

JAN 22 2021

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

1 Part I

2 SECTION 1. The legislature finds that public trust in law
3 enforcement is critical to ensuring justice for all under the
4 law. The legislature further finds that the difficult and often
5 dangerous job of law enforcement is safer, easier, and more
6 effectively executed when citizens trust those empowered to
7 serve and protect them.

8 The purpose of this Act is to enhance the public's trust in
9 law enforcement and standardize best practices between the
10 counties by:

11 (1) Authorizing forfeiture of certain employees'
12 retirement system benefits, pursuant to court order,
13 for law enforcement officers who are convicted of an
14 employment-related crime, to pay or reimburse the
15 State or county for the costs of defense on behalf of
16 the law enforcement officer in connection with the
17 crime; and



1 (3) Pension;
2 (4) Annuity; or
3 (5) Retirement allowance,
4 to which the law enforcement officer may otherwise be entitled
5 under this chapter to pay or reimburse the State or county for
6 the costs of defense incurred on behalf of the law enforcement
7 officer in connection with the crime; provided that upon the
8 death of the law enforcement officer, the designated beneficiary
9 of the law enforcement officer may receive benefits to which
10 such beneficiary would otherwise be entitled under this chapter;
11 provided further that the designated beneficiary was not also
12 convicted of a crime based on the same set of circumstances as
13 the law enforcement officer penalized under this section.

14 (b) Upon receipt of a certified copy of the order
15 decreeing forfeiture, the system shall comply with the order and
16 shall reduce, suspend, or deny payment to the law enforcement
17 officer or designated beneficiary, if applicable, as provided in
18 the order until such time as the system receives a certified
19 order to:

20 (1) Increase, resume, or make payments to the law
21 enforcement officer; or



1 (2) Quash or reverse the decree of forfeiture.

2 The system shall not be required to make inquiry into the
3 propriety of the order decreeing forfeiture or recoup any
4 payments made to the law enforcement officer or designated
5 beneficiary before receipt by the system of the order decreeing
6 forfeiture.

7 (c) This section shall not diminish or impair benefits
8 accrued before the effective date of Act , Session Laws of
9 Hawaii 2021. This section shall not apply to crimes committed
10 before the effective date of Act , Session Laws of Hawaii
11 2021.

12 (d) This section shall not apply to accrued retirement
13 benefits that are non-forfeitable pursuant to sections 88-73(f),
14 88-281(g), and 88-331(f).

15 (e) For the purposes of this section:

16 (1) A crime is "related to the employment" of a law
17 enforcement officer if the law enforcement officer
18 uses or attempts to use the officer's official
19 position to commit the crime, including:



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- 1 (A) Crimes in which State or county time, equipment,
- 2 or other facilities are used in the commission of
- 3 the crime;
- 4 (B) Bribery;
- 5 (C) Embezzlement, theft, or other unlawful taking,
- 6 receiving, retaining, or failing to account
- 7 properly for, any property or funds that belong
- 8 to the State or county or any department, bureau,
- 9 board, or other agency thereof; or
- 10 (D) A crime committed against a person over whom the
- 11 law enforcement officer, in the course of the
- 12 officer's duties, exercises custody or
- 13 supervision; and
- 14 (2) "Law enforcement officer" shall have the same meaning
- 15 as that term is defined in section 139-1."

Part III

17 SECTION 3. Chapter 139, Hawaii Revised Statutes, is

18 amended by adding a new section to be appropriately designated

19 and to read as follows:

20 "§139- **Felony offense; administrative leave.** Any law

21 enforcement officer that is being investigated for a felony



1 offense shall be immediately placed on unpaid administrative
2 leave pending the investigation."

3 SECTION 4. Chapter 463, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§463- Felony offense; licensees. The board shall
7 revoke the license of any licensee who has been convicted in any
8 jurisdiction of a felony offense while employed as a law
9 enforcement officer and permanently bar the licensee from
10 obtaining a license under this chapter."

11 SECTION 5. Section 139-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§139-3 Powers and duties of the board.** The board shall:

14 (1) Adopt rules in accordance with chapter 91 to implement
15 this chapter;

16 (2) Establish minimum standards for employment as a law
17 enforcement officer and to certify persons to be
18 qualified as law enforcement officers;

19 (3) Establish criteria and standards in which a person who
20 has been denied certification, whose certification has



1 been revoked by the board, or whose certification has
2 lapsed may reapply for certification;

3 (4) Establish minimum criminal justice curriculum
4 requirements for basic, specialized, and in-service
5 courses and programs for schools operated by or for
6 the State or a county for the specific purpose of
7 training law enforcement officers;

8 (5) Consult and cooperate with the counties, agencies of
9 the State, other governmental agencies, universities,
10 colleges, and other institutions concerning the
11 development of law enforcement officer training
12 schools and programs of criminal justice instruction;

13 (6) Employ, subject to chapter 76, an administrator and
14 other persons necessary to carry out its duties under
15 this chapter;

16 (7) Investigate when there is reason to believe that a law
17 enforcement officer does not meet the minimum
18 standards for employment, and in so doing, may:

19 (A) Subpoena persons, books, records, or documents;

20 (B) Require answers in writing under oath to
21 questions asked by the board; and



- 1 (C) Take or cause to be taken depositions as needed
- 2 in investigations, hearings, and other
- 3 proceedings,
- 4 related to the investigation;
- 5 (8) Establish and require participation in continuing
- 6 education programs for law enforcement officers;
- 7 (9) Have the authority to charge and collect fees for
- 8 applications for certification as a law enforcement
- 9 officer;
- 10 (10) Establish procedures and criteria for the revocation
- 11 of certification issued by the board;
- 12 (11) Have the authority to revoke certifications; ~~and~~
- 13 (12) Review and recommend statewide policies and procedures
- 14 relating to law enforcement, including the use of
- 15 force~~[]~~; and
- 16 (13) Have the authority to permanently bar persons from
- 17 obtaining certification as a law enforcement officer."

18 SECTION 6. Section 139-6, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[~~§~~§139-6~~§~~] **Standards; certification.** (a) No person
21 may be appointed as a law enforcement officer unless the person:



- 1 (1) Has satisfactorily completed a basic program of law
2 enforcement training approved by the board; and
- 3 (2) Possesses other qualifications as prescribed by the
4 board for the employment of law enforcement officers,
5 including minimum age, education, physical and mental
6 standards, citizenship, good conduct, moral character,
7 and experience.
- 8 (b) ~~The~~ Except as provided in subsection (d), the board
9 shall issue a certification to an applicant who meets the
10 requirements of subsection (a) or who has satisfactorily
11 completed a program or course of instruction in another
12 jurisdiction that the board deems to be equivalent in content
13 and quality to the requirements of subsection (a).
- 14 (c) The board may deny or revoke the certification of an
15 applicant or law enforcement officer who fails to meet or
16 maintain the standards required under subsection (a).
- 17 (d) The board shall deny or revoke the certification of
18 any applicant or law enforcement officer convicted in any
19 jurisdiction of a felony offense and permanently bar the
20 applicant or law enforcement officer from obtaining
21 certification as a law enforcement officer."



1 SECTION 7. Section 139-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[f]§139-8[+] **Revocation or denial of certification.** (a)

4 The board shall adopt rules, pursuant to chapter 91, that
5 establish criteria for the denial, suspension, or revocation of
6 a law enforcement officer's certification, including upon a
7 finding by the board that the law enforcement officer:

8 (1) Knowingly falsified or omitted material information on
9 the law enforcement officer's application for training
10 or certification to the board;

11 [~~2~~] ~~Has been convicted at any time of a felony offense~~
12 ~~under the laws of this State or has been convicted of~~
13 ~~a federal or out-of-state offense comparable to a~~
14 ~~felony under the laws of this State; provided that if~~
15 ~~a law enforcement officer was convicted of a felony~~
16 ~~before being employed as a law enforcement officer,~~
17 ~~and the circumstances of the prior felony conviction~~
18 ~~were fully disclosed to the employer of the law~~
19 ~~enforcement officer before being hired, the board may~~
20 ~~revoke certification only with the agreement of the~~
21 ~~employing law enforcement agency;~~



1 ~~(3)~~ (2) Interfered with an investigation or action for
2 denial or revocation of certification by:

3 (A) Knowingly making a materially false statement to
4 the board; or

5 (B) In any matter under investigation by or otherwise
6 before the board, tampering with evidence or
7 tampering with or intimidating any witness; or

8 ~~(4)~~ (3) Has taken other prohibited action as established
9 by the board, by rule.

10 (b) The board may investigate whether a law enforcement
11 officer no longer meets the standards for certification under
12 section ~~[139-6(a)-.]~~ 139-6.

13 (c) Any proceeding to revoke a certification shall be
14 conducted by the board in accordance with chapter 91."

15 SECTION 8. Section 463-6, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§463-6 Private detectives and detective agencies;**
18 **qualifications for license.** (a) The board may grant a private
19 detective license to any suitable individual, or a detective
20 agency license to any suitable firm making written application



1 therefor. The applicant, if an individual, or the principal
2 detective of a firm shall:

- 3 (1) Be [~~not~~] no less than eighteen years of age;
- 4 (2) Have had a high school education or its equivalent;
- 5 (3) Have had experience reasonably equivalent to at least
6 four years of full-time investigational work;
- 7 (4) Not be presently suffering from any psychiatric or
8 psychological disorder which is directly related and
9 detrimental to a person's performance in the
10 profession;
- 11 (5) Not have been convicted in any jurisdiction of [a]:
 - 12 (A) A felony offense while employed as a law
13 enforcement officer; or
 - 14 (B) A crime which reflects unfavorably on the fitness
15 of the applicant to engage in the profession,
16 unless the conviction has been annulled or
17 expunged by court order; and
- 18 (6) Possess a history of honesty, truthfulness, financial
19 integrity, and fair dealing.

20 A firm applying for a detective agency license shall have in its
21 employ an individual who is licensed as a private detective and



1 who shall be designated as the principal detective for the firm,
2 and shall provide a bond as required under section 463-12.

3 (b) A detective agency may employ as many agents,
4 operatives, and assistants in an investigative capacity and as
5 necessary for the conduct of business; provided that the
6 principal detective shall be held responsible for, and have
7 direct management and control of, the agency and the agency's
8 employees while they are acting within the scope and purpose of
9 the detective agency's business. These employees shall not be
10 required to have private detective licenses, and shall:

11 (1) Have had an eighth grade education or its equivalent;

12 (2) Not be presently suffering from any psychiatric or
13 psychological disorder which is directly related and
14 detrimental to a person's performance in the
15 profession;

16 (3) Not have been convicted in any jurisdiction of [a]:

17 (A) A felony offense while employed as a law
18 enforcement officer; or

19 (B) A crime which reflects unfavorably on the fitness
20 of the employee to engage in the profession,



1 unless the conviction has been annulled or
2 expunged by court order; and

3 (4) Be registered with the board upon employment with the
4 agency.

5 The employer, with the written authorization of the employee,
6 shall conduct a criminal history records check of all new
7 employees employed in an investigative capacity directly through
8 the Hawaii criminal justice data center upon certification to
9 the board that the signature on the authorization is authentic."

10 SECTION 9. Section 463-8, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§463-8 Principal guards and guard agencies;**
13 **qualifications for license.** (a) The board may grant a
14 principal guard license to any suitable individual, or a guard
15 agency license to any suitable firm making written application
16 therefor. The applicant, if an individual, or the principal
17 guard of a firm shall:

- 18 (1) Be [~~not~~] no less than eighteen years of age;
19 (2) Have had a high school education or its equivalent;
20 (3) Have had experience reasonably equivalent to at least
21 four years of full-time guard work;



- 1 (4) Not be presently suffering from any psychiatric or
2 psychological disorder which is directly related and
3 detrimental to a person's performance in the
4 profession;
- 5 (5) Not have been convicted in any jurisdiction of [a]:
6 (A) A felony offense while employed as a law
7 enforcement officer; or
8 (B) A crime which reflects unfavorably on the fitness
9 of the applicant to engage in the profession,
10 unless the conviction has been annulled or
11 expunged by court order; and
- 12 (6) Possess a history of honesty, truthfulness, financial
13 integrity, and fair dealing.
- 14 A firm applying for a guard agency license shall have in its
15 employ an individual who is licensed and registered as a guard
16 pursuant to section 463-10.5 and who shall be designated as the
17 principal guard for the firm, and shall provide a bond as
18 required under section 463-12.
- 19 (b) A guard agency may employ as many agents, operatives,
20 and assistants in a guard capacity and as necessary for the
21 conduct of business; provided that the principal guard shall be



1 held responsible for, and have direct management and control of,
2 the agency and the agency's employees while they are acting
3 within the scope and purpose of the guard agency's business.

4 These employees shall:

5 (1) Have had a high school education or its equivalent;

6 (2) Not be presently suffering from any psychiatric or
7 psychological disorder which is directly related and
8 detrimental to a person's performance in the
9 profession;

10 (3) Not have been convicted in any jurisdiction of [a]:

11 (A) A felony offense while employed as a law
12 enforcement officer; or

13 (B) A crime which reflects unfavorably on the fitness
14 of the employee to engage in the profession,
15 unless the conviction has been annulled or
16 expunged by court order; and

17 (4) Be registered with the board upon employment with the
18 agency.

19 The employer, with the written authorization of the employee,
20 shall conduct a criminal history records check, in accordance
21 with section 463-10.5 and the rules of the board adopted



1 pursuant thereto, of all new employees employed in a guard
2 capacity directly through the Hawaii criminal justice data
3 center upon certification to the board that the signature on the
4 authorization is authentic."

5 SECTION 10. Section 463-10.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§463-10.5 Guards; registration, instruction, training,**
8 **testing, and continuing education required; renewal of**
9 **registration.** (a) All guards, and all agents, operatives, and
10 assistants employed by a guard agency, private business entity,
11 or government agency who act in a guard capacity shall apply to
12 register with the board, and meet the following registration,
13 instruction, and training requirements [~~prior to~~] before acting
14 as a guard:

- 15 (1) Be [~~not~~] no less than eighteen years of age;
- 16 (2) Possess a high school education or its equivalent;
- 17 provided that the applicant may satisfy the
- 18 requirements of this paragraph by attesting that the
- 19 applicant possesses a high school education or its
- 20 equivalent;



1 (3) Not be presently suffering from any psychiatric or
2 psychological disorder which is directly related and
3 detrimental to a person's performance in the
4 profession; and
5 (4) Not have been convicted in any jurisdiction of [a]:
6 (A) A felony offense while employed as a law
7 enforcement officer; or
8 (B) A crime which reflects unfavorably on the fitness
9 of the individual to act as a guard, unless the
10 conviction has been annulled or expunged by court
11 order;
12 provided that the individual shall submit to a
13 national criminal history record check as authorized
14 by federal law, including but not limited to the
15 Private Security Officer Employment Authorization Act
16 of 2004, and specified in the rules of the board, and
17 a criminal history record check from the Hawaii
18 criminal justice data center under chapter 846.
19 The board shall determine whether an individual qualifies for
20 registration pursuant to this subsection.



1 (b) All classroom instruction required under this section
2 shall be provided by an instructor who is approved by the board
3 and who may be an employee, manager, or owner of a guard agency
4 in this State if the course of study meets board-approved
5 curricula. Course curricula shall meet the specific standards
6 of this section and all other applicable requirements of this
7 chapter, and shall be established by the board.

8 (c) Guards and individuals acting in a guard capacity
9 shall successfully complete the classroom instruction specified
10 by this section, pass a written test, and undergo four hours of
11 on-the-job training supervised by an individual who has
12 successfully completed all of the requirements of this section
13 or who has otherwise been approved by the board for on-the-job
14 training. Guards and individuals acting in a guard capacity
15 shall successfully complete:

16 (1) Eight hours of classroom instruction before the first
17 day of service; and

18 (2) Four hours of classroom instruction during the
19 triennial registration renewal period; provided that
20 in addition to relevant guard industry material, the
21 required classroom instruction shall include a



1 refresher component on professional image and aloha
2 training as approved by the board.

3 For purposes of this section, "classroom instruction" may
4 include two-way teleconferencing and other interactive
5 educational formats approved by the board.

6 (d) The content of classroom instruction required under
7 this section shall include, but not be limited to:

- 8 (1) State and federal law regarding the legal limitations
9 on the actions of guards, including instruction in the
10 law concerning arrest, search and seizure, and the use
11 of force as these issues relate to guard work;
- 12 (2) Access control, safety, fire detection and reporting,
13 and emergency response;
- 14 (3) Homeland security issues and procedures;
- 15 (4) When and how to notify public authorities;
- 16 (5) Techniques of observation and reporting of incidents,
17 including how to prepare an incident report;
- 18 (6) The fundamentals of patrolling;
- 19 (7) Professional ethics; and
- 20 (8) Professional image and aloha training.



1 (e) Before beginning employment as a guard or in a guard
2 capacity, in addition to the classroom instruction required by
3 this section, guards and individuals acting in a guard capacity
4 who carry a firearm or other weapon, including but not limited
5 to an electric gun as defined in section 134-1, while on-duty in
6 a guard capacity shall possess a valid permit to acquire the
7 ownership of a firearm issued by county police pursuant to
8 section 134-2 and shall satisfy the requirements of section 134-
9 2(g).

10 (f) The board may adopt rules pursuant to chapter 91 that
11 mandate additional training, instruction, testing, and
12 continuing education for guards and agents, operatives, and
13 assistants employed in a guard capacity.

14 (g) Effective June 30, 2018, registrations issued under
15 this section shall be valid for the three-year triennial period,
16 and may be renewed upon payment of the triennial renewal fee and
17 compliance resolution fund fee to the board on or before June 30
18 of each triennial renewal term. [~~Prior to~~] Before the June 30,
19 2021, triennial renewal of the guard registration and every
20 registration renewal thereafter, the applicant shall pay all
21 required fees, and have had at least four hours of continuing



1 education as specified in this section and in the rules of the
2 board. A guard who has registered with the board within one
3 year [~~prior to~~] before the applicable renewal date shall not be
4 required to take the four hours of classroom instruction to
5 renew the guard registration.

6 The board may conduct a random audit, pursuant to rules
7 adopted pursuant to chapter 91, of registrants applying for
8 renewal of a registration to determine whether the continuing
9 education requirements of this subsection have been met.

10 The failure, neglect, or refusal of any registered guard to
11 pay the renewal fee or meet the continuing education
12 requirements shall constitute a forfeiture of the guard's
13 registration. A forfeited registration may be restored upon
14 written application within one year from the date of forfeiture,
15 payment of the required renewal fee plus penalty fees, and
16 meeting the continuing education requirements in effect at the
17 time of restoration.

18 (h) The board shall deny or revoke registration of any
19 individual or registered guard who has been convicted in any
20 jurisdiction of a felony offense while employed as a law



1 enforcement officer and permanently bar the registration of the
2 individual or registered guard under this section."

3 Part IV

4 SECTION 11. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 12. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 13. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 14. This Act shall take effect upon its approval.

16

INTRODUCED BY: 



S.B. NO. 781

Report Title:

Law Enforcement Officers; ERS; Felony Offenses

Description:

Authorizes forfeiture of certain employees' retirement system benefits for law enforcement officers who are convicted of an employment-related crime. Requires law enforcement officers under investigation for a felony offense to be placed on unpaid administrative leave, and if convicted, be permanently barred from employment as a law enforcement officer, private detective, or guard.

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