THE SENATE THIRTY-SECOND LEGISLATURE, 2023 STATE OF HAWAII

S.B. NO. 922

JAN 2 0 2023

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT REFORM.

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

1	SECTION 1. Chapter 139, Hawaii Revised Statutes, is
2	amended by adding a new section to be appropriately designated
3	and to read as follows:
4	" <u>§139-</u> Reports of criminal misconduct by law enforcement
5	officers. (a) It shall be the duty of a law enforcement
6	officer who observes criminal misconduct by another law
7	enforcement officer to notify the department head of the officer
8	who committed the criminal misconduct. The notice shall be
9	submitted in writing immediately or as soon as is practicable
10	after observing the criminal misconduct.
11	(b) Within fifteen days of receiving written notification,
12	the department head shall complete an investigation pursuant to
13	subsection (c) and notify the chief of police of the respective
14	county of the outcome of the investigation in writing.
15	(c) Any department head who receives a report of criminal
16	misconduct under this section shall immediately begin conducting
17	an investigation of the officer reported to have committed the



1	criminal misconduct and reach a timely determination on the
2	merits. If the investigation determines that, in the
3	determination of the department head, sufficient evidence shows
4	that the individual committed an act of criminal misconduct, the
5	name of the individual and act of criminal misconduct shall be
6	disclosed to the chief of police of the respective county. If
7	the department head determines that evidence of criminal
8	misconduct is insufficient, the department head shall still
9	provide the chief of police with the outcome of the
10	investigation but shall redact any personally identifiable
11	information of the individuals involved in the investigation.
12	(d) Within fifteen days of receiving written notification
13	of the outcome of the investigation, the chief of police shall
14	notify the police commission of the respective county of the
15	outcome of the investigation in writing.
16	(e) If the department head is the subject of the criminal
17	misconduct report, the reporting officer shall report directly
18	to the police commission of the respective county within seven
19	days of observing the criminal misconduct, and the police
20	commission shall complete an investigation pursuant to

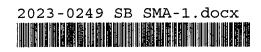


1	subsection (f) within fifteen days of receiving written
2	notification.
3	(f) Any police commission that receives a report of
4	criminal misconduct pursuant to subsection (e) shall immediately
5	begin conducting an investigation of the officer reported to
6	have committed the criminal misconduct and reach a timely
7	determination on the merits.
8	(g) No discriminatory, disciplinary, or retaliatory action
9	shall be taken against any law enforcement officer for any
10	information given or disclosed by the officer in good faith in
11	the course of making a report of criminal misconduct under this
12	section.
13	(h) For purposes of this section:
14	"Criminal misconduct" means assault, sexual assault,
15	bribery, coercion, fraud, theft, tampering with physical
16	evidence, tampering with a witness, use of a chokehold as
17	defined in section 703-307, or excessive use of force.
18	"Department head" means the official or officer having the
19	most managerial or administrative authority in the State or
20	county agency or department."

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1	SECT	ION 2. Section 139-1, Hawaii Revised Statutes, is
2	amended b	y amending the definition of "law enforcement officer"
3	to read a	s follows:
4	""La	w enforcement officer" means:
5	(1)	A police officer employed by a county police
6		department;
7	(2)	A public safety officer employed by the department of
8		public safety[;], except an adult correctional
9		officer; or
10	(3)	An employee of the department of transportation,
11		department of land and natural resources, department
12		of taxation, or department of the attorney general who
13		is conferred by law with general police powers."
14	SECT	ION 3. Section 139-6, Hawaii Revised Statutes, is
15	amended b	y amending subsection (a) to read as follows:
16	"(a)	No person may be appointed as a law enforcement
17	officer u	nless the person:
18	(1)	Has satisfactorily completed a basic program of law
19		enforcement training approved by the board; [and]
20	(2)	Has passed a psychological screening test battery
21		administered under the direction of a licensed



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1		psychologist or psychiatrist according to protocols
2		adopted by the board and designed to detect behavioral
3		traits that could adversely affect the person's
4		ability to perform the essential functions of a law
5		enforcement officer. The test battery results shall
6		be valid for a period of one year from the date of
7		administration for purposes of qualifying for
8		appointment as a law enforcement officer; and
9	[-(2)]	(3) Possesses other qualifications as prescribed by
10		the board for the employment of law enforcement
11		officers, including minimum age, education, physical
12		and mental standards, citizenship, good conduct, moral
13		character, and experience."
14	SECT	ION 4. Section 139-8, Hawaii Revised Statutes, is
15	amended b	y amending subsection (a) to read as follows:
16	"(a)	The board shall adopt rules, pursuant to chapter 91,
17	that esta	blish criteria for the denial, suspension, or
18	revocatio	n of a law enforcement officer's certification,
19	including	upon a finding by the board that the law enforcement
20	officer:	

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1	(1)	Knowingly falsified or omitted material information on
2		the law enforcement officer's application for training
3		or certification to the board;
4	(2)	Has been convicted at any time of a felony offense
5		under the laws of this State or has been convicted of
6		a federal or out-of-state offense comparable to a
7		felony under the laws of this State; provided that if
8		a law enforcement officer was convicted of a felony
9		before being employed as a law enforcement officer,
10		and the circumstances of the prior felony conviction
11		were fully disclosed to the employer of the law
12		enforcement officer before being hired, the board may
13		revoke certification only with the agreement of the
14		employing law enforcement agency;
15	(3)	Interfered with an investigation or action for denial
16		or revocation of certification by:
17		(A) Knowingly making a materially false statement to
18		the board; or
19		(B) In any matter under investigation by or otherwise
20		before the board, tampering with evidence or
21		tampering with or intimidating any witness; [or]

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1	(4)	Failed to report any criminal misconduct the law
2	<u>e</u>	enforcement officer observed, as required by
3	<u></u>	section 139- , or committed an act of criminal
4	Ţ	misconduct, as defined by section 139- ; or
5	[-(4)]	(5) Has taken other prohibited action as established
6	1	by the board, by rule."
7	SECTIO	ON 5. Section 703-307, Hawaii Revised Statutes, is
8	amended to	read as follows:
9	"§703-	-307 Use of force in law enforcement. (1) Subject
10	to [the pr	ovisions of] this section and [of] section 703-310,
11	the use of	force upon or toward the person of another is
12	justifiable	e when the actor is making or assisting in making an
13	arrest and	the actor believes that [such] <u>the</u> force is
14	immediately	y necessary to effect a lawful arrest.
15	(2)	The use of force is not justifiable under this section
16	unless:	
17	(a) 1	The actor makes known the purpose of the arrest or
18	ł	pelieves that it is otherwise known by or cannot
19	1	reasonably be made known to the person to be arrested;
20	ē	and

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1	(b)	When the arrest is made under a warrant, the warrant
2		is valid or believed by the actor to be valid.
3	(3)	The use of deadly force is not justifiable under this
4	section u	nless:
5	(a)	The arrest is for a felony;
6	(b)	The person effecting the arrest is authorized to act
7		as a law enforcement officer or is assisting a person
8		whom [he] <u>the person</u> believes to be authorized to act
9		as a law enforcement officer;
10	(c)	The actor believes that the force employed creates no
11		substantial risk of injury to innocent persons; and
12	(d)	The actor believes that:
13		(i) The crimes for which the arrest is made involved
14		conduct, including the use or threatened use of
15		deadly force; or
16		(ii) There is a substantial risk that the person to be
17		arrested will cause death or serious bodily
18		injury if [his] the person's apprehension is
19		delayed.
20	(4)	The use of force to prevent the escape of an arrested
21	person fr	om custody is justifiable when the force could

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justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a law enforcement officer is justified in using force [which he] that the guard or other authorized person believes to be immediately necessary to prevent the escape from a detention facility.

7 (5) A private person who is summoned by a law enforcement 8 officer to assist in effecting an unlawful arrest is justified 9 in using any force [which he] that the person would be justified 10 in using if the arrest were lawful [-7]; provided that [he] the person does not believe the arrest is unlawful. A private 11 person who assists another private person in effecting an 12 13 unlawful arrest, or who, not being summoned, assists a law 14 enforcement officer in effecting an unlawful arrest, is justified in using any force [which he] that the person would be 15 justified in using if the arrest were $lawful[_7]$; provided that 16 [he] the person believes the arrest is lawful, and the arrest 17 18 would be lawful if the facts were as [he] the person believes 19 them to be.

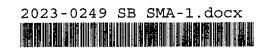
20 (6) The use of force by a law enforcement officer that is
21 justifiable pursuant to this section shall not include the use



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1	of a chokehold unless the use of deadly force is justifiable
2	pursuant to this section.
3	(7) As used in this section, "chokehold" means the
4	application of any pressure to the throat, windpipe, or neck
5	that prevents or reduces intake of air or oxygen to the brain."
6	SECTION 6. This Act does not affect rights and duties that
7	matured, penalties that were incurred, and proceedings that were
8	begun before its effective date.
9	SECTION 7. Statutory material to be repealed is bracketed
10	and stricken. New statutory material is underscored.
11	SECTION 8. This Act shall take effect upon its approval.
12	Kal Rhad
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INTRODUCED BY:



Report Title:

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

Description:

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. 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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