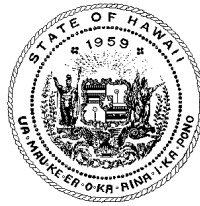


DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

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No. \_\_\_\_\_

**TESTIMONY ON SENATE BILL 2383  
RELATING TO PUBLIC SAFETY.**

by  
Nolan P. Espinda, Director

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Tuesday, February 11, 2020; 1:35 p.m.  
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) appreciates the intent of and offers comments on Senate Bill (SB) 2383, which requires the PSD to at least annually review and update its policies and procedures governing use of force, weapons, and equipment and provide less lethal equipment and training. The department requests that this measure be deferred.

PSD understands the importance of less lethal equipment, governing policies, and training. The department further appreciates the appropriation of funds. The department, however, requests that this measure be deferred because it is unnecessary, based on the reasons explained below.

First, as required by the Commission on Accreditation for Law Enforcement Agencies (CALEA), PSD has been reviewing and revising all its policies governing the Law Enforcement Division. On December 30, 2019, the department executed the CALEA accreditation agreement, and expects to be accredited within the three-year period, by the end of December 2022.

Subsection 2(a) of this measure on page 2, lines 14 – 16, would mandate that PSD review and update its policies governing weapons, equipment, and use of force. As to weapons and equipment, on July 12, 2019 after consultation with the union, the department already updated, revised, and implemented Policy LAW.09.02 Weapons and Equipment Standards. Similarly, Policy LAW.09.05 Conducted Electrical Weapon (commonly known as tasers), was consulted with the union and implemented on February 5, 2020. Finally, Policy LAW.09.01 Use of Force is in its final stages of revision before consult with the union. We intend that this revised Use of Force Policy will be implemented in February. These specific policies, along with all policies, will continuously and routinely reviewed and updated to meet, and maintain, CALEA accreditation. Based upon the above, subsection (a) as proposed is unnecessary and redundant.

Second, subsection 2(b) on page 2, line 17 – 20 would mandate that the department equip each law enforcement officer with less-than-lethal weapons. We note that this is vague because it does not specify which less lethal weapons. Further, it is also too broad because it would be unreasonable to equip each officer with his/her individual 12 gauge less lethal shotgun, especially for the hundred plus deputy sheriffs whose primary function is in the courthouse.

More importantly, all law enforcement officers are now adequately equipped with less lethal weapons, and the department will continue to assess, evaluate, and deploy equipment based upon operational needs and technological advances. Currently, each PSD law enforcement officer is issued a baton and OC. In August 2019, PSD purchased 25 Axon Taser 7 conducted electric weapons (CEW), along with 33 additional user licenses, to be deployed under a pilot initial rollout project. On February 10, 2020, Axon is training ten instructors on the CEW. The department's current budget request includes a request for \$287,000.00 in FY 21, recurring over the following four years, to equip all department law enforcement officers with tasers. If we are able to secure funding this legislation session, PSD hopes to seamlessly continue to train and equip all its law enforcement officers with tasers statewide within a year.

In addition to individually issued baton, OC spray, and conducted electrical weapons, each Sheriff Division Section (e.g. Airport, courthouses, Capitol Patrol) statewide was issued 12 gauge less lethal shotguns. Pepper ball launchers will be deployed in February. Since October 2019, 122 deputies statewide have been trained on the less lethal shotguns. In the same timeframe, 232 deputies have been trained in pepper ball. These efforts ensure that PSD's LEOs can immediately deploy these weapons in the field. In addition to the traditional baton and OC spray, these and other less lethal weapons ensure that PSD's law enforcement officers are well-equipped, and they and the public are well-protected. Further, the Sheriff Division has available other less lethal equipment such as dispersion devices, 37 mm less lethal launchers, and assorted less lethal munitions.

Third, subsection 2(b) on page 2, lines 19 – 20 proposes that the department shall provide less lethal training annually. CALEA standard 4.3.3 requires that all department LEOS must qualify annually on all approved lethal weapons and electronic controlled weapons, and at least biennially, not annually as proposed by this measure, for all other less lethal weapons. PSD must annually comply with these standards to meet and maintain its CALEA accreditation, regardless of what is proposed.

Fourth, subsection 2(c) on page 3, lines 1 – 5, proposes that the department's use of force training shall be reviewed by the Law Enforcement Standard Board. By statute, the board is responsible for establishing minimum standards for employment as a law enforcement officer and certifying persons qualified as law enforcement officers. The board is also responsible for establishing minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. In setting the minimum training standards, the board will necessarily review not just this department's, but all law enforcement agencies' training, to ensure compliance. As such, this provision is superfluous.

And lastly, subsection 2(d) on page 3, lines 6 -7 requires the deputy director of law enforcement to be included and certified in all weapons training. Certification in weapons training is not necessary for the deputy director of law enforcement to perform his/her duties and responsibilities. The functional statement for the deputy

director for law enforcement specifies that he/she administers through subordinate staff office and line divisions, programs and services for protecting the public and preserving the peace. This position directs review and assessment of programs, including goals, objectives, and priorities; directs divisional operating budgets, including staffing, contract services among other duties; establishes and directs expenditure and other management controls; and directs and coordinates implementation of policy, and operational and organizational changes, among other administrative functions. Certification in all weapons training is not necessary to perform the duties of this administrative position.

For all of the reasons specified above, the objectives of this bill are already being accomplished, and this measure is not necessary. We respectfully request that this measure be deferred.

Thank you for the opportunity to testify on this measure.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, February 11, 2020

1:35 PM – Room 229

### COMMENTS on SB 2383 – LESS THAN LETHAL USE OF FORCE

Aloha Chair Nishihara, Vice Chair Wakai and Members of the Committee!

MY NAME IS KAT BRADY AND I AM THE COORDINATOR OF COMMUNITY ALLIANCE ON PRISONS, A community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2383 requires the department of public safety to review its policies and procedures governing the use of force, weapons, and equipment. Requires the law enforcement standards board to review the department's use of force training. Appropriates funds for training, equipment, and related records management for the department.

It provides no comfort to the families of those killed by department employees, or to the community at large, that this same department will *"review its policies and procedures governing the use of force, weapons, and equipment."* This department needs professional and independent oversight.

Community Alliance on Prisons offers comments on this measure. We support the use of less than lethal force, however, our concerns are that the bill is just a stalling tactic to delay what must be done if we want to prevent deaths by public safety employees: That is creating a REAL TRAINING ACADEMY with certified, experienced, and honest trainers.

The HCR 85 Correctional Reform Task Force worked on this issue, visited the training facility, met with PSD's trainer Marti Martinez, and invited Ms. Martinez to present at a Program Subcommittee meeting that included the community on October 18, 2016, and their Final Report<sup>1</sup> describes their findings:

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<sup>1</sup> Creating Better Outcomes, Safer Communities, Training, Chapter 7 A, page 44.

[https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85 ON October 18, 2016\\_task\\_force\\_final\\_report.pdf](https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85 ON October 18, 2016_task_force_final_report.pdf)

**CHAPTER 7**  
**THE LEGISLATURE SHOULD CREATE AN ACADEMY**  
**TO TRAIN CORRECTIONAL WORKERS AT ALL LEVELS**

**A. Training Correctional Staff**

Hawai'i does not provide standardized education and training for correctional workers. An untrained or poorly trained staff contributes to poor outcomes, an unsafe workplace, poor morale, and an inefficient workforce. **The Task Force recommends that the State establish a Corrections Academy to ensure that the quality and type of education and training needed by correctional personnel is delivered in a standardized and effective manner.**

The representative from Probation on the first year of the Task Force was an active and engaged member with decades of experience. Before he retired, he spoke about the national meetings he regularly attended and mentioned that most jurisdictions had training academies for their employees. **Hawai'i does not have a real academy to train department employees.** Eight or nine weeks of training in takedowns, cell extractions, along with short presentations on mental health and working with vulnerable populations does not adequately train a person to address the needs of the people who are in the state's "care and custody."

Instituting a real training academy with accredited professional trainers would go far in reforming this department. The recent deaths at the capitol must be an impetus to impress upon the committee and the legislature the importance of delivering good training to protect staff and the public. Professionalizing the staff and valuing their input could go a long way in retaining good staff and attracting a better quality of recruit.

Lastly, while Community Alliance on Prisons strongly supports the use of less than lethal force, we must acknowledge that there are problems in PSD's training department. Asking the department whose director testified before the Senate PSD did their due diligence in hiring the current trainer when a news reporter could find no verification of the trainers' qualifications from any institution she listed<sup>2</sup> should give the legislature pause in allowing them to review their policies and procedures governing the use of force, weapons, and equipment.

Community Alliance on Prisons emphasizes the importance of good, accredited training that a REAL TRAINING ACADEMY could provide. The recent *preventable* deaths are a clarion call for good weapons training by public safety staff. This is a matter of life and death for people both inside and outside correctional facilities.

It provides no comfort to the families of those killed by department employees or to the community at large that this same department will "*review its policies and procedures governing the use of force, weapons, and equipment.*" This department needs professional and independent oversight.

Mahalo for this opportunity to offer Community Alliance on Prisons' comments on this bill.

*"A leader is best when people barely know he exists,  
when his work is done, his aim fulfilled, they will say: we did it ourselves."*  
Lao Tzu

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<sup>2</sup> Public safety trainer a 'no show' at hearing to question her qualifications, By Lynn Kawano, September 25, 2019.  
<https://www.hawaiinewsnow.com/2019/09/26/public-safety-trainer-no-show-hearing-question-her-qualifications/>



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirtieth Legislature, State of Hawaii  
THE SENATE  
Committee on Public Safety, Intergovernmental, and Military Affairs

Testimony by  
Hawaii Government Employees Association

February 11, 2020

S.B. 2383 – RELATING TO LESS THAN LETHAL FORCE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2383 which requires the Department of Public Safety, to review and update its policies and procedures governing the use of force, weapons, and equipment annually. The department shall also equip each law enforcement officer with less-than-lethal weapons, which the department shall provide and require adequate annual training. The department's use of force training shall be reviewed by the law enforcement standards board which was established under section 139-2 and shall include use of force decision making, crisis intervention, de-escalation techniques, and less than lethal alternatives. This act also provides for the requirement of the Deputy Director of the Law Enforcement Division to be included and certified in all weapons training.

Updated policies have been an ongoing concern for the department employees as well as the legislators last session. Having the policies reviewed on an annual basis will ensure safety is at the forefront and compliance is in effect. The use of less-than-lethal weapons have been a request of law enforcement officers for quite some time and this act enables them to be properly equipped to enforce laws in a less lethal situation. Furthermore, the Deputy Director of the Law Enforcement Division should be included and certified in all weapons training. Any individual in this position should have the same requirements and standards as the leader of the division.

Thank you for the opportunity to testify in support of S.B. 2383.

Respectfully submitted,

Randy Perreira  
Executive Director

**SB-2383**

Submitted on: 2/6/2020 12:53:38 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Pcola_Davis	Individual	Support	No

Comments:

**HB1879 and SB2383**

I am strongly in support of ALL police officers to have less than lethal weapons. However, this should NOT deter a police officer from using force if the situation requires that. Our officers do not wake up and say, "Who am I going to use deadly force on today?" They are out there protecting the people.

I think the public needs to realize that even with recordings on phones, you aren't really there as it is happening.

I can't see us expecting our officers to second guess what they learned in training.

There are many less than lethal weapons available. We need to choose the ones that fit. One officer may be more comfortable with a taser another may just want to use a nightstick.

There are some officers that may use excessive force as it is seen by a spectator or family member. The Chief of Police is responsible for determining whether it was justified. Not TV stations showing upset spectators or family members accusing officer.

The officer is the sole person to make the call. The aftermath is up to the Commissioner.

I also think that officers should have input as to what "less than Lethal weapons" they would feel safe using.

**From the web: \*\* Suggested**

**\*\* Nightstick**

As anybody who has been hit by one of these weapons can attest, their usage can inflict great harm or even cause death!

**\*\* Pepper Spray**



Its biggest advantage in subduing uncontrollable folks is that it causes temporary blindness and difficulty breathing, the effects of which lasting from 30 to 60 minutes. Pepper spray can also be used against other mammals, especially dogs.

### **\*\*Chemical Mace (Tear Gas)**

Mace is an aerosol spray containing tear gas, a lachrymatory agent, as well as hydrocarbon solvents. Like pepper spray, but more powerful, mace attacks the eyes, lungs and mouth, inducing pain, skin irritation, vomiting and temporary blindness.

### **Bean Bag Round**

A bean bag round is a shotgun round that contains a square-shaped, fabric “pillow” holding about 40 grams of lead shot. This round is designed to cause no penetration and minimal long-term damage, yet often causes muscle spasms, allowing police time to subdue suspects.

### **\*\* Taser (with proper training)**

The Taser is an electroshock weapon. Tasers are designed to be used instead of firearms, greatly reducing deaths in the process; fewer injuries to police officers have been achieved with its use as well. Unfortunately, cardiac arrest has resulted from the use of Tasers, so its usage is not completely nonlethal!

Most of these police suspects or unruly or dangerous people had risk factors such as drug use, serious physiological and/or mental conditions.

### **\*\* Stun Gun (with proper training)**

Similar to the Taser, stun guns are designed to stun or incapacitate a person by touching them with the electrodes of this electrical device. The baton-like cattle prod is one such device. One such stun gun looks like a smart phone; another is included in a long flashlight. Stun “rounds” can also be fired from shotguns.

### **\*\* Web Shot (very safe with a good aim and training)**

Inspired by Spiderman comics and movies, this shotgun-like device fires a Kevlar net, which, traveling at about 65 mph, wraps up the suspect or criminal in a spider-like fashion, until police can handcuff him or her.

### **Laser Rifle (probably not)\_**

The Dazzler or PHASR weapon, a rifle-like, hand-held device, is an energy-directed weapon, a burst of low-intensity radiation from which can temporarily blind or disorient a person.

## **\*\* Stink Bomb (very safe)**

Another way of getting rid of people quickly without firing lethal projectiles at them, the stink bomb is truly a nonlethal device, as nobody has died from smelling something terrible, have they? Stink bombs often use sulfur-based compounds that smell like human feces, rotten eggs or decaying flesh, while some bombs hit you with a repellent “cheap perfume” smell.

## **Rubber Bullets**

Rubber bullets are exactly what the name implies, bullets made of rubber or metal rounds covered with rubber. However, in current times, many rubber bullets have been replaced with plastic bullets, which don't bounce uncontrollably and are not as lethal. (Wax, wood or sponge may also be used.) These types of projectiles are known as baton rounds.

## **Water Cannon**

Water cannons have been used by police for riot control. These devices are similar to pressure washers but not as powerful. But a stream of water directed at somebody, constituting a kind of projectile, can cause bodily injury or death.

## **\*\* Flashlight Gun (safe)**

This flashlight-like weapon can hit people with an adjustable beam of LED light that can cause people to become disoriented and/or nauseous. Other simpler and cheaper flashlight weapons can hit people with a beam of light that is 100 times as bright as the average flashlight, essentially blinding people by the light!

## **\*BolaWrap (interesting thought but the Web shot seems safer)**

Looking something like a Taser, the BolaWrap fires an eight-foot Kevlar cord with four pronged hooks on each end. The cord is designed to wrap around suspects twice, essentially tying them up, so the police can subdue them in a nonlethal way. Its range is 10 to 25 feet. Each BolaWrap costs about \$800.

## **Vortex Ring Gun (future)**

The vortex ring gun fires small rings of gas at supersonic speed. People hit with these rings will generally drop to the ground, allowing police time to cuff them. Or these propelled rings of gas can be used to mark people with dyes or douse them with malodorous or incapacitating chemicals.

**SB-2383**

Submitted on: 2/9/2020 1:15:08 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steven Costa	Individual	Support	No

Comments:

**SB-2383**

Submitted on: 2/9/2020 6:51:47 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert K. Merce	Individual	Support	No

Comments:

Recent lethal incidents strongly suggest that additional training is necessary.

**SB-2383**

Submitted on: 2/10/2020 11:51:30 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments: