

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE

February 9, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 2439, Relating to Law Enforcement

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 2439, Relating to Law Enforcement.

The proposed additions to Sections 710-1010 and 711-1111 are unnecessary. Anyone, whether a law enforcement officer or not, can be subject to being photographed or recorded in a public setting where there is no reasonable expectation of privacy. The lack of a reasonable expectation of privacy in a public setting, let alone law enforcement, makes these amendments unnecessary.

The more egregious portion of this bill is the addition of subsection (12) on page 16 to the so-called wiretap law. The proposed language would allow individuals to intercept a wire, oral, or electronic communications involving law enforcement officers. This would in essence allow individuals to wiretap law enforcement as long as they believe it is being done in the performance of the officer's duties and they are not interfering with the safety, control, and security of crime scenes, the protection of confidentiality of investigations, or the protection or public safety and order.

This is a lot for someone to decide before making the intercept. What happens when the intercept violates any of these conditions?

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
February 9, 2016
Page 2

The language in this bill is vague regarding the use of a public place. The buildings and facilities used by the Honolulu Police Department are public places without public access. We believe that this bill would allow for our communications to be intercepted under this bill.

Allowing the passage of this bill would be a complete frustration of legitimate government operations. It would also cause many other problems with the interception of confidential and other sensitive information.

Senate Bill No. 2439 is unnecessary in its treatment of law enforcement in a public place and targets law enforcement officers for eavesdropping. In addition to this, House Bill No. 2105, Relating to Law Enforcement, would not serve the public well through its unintended consequences of confidential and sensitive information that would be discovered through the exception made to the wiretap law.

The Honolulu Police Department urges you to oppose Senate Bill No. 2439, Relating to Law Enforcement.

Thank you for the opportunity to testify.

Sincerely,



John D. McCarthy, Captain
Criminal Investigation Division

APPROVED:



Louis M. Kealoha
Chief of Police

TESTIMONY

**The Libertarian Party of Hawaii
c/o 1658 Liholiho St #205
Honolulu, HI 96822**

RE: SB 2439 to be heard Tuesday February 9, at 9:15 AM in conference room 016

SUPPORT

To the Members of the Senate Committee on Judiciary”

As an advocate for transgender women working in the sex industry I have heard many stories of police violence and aggression against helpless individuals. One friend of mine was shoved over while handcuffed. Unable to break her fall she hit her head on the concrete pavement. The cops left her bleeding and semi-conscious in a holding cell overnight without any medical attention. There are lots of other stories out there.

Sincerely:



Tracy Ryan, Chair

**Hawaii State Legislature
Senate Committee on
Public Safety, Intergovernmental and Military Affairs
Testimony**

Aloha Chair Nishihara, Vice Chair Espero, and other distinguished committee members

Thank you for allowing me to testify on behalf of this proposed amendment. My name is Aaron Hunger and I am a doctoral researcher at the University of Hawaii at Manoa, a former police officer in Florida and California, and a criminal justice instructor for a private college in Honolulu. I have been honored to be engaged in doctoral research involving the Honolulu Police Department, and its oversight mechanisms since 2010. Together with my teaching, I have over 24 years of police experience. Currently, I am engaged in research with the University of Hawaii at Manoa that (among other issues) seeks to understand the unique structure of the criminal justice institutions on Oahu. Based on the unique composition of local policing organizations, one of many questions being answered is what effect (if any) does the absence of critical systemic oversight mechanisms (or their dysfunctionality) produce and how often. Based on the work and research that I have been privileged to be a part of, I would support Senate Bill 2439 (Legalizing citizens videotaping of police activities).

There are currently two legislative bills that are seeking to legalize a citizen's right to videotape police without fearing police retaliation by being charged with violating the criminal statute of "obstruction of justice." Senate Bill 2191, while seeking a similar outcome, proposes alternate language that would appear to be more appropriate given the wide interpretation that police managers have taken with the proposed language contained within this bill. Of particular problem is the language that reads: "...provided that the officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order."

Given how the Honolulu Police Department's officers, supervisors, and managers reacted in several cases where citizen's private video recordings proved gross policy violations and (in some instances) unwarranted violence toward the public¹, it does not seem prudent to allow officers and managers at the Honolulu Police Department the ability to dissect vague policy language in an attempt to seek the widest interpretation of their power and authority.

In this case the particular language that appears vulnerable to police re-interpretation is, "...protect the integrity and confidentiality of investigations, and protect the public safety and order." Honolulu Police have (on several occasions) used their authority to "protect the integrity of a current investigation", or "protect public safety and order" as justification for attempting to seize evidence of their individual misconduct that was captured on video tape. The cases of Honolulu Police Officer Robert Steiner (2014)², and Siave Seti Jr (2015) are just two of many other examples where police have used their

¹ (Daysog, 2015) (Daysog, 2014) (Hawaii News Network, 2013) (Kawano, 2014 (BCND)) (Kerr, 2014) (Kerr, 2015)

² (Grube, 2014 (PHM)) (Nick, 2015 (SLG))

power and authority to widely interpret search and seizure laws in an attempt to silence the public, by seizing video evidence of their unwarranted conduct through violence or intimidation.

For this reason it is strongly advised that the language proposed in SB 2191 (a bill whose intent is similar) be utilized, as it creates a stronger deterrent for police to obstruct citizens constitutional right to video their governmental agents service performance while in a public place. This bills language should be amended to read (as proposed in SB2191):

“A person who is making a video or audio recording of a law enforcement officer while the officer is in a public place or is making the recording while in a location that the person has the right to be; provided that the person is not physically interfering with the officer’s duties.”

Police departments train (nationally) that officers have no expectation of privacy when performing their duties, and are thus always trained to be aware of the media, videotaping, and their conduct when providing police services. Additionally with the introduction of body cameras, police are trained to take measures to adjust their service delivery into guarding specifically sensitive aspects of an investigation (i.e., license plate numbers, homicide victim’s identity, etc.) With police filming the public, there is no reason to limit citizens counter-filming of police service performance.

I support the intent of this bill, however strongly suggest that the language that would allow police to justify the stopping of a video “due to public safety” or “due to investigatory security” should be omitted.

Bibliography

- Daysog, R. (2014, June 09). *Exclusive: HPD sued over violent arrest caught on tape*. Retrieved from Hawaii News Now: <http://www.hawaiinewsnow.com/story/25734706/exclusive-police-beating-caught-on-video>
- Daysog, R. (2015, March 03). *EXCLUSIVE: Violent police takedown caught on camera*. Retrieved from Hawaiiinewsnow.com: <http://www.hawaiinewsnow.com/story/28244839/exclusive-violent-police-take-down-caught-on-camera>
- Grube, N. (2014 (PHM), October 10). *iPhone Video Shows HPD Officer Striking Man, City Pays \$37,500*. Retrieved from Civilbeat.com: <http://www.civilbeat.com/2014/10/iphone-video-shows-hpd-officer-striking-man-city-pays-37500/>
- Hawaii News Network. (2013 , February 28). *EXCLUSIVE VIDEO: Man claims rights were violated after videotaping arrest*. Retrieved from HawaiiNewsNetwork.com: <http://www.hawaiinewsnetwork.com/exclusive-video-man-claims-rights-were-violated-after-videotaping-arrest/>
- Kawano, L. (2014 (BCND), October 24). *Exclusive: New, disturbing video of attack by Honolulu Police Officer inside a game room*. Retrieved from HawaiiNewsNow.com:

<http://www.hawaiinewsnow.com/story/26889032/exclusive-new-disturbing-video-of-an-attack-by-a-honolulu-police-officer-inside-a-game-room>

Kerr, K. (2014, February 5). *Exclusive: HPD sergeant facing demotion for confrontation caught on video*. Retrieved from HawaiiNewsNow.com:

<http://www.hawaiinewsnow.com/story/24648241/exclusive-hpd-sergeant-facing-demotion-for-confrontation-caught-on-video>

Kerr, K. (2015, December 15). *Family will sue over violent beach arrest caught on video*. Retrieved from HawaiiNewsNow.com: <http://www.hawaiinewsnow.com/story/30761197/family-will-sue-over-violent-beach-arrest-caught-on-video>

Nick, G. (2015 (SLG), March 3). *HPD Officer Caught on Video Slamming Man to the Ground*. Retrieved from Civilbeat.com: <http://www.civilbeat.com/2015/03/hpd-officer-caught-on-video-slamming-man-to-the-ground/>