A BILL FOR AN ACT

RELATING TO POLICE DEPARTMENTS.

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

SECTION 1. The legislature finds that domestic violence is an epidemic affecting individuals in every community, regardless of age, economic status, race, religion, nationality, or educational background. According to the National Coalition Against Domestic Violence, one in every four women will experience domestic violence in her lifetime. Between 2008 and 2012, there was an 18 per cent increase statewide in arrests relating to abuse of family or household members. During this same time period, there was also an increase in the number of persons served by various statewide agencies who provide services to victims of domestic violence.

The legislature further finds that the Honolulu police department has been heavily criticized by lawmakers and the public in the wake of a recent high-profile incident involving an off-duty Honolulu police department sergeant. In September 2014, the off-duty sergeant was captured on surveillance video punching his then-girlfriend in a Waipahu restaurant. However,
the sergeant was not arrested at the scene and responding
officers failed to file a report. According to news reports, it
was only on the following day, after a citizen provided the
Honolulu police department and the press with the surveillance
video, that the department took action to remove the sergeant of
his police powers and began an internal investigation into the
incident. An Oahu grand jury later determined there was not
enough evidence to indict the sergeant for his actions, although
the internal investigation into the sergeant and the responding
officers is still ongoing.

The sergeant's actions sparked concern about the way police
handle domestic violence cases and triggered an informational
briefing at the state capitol, where Honolulu's police chief and
two of his deputies were intensively questioned about the
Honolulu police department's policies regarding domestic
violence investigations.

Service providers who assist domestic violence victims were
also at the informational briefing. Some of these providers
expressed concern that the incident involving the Honolulu
police department sergeant reflects a larger problem within the
department. Between May 2013 and September 2014, the Hawaii
state commission on the status of women received approximately thirty-eight separate complaints from women who said officers with the Honolulu police department did not respond appropriately to allegations of abuse. According to the commission, approximately one-third of these instances involved a police officer or a relative of a police officer as the alleged abuser. The commission believes that the September 2014 incident involving the off-duty sergeant was not an isolated incident, but rather a pattern of inappropriate handling by some police officers in response to allegations of domestic violence.

The Honolulu police chief and his deputies told lawmakers at the informational briefing that the Honolulu police department has a zero tolerance policy when it comes to domestic violence and other serious offenses. However, the department's record on disciplining officers for domestic violence-related misconduct was called into question by lawmakers at the briefing.

Pursuant to section 52D-3.5, Hawaii Revised Statutes, the chief of each county police department is required to submit an annual report to the legislature that includes, among other things, a summary of the facts and the nature of the misconduct...
for incidents which resulted in the suspension or discharge of a police officer and the disciplinary action imposed for each incident. The Honolulu police department's 2013 report to the legislature indicates thirty incidents which resulted in discipline against an officer. Of these, three specifically involved domestic-related incidents, including an officer who was involved in a domestic dispute that escalated into a physical altercation causing pain to the complainant, an officer repeatedly contacting an ex-girlfriend after being told the contact was unwanted, and an officer repeatedly contacting an estranged spouse after being told the contact was unwanted. Each of these three incidents resulted in a one-day suspension.

In comparison, other non-domestic related incidents in the 2013 report resulted in much harsher disciplinary action. For instance, an officer arrested for possession of marijuana and driving under the influence received a twenty-day suspension. Another officer conspired with other officers relating to special duty assignments and received a ten-day suspension. Another officer was discharged for failing a drug urinalysis test. Furthermore, a Honolulu Civil Beat analysis of annual Honolulu police department misconduct summaries turned up
twenty-five incidents of domestic violence from 2000 through 2012. Three officers were discharged but their dismissals were not upheld, according to information provided to Honolulu Civil Beat by the Honolulu police department.

This disciplinary disparity leads the legislature to question whether the Honolulu police department is minimizing the problem of domestic violence, particularly when incidents involve a police officer. The legislature also questions whether any potential minimization of alleged incidents of domestic violence involving police officers is based on concern over the Lautenberg Amendment, a federal law that forbids anyone, including a police officer, with a misdemeanor domestic violence conviction from owning or possessing a firearm.

The legislature additionally finds that whatever the outcome of the Honolulu police department's internal investigation into the sergeant and responding officers connected to the September 2014 incident, additional public disclosure is needed about the discipline taken in this high-profile case and in other cases involving police officer misconduct. The legislature also finds that while all other government employees' misconduct information becomes public if
the misconduct results in suspension or termination, existing
law gives police officers special treatment in the form of an
exemption under section 92F-14, Hawaii Revised Statutes, even
misconduct information that results in suspension.

The legislature notes that, consistent with the Hawaii
Supreme Court's opinion in *State of Hawai'i Org. of Police
Officers (SHOPO) v. Soc'y of Prof'1 Journalists-Univ. of Hawai'i
Chapter*, 927 P.2d 386 (Haw. 1996) (*SHOPO v. SPJ*), the removal of
the exemption under section 92F-14, Hawaii Revised Statutes,
will not violate the privacy rights of individual police
officers. The Hawaii Supreme Court held in *SHOPO v. SPJ* that,
"[t]he information that must be disclosed pursuant HRS § 92F-
14(b)(4)(B) regarding a public employee's employment-related
misconduct and resulting discipline, is not "highly personal and
intimate information" and is, therefore, not within the scope of
Hawai'i's constitutional right to privacy."

Accordingly, the purpose of this Act is to increase public
accountability for police officers whose misconduct results in
suspension or termination and ensure police officers are held to
the same standards as other government employees by repealing
the privacy exemption within the Uniform Information Practices Act for county police department officers.

SECTION 2. Section 92F-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following are examples of information in which the individual has a significant privacy interest:

1. Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;

2. Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

3. Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;

4. Information in an agency's personnel file, or applications, nominations, recommendations, or
proposals for public employment or appointment to a governmental position, except:

(A) Information disclosed under section 92F-12(a)(14); and

(B) The following information related to employment misconduct that results in an employee's suspension or discharge:

(i) The name of the employee;

(ii) The nature of the employment related misconduct;

(iii) The agency's summary of the allegations of misconduct;

(iv) Findings of fact and conclusions of law; and

(v) The disciplinary action taken by the agency;

when the following has occurred: the highest nonjudicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision or, for
decisions involving county police department officers, ninety days have elapsed following the issuance of the decision; [provided that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer;]

(5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;

(6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:

(A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;

(B) Information on the current place of employment and required insurance coverages of licensees;
(C) The record of complaints including all
dispositions;

(8) Information comprising a personal recommendation or
evaluation; and

(9) Social security numbers."

SECTION 3. Statutory material to be repealed is bracketed
and stricken.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: [Signatures]
Report Title:
County Police Departments; Police Officer; Uniform Information Practices Act; Privacy Interests; Disclosure; Misconduct

Description:
Repeals the privacy exemption within the Uniform Information Practices Act for county police department officers.

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