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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 14, 2014, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 2591, S.D. 1
Relating to Law Enforcement

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) takes no position on the current version of this bill; however, OIP would support amendment of the bill consistent with this Committee’s amendments to the companion bill, H.B. 1812, H.D. 1.

In H.B. 1812, H.D. 1, this committee added an amendment to section 92F-14, HRS, in the Uniform Information Practices Act (“UIPA”), deleting a clause giving special treatment to information about police officers’ misconduct. While all other government employees’ misconduct information becomes public if the misconduct resulted in suspension or termination, the current law gives police officers a special statutory privacy interest even in information about misconduct that resulted in suspension. The H.D. 1 puts police officers on the same footing as other government employees. As the committee report on H.D. 1 noted, the amendment was intended to be consistent with the Hawaii Supreme Court’s opinion in State of Hawaii Organization of Police Officers v. Society of Professional Journalists, University of Hawaii Chapter, 83 Haw. 378 (1996) (SHOPO opinion),

which held that such information was not “highly personal and intimate information” and thus not covered by Hawaii’s constitutional privacy protection.

Based on the Hawaii Supreme Court’s SHOPO opinion, OIP similarly in its Opinion Letter Number 97-1 that the names of suspended police officers are publicly disclosable, notwithstanding the 1995 amendment to the UIPA that statutorily stated that suspended police officers had a significant privacy interest in their misconduct information. Following the SHOPO opinion, OIP reasoned that this statutory privacy interest was still outweighed by the public interest in disclosure, and thus the information remained public. The UIPA amendment proposed by H.B. 1812, H.D. 1, would be consistent with both the SHOPO opinion and OIP’s Opinion Letter Number 97-1, and would restore the UIPA’s own treatment of suspended police officers’ misconduct information to what it was prior to 1995. **Therefore, OIP supports amending this companion bill to include the UIPA amendment that was added to H.B. 1812, H.D. 1.**

Thank you for the opportunity to testify.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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

RE: Testimony in Support of S.B. 2591 S.D. 1, Relating to Law Enforcement
Hearing: March 14, 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 S.B. 2591 S.D. 1. The Law Center strongly supports this bill.

S.B. 2591 S.D. 1 is substantively identical to H.B. 1812 before the positive clarifying amendments made by the Committee and passed by the House as H.B. 1812 H.D. 1. In its present form, S.B. 2591 S.D. 1 reverses the inexplicable secrecy that for over a decade has concealed information regarding police officers who have been suspended for criminal conduct. Annual reports to the Legislature pursuant to Hawai'i Revised Statutes (HRS) § 52D-3.5 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."¹ E.g., Honolulu Police Department, 2010 Annual Report ¶¶ 1, 7. And as the Committee noted in connection with H.B. 1812, "consistent with *State of Hawai'i Organization of Police Officers v. Society of Professional Journalists, University of Hawai'i Chapter*, 83 Hawai'i 378 (1996) (*SHOPO v. SPJ*), this measure does not violate the privacy rights of individual police officers." H. Stand. Comm. Rep. No. 651-14.

The Law Center also strongly supports the amendments that the Committee previously made to H.B. 1812. Most significantly, the Committee amended the Uniform Information Practices Act (Modified) (UIPA), HRS § 92F-14(b)(4)(B) to be consistent with the Hawai'i Supreme Court's holding in *SHOPO v. SPJ* and the State of Hawai'i Office of Information Practices (OIP) Opinion 97-1 concerning public disclosure of police disciplinary suspensions.

¹ 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.

In 1995, the Legislature amended the UIPA to provide for mandatory disclosure – notwithstanding any purported privacy interests – of information about police officers discharged for misconduct. The Legislature left open the possibility that *suspended* police officers may have valid privacy claims because police officers “are subject to more stringent standards and tougher discipline than most other government employees” H. Stand. Comm. Rep. No. 1584, in 1995 House Journal. Without more information, there was speculation that police disciplinary suspensions concerned officers who “did not shine [their] shoes” or were “late reporting to work.” 1995 House Journal, at 682 (remarks of Rep. Alcon).

But we now have more information because the 1995 Legislature also required the annual reports pursuant to HRS § 52D-3.5. As already noted, those reports reveal disciplinary suspensions for a wide range of criminal conduct by police officers, not mere departmental violations.

Moreover, in 1996, the Hawai‘i Supreme Court shut the door on the possibility that suspended police officers have valid privacy claims. As this Committee recognized when quoting from *SHOPO v. SPJ*: “The information that must be disclosed pursuant to 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 of privacy.” H. Stand. Comm. Rep. No. 651-14.

In light of the Supreme Court’s ruling, OIP held that police disciplinary suspensions must be disclosed. OIP Op. No. 97-1. “[T]he only possible conclusion that OIP can reach is that disclosure of this information would *not* be a clearly unwarranted invasion of personal privacy under the UIPA and, therefore, information required to be made public under section 92F-14(b)(4)(B) for discharged officers, must also be made public for suspended officers.” *Id.* at 12. OIP’s conclusion was upheld recently in *Peer News LLC v. City and County of Honolulu*, Civil No. 13-1-2981-11 KKS.

The UIPA amendment that the Committee added to H.B. 1812 thus would conform the UIPA to existing judicial and OIP interpretations. The Law Center strongly supports including those same amendments in S.B. 2591 S.D. 1.

Besides the amendments made to H.B. 1812, the only other suggested amendment is correction of the defective effective date in S.B. 2591 S.D. 1. It should take effect on approval.

Thank you again for the opportunity to testify.



P.O. Box 3141
Honolulu, HI 96802
March 15, 2014

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

Re: Senate Bill 2591, S.D.1, Relating to Law Enforcement

Rep. Rhoads and Committee Members:

We support this bill and urge you to pass with an amendment of restoring the language that your committee put into H.B. 1812, H.D. 1 amending the Fair Information Practices Act to follow court rulings and Office of Information Practices opinions. We also ask you to cure the effective date.

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 having unintended consequences.

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

We believe that more details would give the public or legislators 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, appearing to read 'Stirling Morita'.

Stirling Morita
President
Hawaii Chapter SPJ

SHOPO



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Tenari R. Ma'afala

VICE PRESIDENT
Malcolm Lutu

TREASURER
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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: March 14, 2014

SUBJECT: Testimony on S.B. No. 2591 S.D.1, Relating to Law
Enforcement

HEARING DATE: Friday, March 14, 2014
2:00 p.m. Conference Room 325

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

First and foremost, the wheel is not broken and doesn't need fixing. The Chiefs of Police of the county police departments already have internal policies in place to investigate police misconduct and to impose discipline. The Chiefs are accountable to their respective Police Commissions for handling police misconduct. These Commissions are made up of citizens from our community.

Second, based on statistics compiled from Honolulu Police Department ("HPD") Annual reports and other sources, in 2012, **HPD had 5.3 complaints per 100,000 public contacts**. In 2011, HPD had 4.2 complaints per 100,000 public contacts, and in 2010, the rate was 4.6 complaints per 100,000 public contacts. This is a record that any department and community in the nation would be proud of, especially when public contact is daily and constant, and often involves dangerous, highly confrontational and stressful situations, with people in highly emotional states.

Third, annual misconduct reports have been submitted to the legislature by the Chiefs of Police for many years and already provide sufficient information.

Fourth, when county prosecutors believe there is sufficient evidence to proceed against a police officer for alleged criminal conduct, they file documents in court that name the officer and are available to the public. Likewise, if a person files a civil suit against an officer, those court documents including the officer's name, are available at the courts.

Thus, we respectfully request this bill be deferred.

SB2591

Submitted on: 3/11/2014

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

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

Committee: Committee on Judiciary
Hearing Date/Time: Friday, March 14, 2014, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in **Support of S.B. 2591, SD 1, Relating to Law Enforcement**

Dear Chair Rhoads and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 2591, SD 1, which provides for improved reporting to the Legislature of disciplinary actions taken against police officers.

This bill, if enacted, would increase law enforcement transparency and accountability, and thereby help to improve the public’s trust of our police officers. Law enforcement officers should be responsive to the community they serve, and should not be able to shield unlawful behavior from public scrutiny.

Thank you for the opportunity to testify.

Sincerely,

Daniel Gluck
Senior Staff Attorney
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

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JUDICIARY COMMITTEE)

Friday, March 14, 2014, 2:00 p.m., Room 325
SB 2591, SD1 RELATING TO LAW ENFORCEMENT
TESTIMONY

Janet Mason, Legislative Chair, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Har and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 2591, SD1 requiring an annual report to the Legislature from each County police Department of misconduct incidents that resulted in suspension or discharge of a police officer for the prior calendar year.

We concur with the testimony prepared by the Civil Beat Law Center for the Public Interest. The bill proposes reasonable solutions to existing shortcomings of police department monitoring and disclosure of misconduct by police officers. The League of Women Voters supports the public's right and interest in meaningful records of misconduct by these officers.

This measure is long overdue, and we request that the bill be amended to take effect upon approval.

Thank you for the opportunity to submit testimony.