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

Ka 'Oihana Ho'okō Kānāwai

715 South King Street
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 1611, HOUSE DRAFT 2
RELATING TO LAW ENFORCEMENT OFFICERS

Before the Senate Committee on
Public Safety and Intergovernmental and Military Affairs
Monday, March 11, 2024; 3:00 p.m.
State Capitol Conference Room 225, Via Videoconference

Testifier: Jordan Lowe or Michael Vincent

Chair Wakai, Vice Chair Elefante, and members of the Committee:

The Department of Law Enforcement (DLE) submits the following comments on House Bill 1611, HD2 with a recommended effective date of July 1, 2026.

This bill seeks to give law enforcement agencies in Hawai'i tools to help ensure that law enforcement officers serving in our communities possess the highest moral standards and character by requiring the use of the National Decertification Index as part of a law enforcement agency's determination of an applicant's employment suitability. To that end, the DLE is supportive of this bill. However, the DLE notes that section 2 of the bill requires both the Law Enforcement Standards Board (LESB) and the employing law enforcement agency to consult, or report to, the National Decertification Index before employing any officer or when taking disciplinary action against an officer. The DLE reviewed the LESB's Annual Report to the 2024 Legislature and further notes that the LESB reported that it is currently in considerations for employing its own staff and infrastructure.ⁱ Consequently, the DLE is concerned that the effective date of this bill, July 1, 2024, may be too soon.

The DLE is recommending **July 1, 2026**, as the effective date of this bill be to give the LESB and law enforcement agencies time to meet the requirements of this bill.

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

ⁱ Report on the Law Enforcement Standards Board submitted to the Thirty-Second Legislature, Page 4, subsection (4) "...concerns regarding consistency with Act 278 of the 2022 Legislative Session, future funding of the board, clarification of Board powers, deadlines for Board to meet statutory requirements, additional Board staffing..."



Hawai'i

Committee: Public Safety and Intergovernmental and Military Affairs
Hearing Date/Time: Monday, March 11, 2024 at 3:00pm
Place: Conference Room 225 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB 1611, HD2 Relating to Law Enforcement Officers**

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

The ACLU of Hawai'i **supports H.B. 1611 H.D. 2**, which requires law enforcement agencies and the Law Enforcement Standards Board to consult the National Decertification Index and report certain information related to a law enforcement officer's certification status to the Index.

This is a good governance measure and a small step towards accountability and documenting instances of law enforcement misconduct.

The reality of law enforcement is that they have the de facto power to stop anyone, at any time, for any reason, and that these encounters can result in injury or death.

The other reality that we often ignore is that under-resources communities, particularly Native Hawaiians and Pacific Islanders, are more likely to be subjected to law enforcement action and misconduct. This propels individuals into the revolving door of the criminal legal and carceral system, increasing exposure to trauma, isolation, shame, violence, and reduced access to work force opportunities to provide for the needs of the individual and their family.

Reimagining Public Safety encompasses the freedom from law enforcement misconduct. To achieve such an end requires data collection of law enforcement misconduct, and it requires legal accountability at the state and local level for misconduct and a commitment to invest in housing, education and economic opportunities in communities that have been historically overpoliced and underserved.

Thank you for considering our testimony in support of **H.B. 1611 H.D. 2**.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i
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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.



LATE

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

March 9, 2024

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: **HB 1611 HD2 – Relating to Law Enforcement Officers**

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 **strong opposition to HB 1611 HD2**. This bill seeks to, among other things, amend HRS chapter 139 by adding a new section requiring broad reporting mandates to the National Decertification Index before certifying existing police officers. There are myriad issues with the bill, which will be discussed below.

As you may know, the constitutional right “to organize for the purpose of collective bargaining” is a fundamental right under Article XIII, Section 1 of the Hawai`i State Constitution. The CBAs between SHOPO and the counties contain a grievance procedure for disciplinary actions, which was negotiated and agreed to by the parties. This grievance procedure reflects the essential requirements of due process, namely, notice and an opportunity to respond to allegations and disciplinary actions. Under Article 13 of the CBA, the parties agreed that records and information related to the grievance process, including investigations, “shall be considered confidential[.]” Article 32 grants and invests an impartial arbitrator with wide discretion to rule on matters presented. The arbitrator makes his/her decision after carefully hearing testimony of witnesses and weighing the evidence presented. In some instances, an arbitrator may decide that discipline has been issued without “just cause,” and in those cases, the arbitrator has the power to set aside, reduce, or otherwise change the discipline, including removing the discipline and/or complaint from the law enforcement officer’s personnel file and record. Significantly, if passed, this bill will inevitably lead to situations where, despite an independent arbitrator’s finding that was an officer’s termination was improper, that same officer is terminated anyway because he/she is not able to be certified due to what is reported to the NDI.

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The Honorable Glenn Wakai, Chair
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The bill's reporting requirement to the NDI unquestionably leads to additional issues. Proposed subsection (b) requires the Board to report to NDI each time (1) the board suspends or revokes a law enforcement officer's certification; (2) a law enforcement officer voluntarily relinquishes their certification; (3) a law enforcement officer's board certification lapses; or (4) the board opens a "disciplinary investigation" of a law enforcement officer. "Disciplinary investigation" does not appear to be defined in the proposed measure but HRS § 139-3 states that the Board has the power to:

- (7) Investigate when there is reason to believe that a law enforcement officer does not meet the minimum standards for employment, and in so doing, may:
 - (A) Subpoena persons, books, records, or documents;
 - (B) Require answers in writing under oath to questions asked by the board;and
 - (C) Take or cause to be taken depositions as needed in investigations, hearings, and other proceedings, related to the investigation;

Board disciplinary investigations may be reported to NDI *before* an officer's due process rights are exercised and exhausted under the negotiated grievance procedure. In other words, if the grievance process subsequently overturned any disciplinary action taken against an officer, the officer would be cleared, and the disciplinary action would become null and void. However, under the existing language of this bill, any disciplinary investigation would have already been reported to NDI without regard for the status of a related grievance process. Disclosing a disciplinary investigation to NDI before any related grievance is final would be premature and serves no valid purpose. In fairness to our officers, Board reports to NDI should only be suspensions or terminations and should only be disclosed after any related grievance process has concluded after the officer's due process rights provided by that grievance process have been exercised and exhausted.

As you know, the County police departments are already mandated to submit annual reports to the legislature of misconduct incidents that resulted in suspension or discharge of a police officer. These reports summarize the facts and the nature of the misconduct for each incident; specify the disciplinary action imposed for each incident; identify any other incident in the annual report committed by the same police officer; and state whether the highest nonjudicial grievance adjustment procedure timely invoked by the police officer or the police officer's representative has concluded. If the grievance procedure is concluded, the report must also state whether the incident concerns conduct punishable as a crime, and if so, must describe the county police department's findings of fact and conclusions of law concerning the criminal conduct; and whether the county police department notified the respective county prosecuting attorney of the

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incident. If the highest nonjudicial grievance procedure is not concluded, the report must also state the current stage of the nonjudicial grievance adjustment procedure as of the end of the reporting period and disclose the identity of the police officer upon the police officer's suspension or discharge.

In addition, it is unclear who has access to the information in the NDI. The website indicates that the Index is intended for use by law enforcement agencies and POST organizations, but also states that "in cases of legitimate need, access to the NDI may be granted to other individuals" by making a simple private email request.

Finally, SHOPO agrees that law enforcement officers should be held to the highest standards. 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. 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.

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 until further consideration is given to the issues and concerns we have raised.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President