

JAN 20 2023

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# 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           "§139-       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."



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

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

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

- 18 (1) Has satisfactorily completed a basic program of law  
19 enforcement training approved by the board; [and]  
20 Has passed a psychological screening test battery  
21 administered under the direction of a licensed



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

16        "(a) The board shall adopt rules, pursuant to chapter 91,  
17        that establish criteria for the denial, suspension, or  
18        revocation 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        enforcement officer observed, as required by  
 3        section 139- , or committed an act of criminal  
 4        misconduct, as defined by section 139- ; or

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

7        SECTION 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 provisions of]~~ this section and ~~[of]~~ section 703-310,  
 11       the use of force upon or toward the person of another is  
 12       justifiable when the actor is making or assisting in making an  
 13       arrest and the actor believes that ~~[such]~~ the force is  
 14       immediately necessary to effect a lawful arrest.

15       (2) The use of force is not justifiable under this section  
 16       unless:

17       (a) The actor makes known the purpose of the arrest or  
 18       believes that it is otherwise known by or cannot  
 19       reasonably be made known to the person to be arrested;  
 20       and



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 unless:

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~~] the person 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 from custody is justifiable when the force could





1 justifiably have been employed to effect the arrest under which  
2 the person is in custody, except that a guard or other person  
3 authorized to act as a law enforcement officer is justified in  
4 using force [~~which he~~] that the guard or other authorized person  
5 believes to be immediately necessary to prevent the escape from  
6 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  
11 person does not believe the arrest is unlawful. A private  
12 person who assists another private person in effecting an  
13 unlawful arrest, or who, not being summoned, assists a law  
14 enforcement officer in effecting an unlawful arrest, is  
15 justified in using any force [~~which he~~] that the person would be  
16 justified in using if the arrest were lawful[7]; provided that  
17 [~~he~~] the person believes the arrest is lawful, and the arrest  
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.

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INTRODUCED BY: \_\_\_\_\_



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**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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