



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 3041, RELATING TO LAW ENFORCEMENT.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND
MILITARY AFFAIRS

DATE: Friday, February 9, 2024

TIME: 3:01 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Adrian Dhakhwa, Deputy Attorney General

Chair Wakai and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

The purposes of this bill are to: (1) clarify membership requirements for the law enforcement standards board to facilitate participation and representation; (2) enable the board to research the impact of uniform standards, certification, and training on existing legal requirements; (3) establish new deadlines for the completion of the board's responsibilities; and (4) exempt the board administrator from civil service.

The law enforcement standards board, established in 2018 by section 139-2, Hawaii Revised Statutes, is responsible for establishing minimum standards for employment as a law enforcement officer. The board is also responsible for creating and overseeing the certification, re-certification, and revocation of certification processes for law enforcement officers. It must establish minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. The board is also responsible for investigating law enforcement officers when there is reason to believe that an officer does not meet the minimum standards for employment.

This bill will aid the board in accomplishing its statutory duties by increasing the size and perspective of the board and allowing ex-officio members to use designees. Currently, only the Chairperson of the Board of Land and Natural Resources and the

Director of Taxation are allowed to use designees, whereas the other ex-officio members do not have the same flexibility. This bill will also help the board accomplish its goals by extending a board member's term from three years to four years, which will enhance the commitment and stability of board members.

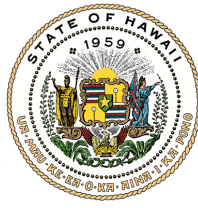
Currently, collective bargaining rules and employment laws govern various aspects of a law enforcement officer's career. Explicitly authorizing the board to study and evaluate these rules and laws will allow the board to establish standards, certification procedures, and training requirements that comport within the existing framework.

Additionally, the board was given an original deadline of July 1, 2019, to establish its standards and certification process. That deadline was pushed back to December 31, 2021. The Legislature provided full funding for the board's administrator and support staff for Fiscal Year 2023-2024, and this bill sets forth a realistic deadline of July 1, 2026, to accomplish all of the statutory duties listed in section 139-3, Hawaii Revised Statutes.

Exempting the board administrator position from civil service will allow the board the flexibility it needs to meet its broad duties and responsibilities. The board's role and that of the administrator are unique and not within the traditional civil service classification system. The board, therefore, needs the discretion to hire or terminate without complying with civil service requirements.

The Department respectfully requests the passage of this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



JORDAN LOWE
DIRECTOR

MICHAEL VINCENT
Deputy Director
Administration

JARED K. REDULLA
Deputy Director
Law Enforcement

SYLVIA LUKE
LT GOVERNOR
KE KE'ENA

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LAW ENFORCEMENT

Ka 'Oihana Ho'okō Kānāwai

715 South King Street
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TESTIMONY ON SENATE BILL 3041
RELATING TO LAW ENFORCEMENT

Before the Senate Committee on
Public Safety and Intergovernmental and Military Affairs
Friday, February 9, 2024; 3:01 p.m.
State Capitol Conference Room 225, Via Videoconference

WRITTEN TESTIMONY ONLY

Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

The Department of Law Enforcement (DLE) **supports** Senate Bill 3041.

This bill clarifies the membership of the Law Enforcement Standards Board and adds to certain powers and duties of the Board, and establishes new deadlines for the completion of board responsibilities.

This is an important measure to assist the law enforcement community with the membership requirements and broader participation of law enforcement on the Board, direction to guide the Board in its duties, and deadlines to help establish benchmarks for successful accomplishment of the Board's work.

Thank you for the opportunity to testify in support of this bill.



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

" A Police Organization for Police Officers Only "
Founded 1971

February 7, 2024

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 407, 217
415 South Beretania Street
Honolulu, HI 96813

Re: **SB 3041 – Law Enforcement Standards Board**

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 to you on behalf of our Union in **opposition** to SB 3041. This bill proposes multiple changes to existing law concerning the Law Enforcement Standards Board (“Board”). Along with eliminating the Board’s previous deadline to finalize its standards, this bill also widens the breadth of the Board’s powers to include review of and conducting its own studies. The bill also adds benchmark dates in 2026 for when its approved trainings and certifications would be applicable as requirements for existing and incoming law enforcement officers.

SHOPO opposes this bill because it creates duplicate certifications, standards, and law enforcement training already established and managed by the respective county police departments through their accredited training academies and does not adequately address collective bargaining rights guaranteed under the Hawaii Constitution.

As you may already know, all four (4) county police departments and their respective police academies are accredited by the Commission on Accreditation for Law Enforcement Agencies (“CALEA”). 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.

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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
February 7, 2024
SHOPO Testimony Page 2
Re: SB 3041 – Law Enforcement Standards Board

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. Ironically, this same legislative body is currently pushing for DLNR's conservation and resources enforcement program to obtain CALEA certification, see e.g., SB 70, and thus, this legislative body clearly believes CALEA is a credible and valid accreditation. It remains unanswered as to how another layer of training and certification is going to solve the current officer staffing crisis that is only getting worse, and when many current recruits are unable to pass the rigorous training standards required by each county police training academy.

The bill's proposal to make the Board certification requirement inapplicable to a person "who entered into employment with the applicable county police department or state department before July 1, 2026," *and* when the "termination of employment would violate any valid collective bargaining agreement," has the potential to create dissension among the ranks as it creates two tiers of police officers (those grandfathered and those not) and does not adequately address our members' collective bargaining rights guaranteed under the Hawaii Constitution. See HRS § 89-9. Collective bargaining is required anytime there are changes to wages, hours or working conditions of our members. We maintain our serious concern that the Board's power to revoke an officer's certification may also indirectly conflict with our collective bargaining agreement, the outcome of a grievance proceeding, and HRS chapter 89.

If this Board continues forward, we suggest and recommend that in order to make the Board truly all-inclusive and transparent, a Board position should be created for the appointment of a representative from our Union for the purpose of providing insight and input on training, certification, standards, and collective bargaining. Our Union and members operate on the front lines in the battle against crime and have the necessary training, current experience and knowledge that others on the Board will not possess. If the true intent is to make things better, having a Union representative on the Board will further that objective. While we appreciate that additional county law enforcement officers including an officer from each of the four counties are proposed to sit on the Board, we recommend that the county officers should hold the rank of lieutenant or lower and be nominated by the Union for the governor's appointment.

Finally, we recommend that the appointment of the public members of the Board should be with the advice and consent of the senate like any other board or commission and that the police chiefs themselves should be required to participate rather than pass their responsibilities on to someone else.

The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
Senate Committee on Public Safety and Intergovernmental and Military Affairs
February 7, 2024
SHOPO Testimony Page 3
Re: SB 3041 – Law Enforcement Standards Board

We thank you for allowing us to be heard to share our serious concerns with this bill and hope your committee will unanimously reject this bill and/or defer until further consideration is given to the issues and concerns we have raised.

Respectfully submitted,

ROBERT “BOBBY” CAVACO
SHOPO President

RC jmo



Committee: Public Safety and Intergovernmental and Military Affairs
Hearing Date/Time: Friday, February 9, 2024 at 3:01pm
Place: Conference Room 225 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in OPPOSITION to SB3041
Relating Law Enforcement**

Dear Chair Wakai, Vice Chair Elefante, and Members of the Committee:

The ACLU of Hawai'i **OPPOSES S.B. 3041**, which clarifies membership and certain powers and duties of the Law Enforcement Standards Board and establishes new deadlines for the completion of board responsibilities.

We have serious concerns about this bill based on its **overly broad exemption**. As drafted, this bill exempts all officers hired before 2026 from certification/decertification requirements.

In other words, if this bill passes, the vast majority of law enforcement employees in Hawai'i will not be subject to decertification by the Law Enforcement Standards Board for a long time well into the future. This defeats the purpose of consistent and uniform certification and decertification standards for all law enforcement employees in Hawai'i.

For these reason, we respectfully request that you defer this measure, or pass with an amendment to remove the unduly broad exemption.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i
cshirota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

**HAWAI‘I SENATE COMMITTEE ON PUBLIC SAFETY AND
INTERGOVERNMENT AND MILITARY AFFAIRS**

HEARING:

Public Hearing on Senate Bill 3041, Feb. 8, 2024

DATE OF TESTIMONY:

Feb. 8, 2024

**TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW IN
OPPOSITION TO S.B. 3041**

One of the best ways to ensure transparent, effective, and ethical policing is for the public to be democratically involved in setting expectations for police practices *before* police act, instead of *after* something has gone wrong.¹ In 2018, Hawai‘i took an enormous step toward this kind of democratic accountability in policing when it joined nearly every other state in the country by empowering a state agency—the Law Enforcement Standards Board (“the Board”)—to license officers, set training standards, and suspend or revoke officers’ licenses if they engage in certain narrow categories of egregious misconduct. The legislation under consideration today, S.B. 3041, threatens to undermine and even reverse much of this progress.

Specifically, S.B. 3041 severely undercuts the aim of the 2018 law by providing that nearly all current officers need not ever be licensed, and thus never can have their license stripped by the Board. Further, S.B. 3041 would alter the composition of the Board to make the Board inadequately representative of the communities most heavily policed, further eroding the Board’s ability to improve policing in Hawai‘i.

We thus submit this testimony in opposition to S.B. 3041, as currently drafted.

¹ As part of its mission to advance democratic accountability in policing, the Policing Project has aided numerous states across the country in establishing and strengthening their decertification statutes and regulations. We have vetted our thinking on officer discipline & decertification with an advisory committee consisting of law enforcement officials, academics, policing experts, and affected community members. We have also created a number of model statutes, all of which are informed by best practices in existing legislation and vetted by our advisory committee. One of those statutes is our [comprehensive decertification statute](#); that statute is additionally informed by the [American Law Institute’s Principles of Policing on certification and decertification](#).

S.B. 3041 Regressively Exempts Nearly All Hawai’ian Law Enforcement Officers From the Board’s Training and Licensing Requirements

The 2018 Law Brought Hawai’i in Line With Nearly Every Other State in the Country

Act 220, enacted in 2018, created the Law Enforcement Standards Board and modernized Hawai’i approach to policing. That Act and follow-up legislation:

1. requires all Hawai’i law enforcement officers to receive training to minimize the use of excessive force, including de-escalation and crisis intervention techniques;
2. commissions the Board with setting minimum age, education, physical and mental health, and moral character standards for officers; and
3. empowers the Board to certify officers who meet the above standards and, after a full hearing, suspend or revoke the certification of any officer who fails to meet those standards or engages in egregious misconduct.

See Haw. Rev. Stat. §§ 139-5, 139-6. The narrow categories of egregious misconduct are set forth in the statute, and include being convicted of a felony and knowingly making material false statements to the Board. *Id.* at § 139-8.

Critically, existing law empowers the Board to strip some of the worst officers of their badge, even if they are not fired or do not resign from their employing agency. The Board, in other words, serves as a backstop to ensure officers who undercut the reputation of Hawai’i law enforcement and pose a danger to the public are held accountable.

The existing law, and forthcoming implementing regulations from the Board, also help address the wandering officer problem, in which officers who engage in serious misconduct simply move on to another agency rather than face any accountability. If an officer comes from another state, the Board must ensure that officer meets Hawai’i’s minimum standards before certifying the officer. And if an officer leaves one of Hawai’i’s four county agencies (or a state agency) after engaging in serious misconduct, this existing law helps ensure that the officer cannot just move and obtain employment at another Hawai’i agency.

In addition, the existing law follows best practices for protecting officers’ due process rights, by granting officers a full hearing before the Board takes any action against the officer. *See* Haw. Rev. Stat. § 139-8(c).

S.B. 3041 Contains a Provision That Would Exempt Nearly All Current Officers From the 2018 Law’s Training and Licensing Requirements

S.B. 3041 contains a provision that would reverse much of the progress Hawai’i has made in the past few years by exempting nearly all current (and even some future) officers from the minimum standards and licensing requirements described above. Specifically, Section 6 amends Haw. Rev.

Stat. § 139-7 to exempt from minimum standards and licensing requirements, any officer “who entered into employment with the applicable county police department or state department before July 1, 2026, and termination would violate any valid collective bargaining agreements.”

This would mean that nearly all current officers (even a 25-year-old new hire)—over 2,700 of them—as well as any officers hired by a police department before July 2026, would be forever exempt from the 2018 law’s laudable minimum standards and requirements. If enacted, this law would also ensure that multiple generations of Hawai‘i law enforcement officers could not have their license suspended or stripped by the Board even if they have been convicted of a felony or knowingly lie to the Board.

The exemption provision would make Hawai‘i an outlier, certifying fewer officers per capita than any other state in the country. Further, it would significantly impede Hawai‘i from obtaining the benefits described above: enhancing the reputation of Hawai‘i law enforcement by stripping the worst of officers of their badge, addressing the wandering officer problem, and ensuring all Hawai‘i officers meet minimum training and moral character standards. In short, high quality, accountable policing would be more difficult.

To the extent that this exemption is a response to the current SHOPO² collective bargaining agreement (“CBA”), it is an entirely unnecessary one. To begin with, the current CBA did not take effect until 2021, three years after the decertification law. There is no Contracts Clause constitutional issue that the legislature needs to navigate around. Further, to the extent there remains a perceived issue with the existing CBA, the bill could simply provide that current officers need only be certified after the current CBA expires in 2025—the exemption provision is wholly unnecessary. The Policing Project would be happy to work with this Committee on such language.

Without the elimination of the exemption provision, the Policing Project cannot support this bill.

S.B. 3041 Alters the Composition of the Board In A Way that Does Not Adequately Represent the Communities Most Heavily Policed

S.B. 3041 also would increase the number of law enforcement officers on the Law Enforcement Standards Board from two officers to five officers, while continuing to allow the four public members to come from a law enforcement background as well. The eight *ex officio* members of the Board also overwhelmingly work in law enforcement; among those members are four police chiefs and the Director of Law Enforcement. Meanwhile, there are currently *no* spots on the Board exclusively designated for those who can effectively represent the Hawai‘i communities most

² State of Hawai‘i, City & County of Honolulu, County of Hawai‘i, County of Maui, County of Kauai, and State of Hawai‘i Organization of Police Officers.

heavily policed, such as public defenders, civil rights attorneys, social workers, and people with experience in police auditing or oversight.

That runs counter to the best practice of reserving at least one-third of Board seats for members that can meaningfully represent the communities most heavily policed, and thus most impacted by police misconduct. These voices and expertise are crucial in ensuring that the Board's rules and decisions reflect the wishes and needs of the entire community, and their inclusion can help strengthen relations between law enforcement and their communities. To remedy this disparity, we recommend at least (a) requiring that the four existing public member slots be specifically and exclusively reserved for public defenders, civil rights attorneys, and the like, and (b) aiming to have one-third or more of the total Board slots allocated to members representative of Hawai'i's most impacted communities.³

S.B. 3041 Contains Some Provisions That Do Not Raise Concerns.

Although the exemption and Board composition provisions represent significant steps backwards, S.B. 3041 contains a couple of provisions that would strengthen the 2018 law. For example, the bill would allow designees to serve on the Board instead of high-level *ex officio* members like the Attorney General. This sensibly would allow the Attorney General and other high-level officials to delegate responsibility appropriately. The bill also authorizes the Board to conduct studies relevant to the Board's objectives. This power could help provide an evidentiary basis for future policy changes.

Nonetheless, while these provisions are laudable, they would not outweigh the harm caused by the remainder of the bill.

Conclusion

S.B. 3041 strikes at the core of Hawai'i's praiseworthy 2018 law enforcement officer certification law, exempting nearly all current officers from the minimum standards and licensure requirements set forth in that law. The law also deepens an existing imbalance in Hawai'i's Law Enforcement Standards Board: instead of ensuring slots are reserved for those who can represent the communities in Hawai'i that are most heavily policed, S.B. 3041 would add new law enforcement representatives. We therefore oppose the bill.

Thank you for considering our testimony.

³ Some states have required that at least some of these non-sworn members be appointed from a list of candidates provided by the relevant professional association (e.g., a civil rights attorney from a list submitted by the civil rights section of the state bar association).