statute in this area was enacted by Wisconsin in 2014. The Wisconsin statute uses the term “officer-involved death,” which Wisconsin defines as “a death of an individual that results

directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of his or her law enforcement duties.” In light of what the current version of this bill seems to be aiming for, a more appropriate term to use in Hawaii may be “officer-involved death or serious bodily injury.” A suggested definition of this term would be “a death or serious bodily injury of an individual that results directly from an act or omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of the officer’s law enforcement duties.” Such a definition would cover both deaths in custody as well as shootings involving a law enforcement officer (“LEO”) and would more specifically set forth the exact types of cases that would fall under the scope of the Board’s review (“covered cases”). Without a clear mandate as to what types of cases the Board has the authority to review, the Board may be left to determine on its own the full extent of its authority and may not be able to adequately assess and obtain the resources necessary to fulfill its mission.

The Review Process

To the extent that the bill sets forth a process for the Board’s independent review of covered cases, the Department has concerns regarding the nature of the Board’s interaction with the LEAs during the investigation or review process as well as the overall focus of the Board’s review. This bill requires each LEA to have written policies to address the incidents within the scope of the Board’s reviewing authority (“covered incidents”) and conduct their own internal investigations of those incidents. When covered incidents occur in Hawaii today, LEAs already have procedures and protocols in place that are designed to fairly, objectively, and legally investigate and evaluate such incidents. Inserting the Board and/or an independent review board investigator (“Board investigator”) into this well-established process may be problematic.

Current protocols for Hawaii LEAs mandate parallel internal investigations be initiated; one criminal and one administrative. The administrative investigation can access and make use of anything obtained in the criminal investigation, but matters obtained in the administrative investigation are subject to limitations and cannot be used in any criminal investigation or prosecution. In its current form, this bill does not appear to account for these separate and independent criminal and administrative investigations. This creates problems in two key

provisions of the bill: (1) the establishment of a Board investigator as set forth in section 28-C, and (2) the establishment and composition of the Board as set forth in section 28-B.

While the bill empowers the Board investigator to “work with or investigate cooperatively with” the LEAs, it is not clear in which investigation (criminal or administrative) the Board investigator will be participating. Allowing the Board investigator to “investigate cooperatively” with either investigation will compromise the confidentiality and integrity of these investigations and could implicate constitutional rights that belong to the LEO and cannot be waived.

Given the nature of the covered cases, we respectfully recommend that the Board be comprised of individuals who have experience investigating or reviewing investigations of crimes of violence, i.e. crimes resulting in death or serious bodily injury. As currently written, it is not clear that the proposed Board members must have that type of experience.

The Nature and Effect of the Board’s Recommendation

Whether the outcome of the Board’s investigation and the Board’s recommendation is to be used for criminal law enforcement or administrative purposes and whether it is binding or advisory should be clarified.

The bill does not currently provide what kind of recommendation the Board is expected to make once the Board has completed its review. Once the Board has finished its review, the bill directs the Board to make recommendations to the Attorney General and the prosecuting attorney. Since the Attorney General and the various prosecuting attorneys do not have administrative authority over other LEAs, the recommendation being contemplated by directing the Board recommendation in this manner must necessarily be whether or not to initiate criminal prosecution. The bill also directs the Board to forward the report of the Board investigator to “the law enforcement officer or agency responsible for disciplining the law enforcement officer involved.” The bill is silent as to what circumstances would prompt the Board to forward the report to the LEO as opposed to the LEA, however, either one is consistent with the Board making recommendations regarding administrative action as opposed to criminal prosecution. Because any criminal and administrative investigations should be kept separate, we suggest that Board recommendations either be as to criminal prosecution or administrative action, not both.

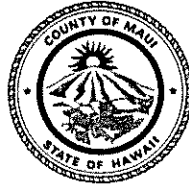
We also suggest that the findings and recommendations of the Board and the Board investigator be advisory only. To do otherwise may unduly restrict or impose upon prosecutorial discretion in the case of criminal prosecutions and could interfere with LEA administration in the case of administrative action. Binding Board recommendations upon either the Department or the various prosecuting attorneys may create conflicts with the ethical obligations of those entities.

Confidentiality

Finally, in its current form, the Department has concerns regarding confidentiality. The internal criminal and administrative investigations by the LEAs, and any accompanying documents and information are confidential. These matters continue to be confidential even after they have been forwarded to the appropriate administrative or prosecuting authority. The extent to which the Board and the Board investigator may access the internal LEA investigations is of concern because disclosure of such matters to any non-LEA third party, such as the Board, may constitute a waiver of confidentiality. Additionally, the bill requires the Department release the Board investigator's report and "any accompanying written files, unless otherwise prohibited by law," once the Board has finished its review. Given the Board would not be a LEA under the current provisions of the bill, the confidentiality protections in place for LEAs will not apply to the Board. Assuming there is a way to address the waiver issue, the bill should be worded in such a way as to protect the integrity of any administrative process and prevent extra-judicial discovery in any criminal proceedings. The Department respectfully recommends all Board matters and investigations remain confidential until any administrative and criminal proceedings have been concluded. Then, and only then, should the Board release any information, unless otherwise prohibited by law.

Conclusion

The Department recommends that the above matters be considered and that the suggested changes be made in order to better promote the intent of the bill.



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TESTIMONY
ON
SB 2196 - RELATING TO THE LAW ENFORCEMENT
OFFICER INDEPENDENT REVIEW BOARD

February 10, 2016

The Honorable Clarence K. Nishihara
Chair
The Honorable Will Espero
Vice Chair
and Members
Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Maile L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chairs Nishihara and Keith-Agaran, Vice Chairs Espero and Shimabukuro, and Members of the Committees:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY OPPOSES** SB 2196 - Relating to the Law Enforcement Officer Independent Review Board. SB 2196 establishes and appropriates funds to support and implement the review board.

Our Department strongly opposes the creation of this type of review board. Currently, there are mechanisms in place to address these types of situations. For example, where there is a death related to an officer involved shooting, the Department of the Prosecuting Attorney will independently review the reports of the investigation and determine whether or not any charges will be filed.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY OPPOSES** the passage of this bill. Thank you very much for the opportunity to provide testimony on this bill.



Senate Public Safety, Intergovernmental, and Military Affairs Committee
Chair Clarence Nishihara, Vice Chair Will Espero

Senate Judiciary + Labor Committee
Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro

Wednesday 02/10/2016 at 8:30 AM in Room 016
SB 2196 – Relating to the Law Enforcement Officer Independent Review Board

TESTIMONY

Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chairs Nishihara and Keith-Agaran, Vice Chairs Espero and Shimabukuro, and members of the Committees:

Common Cause supports the intent of SB 2196 which would establish a law enforcement officer independent review board within the Attorney General's department to investigate A) deaths while in law enforcement custody, and B) shootings that involve a law enforcement officer when an individual is injured.

We are at a tipping point, where the public is vocally demanding that law enforcement officers must follow the laws they enforce. Creating an Independent Review Board to "audit" incidences involving death/shootings and law enforcement, is a step toward improved oversight and accountability to Hawaii's law enforcement officers. Something that has been sorely lacking for far too long.

Thank you for the opportunity to offer testimony on SB 2196.

TESTIMONY

**The Libertarian Party of Hawaii
c/o 1658 Liholiho St #205
Honolulu, HI 96822**

RE: SB 2196 to be heard Wednesday February 10, at 8:30 AM in conference room 016

SUPPORT

To the Members of the Senate Committee on Judiciary”

Inadequate oversight of law enforcement is becoming a national scandal. Let’s pass this bill and start doing a better job in our state.

Sincerely:

A handwritten signature in black ink, appearing to read 'Tracy Ryan', with a long horizontal flourish extending to the right.

Tracy Ryan, Chair

S.B No.2196

Aloha, my name is Paulo O.J Paulo. I am a scholar in the criminal justice field. I've been studying criminal justice in Honolulu for about 3 years now. We've been talking, studying and analyzing the dysfunctional and broken HPD system ever since I came out of high school (2013). These things I wasn't aware of was happening right in front of me, now I'm aware of and have knowledge of the situation. I want to do something to help promote this bill.

I fully support this bill proposal for the better future of our community.

Having this review board helps in internal investigations within the department's corruption and misconduct acts. Handing down reprimands and stressing the enforcement of the department's policies. This can really help develop our police department to a new level of integrity and dedication.

Policy 2196

Hello my name is John Figueroa. I've been living in Honolulu for 4 years, and I'm a Criminal Justice academic at Remington College. I fully support this bill because police shootings need transparent investigations. Honolulu Police Department is responsible for numerous deaths between 2010-2015. Sheldon Haleck, that was pepper sprayed and tazed proves that "in custody deaths" are just as important as shootings.

My name is Jessica Agonias and I am a Criminal Justice academic at Remington College. I am in support of SB2196. Police shootings need transparent investigations to gain the public's trust. Honolulu's Police Department is responsible for many deaths in 2010-2015. Sheldon Haleck proves that "in custody deaths" are just as important as shootings.

**Hawaii State Legislature
Senate Committee on
Public Safety, Intergovernmental and Military Affairs
Testimony**

Aloha Chair Nishihara, Vice Chair Espero, and other distinguished committee members

Thank you for allowing me to testify on behalf of this proposed amendment. My name is Aaron Hunger and I am a doctoral researcher at the University of Hawaii at Manoa, a former police officer in Florida and California, and a criminal justice instructor for a private college in Honolulu. I have been honored to be engaged in doctoral research involving the Honolulu Police Department, and its oversight mechanisms since 2010. Together with my teaching, I have over 24 years of police experience. Currently, I am engaged in research with the University of Hawaii at Manoa that (among other issues) seeks to understand the unique structure of the criminal justice institutions on Oahu. Based on the unique composition of local policing organizations, one of many questions being answered is what effect (if any) does the absence of critical systemic oversight mechanisms (or their dysfunctionality) produce and how often. Based on the work and research that I have been privileged to be a part of, I would support Senate Bill 2196 (Statewide Law Enforcement Officers Independent Review Board).

One aspect of my research involves collecting data on the Honolulu Police Department as part of the University of Hawaii's Human Research Study (UH-HRS) #23221. One of the primary purposes of UH-HRS #23221 (ongoing since APEC's summit (2010)) was to collect data meant to analyze and evaluate the Honolulu Police Department oversight system's administration, management, function, structure, and policies. Among the many patterns that emerged from data analysis was a pattern of covertly investigated police violent conduct against vulnerable populations in Hawaii, which were all ultimately justified and dismissed by various county government agencies responsible for police oversight investigation.¹ More troubling was that upon closer scrutiny of some of these cases by federal investigators, many of these "justified cases of police violence" were actually abuses of force and authority which were being concealed by false testimony provided by police officers.²

Four recent cases (involving Honolulu Police between the years of 2012 – 2015) that resulted in police initiated homicides, which have led to accusations of police cover-up and abuse of deadly force and authority (a loss in public trust in governance) include; Gregory Gordon (2012)³, Richard Nelson (2014)⁴, James Pickard Jr. (2014)⁵, and Sheldon Haleck (2015)⁶. While other counties in Hawaii may add to these names, these four citizens (alone) provide ample reason as to why SB-2196 should be instituted. Three

¹ (Grube, 2013 (MC)) (Grube, 2014 (AT)) (Grube, 2015 (GJ)) (Grube, 2015 (B)) (Grube, 2014 (NTA)) (Grube, 2013 (PC))

² (Daranciang, 2015)

³ (KITV, 2014)

⁴ (KHON2, 2014)

⁵ (Kubota, 2015)

⁶ (Grube, 2015 (SHL))

of the four men listed were involved in non-violent traffic crimes when they were killed by police. One of the men was killed during the commission of a non-violent property crime. Half of these incidents (Gordon and Nelson) appear to have video that criminologists and police experts have pointed to as evidence that casts doubt on the official accounting of the incidents by police.

Multiple cases were exposed between the years of 2012-2015 where federal prosecutors exposed Honolulu Police officers lying on official reports, including the cases involving Honolulu Police Officers: Copeland, Rudolfo, Morre, Becea, Tamayori, Raquino, Furtado, Tojio, Yasue, Zoller, Bernal, Bugarin, Morris, Nishimura, and (currently under federal grand jury investigation) Honolulu Police Chief Kealoha. Public trust in law enforcement is at an all-time low. This loss of trust is occurring at a point when Hawaiian sovereignty issues are rising. Criminologist and National Security experts agree that a loss in governmental legitimacy combined with a rising indigenous sovereignty movement is a combination that is not conducive to long-term governmental stability, and should be immediately rectified by addressing public trust issues surrounding policing oversight, transparency, and accountability.⁷ With four recent high-profile police-initiated homicides occurring during the same time period as multiple accounts of police falsification of official reports or documents, the idea that Honolulu Police can regain public trust without major reforms from external sources is not realistic.

One method of addressing the public trust involving police use-of-deadly force is by reconfiguring the existing oversight system to ensure multiple (more than one) external agencies investigate police shootings, in-custody deaths, and homicides. The use of independent investigatory bodies that operate concurrently and parallel to the mandated investigatory shooting protocols are becoming a popular remedy of addressing the loss of public confidence in police departments, nationwide.⁸

While most states have the option of utilizing their (state level) Standards and Training Board (as proposed in SB2325 and SB2755) as the agency empowered to oversee an Independent Review Board, Hawaii remains as a lone hold-out in legislatively enacting this critical law enforcement oversight agency. For this reason the bill should be passed as written, however it is strongly advised that should the state ever reach consensus and enact a state Standards and Training entity, that this board should be repositioned within such an entity. Because of the severity of the police violence in these cases, it is recommended that the state legislature understand that police shooting and gross violence investigations are received as more legitimate by the public the farther that the investigatory body is from the involved agency. For this reason, state government is better equipped and situated to staff and oversee this bureaucratic investigatory police oversight agency.

Ensuring that this body would independently investigate and issue findings and recommendations that were distinct and separate from the agency involved, would greatly improve the ability of the government (as a bureaucracy) to appear legitimate, transparent, and accountable in its oversight of policing services.

⁷ (Daryl, 2015)

⁸ (Swarts, 2015)

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<http://www.washingtontimes.com/news/2015/jan/22/states-look-to-set-up-independent-boards-to-review/?page=all>

My name is Kenneth Wayne Clark; I am a criminal justice academic in Honolulu. I have studied the unique police oversight and policing model that exists on Oahu. Understanding the current structure of the Police Commission on Oahu.

I support bill number 2196 to have an Independent Review Board. Police shootings needs to be transparent in order regain the public's trust. The Honolulu Police Department is responsible for over 36 deaths between the years of 2010 to 2015. Sheldon Haleck proves that "in custody deaths" is just as important as shootings are. Nationally, police have proven the need for outside interventions of shootings to create lies. According to CivilBeat, Hawaii is ranked in the nation for deaths by the police.

My name is Timothy Baker. I am a criminal justice academic residing in Honolulu, and I've been studying the Honolulu criminal justice system for over 2 years. I am writing in support of bill (SB) 2196. In order to gain the public's trust, police shootings need to have transparent investigations. The Honolulu Police Department has been responsible for too many deaths within the past five years. Also, the death of Sheldon Haleck proves that "in custody deaths" are just as important as shootings. On a national scale, police have proven to be untrustworthy of investigating police shootings.

My name is Roy Lovell. I am a Criminal Justice academic in Honolulu. I support SB2196 (LEO-Independent Review Board.) Police shooting need transparent investigations to build public trust. Honolulu Police Department is responsible for six deaths between 2010-2015. Sheldon Haleck proves that “in custody deaths” just as important as shootings. Nationally, police have proven the need for outside inventory of shootings.

Aloha everyone,

My name is William Moore and I am a criminal justice academic. I lived in the Honolulu area for the past five years. I currently study the policies and laws of Hawaii and how those laws impact the people of the state.

SB 2196

I am submitting this testimony in an effort to support item SB2196. Over the past 5 years the Honolulu Police Department has taken part in more than 20 deaths involving the public and their own police officers. The majority of investigations for these deaths have turned out void. This due to the police department re conducting an investigation thru internal mechanisms. Therefore, the Honolulu Police Department has claimed no responsibility for these actions. To prevent further public distrust an Independent Review Board is needed to oversee that any investigation involving custody shooting and injuries is conducted fairly and all evidence is accounted for.

S.B.NO. 2196 IRB

My name is Leuluniu Otineru I am a criminal justice academic here in Honolulu. I've been studying in Honolulu criminal justice system for about 3 years now. I support bill 2196 because we the community don't trust police officer investigating themselves, what we do need is a standard board to investigate bad cops that committing crime out there in the street. HPD is responsible for the deaths between 2010-2015 which they must take out the bad cops off the street and put in the new cops in order to bring back the trust between the police and the community.

S.B 2196

Greetings my name is Lucky Lotu and I'm an enrolling student here at Remington College. We have been going through this bill as a class and so far we concluded to add a few adjustments.

I am in full support of proposing this bill (2196) not only for the better of our community but as well as a greater future for our upcoming younger generation.

Fire and foremost we need to adjust this bill by having police shootings have transparent Investigation in that way they can gain public trust. In the same statistics, it should include HPD death rates between 2010-2015. In fact, Sheldon Haleck proves that in custody deaths. More importantly, this bill can help uphold a strong foundation for IRB because there has been a lot of outside shooting happening on island. In conclusion, I am in full support of this bill.

SB No. 2196

Greetings, my name is Lorentina Te'i and I am a criminal justice academic residing in Nanakuli. I have been studying the Honolulu criminal justice system for about two years on going at Remington College. Living on the west side of Oahu has its ups and downs. We have been observing and analyzing the HPD and their interactions with the public as part of my studies, also being aware of the dysfunctional and corrupt system here in Hawaii.

I am writing in support of the bill (2196), in hopes to better and create a safer environment for our community.

Having this review board helps its internal investigations within the department's corruption and misconduct acts. Handing down reprimands and stressing the enforcement of the department's policies. This can really help develop our police department to a new level of integrity and dedication. Also set a high ethical standard for the police department.