

HB 1812 HD1

RELATING TO LAW ENFORCEMENT

Requires additional detail and updating for annual reports for the Legislature of police misconduct; requires retention of disciplinary records for at least eighteen months after reporting; permits disclosure under the Freedom of Information Act of misconduct by a police officer that results in a suspension. (HB 1812 HD1)

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety, Intergovernmental
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: March 18, 2014, 3:00 p.m.
State Capitol, Conference Room 224

Re: Testimony on H.B. No. 1812, H.D. 1
Relating to Law Enforcement

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports the current version of this bill amending section 92F-14, HRS, in the Uniform Information Practices Act (“UIPA”).

The UIPA amendment deletes 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 the 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.

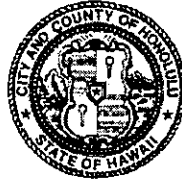
Based on the Hawaii Supreme Court's SHOPO opinion, OIP similarly concluded in its Opinion Letter Number 97-1 that the names of suspended police officers are publicly disclosable, notwithstanding the 1995 amendment to the UIPA that statutorily stated that suspended police officers had a significant privacy 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 this bill is 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 the current version of this bill.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE CH-MM

March 18, 2014

The Honorable Will Espero, Chair
and Members
Committee on Public Safety,
Intergovernmental and Military Affairs
State Senate
Hawaii State Capitol, Room 224
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

SUBJECT: House Bill No. 1812, HD 1, Relating to Law Enforcement

I am Clyde K. Ho, Major of the Professional Standards Office, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD respectfully opposes House Bill No. 1812, HD 1, Relating to Law Enforcement. This bill establishes specific requirements in the annual report to the Legislature concerning incidents of misconduct. Further, we do not support the amendment in House Bill No. 1812, HD 1, SECTION 2, Section 92F-14, Hawaii Revised Statutes. Subsection (b) of this segment is amended to remove the exemption for county police department officers from disclosure of their names for incidents of misconduct resulting in suspension.

We strongly feel that the release of the officers' names deters from the disciplinary intention, which is to correct the behavior of the employee and not proliferate a more severe penalty through ridicule in a public forum. Having such a requirement would adversely affect the recruiting efforts of the HPD and may be considered in grievances and arbitrations as a part of the imposed penalty by the agency. The HPD is not in opposition to the current standard of divulging the information when an employee is terminated from employment, as it is surmised that the employee's misconduct would be so egregious that such protection would not be extended.

Serving and Protecting With Aloha

The Honorable Will Espero, Chair
and Members
Committee on Public Safety,
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We have already taken measures to meet key aspects of this bill by providing added information to the report summary and modifying our retention policies to make the reports available six months after being published in the legislative report.


The Honolulu Police Department urges you to oppose the amendment to House Bill No. 1812, HD 1, as currently written.

Thank you for the opportunity to testify.

Sincerely,


Clyde K. Ho, Major
Professional Standards Office

APPROVED:



Louis M. Kealoha
Chief of Police

SHOPO



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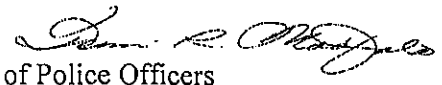
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TO: The Honorable Will Espero, Chair
Senate Committee on Public Safety, Intergovernmental
And Military Affairs

The Honorable Rosalyn H. Baker, Vice Chair
Senate Committee on Public Safety, Intergovernmental
And Military Affairs

Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs

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

DATE: March 17, 2014

SUBJECT: Testimony on H.B. No. 1812 H.D.1, Relating to Law
Enforcement

HEARING DATE: Tuesday, March 18, 2014
3:00 p.m. Conference Room 224

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 their handling of 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.

Fifth, the repeal of the exception provided in Hawaii Revised Statutes section 92F-14(b)(4)(B)¹ flies in the face of all the work the 1995 legislature did in enacting that legislation, along with the police chiefs that testified at those hearings. It also flies in the face of the agreement that the county police departments would thereafter provide information annually to the legislature with the summary of allegations of misconduct, the nature of the conduct, and the disciplinary action taken, whether suspension or discharge.

The 1995 House Journal Standing Committee Report states:

Your Committee also finds that, unlike most government agencies, there is an independent body set up outside of the Police Department which is specifically charged with overseeing the conduct of the department and its officers. The county police commissions perform this function, and, in addition, have the power to remove the Chief of Police should the Chief fail to meet his or her obligation to appropriately supervise and discipline police officers.

Your Committee had concluded that the release of police officers' names simply because they have been suspended is not appropriate since they are subject to more stringent standards and tougher discipline than most other government employees and their conduct is overseen by the county police commission.

House Journal Standing Committee Report 1584 Judiciary on S.B. No. 171 at 1627 (1995).

Additionally, as one legislator so eloquently stated in 1995 at third reading on S.B. No. 171, S.D.1:

¹ The exception that H.B. 1812 H.D.1 proposed to repeal is underlined below. HRS section 92F-14 (b) provides in relevant part as follows:

The following are examples of information in which the individual has a significant privacy interest:

...

(4) Information in an agency's personnel file,...except:

...

(B) The following information related to employment misconduct that results in an employee's suspension or discharge:

- (i) The name of the employee;
- (ii) The nature of the employment related misconduct;
- (iii) The agency's summary of the allegations of misconduct;
- (iv) Findings of fact and conclusions of law; and
- (v) The disciplinary action taken by the agency;

when the following has occurred: the highest non-judicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision; provided that this subparagraph shall not apply to a county police department officer except in a case which results in the discharge of the officer;

The Honorable Will Espero, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs
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Mr. President, not only are we requiring our police officers to wear their badges, we are forcing them to wear 'scarlet letters.' Not only will they wear the stripes on the sleeves of their uniforms, but their mistakes as well. Not only are they being disciplined by their chiefs, but they are being pilloried in the press. This is not only bad employment policy, this is bad public policy, and I would urge all my colleagues to support this bill. Thank you, Mr. President.

Senate Journal 26th Day at 287 (1995).

Thus, considering the lack of necessity for this bill, that the legislature has already addressed these issues and successfully found a workable solution for the county police departments to file their annual reports, as well as criminal and civil court proceedings and filings being public in nature, we respectfully urge you to defer this bill.



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P.O. Box 3141
Honolulu, HI 96802
March 18, 2014

Sen. Will Espero
Chairman, Senate Public Safety, Intergovernmental and Military Affairs Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 1812, H.D. 1, Relating to Law Enforcement

Sen. Espero 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 having unintended consequences.

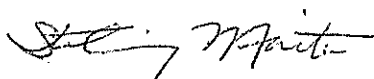
But we wonder how the public and the Legislature can gauge whether the law is having bad results because the summaries of offenses are so bereft of details. How can anyone get a picture of offenses within a police department with such inadequate descriptions as hindering a federal investigation?

HB 1812 would return police officers disciplinary actions to the same disclosure level as those of other public employees. This is what the Office of Information Practices had said should be the case, and what the courts have ruled consistently.

In the 1970s and 1980s, names of disciplined police officers were made a part of the public record when the Honolulu Police Commission acted on cases.

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

Sincerely,



Stirling Morita
President
Hawaii Chapter SPJ

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Senate Committee on Public Safety,
Intergovernmental and Military Affairs
Honorable Will Espero, Chair
Honorable Rosalyn H. Baker, Vice Chair

RE: Testimony in Support of H.B. 1812 H.D. 1, Relating to Law Enforcement
Hearing: March 18, 2014 at 3:00 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 H.D. 1. The Law Center strongly supports passage of this bill unamended.

With one major exception, H.B. 1812 H.D. 1 is substantively identical to S.B. 2591 S.D. 1, which unanimously passed the Senate on March 4. These companion bills will shed light on police officers who have been suspended for criminal conduct, an area that has been shrouded in secrecy for more than a decade. 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.

As this Committee and the Senate Committee on Judiciary and Labor explained in reporting on S.B. 2591, this measure "creates a more informed public dialogue about misconduct by police officers." S. Stand. Comm. Rep. Nos. 2210, 2581. And as the House Committee on Judiciary 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. No agency should hide from public scrutiny and oversight when an employee commits a crime, especially a law enforcement agency.

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.

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The major difference between the companion bills is an amendment to HRS § 92F-14(b)(4)(B) of the Uniform Information Practices Act (Modified) (UIPA). H.B. 1812 H.D. 1 amends the UIPA 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.

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.

In 1996, the Hawai'i Supreme Court shut the door on the possibility that suspended police officers have valid privacy claims. As the House Committee on Judiciary 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 in 1997 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 in H.B. 1812 H.D. 1 thus would conform the UIPA to existing judicial and OIP interpretations. The Law Center strongly supports passage of H.B. 1812 H.D. 1 with the UIPA amendment.

Thank you again for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 15, 2014 10:35 AM
To: PSMTestimony
Cc: aurasaki@hawaiiantel.net
Subject: Submitted testimony for HB1812 on Mar 18, 2014 15:00PM

HB1812

Submitted on: 3/15/2014

Testimony for PSM on Mar 18, 2014 15:00PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki	Individual	Support	No

Comments: In support.

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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