

DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

POLICE DEPARTMENT COUNTY OF KAUAI



TODD G. RAYBUCK, CHIEF OF POLICE

Testimony of Todd G. Raybuck
Chief of Police
Kauai Police Department

Before the
Committee on Judiciary
February 23, 2023, 9:45 am
Conference Room 016 & via Videoconference

In consideration of
Senate Bill 151 S.D. 1
Relating to Law Enforcement Reform

Honorable Chair Rhoads, Honorable Vice-Chair Gabbard, and Committee Members:

I provide the following testimony, as Chief of Police for the Kauai Police Department, regarding Senate Bill 151 SD 1 Relating Law Enforcement, which seeks to require law enforcement agencies to maintain use of force policies, provide certain training, and require use of force reporting and investigation standards designed to minimize the use of force.

In response to my testimony before the Committee on Public Safety and Intergovernmental and Military Affairs on SB 151, the term “department head” was changed to “division head” in SB 151 SD 1 (e) in error.

I offer the following request for changes in the Ramseyer format for clarification and this Committee’s consideration.

“§139- Reports of use of force by law enforcement officers”

(e) If the ~~department head~~ [division head] is the subject of the use of force report, the reporting officer shall report directly to the police commission of the respective county within seven days of observing the use of force, and the police commission shall complete an investigation pursuant to subsection (f). ~~within fifteen days of receiving written notification.]~~

(f) Any police commission that receives a report of use of force pursuant to subsection (e) shall [immediately] begin conducting an investigation as soon as practicable and reach a timely determination on the merits.

It appears the change from department head in SB 151 to division head in SB 151 SD 1 was an error based on the interpretation of my previous testimony. If the intent of the legislature is to have the



police commission of the respective county investigate allegations of excessive force by the department head (chief of police), this language should be changed back to department head.

Consideration for changing the timeline for the police commission to complete their investigation should be given from fifteen days of receiving written notification to as soon as practicable. This change is necessary as the Police Commission does not have the ability to conduct its own investigations. Consequently, the procurement process is required to hire an outside investigator to complete the investigation which, would make the fifteen-day requirement unattainable.

“§139- Reports of use of force by law enforcement officers”

(h) For purposes of this section:

“Department head” means the official or officer having the most managerial or administrative authority in the state department or county agency.

“Division head” means the official or officer having the most managerial or administrative authority within a subdivision in the state department or county agency.”

The above changes are necessary to properly identify the persons described within sections of SB 151 SD 1.

The Kauai Police Department is committed to ensuring that force used by officers in the performance of duties is proper, lawful, and necessary. To that end, the Department provides training and has enacted policy and procedures that have established the standards SB 151 SD 1 sets out to accomplish. The Department’s use of force policies and practices are also in accordance and compliance with accreditation standards set by the Commission on Accreditation for Law Enforcement Agencies and federal mandates for law enforcement organizations that receive federal grant funding.

For the foregoing reasons, the Kauai Police Department supports the intent of Senate Bill 151 SD 1 and appreciates your time and consideration to the above recommendations.





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

February 21, 2023

VIA ONLINE

The Honorable Karl Rhoads
Chair
The Honorable Mike Gabbard
Vice-Chair
Senate Committee on Judiciary
Hawaii State Capitol, Rooms 228, 201
415 South Beretania Street
Honolulu, HI 96813

Re: **SB 151 SD1 - Relating to Law Enforcement Reform**

Dear Chair Rhoads, Vice-Chair Gabbard, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers (“SHOPO”) and write to you on behalf of our Union in strong **opposition** to SB 151 SD1. Respectfully, the amendments made to this measure do not go far enough to account for the inherent dangers in our jobs that require split second life and death decisions while under extreme duress. This bill continues to add unnecessary scrutiny and burden on our police officers when multi-layers of safeguards are already in place that hold each and every county police officer accountable for their individual actions and omissions, both administratively and criminally.

This bill requires any department or agency employing a law enforcement officer to maintain a publicly available policy that provides a minimum standard on the use of force with nineteen (19) sub-requirements, allows the use of force policies and training to be considered in legal proceedings involving a law enforcement officer’s use of force, requires a report and investigation of any force “beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances,” and requires that law enforcement officers receive training designed to minimize the use of force.

As police officers, we have a Code of Ethics:

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

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I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held as long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

We are by no means perfect and have never claimed to be. We have the same human frailties as our neighbors and yes some of us do make mistakes. We are no less human than the politicians arrested for drunk driving or who have accepted bribes. However, three recent cases involving our officers who were severely injured in the line of duty should highlight and stand as a stark reminder to you and your committee of the inherent dangers involved with our job. One suspect viciously and critically attacked one of our officers with a crowbar/tire iron while he was responding to a call. Another officer was critically injured while responding to a motor vehicle collision. Yet another officer was severely injured after responding to a call involving a driver who reportedly intentionally ran over an innocent woman pushing a baby in a stroller and then attacked a bystander with a crowbar. These cases flare up and spiral out of control in a matter of **split** seconds leaving our officers with little to no time to react other than relying on their training.

There is no stated purpose included with this bill although it seeks to inject another layer of bureaucracy into the business of professional policing. After the Sykap incident, each of the three officers involved had to answer for their actions with HPD's investigators and

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commanders, the prosecutor’s office, a grand jury, and at the end they stood in judgment in a courtroom before a judge who determined that the officers had acted appropriately and within the boundaries of the law.¹ SB 151 SD1 was not needed for this level of accountability and transparency to happen. Despite being exonerated, our officers still face a civil lawsuit that jeopardizes their personal and family’s financial security and well-being. That is the life of a police officer and the sacrifices we make to protect our community.

This bill requires each department or agency employing a law enforcement officer to maintain a policy that provides a “minimum standard” on the use of force, delineates nineteen (19) detailed requirements for such a policy, and mandates that it be made public. It even goes so far as to specify that such a policy may be introduced as evidence in proceedings involving a law enforcement officer’s use of force. This bill also requires all law enforcement officers to receive training “designed to minimize the use of force.” In doing so, this bill duplicates procedures, certifications, standards, and law enforcement training already established and managed by the respective county police departments through their training academies. All four (4) county police departments and their respective police academies are accredited by the Commission on Accreditation for Law Enforcement Agencies (“CALEA”).² CALEA is nationally known as the gold standard benchmark in law enforcement and its accreditation seals are internationally recognized as the “Marks of Professional Excellence” for public safety agencies. Our county officers are highly trained, experienced, and investigate the broad range of crimes set forth in the Hawaii penal code as codified in the Hawaii Revised Statutes. Our officers are held to the highest professional standards and are investigated and held accountable for the slightest deviations or infractions. The policies and training of each county police department have much in common, but they also have special provisions and aspects tailored to each island’s unique demands and diverse communities.

Standards on the use of force have already been established over the many years by each respective county in conjunction with their human resources departments. No one has pointed

¹ There is also Internal Affairs, Professional Standards Office, police commissions, Department of the Attorney General, FBI, and the Department of Justice that provides accountability and transparency. The civil rights laws provide a further check and balance on the use of force by our officers.

² We also find it highly ironic that this same legislative body is pushing for funding to have DLNR’s conservation and resources enforcement program obtain CALEA certification. See HB 767 and SB 70. By endorsing CALEA certification, this legislative body clearly believes CALEA is a credible and valid accreditation.

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out where any current county police training academy has somehow failed to establish or meet “minimum” use of force standards. Notification of any use of excessive force is already a duty and responsibility of every officer in every county police department. Moreover, every complaint of criminal misconduct is required to be in writing and is fully investigated by the police department’s internal affairs division. The completed investigation is thereafter submitted to the Chief of Police. Thus, the substance of SB 151 SD1 is already in place within the county’s departments which need not be disturbed or interfered with by the legislature.

The bill infers that the county police departments and their respective training curriculums are subpar, do not currently incorporate acceptable and reasonable minimum standards of the use of force, and do not have acceptable criminal justice curriculums. We are not aware of a single legislator who has come forward with any evidence that there is any truth to this in the slightest. This bill, in essence, will usurp the training curriculum and standards implemented by the respective county police department’s training academies, paints with a broad brush, and seeks to add another needless bureaucratic layer at an inopportune time when we are in the midst of a staffing crisis like we have never seen before. Rather than doing something productive to help us recruit and retain police officers, SB 151 SD1 makes it that much more difficult for us to recruit and retain an adequate number of police officers to police our communities and unnecessarily burdens our existing police force. For example, as to the bill’s mandate of reporting uses of force “beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances” to a “division head,” which is defined as “the official or officer having the most managerial or administrative authority in the state department or county agency,” for our purposes, that person would nonetheless be one of the police chiefs that heads of each county police departments. That is something that is already required and occurs in our State. Officers who use force to effectuate an arrest must complete a use of force form and a narrative report that explains in detail the level of force that was used, why force was used, and the justification for the force. These reports are provided to, reviewed, and signed by the officer’s supervisor. Body worn cameras are also widely used by our officers and further documents events where force was employed. These videos are downloaded and saved as evidence.

This bill further adds a section to HRS chapter 139 requiring that any time an officer observes use of force “beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances,” he/she must notify the exercising officer’s division head in writing. This bill provides that an investigation must occur within specified timelines upon receipt of a written notification and requires the outcome of the investigation to be shared with the police chief and police commission under certain circumstances. In addition, the bill calls for the county police commissions to investigate reports of the use of force in certain

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circumstances. In addition, this bill appears to conflict with a county's charter and the powers, duties and functions bestowed on each police commission.³ The bill further assumes that a police commission has the expertise and that its investigators are trained and experienced to conduct such an investigation as opposed to other agency investigators such as the prosecutor's office who are trained for this very purpose, not to mention the conflicts that may arise with witnesses and other aspects of an investigation when two separate agencies are investigating the same incident.

Changing the verbiage from requiring reporting any use of force to the use of force "that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances" does not change the fact that this measure will redirect an officer's attention away from the suspect and toward the other officers at the scene who must now be fortune tellers and second guess each other as to what they are doing or what they are about to do. This may create a chilling effect and cause an officer to prematurely intervene, thus escalating a situation and making a dangerous situation even more dangerous for the officers involved. Officers will be trying to anticipate what level of force their fellow officers are about to use and whether that anticipated force is "objectively reasonable" without having all of the relevant information to make such an assessment. Officers will undoubtedly misconstrue what they may believe is excessive force because they are unaware the suspect had earlier brandished a gun or knife before the officer arrived at the scene. In performing their duties, the officer's concentration should be on what they immediately need to do to protect the public and keep everyone safe. Each officer is responsible for their own actions. Assessing a highly charged scene with people running around screaming and reports of deadly weapons requires an officer to quickly determine who the suspects are, what type and how many weapons are involved, who may be helping the suspects, the surroundings to determine if it is safe to use a firearm, and to evaluate a host of other considerations. It is often the case that we do not have the luxury of time to figure everything out or carefully prepare a response because we must react instinctively in accordance with our training. That is our reality.

In summary, this bill seems to be telling the police departments what type of arrest and control tactics they should employ or not use to effect an arrest. Our police departments are para-military organizations. I am not aware of anyone on this committee having law

³ For example, the Honolulu Police Commission ("HPC") is only authorized to investigate charges brought by the public and those findings are submitted to the Chief of Police. In addition, the HPC is prohibited from interfering "in any way with the administrative affairs of the department." See Revised Charter, Section 6-1606. This bill conflicts with the limited power bestowed upon the HPC which is intended to prevent inference with police operations.

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enforcement experience or the extensive training our officers receive in the use of force that would allow them to dictate what tactics to use or not use on an armed and/or violent suspect.

Rather than finding ways to make it more difficult to hire and retain officers, we respectfully ask that you please find ways to help replenish our ranks to fight the escalating crime occurring in our community. We are suffering a critical shortage of police officers and it is directly affecting our ability to protect the public. The statistics reflecting the closure and clearance rates of property crimes averages about 6%, and the average clearance rate for violent crimes is a dismal 33.77%. These statistics are downright shameful and embarrassing. In other words, more than half of the people committing violent and property crimes are getting away with it. Those numbers should be alarming for everyone, and this bill does nothing to address this critical problem. Instead, of expending time figuring out how to make it more difficult to serve one's community as a police officer, we should be expending and dedicating that same energy to figuring out how we can recruit and retain officers.

Constructive efforts to support law enforcement is what we need. Subjecting our officers to constant attack by bills such as this which makes their jobs tenuous, dangerous, and exposes them to civil liability, is not what we need. The reality is that this bill discourages women and men in our community from aspiring to be police officers to fill our depleted ranks.

We thank you for allowing us to be heard on this very important issue and we hope your committee will unanimously oppose SB 151 SD1.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

SB-151-SD-1

Submitted on: 2/22/2023 10:58:48 AM

Testimony for JDC on 2/23/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Kitchens	Testifying for Stolen Stuff Hawaii	Oppose	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members,

I am the creator of Stolen Stuff Hawaii, an anti-crime Facebook & Instagram group comprising over 200,000 Hawaii-based members and I strongly oppose SB151 in its current form.

I defer to the reasons and justifications in written testimony proved by the Hawaii Police Department, Honolulu Police Department, Kauai Police Department, as well as SHOPO. They have made it quite clear in their previous testimony for this bill as to why it should be opposed altogether.

Mahalo,

Michael J. Kitchens
Administrator,
Stolen Stuff Hawaii

SB-151-SD-1

Submitted on: 2/21/2023 8:47:15 PM

Testimony for JDC on 2/23/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Without a complete overhaul of the law enforcement and criminal legal system, police violence will continue to plague communities. We need to redefine our system so that it protects public health and wellbeing, not property and wealth. Restorative justice delivers peace and helps people heal after the trauma crime can inflict.

In the short term, we can strengthen the laws that regulate police conduct and require much tighter oversight. But we need to continue working toward systemic change. Please support SB151 SD1.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 151, S.D. 1, RELATING TO LAW ENFORCEMENT REFORM.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 23, 2023 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Adrian Dhakhwa,
Deputy Attorney General, at 808-586-1160)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on the bill.

The bill adds two new sections to chapter 139, Hawaii Revised Statutes (HRS), and amends section 139-6, HRS. The first new section establishes mandatory requirements for law enforcement use of force policies (page 1, line 4, to page 5, line 4). The second new section establishes reporting requirements for incidents involving "use of force" by law enforcement officers (page 5, line 5, to page 7, line 11). The amendment to section 139-6(a), HRS, adds a requirement that no person may be appointed as a law enforcement officer unless the person has received "training designed to minimize the use of force, including but not limited to legal standards, de-escalation techniques, crisis intervention, mental health response, implicit bias, and first aid" (page 7, lines 18 to 21).

The Department has the following three concerns with the bill.

First, this bill includes law enforcement officers employed by the State: "Any department or agency employing a law enforcement officer . . ." (page 1, lines 4-5). However, the scheme for reporting incidents involving unnecessary force does not accommodate law enforcement officers employed by the State. Under this bill, a division head from the State Department of Law Enforcement who is investigating a

deputy sheriff would have to disclose the name and act to the "chief of police of the respective county" (page 6, lines 4-5). Moreover, there is no state version of the county police commission, which is supposed to receive reports from the county police chief (page 6, lines 10-13). The Department suggests inserting wording to deem the state department deputy director and director as the functional equivalents of the county police chief and county police commission, respectively (starting on page 5, line 15). Subsections (b), (d), (e), and (f) would read (additions underlined):

(b) Within fifteen days of receiving written notification, the division head shall complete an investigation pursuant to subsection (c) and notify the chief of police of the respective county or the state department deputy director, as applicable, of the outcome of the investigation in writing.

...

(d) Within fifteen days of receiving written notification of the outcome of the investigation, the chief of police or state department deputy director that received such written notification shall notify the police commission of the respective county or state department director, as applicable, of the outcome of the investigation in writing.

(e) If the division head is the subject of the unnecessary use of force report, the reporting officer shall report directly to the police commission of the respective county or the state department director, as applicable, within seven days of observing the unnecessary use of force, and the police commission or the state department director shall complete an investigation pursuant to subsection (f) within fifteen days of receiving written notification.

(f) Any police commission or state department director that receives a report of unnecessary use of force pursuant to subsection (e) shall immediately begin conducting an investigation and reach a timely determination on the merits.

Second, the proposed new section beginning on page 5, line 5, mandates reporting of incidents only involving unnecessary force. However, the title currently reads, "Reports of use of force by law enforcement officers." The Department suggests inserting "unnecessary" in the title – "Reports of unnecessary use of force by law enforcement officers." -- as well as on page 5, lines 12 and 14, to read "unnecessary use of force".

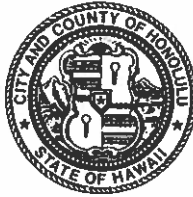
Finally, the definition of "division head" in subsection (h) of the new section at page 7, lines 9-11, currently states that the term "means the official or officer having the most managerial or administrative authority in the state department or county agency." This makes "division head" synonymous with the chief of police. To accurately effectuate the intent of the amendment as suggested by the testimony of the Kauai Police Department to the Committee of Public Safety and Intergovernmental and Military Affairs on February 10, 2023, clarifying language should be added: "Division head' means the official or officer having the most managerial or administrative authority within a division in the state department or county agency[-], but who is subject to the authority of the department head or chief of police."

Thank you for the opportunity to provide comments on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MH-SK

February 23, 2023

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: Senate Bill No. 151, S.D. 1, Relating to Law Enforcement Reform

I am Manuel Hernandez, Captain of the Training Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent of Senate Bill No. 151, S.D. 1, Relating to Law Enforcement Reform, and submits the following comments and recommendations for your consideration.

The HPD supports Section 139-, Law enforcement use of force policies, Hawaii Revised Statutes (HRS) and currently has policies and procedures in place that either meet or exceed those proposed in the bill. This includes reasonableness in the use of force, a duty to intervene with regard to unlawful use of force, and use of force training and reporting.

However, the HPD has concerns regarding the language under Section 139-, Reports of use of force by law enforcement officers, HRS.

Our concern is the fifteen-day timeline contained in the bill in which a department head is to complete an investigation into the reported use of force incident. Administrative investigations into any use of force incident may be complex, and this timeline is not feasible for a thorough investigation to be completed. The HPD currently has procedures and protocols in place to properly investigate such incidents to ensure

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that appropriate corrective action is administered in the event that inappropriate or unreasonable use of force was utilized.

The HPD appreciates the committee's consideration of our comments regarding Senate Bill No. 151, S.D. 1, Relating to Law Enforcement Reform, and thanks you for the opportunity to testify.

Sincerely,



Manuel Hernandez, Captain
Training Division

APPROVED:



Arthur J. Logan
Chief of Police