

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 Public Safety and Intergovernmental and Military Affairs
February 1, 2023, 3:00 pm
Conference Room 225 & via Videoconference

In consideration of
Senate Bill 372
Relating to Government Services Relating to the Law

Honorable Chair Wakai, Honorable Vice-Chair Elefante, and Committee Members:

The Kauai Police Department (KPD) is in **support** of Senate Bill 372, Relating to Government Services Relating to the Law, which seeks to require the duty of law enforcement officers to intervene and report the excessive use of force.

Hundreds of thousands of law enforcement officers across this nation, including thousands serving within the state of Hawaii, do so professionally, honorably, and with restraint when faced with situations that require the use of force. Tragically, some law enforcement officers have violated the public's trust, abused their authority, and shown a blatant disregard for the sanctity of life. The acts of these few officers have tarnished the image of all the noble men and women that sacrifice and serve their communities daily.

The policy of the Kauai Police Department requires employees, regardless of rank, observing another employee using force that is beyond what is justified and reasonable to intervene, when in a safe position to do so. The employee is required to promptly report the observations and the efforts made to intervene to a supervisor and submit a written report of the incident through the chain of command.

Senate Bill 372 complements the Kauai Police Department's policy and commitment to prevent and intercede in the unjustified use of excessive force against members of the community.

For the foregoing reasons, the Kauai Police Department **supports** passage of Senate Bill 372. Thank you for your time and consideration.



Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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January 31, 2023

RE: S.B. 372; RELATING TO GOVERNMENT SERVICES RELATING TO LAW

Chair Wakai, Vice Chair Elefante and members of the Senate Committee on Public Safety and Intergovernmental and Military Affairs, the Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony in support of S.B. 372.

As our nation reels from another assault on an unarmed black man by law enforcement, it is critical that we keep track of use of excessive force by law enforcement officials. Acts like these undermine trust in the criminal legal system, which threatens the safety of all communities. People in crime-impacted communities are often unwilling to work with law enforcement. This significantly hinders our ability to solve and prevent crime, making us all less safe.

Lack of accountability for police misconduct undermines the integrity of the entire criminal legal system. Transparency with the public about when excessive force is used along with use of tools like body-worn cameras builds confidence that law enforcement is acting with integrity. Our Office has the privilege and honor of working with officers who exemplify professionalism and restraint in life-threatening and stressful situations. We are confident keeping an annual log of excessive use of force will indicate this.

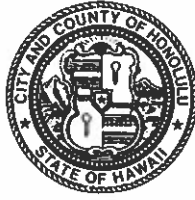
It is our understanding that the Kauai Police Department currently has an internal policy mirroring the one mandated in S.B. 372. KPD already collects annual data on taser deployments. Collecting additional data as proposed in S.B. 372 will show how frequently officers employ excessive force.

For the above reasons, the Office of the Prosecuting Attorney for the County of Kaua'i respectfully submits the above comments supporting the passage of S.B. 372. Thank you for the opportunity to testify on this matter.

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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
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ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE

MH-SK

February 1, 2023

The Honorable Glenn Wakai, Chair
and Members
Committee on Public Safety and
Intergovernmental and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Dear Chair Wakai and Members:

Subject: Senate Bill No. 372, Relating to Government Services Relating to the Law

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

The HPD supports Senate Bill No. 372, Relating to Government Services Relating to the Law, and submits the following comments and recommendations for your consideration.

The HPD currently has policies and procedures in place that meet those proposed in the bill, specifically to include a duty to intervene with regard to the use of unlawful force, thus supporting the intent of the proposed legislation.

However, the HPD has concerns with the language as it is written in Section 2(b) of this bill, specifically "A law enforcement officer who reasonably believes that another law enforcement officer is using or is about to use (emphasis my own) on an arrestee unnecessary or excessive force that violates an applicable law or departmental policy shall have a duty to:..."

The Honorable Glenn Wakai, Chair
and Members
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With the current language as written, a law enforcement officer who reasonably believes another law enforcement officer is about to use unlawful force is subjective in nature, as it would be difficult to codify in what situation it would be reasonable to believe said unlawful force is about to be used.

The HPD recommends that the language of the bill be written to maintain a duty to intervene upon the observation of unlawful use of force. Additionally, we recommend an update to the bill's language to reflect a duty to intervene to prevent the unlawful use of force when possible, in lieu of "about to use" unlawful force.

The HPD urges you to support Senate Bill No. 372, Relating to Government Services Relating to the Law, with the proposed amendments, and we appreciate the committee's consideration of these concerns.

Thank you for the opportunity to testify.

Sincerely,



Manuel Hernandez, Captain
Training Division

APPROVED:



Arthur J. Logan
Chief of Police

SHOPO



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
& Military Affairs
Hawaii State Capitol, Rooms 217, 407
415 South Beretania Street
Honolulu, HI 96813

Re: **SB 372-Relating to Government Services Relating to the Law**

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 write on behalf of our Union in **opposition** to SB 372. This bill seeks to amend HRS §803-7, however, the bill does not account for the inherent dangers involved with our jobs and the dynamics of making split second life and death decisions under extreme duress. The bill also does not account for the existing layers of safeguards in place that already hold each and every county police officer accountable for their individual actions and omissions, both administratively and criminally.

Without a police presence and officers patrolling your neighborhoods, society cannot maintain its civility or its rule of law. Our Hawaii citizens understand and appreciate the protections and law enforcement services provided by our police officers. The community's outpouring of support for our three officers involved in the Sykap case was on full public display at the courthouse.

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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The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
Senate Committee on Public Safety and Intergovernmental & Military Affairs
Re: SB 372-Relating to Government Services Relating to the Law
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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.

The current law simply states, “In all cases where the person arrested refuses to submit or attempts to escape, such degree of force may be used as is necessary to compel the person to submission.” This law in its most basic form goes back to the Hawaiian Kingdom and has been on the books since 1869. The current form and language of the law has been in existence since 1985, which is more than three and a half decades. The law as it currently reads keeps the focus on the criminal and limits the use of force to what is necessary to apprehend the suspect. There is nothing broken with this law that has stood the test of time for over 100 years.

The bill under consideration takes the focus off the criminals who are breaking the law, resisting arrest, or trying to escape, and place the focus squarely on our police officers who are doing their best to apprehend and arrest criminals in our communities. Rather than keeping the emphasis on apprehending the criminal suspect, this bill redirects the officer’s attention away from the suspect and directs it toward the other officers at the scene who must now second guess

The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
Senate Committee on Public Safety and Intergovernmental & Military Affairs
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what the other officers are doing or what they are about to do relating to the use of force. This may 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 reasonable without having all of the relevant information available to them to make such an assessment. Officers will undoubtedly misconstrue what they believe is excessive force because they were 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 is 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 armed with deadly weapons requires an officer to quickly determine who are the suspects, what type and how many weapons are involved, who may be helping the suspects, what is in the background in the event the officer has to draw and discharge their firearm and evaluate a cascade of other considerations in split seconds to determine what must be done. It is often the case that our officers do not have the luxury of time to figure everything out or carefully prepare a response because we must react instinctively in reliance on our training. That is our reality.

The Sykap Kalakaua shooting ended with the tragic death of a young man who was terrorizing our community. We must also never forget our two officers gunned down at Diamond Head and the many other officers who sacrificed their lives or suffered horrendous injuries to protect our community. These are heartbreaking situations for everyone involved. However, these horrible incidents highlight the life-threatening situations our officers are suddenly thrust into that can rapidly deteriorate in a matter of seconds and escalate into extreme violence and death.

The stated purpose of the bill is to require "greater accountability and transparency" with law enforcement services. After the Kalakaua incident, the three officers had to answer for their actions with HPD's investigators and 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 This level of accountability and transparency happened with the system in place and without SB 372.

SB 372 also requires an officer involved in a use of force incident to report it to a supervisor. However, that requirement is already in place within our county police departments.

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.

The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
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Officers who use force in the field or to effectuate an arrest must complete a mandatory use of force report that explains, in detail, the level of force used, why force was used, and the justification for the force. These reports are provided to, reviewed, and signed by a supervisor. Body worn cameras are also widely used by our officers and further document incidents where force was employed. These videos are required to be downloaded and saved as evidence.

There is also a disciplinary reporting component to the bill that will require the disclosure of the department's disciplinary action taken against an officer who used force, **before** the grievance process has concluded. In fairness to our officers and to avoid undermining our officers constitutionally protected collective bargaining right embodied in Article 13 of the Hawaii Constitution, the disclosure of any disciplinary action should be limited to suspensions or terminations and should only be disclosed **after** the grievance process has concluded. This would also be consistent with HRS §92F-14. The rationale is that if a grievance is sustained, the disciplinary action at issue may be completely overturned and/or modified. Thus, disclosing the discipline before the grievance is final would be premature.

It is not a mere coincidence that our county police departments are suffering serious staffing shortages like we have never seen before. The staffing crisis is downright scary and compromises the community's safety. There is no way to sugarcoat this reality. Rather than support law enforcement, our officers feel they are under constant attack which makes their jobs tenuous, more dangerous, and unnecessarily exposes them to civil liability that enriches criminals and their families. The reality is that this bill is unnecessary, confusing, and discourages women and men in our community from aspiring to be police officers to fill our depleted ranks. The safeguards already in place protect everyone involved without the need for SB 372.

We thank you for allowing us to be heard on this important issue and we hope your committee will unanimously oppose SB 372.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

SB-372

Submitted on: 1/28/2023 1:11:59 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

Today is Saturday. It is almost 24 hours since the Memphis police department released the almost hour long video relating to the police actions which led to the death of Tyre Nichols. It is the top news story nationwide and parts of the tape are playig non stop. Nichols was kicked, beaten, left lying in the street by five now fired officers not rendering aid. Other law enforcement officers have been suspended. Nichols waited more than 20 minutes for an ambulance with no aid being rendered. If this bill was not needed before, it certainly is now. Please move this bill forward. We definitely do not want to see something like this in the State of Hawaii.

SB-372

Submitted on: 1/30/2023 9:01:10 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

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

Comments:

The fact that this law is even needed demonstrates how far policing in the United States and Hawai'i has strayed from its supposed mission of protecting and serving the public safety interests of the people. Personally, I don't believe this bill will end police brutality in Hawai'i. The problem involves deeper systemic issues that need to be resolved. But if this policy makes the difference in even one case, then it will have been worth supporting SB372.

SB-372

Submitted on: 1/31/2023 8:15:18 AM

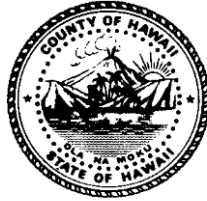
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alan Urasaki	Individual	Support	Written Testimony Only

Comments:

I support passage of this bill.

Mitchell D. Roth
Mayor



Benjamin T. Moszkowicz
Police Chief

County of Hawai'i

POLICE DEPARTMENT

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January 31, 2023

Senator Glenn Wakai
Chairperson and Committee Members
Committee on Public Safety and Intergovernmental and Military Affairs
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: SENATE BILL 372, RELATING TO GOVERNMENT SERVICES RELATING TO LAW
HEARING DATE: FEBRUARY 1, 2023
TIME: 3:00 P.M.

Dear Senator Wakai:

The Hawai'i Police Department **supports the intent** of Senate Bill 372, with its purpose to require law enforcement officers to intervene if they reasonably believe that another law enforcement officer is using or about to use unnecessary or excessive force on an arrestee, report the incident to the supervisor and submit annual reports to the Legislature.

It is the duty of Law Enforcement officers to enforce the laws (Federal, State and County) to ensure the safety of all people. This includes the inherent duty to intervene if they believe excessive force will be used, or if they witness it being used. The Hawai'i Police Department's General Orders govern these actions by requiring "Any police officer who observes another officer, regardless of rank, using excessive force, shall when safe and feasible to intervene in an effort to try to stop the excessive force, and promptly report these observations and the efforts made to intervene to a supervisor, or, if the person utilizing excessive force is a supervisor, to the supervisor's commander." In addition, according to our policy, supervisors bear a responsibility to stop violations and to inform their respective commanders and refer the incident to the Officer of Professional Standards.

While we support the intent of this bill and encourage its passage through your committee, we respectfully request an opportunity to further refine the language to comport with the intent of the bill. Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 372.

Sincerely,


BENJAMIN T. MOSZKOWICZ
POLICE CHIEF