



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

June 25, 2020
1:45 p.m.
State Capitol, Room 229

**H.B. 1901, Proposed S.D. 1,
RELATING TO PUBLIC SAFETY.**

Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Department of Transportation (DOT) **supports** the intent to enhance the standards for training and certification of law enforcement officers. The DOT is conscious of non-lethal enforcement tools and pursued the qualifications of training to use electric guns, as specifically provided in Section 134-16.

The Director of Transportation enforces all laws under the jurisdiction of Airports, Harbors, and Highways Divisions. Each Division has its own unique law enforcement requirements and activities and coordinates prosecution through the Office of the Attorney General, Office of Public Safety and County Police Departments. Each Department or Division upholds standards of conduct in the performance of the law enforcement officers' duties and responsibilities.

The DOT recognizes the importance of the Board to standardize training and policies, however, having the Board review past disciplinary actions should remain personnel matters governed by the county police commission, the employer and exclusive representatives to the collective bargaining agreements.

In lieu of the Board duplicating efforts to review use of force matters, the DOT requests that H.B. 1901, Proposed S.D. 1 be amended to required law enforcement agencies and police departments, upon written request as prescribed by rule, submit information required by the Board to make informed decision regarding the issuance or revocation of certification.

The DOT is a member of the Law Enforcement Standards Board and will consider the use of force at future meetings.

Thank you for the opportunity to provide testimony.



**HB1901 SD1 Proposed
RELATING TO PUBLIC SAFETY**

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

June 25, 2020

1:45 p.m.

Room 229

OHA **SUPPORTS** HB1901, which would clarify that the Hawai'i Correctional System Oversight Commission's (Oversight Commission's) statutory responsibilities include ensuring that the Department of Public Safety's (PSD's) comprehensive offender reentry system enables inmates to meet all parole requirements at the earliest time they may be eligible for parole. This measure would provide a simple amendment to the codified language of Act 179, Session Laws 2019, to better align with the recommendations of the HCR85 Task Force on Prison Reform, as well as the overall intent of Act 179. The Administration of OHA will also recommend that the Board of Trustees offer **COMMENTS**, detailed below, on the language contained in the proposed SD1 draft of HB1901, should this draft be adopted by the Committee.

The HCR85 Task Force on Prison Reform, in its 2018 report, called for the establishment of an Oversight Commission to assist in transitioning our correctional system from a punitive model to a rehabilitative and therapeutic one. In creating the Commission, and consistent with the recommendations of the HCR85 Task Force Report, the legislature in Act 179 tasked the Commission with working with PSD on its comprehensive offender reentry program, ensuring that the overall comprehensive offender reentry system is working properly, and ensuring that the inmate population for PSD's facilities do not exceed their capacity. The amendment provided for in this measure as currently drafted would more consistently reflect the overall goals of the Commission as envisioned in the HCR85 Task Force Report and as intended by the legislature, by clarifying that the Commission ensure that PSD's comprehensive offender reentry system effectively rehabilitates and prepares pa'ahao for parole at their earliest eligibility; such an amendment would emphasize the need for a properly working reentry system that can provide the greatest and most timely relief to the overcrowded conditions burdening our correctional facilities.

With regards to the proposed SD1 of HB1901, should this draft be adopted by the Committee, the Administration of the Office of Hawaiian Affairs will recommend that the Board of Trustees offer the following **COMMENTS**.

The proposed SD1 of this measure would expand the authority of the Law Enforcement Standards Board to recommend policies on police use of force, investigate complaints against officers, and revoke officer certification for excessive use of force.

Recently publicized data on Honolulu police officer-involved deaths suggest that police use of force may be a serious issue for the Hawaiian community in particular.¹ **More accurate record-keeping, improved transparency practices, and stronger investigation and accountability structures, as could be implemented under the Law Enforcement Standards Board's expanded authority under this measure, will help to increase the level of trust between law enforcement officers and the public they protect and serve, and may further help to mitigate the impacts of police use of force on the disproportionately policed Native Hawaiian community.**²

OHA does request that if the proposed SD1 of HB1901 moves out of this Committee, that it be amended to reinsert the original housekeeping language relating to the Oversight Commission.

Therefore, OHA urges the Committee to **PASS** HB1901. Should the Committee choose to adopt the language of the proposed SD1 draft for this measure, the Administration of OHA also requests that the Committee consider its above comments, and to further include the language in the current draft of HB1901 in any amended SD1 draft. Mahalo nui loa for the opportunity to testify on this important measure.

¹ Anita Hofschneider, Yoohyun Jung, & Nick Grube, *Shoddy record keeping by HPD skews public picture of police killings*, HONOLULU CIVIL BEAT, June 17, 2020.

² THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 10 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY



LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

June 25, 2020

RE: H.B. 1901, PROPOSED S.D. 1; RELATING TO PUBLIC SAFETY.

Chair Nishihara, Vice Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of H.B. 1901, Proposed S.D. 1, with a proposed amendment.

The general purpose of H.B. 1901, Proposed S.D. 1, is to require that the law enforcement standards review board ("LESRB") review departmental provisions regarding use of force, and implement criteria and procedures for withholding or rescinding certifications. The Department supports the overall amendments of this bill, and respectfully **requests that all employees with police powers at the county departments of the prosecuting attorneys be added to those covered** under the requirements and oversight of Chapter 139, Hawaii Revised Statutes ("HRS").

This addition would require adding a new section to the bill, to amend the language of HRS §139-1, possibly as follows:

[§139-1] Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Board" means the law enforcement standards board.

"Law enforcement officer" means:

- (1) A police officer employed by a county police department;
- (2) A public safety officer employed by the department of public safety; or
- (3) An employee of the department of transportation, department of land and natural resources, department of taxation, [Ø] department of the attorney general, or any county department of the prosecuting attorney who is conferred by law with general police powers.

As enacted in 2018 (Act 220), the LESRB certifies and oversees various types of law enforcement officers in Hawaii, but it does not currently appear to include investigators employed by the various county prosecuting attorney offices. **Insomuch as our investigators carry official badges, are authorized to carry firearms, and also have powers of arrest, they are in fact “law enforcement officers” (“LEO”).** In light of this, other existing statutes clearly include these investigators within the definition of a law enforcement officer, including but not limited to: *HRS §28-151* (LEO Independent Review Board); *HRS §701-118* (Hawaii Penal Code, general definitions) *HRS §707-700* (Offenses Against The Person; see definition of “Emergency workers”); and *HRS §710-1000* (Offenses Against Public Administration). We also note that another bill being considered by this honorable Committee (H.B. 1278, H.D. 2, Proposed S.D. 1) contains a definition of LEO that covers investigators employed by the various county prosecuting attorneys.

If the Committee is also willing to consider other ways of strengthening and improving the scope of the LESRB, we would also suggest that the Committee consider adding language from S.B. 2849, S.D. 2, H.D. 1 (which the Department also supported).

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 1901, Proposed S.D. 1, with suggested amendments.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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JOHN D. McCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE
GO-SK

June 25, 2020

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
The Senate
Hawaii State Capitol
415 South Beretania Street, Room 229
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

Subject: House Bill No. 1901, SD1, Relating to Public Safety

I am Gregory Osbun, Major of the Training Division, of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD strongly opposes the passage of House Bill No. 1901, SD1, Relating to Public Safety. This bill proposes to amend Section 139-2, Hawaii Revised Statutes (HRS), by allowing the law enforcement standards board to "review and recommend policies on the use of force, and receive and investigate complaints relating to a law enforcement officer's certification."

The HPD's Use of Force policy is continuously under review to ensure that the techniques, tactics, and equipment detailed in the policy along with the training provided to officers are consistent with national standards and best practices. The legal justification for and the evaluation of an officer's use of force are outlined in both the HRS and the United States Constitution. These laws and guidelines are the basis for the department's Use of Force policy and provide the parameters whenever an officer's use of force is reviewed. Therefore, it would be inefficient and redundant for an external committee to review and recommend changes to the Use of Force policy.

The HPD's Professional Standards Office and the Honolulu Police Commission currently receive, review, and investigate officer complaints. Completed investigations are currently reviewed by the department's Administrative Review Board, and an officer is afforded the opportunity to provide testimony at a hearing before any decision is made to administer disciplinary action.

The Honorable Clarence K. Nishihara, Chair
and Members

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Any disciplinary action, from a civilian board, that ends an individual's ability to maintain employment with a law enforcement agency, such as the concept of decertification as proposed in this bill, would minimize the discretion and decision making of the Chief of Police to terminate an officer's employment, and may be problematic relating to the collective bargaining agreement in terms of "double jeopardy."

The HPD urges you to oppose House Bill No. 1901, SD1, Relating to Public Safety.

Thank you for the opportunity to testify.

Sincerely,


GREGORY OSBUN, Major
Training Division

APPROVED:



SUSAN BALLARD
Chief of Police

TESTIMONY OF THE HAWAI'I POLICE DEPARTMENT

HOUSE BILL 1901, PROPOSED SD 1

RELATING TO PUBLIC SAFETY

**BEFORE THE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS**

DATE : Thursday, June 25, 2020

TIME : 1:45 P.M.

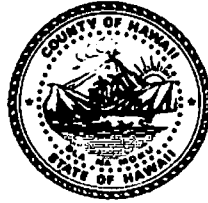
**PLACE : Conference Room 229
State Capitol
415 South Beretania Street**

PERSON TESTIFYING:

**Police Chief Paul K. Ferreira
Hawai'i Police Department
County of Hawai'i**

(Written Testimony Only)

Harry Kim
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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June 24, 2020

Senator Clarence Nishihara
Chairperson and Committee Members
Committee On Public Safety, Intergovernmental, and Military Affairs
415 South Beretania Street, Room 229
Honolulu, Hawai`i 96813

Re: HB 1901, PROPOSED SD 1, RELATING TO PUBLIC SAFETY

Dear Senator Nishihara:

The Hawai`i Police Department opposes House Bill 1901, with its purpose to add on additional responsibility to the law enforcement standards board to review and recommend policies on the use of force, and receive and investigate complaints relating to a law enforcement officers certification.

This bill seemingly fails to take into account that all Law Enforcement Agencies in the state are under constant monitoring for conforming to modern methods of policing, whether it is through review in criminal courts and/or through civil court filings. Furthermore that all of the County Police Departments are nationally recognized fully accredited Law Enforcement Agencies (LEA) through the Commission on Accreditation for Law Enforcement Agencies (CALEA®). In order for any agency to gain this accreditation, they must conform to prescribed standards with appropriate policies and procedural adherence and provide for proof of adherence during on-site assessments conducted by CALEA.

Pursuant to the CALEA Standards, each police department in the State has its own policies that are specific to the use of force and requires an annual review/evaluation of all use of force incidents for the purpose of determining the reasons for these incidents; identifying any training needs, equipment upgrades, and/or policy modifications. Additionally, having policies requiring the duty to conduct internal investigations into complaints on excessive use of force with investigators assigned for this purpose. To add this tasking to the law enforcement standards board is redundant and unrealistic, creating yet another unnecessary and unwarranted layer of Bureaucratic oversight.

Senator Clarence Nishihara

RE: HB 1901, PROPOSED SD 1, RELATING TO PUBLIC SAFETY

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Additionally, in 2016, the Legislature established under §28-151, Hawaii Revised Statutes, the Law Enforcement Officer Independent Review Board, requiring each law enforcement agency in the State to have a written policy regarding the investigation of incidents of officer-involved death. Additionally, in the event of any incident of officer-involved death, each law enforcement agency shall be responsible for conducting a criminal investigation of the law enforcement officer or officers involved in the incident. The Board is then responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies and issuing recommendations to the prosecuting attorney of the county in which the incident occurred.

It is for these reasons, we urge this committee to oppose this legislation as written.

Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 1901.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul K. Ferreira", with a long horizontal line extending to the right.

PAUL K. FERREIRA
POLICE CHIEF



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H.B. No. 1901 S.D. 1
Relating to Public Safety
Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing – Thursday, June 25, 2020
1:45 PM, State Capital, Conference Room 229
by
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

June 24, 2020

The Hawaii Association of Criminal Defense Lawyers (“HACDL”) **strongly opposes** the passage of H.B. 1901 S.D. 1 and supports the testimony of Kenneth L. Lawson, Co-Director of the Hawaii Innocence Project and a Faculty Specialist at the William S. Richardson Law School. HACDL supports Mr. Lawson’s proposal to amend H.R.S. §139-3 and H.R.S. §139-8 to create a Civilian Complaint Authority, fully funded and independent from HPD and the City and County of Honolulu.

H.B. 1901 S.D. 1 effectively provides Hawaii’s police departments and its officers with more immunity than they already have. Just recently, on June 17, 2020, Civil Beat published an article about the Honolulu Police Department (“HPD”) skewing the numbers of lethal use of force incidents. Between 2010 and 2018, HPD’s annual reports list only ten (10) individuals were killed by HPD officers when news articles and public records show HPD officers killed at least 29 people during that time frame. Given the recent events, locally and nationally, how does this bill encourage public confidence in our law enforcement system?

Independence means without undue influence. The present composition of the Standards Board fails in all aspects other than as a blanket endorsement of law enforcement. During this fragile time in our nation, it is imperative to have a transparent, neutral board that will promote police legitimacy and restore community trust.

We urge the committee to **oppose** H.B. 1901 S.D. 1 as it will only contribute to the public’s growing distrust in our law enforcement system.

Very truly yours,

MYLES S. BREINER
President of the Hawaii Association of Criminal Defense Lawyers

HB-1901

Submitted on: 6/23/2020 7:58:57 AM

Testimony for PSM on 6/25/2020 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Support	No

Comments:

H.B. No. 1901 S.D. 1
Relating to Public Safety
Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing – Thursday, June 25, 2020
1:45 PM, State Capital, Conference Room 229
by
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

June 23, 2020

H.B. 1901 S.D. 1 seeks to amend H.R.S. §139-2 to allow the law enforcement standards board to review and recommend policies regarding police use of force and investigate complaints of police officer certification. H.B. 1901 S.D. 1 also seeks to amend H.R.S. §139-3 to allow the law enforcement standards board to review and recommend policies on use of force and investigate claims regarding an officer's certification under H.R.S. §139-8. Lastly, H.B. 1901 S.D. 1 seeks to amend H.R.S. §139-8 allowing the board to adopt rules to establish criteria for certification relating to employment violations and use of force incidents. I submit this testimony in strong opposition to the passage of H.B. 1901 S.D. 1.

The current make-up of the Law Enforcement Standards Board (“Standards Board”) is primarily law enforcement and prosecutors. This fox guarding the henhouse approach to police oversight has contributed to the growing public distrust of Hawai‘i’s police departments. The public is intentionally kept in the dark about the workings of the police departments, so we are left with the “just take our word for it” approach to reforming police standards and police oversight. For example, the police union SHOPO, is so powerful that they have convinced that the State Legislature that the police are above all other state employees and should be exempt from releasing any records of police officer discipline and punishment.

At present, for citizens to make a complaint about police misconduct or use of force cases in Hawaii, they must go to HPD and ask the police to investigate the police, under the condition that records of complaints and discipline are secretly kept from public view and inspection. Citizens who file a complaint with HPD have no way of telling if an honest, non-biased investigation is taking place. The only recourse for a citizen to file a

complaint is through HPD or if the complaint is related to a police shooting, the rather toothless Law Enforcement Officer Independent Review Board (“IRB”) for police shootings will review the matter, but this IRB has very limited authority and the power to conduct any meaningful investigation or impose discipline. Additionally, the IRB, similar to the Standards Board, is mostly comprised of prosecutors, police, and judges.

I would propose that instead of amending H.R.S. §139-3 and H.R.S. §139-8, that the legislature create a Civilian Complaint Authority, fully funded and independent from HPD and the City and County of Honolulu. The current members of the Standards Board, most of which are police or prosecutors, are too entrenched in the current system to investigate complaints and make meaningful reform. As a former attorney, I used to take on civil rights and police misconduct cases in the Midwest from the 1990s through the early 2000s. In Cincinnati, in 2001, after the worst riots in the U.S. since the 1992 L.A. riots, I was co-counsel on a historic agreement between my clients, the U.S. Department of Justice, and the City of Cincinnati Police Department. It was such a historical agreement that U.S. Attorney John Ashcroft flew to Cincinnati to personally sign on behalf of the DOJ.

As part of the Collaborative Agreement, my co-counsel and I drafted and created an independent Civilian Complaint Authority (“CCA”). The CCA was created in 2002 and is still in effect today. Although the police and police union initially resisted any independent civilian oversight, they eventually found themselves fully supporting it. They came to support it because the CCA helped improve police department policies, and new procedures helped them to reduce citizen concerns about high-profile incidents. This helped the police work towards racially bias-free policing by keeping records of complaints, statistics, and engaging in community-oriented problem solving. Within a few years of implementing the CCA, citizen complaints against police officers were drastically reduced.

There are numerous models of civilian oversight boards being used throughout the United States. Hawai‘i would benefit from a board, separate from the Standards Board and IRB, that not only reviews complaints of deaths in police custody, but also investigate other police misconduct allegations. A civilian oversight board, independent of the police, should have the authority to conduct independent investigations, make findings of misconduct, and offer recommendations on discipline to the Chief of Police and the Police Commission. There is a lot more detail that goes into creating

an effective civilian oversight board, but for brevity I will provide a general overview of my proposal. I would propose that Hawai'i create a Civilian Police Oversight Review Board ("Oversight Board") comprised of seven citizens, an executive director, and a team of professional investigators. The seven citizens would have to represent a racially and ethnically diverse and cross-section of the community, appointed by the Mayor but approved by City Council. The Oversight Board should have the power to subpoena witnesses and records. The Oversight Board would have an Executive Director.

The mission of the Oversight Board will be to investigate serious interventions by police officers, including but not limited to: shots fired; deaths in custody; major uses of force; improper search; improper seizure; discrimination; improper pointing of firearms; improper discharging of tasers and mace; and to review and resolve all citizens complaints. Each complaint would be assigned to an investigator within 48 hours after filing and complete an investigation within 90 days after receiving the complaint. The Oversight Board then would make a finding on the complaint and make a recommendation. The officer and the complaining citizen would receive a copy of the complaint. The Oversight Board's recommendations and findings would be submitted to the Police Commission and to the Chief. The complaints would remain private until after the board has completed its investigation and made its findings.

If the solution is more training is needed in certain areas, there is no shame, let's work together to make sure that our officers have the best training available. If better communication is needed between our communities and the police, then let's work toward finding more community based solutions that involve the police and the community talking and working together. If there is a need for more transparency and accountability, let's gather the data so that we can use this information to implement the better practices that will make our communities and police safer. What we cannot do and what we should not do, is allow this opportunity for meaningful and lasting change to pass us by.

Civilian review boards have been found to be very successful in building community trust with law enforcement. With a newfound trust, there would be better communication between the community and the police, which in turn, will help reduce crime and make our neighborhoods safer. It's been done in other cities and when done correctly, citizen's complaints and police

misconduct are both reduced. For these reasons, I strongly oppose giving the Standards Board additional power to investigate and implement police use of force practices. This should be done by an independent civilian review board that is comprised community members, not like IRB, which is comprised only of prosecutors, police, and judges. The Hawai'i community should have a say in how their communities are policed, and the proposed amendments to H.R.S. §139-3 and H.R.S. §139-8, do not provided the reform that is needed in this state.

HB-1901

Submitted on: 6/24/2020 12:33:14 AM

Testimony for PSM on 6/25/2020 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments: