

**HB1812**

Submitted on: 2/21/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Davlantes	Individual	Support	No

Comments: The Civil Beat Series "In the Name of the Law" demonstrated the need for accountability and transparency in law enforcement agencies. They should not be exempt from what is required of other public agencies.

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P.O. Box 3141  
Honolulu, HI 96802  
Feb. 25, 2014

Rep. Karl Rhoads  
Chairman, House Judiciary Committee  
State Capitol  
Honolulu, HI 96813

Re: House Bill 1812, Relating to Law Enforcement

Rep. Rhoads and Committee Members:

We support this bill and urge you to pass it as is.

In 1995, the Legislature passed a bill that made secret the names of disciplined police officers after University of Hawaii students prevailed in court to get those identities. At the same time, the Legislature required that summaries of the offenses be reported to lawmakers every year. A Senate committee report in 1995 indicates the summaries would help lawmakers gauge whether the law was working.

But we wonder how the public and the Legislature can gauge whether the law is having bad results because the summaries of offenses are so bereft of details. How can anyone get a picture of offenses within a police department with such inadequate descriptions as hindering a federal investigation?

We do not believe that more details will tell the public or legislators the identity of the disciplined officer, but more information would give the public an idea of what is going on in the police department or whether the police administration or police commission is doing its job.

This bill does not violate any privacy rights of the individual police officers.

Please pass this bill.

Sincerely,

A handwritten signature in black ink that reads 'Stirling Morita'. The signature is written in a cursive style with a loop at the end.

Stirling Morita  
President  
Hawaii Chapter SPJ

THE CIVIL BEAT  
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House Committee on Judiciary  
Honorable Karl Rhoads, Chair  
Honorable Sharon E. Har, Vice Chair

**RE: Testimony in Support of H.B. 1812, Relating to Law Enforcement**  
Hearing: February 25, 2014 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on H.B. 1812. The Law Center strongly supports this bill.

H.B. 1812 will validate the trust that the people of Hawai'i place in county police departments to respect and enforce the law. The bill requires disclosure of criminal conduct by police officers. No agency should hide from public scrutiny and oversight when an employee commits a crime, especially a law enforcement agency.

For over a decade the only public information available concerning final suspensions of police officers has been the annual reports to the Legislature submitted in accordance with Hawai'i Revised Statutes (HRS) § 52D-3.5. Those reports provide little detail, but reveal numerous instances of police officers who have been suspended for criminal conduct. The annual reports reveal incidents in which police officers have, among other things, lied to other law enforcement, hindered investigations, assaulted others, committed hit-and-runs, or pled guilty to criminal conduct. Suspensions for such conduct range from 1 day to 626 days. All the public learns is: "Hindered a federal investigation . . . 626 days" or "Pled guilty to criminal charges . . . One day."<sup>1</sup> *E.g.*, Honolulu Police Department, 2010 Annual Report ¶¶ 1, 7.

H.B. 1812 opens the door for a more informed public dialogue about criminal activity by police officers. This bill requires county police departments to provide the Legislature additional details about disciplinary actions when a police officer has engaged in criminal conduct. Open and public discussion of how county police departments handle criminal conduct by police officers is critical to public confidence in law enforcement and the administration of our criminal justice system.

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<sup>1</sup> On November 7, 2013, the Law Center filed a Complaint on behalf of the online publication Civil Beat to obtain additional information regarding several egregious examples of police misconduct. On February 10, 2014, the Circuit Court orally granted Civil Beat summary judgment.

Moreover, the bill does not violate any privacy rights of the individual police officers. The Hawai'i Supreme Court has held that police officers have no constitutional right of privacy in information concerning disciplinary suspensions "that have been sustained after investigation." *State of Hawaii Organization of Police Officers v. Soc'y of Prof'l Journalists, Univ. of Hawai'i Chapter (SHOPO v. SPJ)*, 83 Hawai'i 378, 399, 927 P.2d 386, 407 (1996). H.B. 1812 permits county police departments to provide the same simple summaries currently reported until a police officer has exhausted the administrative grievance process for disciplinary challenges.<sup>2</sup> The heightened reporting requirements for criminal misconduct only apply when the police officer's suspension becomes final.

The procedural corrections to HRS § 52D-3.5 in H.B. 1812 are no less important.

- **Record retention:** A recent event illustrates the deficiency in the current law concerning retention of police disciplinary records. On January 9, 2014, the online publication Civil Beat requested information regarding two discharged police officers described in the Honolulu Police Department's December 20, 2013 annual disciplinary disclosure to the Legislature. HPD, however, already had purged its files for one of the disciplinary cases. HPD thus deprived not only the public, but the Legislature of any opportunity to learn more about an incident that was first disclosed less than a month prior.

*H.B. 1812 properly requires a county police department to retain its disciplinary records for at least six months after final disclosure to the Legislature.*

- **Multiple offenses:** Current reporting allows county police departments to conceal when multiple offenses concern the same police officer. Without information about when a reported incident concerns a repeat offender, the Legislature and the public cannot evaluate the severity of the discipline imposed or understand inconsistencies between identically described misconduct.

*H.B. 1812 properly requires a county police department to identify when a reported incident concerns a police officer with multiple offenses and specify the related incidents.*

- **Deadline for disclosure:** Current law requires disclosure before the Legislature convenes. As a result, it is not always clear that a county police department has

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<sup>2</sup> In written testimony before the Senate Committee on Public Safety, Intergovernmental and Military Affairs on companion bill S.B. 2591, SHOPO raised the concern that county police departments would violate their collective bargaining agreement and the Uniform Information Practices Act, HRS ch. 92F (UIPA), by reporting information to the Legislature. That concern is unfounded. A collective bargaining agreement cannot contradict a state statute mandating disclosure, *SHOPO v. SPJ*, 83 Hawai'i at 406, 927 P.2d at 414, and SHOPO has misread the UIPA, as the Circuit Court recently held.

disclosed all disciplinary actions because the report must be filed before the end of the year.

*H.B. 1812 properly requires reporting after the year-end to ensure complete disclosure on an annual basis.*

Thank you again for the opportunity to testify.

# SHOPO



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TO: The Honorable Karl Rhoads, Chair  
House Committee on Judiciary

The Honorable Sharon E. Har, Vice Chair  
House Committee on Judiciary

Members of the House Committee on Judiciary

FROM: Tenari Ma'afala, President   
State of Hawaii Organization of Police Officers

DATE: February 24, 2014

SUBJECT: Testimony on H.B. No. 1812, Relating to Law Enforcement

HEARING DATE: Tuesday, February 25, 2014  
2:00 p.m. Conference Room 325

This bill concerns county police departments' annual reports to the legislature regarding incidents of misconduct by police that result in suspension or discharge of a police officer. The State of Hawaii Organization of Police Officers ("SHOPO") opposes this bill in part.

First, in 52D-3.5, proposed section (b)(1), we oppose the change from a "summary" to "summarize the facts and circumstances" because it conflicts with the current law and the proposed subsection (d) that the "summary of facts" shall not be of such a nature so as to disclose the identity of the individuals involved.

Second, the proposed subsection (b)(4) should be amended as follows:

(4) State whether the highest non-judicial grievance adjustment procedure timely invoked by the police officer or the police officer representative has concluded and 30 calendar days have elapsed following the issuance of the decision;....

This will reduce some of this bill's conflict with Hawaii Revised Statutes section 92-F14(b)(4)(B).

Third, the proposed subsection (b)(4)(A)(i) regarding the police department's findings of fact and conclusions of law concerning criminal conduct, exceeds information that is permitted to be released by HRS section 92F-14(b)(4).

Fourth, the proposed section 52D-3.5(e) should be amended as follows:

(e) For any incident reported pursuant to this section and subject to subsection (b)(4)(B), the county police department shall provide updated information in each successive annual report, until the highest non-judicial grievance procedure timely invoked by the police officer has concluded and 30 calendar days have elapsed following the issuance of the decision....

The Honorable Karl Rhoads, Chair  
The Honorable Sharon E. Har, Vice Chair  
House Committee on Judiciary  
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Fifth, the only information authorized by HRS section 92F-14(b)(4)(B) for release is therein specified, and this release of specified information only applies to county police officers in cases that result in discharge after the highest non-judicial grievance procedure has concluded, a written decision sustaining the discharge has been issued, and 30 calendar days have elapsed after the issuance of that decision.

Finally, the county police departments will be in violation of HRS section 92F-14 (b)(4)(B) and this law should the descriptions they provide indirectly identify an officer who has been suspended, or was discharged without first having had the opportunity to exercise and exhaust fully all of the administrative remedies, which are specified in the collective bargaining agreement and in state law.

SHOPO strongly recommends that this bill be deferred until its conflicts with HRS section 92F-14(b)(4)(B) can be resolved.