
A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT REFORM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Chapter 139, Hawaii Revised Statutes, is
3 amended by adding a new section to be appropriately designated
4 and to read as follows:

5 "§139- Reports of criminal misconduct by law
6 enforcement officers. (a) It shall be the duty of a law
7 enforcement officer who observes criminal misconduct by another
8 law enforcement officer to notify the department head of the
9 officer who committed the criminal misconduct. The notice shall
10 be submitted in writing immediately or as soon as is practicable
11 after observing the criminal misconduct.

12 (b) Within fifteen days of receiving written notification,
13 the department head shall complete an investigation pursuant to
14 subsection (c) and notify the chief of police of the respective
15 county of the outcome of the investigation in writing.



1 (c) Any department head who receives a report of criminal
2 misconduct under this section shall immediately begin conducting
3 an investigation, including a psychiatric evaluation of the
4 officer reported to have committed the criminal misconduct, and
5 reach a timely determination on the merits. If the
6 investigation determines that, in the determination of the
7 department head, sufficient evidence shows that the individual
8 committed an act of criminal misconduct, the name of the
9 individual and act of criminal misconduct shall be disclosed to
10 the chief of police of the respective county. If the department
11 head determines that evidence of criminal misconduct is
12 insufficient, the department head shall still provide the chief
13 of police with the outcome of the investigation but redact any
14 personally identifiable information of the individuals involved
15 in the investigation.

16 (d) Within fifteen days of receiving written notification
17 of the outcome of the investigation, the chief of police shall
18 notify the police commission of the respective county of the
19 outcome of the investigation in writing.

20 (e) If the department head is the subject of the criminal
21 misconduct report, the reporting officer shall report directly



1 to the police commission of the respective county within seven
2 days of observing the criminal misconduct, and the police
3 commission shall complete an investigation pursuant to
4 subsection (f) within fifteen days of receiving written
5 notification.

6 (f) Any police commission that receives a report of
7 criminal misconduct pursuant to subsection (e) shall immediately
8 begin conducting an investigation, including a psychiatric
9 evaluation of the officer reported to have committed the
10 criminal misconduct, and reach a timely determination on the
11 merits.

12 (g) No discriminatory, disciplinary, or retaliatory action
13 shall be taken against any law enforcement officer for any
14 information given or disclosed by the officer in good faith in
15 the course of making a report of criminal misconduct under this
16 section.

17 (h) For purposes of this section:

18 "Criminal misconduct" means assault, sexual assault,
19 bribery, coercion, fraud, theft, tampering with physical
20 evidence, tampering with a witness, use of a chokehold as
21 defined in section 703-307, or excessive use of force.



1 "Department head" means the official or officer having the
2 most managerial or administrative authority in the state or
3 county agency or department."

4 SECTION 2. Section 139-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "law enforcement officer"
6 to read as follows:

7 "Law enforcement officer" means:

- 8 (1) A police officer employed by a county police
9 department;
- 10 (2) A public safety officer employed by the department of
11 public safety[+], except an adult correctional
12 officer; or
- 13 (3) An employee of the department of transportation,
14 department of land and natural resources, department
15 of taxation, or department of the attorney general who
16 is conferred by law with general police powers."

17 SECTION 3. Section 139-6, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) No person may be appointed as a law enforcement
20 officer unless the person:



- 1 (1) Has satisfactorily completed a basic program of law
2 enforcement training approved by the board; [~~and~~]
- 3 (2) Has passed a psychological screening test battery
4 administered under the direction of a licensed
5 psychologist or psychiatrist according to protocols
6 adopted by the board and designed to detect behavioral
7 traits that could adversely affect the person's
8 ability to perform the essential functions of a law
9 enforcement officer. The test battery results shall
10 be valid for a period of one year from the date of
11 administration for purposes of qualifying for
12 appointment as a law enforcement officer; and
- 13 [~~2~~] (3) Possesses other qualifications as prescribed by
14 the board for the employment of law enforcement
15 officers, including minimum age, education, physical
16 and mental standards, citizenship, good conduct, moral
17 character, and experience."

18 SECTION 4. Section 139-8, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The board shall adopt rules, pursuant to chapter 91,
21 that establish criteria for the denial, suspension, or



1 revocation of a law enforcement officer's certification,
2 including upon a finding by the board that the law enforcement
3 officer:

4 (1) Knowingly falsified or omitted material information on
5 the law enforcement officer's application for training
6 or certification to the board;

7 (2) Has been convicted at any time of a felony offense
8 under the laws of this State or has been convicted of
9 a federal or out-of-state offense comparable to a
10 felony under the laws of this State; provided that if
11 a law enforcement officer was convicted of a felony
12 before being employed as a law enforcement officer,
13 and the circumstances of the prior felony conviction
14 were fully disclosed to the employer of the law
15 enforcement officer before being hired, the board may
16 revoke certification only with the agreement of the
17 employing law enforcement agency;

18 (3) Interfered with an investigation or action for denial
19 or revocation of certification by:

20 (A) Knowingly making a materially false statement to
21 the board; or



1 (B) In any matter under investigation by or otherwise
 2 before the board, tampering with evidence or
 3 tampering with or intimidating any witness; [~~or~~]

4 (4) Failed to report the criminal misconduct the law
 5 enforcement officer observed, as required by
 6 section 139- , or committed an act of criminal
 7 misconduct, as defined by section 139- ; or

8 [~~(4)~~] (5) Has taken other prohibited action as established
 9 by the board, by rule."

PART II

11 SECTION 5. Section 703-307, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "§703-307 Use of force in law enforcement. (1) Subject
 14 to [~~the provisions of~~] this section and [~~of~~] section 703-310,
 15 the use of force upon or toward the person of another is
 16 justifiable when the actor is making or assisting in making an
 17 arrest and the actor believes that [~~such~~] the force is
 18 immediately necessary to effect a lawful arrest.

19 (2) The use of force is not justifiable under this section
 20 unless:



1 (a) The actor makes known the purpose of the arrest or
2 believes that it is otherwise known by or cannot
3 reasonably be made known to the person to be arrested;
4 and

5 (b) When the arrest is made under a warrant, the warrant
6 is valid or believed by the actor to be valid.

7 (3) The use of deadly force is not justifiable under this
8 section unless:

9 (a) The arrest is for a felony;

10 (b) The person effecting the arrest is authorized to act
11 as a law enforcement officer or is assisting a person
12 whom [~~he~~] the person believes to be authorized to act
13 as a law enforcement officer;

14 (c) The actor believes that the force employed creates no
15 substantial risk of injury to innocent persons; and

16 (d) The actor believes that:

17 (i) The crimes for which the arrest is made involved
18 conduct including the use or threatened use of
19 deadly force; or

20 (ii) There is a substantial risk that the person to be
21 arrested will cause death or serious bodily



1 injury if [~~his~~] the person's apprehension is
2 delayed.

3 (4) The use of force to prevent the escape of an arrested
4 person from custody is justifiable when the force could
5 justifiably have been employed to effect the arrest under which
6 the person is in custody, except that a guard or other person
7 authorized to act as a law enforcement officer is justified in
8 using force which [~~he~~] the guard or other authorized person
9 believes to be immediately necessary to prevent the escape from
10 a detention facility.

11 (5) A private person who is summoned by a law enforcement
12 officer to assist in effecting an unlawful arrest is justified
13 in using any force which [~~he~~] the person would be justified in
14 using if the arrest were lawful[7]; provided that [~~he~~] the
15 person does not believe the arrest is unlawful. A private
16 person who assists another private person in effecting an
17 unlawful arrest, or who, not being summoned, assists a law
18 enforcement officer in effecting an unlawful arrest, is
19 justified in using any force which [~~he~~] the person would be
20 justified in using if the arrest were lawful[7]; provided that
21 [~~he~~] the person believes the arrest is lawful, and the arrest



1 would be lawful if the facts were as [~~he~~] the person believes
2 them to be.

3 (6) The use of force by a law enforcement officer that is
4 justifiable pursuant to this section shall not include the use
5 of a chokehold unless the use of deadly force is justifiable
6 pursuant to this section.

7 (7) As used in this section, "chokehold" means the
8 application of any pressure to the throat, windpipe, or neck
9 that prevents or reduces intake of air or oxygen to the brain."

10 PART III

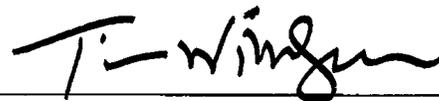
11 SECTION 6. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect upon its approval.

17

INTRODUCED BY:



JAN 22 2021



H.B. NO. 428

Report Title:

Law Enforcement Officers; Reports of Criminal Misconduct;
Psychological Screening; Use of Force; Chokehold

Description:

Part I: Requires a law enforcement officer who observes criminal misconduct by another law enforcement officer to report the criminal misconduct. Requires passage of a psychological screening test battery to qualify for appointment as a law enforcement officer. Subjects a law enforcement officer to denial, suspension, or revocation of a law enforcement officer's certification for failure to report observed criminal misconduct or committing an act of criminal misconduct. Part II: Prohibits the use of a chokehold by a law enforcement officer unless the use of deadly force is justifiable. Defines chokehold.

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