

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO POLICE DEPARTMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that domestic violence is  
2 an epidemic affecting individuals in every community, regardless  
3 of age, economic status, race, religion, nationality, or  
4 educational background. According to the National Coalition  
5 Against Domestic Violence, one in every four women will  
6 experience domestic violence in her lifetime. Between 2008 and  
7 2012, there was an eighteen per cent increase statewide in  
8 arrests relating to abuse of family or household members.  
9 During this same time period, there was also an increase in the  
10 number of persons served by various statewide agencies who  
11 provide services to victims of domestic violence.

12           The legislature further finds that the Honolulu police  
13 department has been heavily criticized by lawmakers and the  
14 public in the wake of a high-profile incident involving an off-  
15 duty Honolulu police department sergeant. In September 2014,  
16 the off-duty sergeant was captured on surveillance video  
17 punching his then-girlfriend in a Waipahu restaurant. However,



1 the sergeant was not arrested at the scene and responding  
2 officers failed to file a report. According to news reports, it  
3 was only on the following day, after a citizen provided the  
4 Honolulu police department and the press with the surveillance  
5 video, that the department took action to remove the sergeant of  
6 his police powers and began an internal investigation into the  
7 incident. An Oahu grand jury later determined there was not  
8 enough evidence to indict the sergeant for his actions, even  
9 while the internal investigation into the sergeant and the  
10 responding officers was still ongoing.

11 The sergeant's actions sparked concern about the way police  
12 handle domestic violence cases and triggered an informational  
13 briefing at the state capitol, where Honolulu's police chief and  
14 two of his deputies were intensively questioned about the  
15 Honolulu police department's policies regarding domestic  
16 violence investigations.

17 Service providers who assist domestic violence victims were  
18 also at the informational briefing. Some of these providers  
19 expressed concern that the incident involving the Honolulu  
20 police department sergeant reflects a larger problem within the  
21 department. Between May 2013 and September 2014, the Hawaii



1 state commission on the status of women received approximately  
2 thirty-eight separate complaints from women who said officers  
3 with the Honolulu police department did not respond  
4 appropriately to allegations of abuse. According to the  
5 commission, approximately one-third of these instances involved  
6 a police officer or a relative of a police officer as the  
7 alleged abuser. The commission believes that the September 2014  
8 incident involving the off-duty sergeant was not an isolated  
9 incident, but rather a pattern of inappropriate handling by some  
10 police officers in response to allegations of domestic violence.

11 The Honolulu police chief and his deputies told lawmakers  
12 at the informational briefing that the Honolulu police  
13 department has a zero tolerance policy when it comes to domestic  
14 violence and other serious offenses. However, the department's  
15 record on disciplining officers for domestic violence-related  
16 misconduct was called into question by lawmakers at the  
17 briefing.

18 Pursuant to section 52D-3.5, Hawaii Revised Statutes, the  
19 chief of each county police department is required to submit an  
20 annual report to the legislature that includes, among other  
21 things, a summary of the facts and the nature of the misconduct



1 for incidents which resulted in the suspension or discharge of a  
2 police officer and the disciplinary action imposed for each  
3 incident. The Honolulu police department's 2013 report to the  
4 legislature indicates thirty incidents which resulted in  
5 discipline against an officer. Of these, three specifically  
6 involved domestic-related incidents, including an officer who  
7 was involved in a domestic dispute that escalated into a  
8 physical altercation causing pain to the complainant, an officer  
9 repeatedly contacting an ex-girlfriend after being told the  
10 contact was unwanted, and an officer repeatedly contacting an  
11 estranged spouse after being told the contact was unwanted.  
12 Each of these three incidents resulted in a one-day suspension.

13 In comparison, other non-domestic related incidents in the  
14 2013 report resulted in much harsher disciplinary action. For  
15 instance, an officer arrested for possession of marijuana and  
16 driving under the influence received a twenty-day suspension.  
17 Another officer conspired with other officers relating to  
18 special duty assignments and received a ten-day suspension.  
19 Another officer was discharged for failing a drug urinalysis  
20 test. Furthermore, a *Honolulu Civil Beat* analysis of annual  
21 Honolulu police department misconduct summaries turned up



1 twenty-five incidents of domestic violence from 2000 through  
2 2012. Three officers were discharged but their dismissals were  
3 not upheld, according to information provided to *Honolulu Civil*  
4 *Beat* by the Honolulu police department.

5 This disciplinary disparity leads the legislature to  
6 question whether the Honolulu police department is minimizing  
7 the problem of domestic violence, particularly when incidents  
8 involve a police officer. The legislature also questions  
9 whether any potential minimization of alleged incidents of  
10 domestic violence involving police officers is based on concern  
11 over the Lautenberg Amendment, a federal law that forbids  
12 anyone, including a police officer, with a misdemeanor domestic  
13 violence conviction from owning or possessing a firearm.

14 The legislature additionally finds that, notwithstanding  
15 the outcome of the Honolulu police department's internal  
16 investigation into the sergeant and responding officers  
17 connected to the September 2014 incident and the department's  
18 moves to terminate the sergeant, additional public disclosure is  
19 needed about the discipline taken in this high-profile case and  
20 in other cases involving police officer misconduct. The  
21 legislature also finds that while all other government



1 employees' misconduct information becomes public if the  
2 misconduct results in suspension or termination, existing law  
3 gives police officers special treatment in the form of an  
4 exemption under section 92F-14, Hawaii Revised Statutes, even  
5 misconduct information that results in suspension.

6 The legislature notes that, consistent with the Hawaii  
7 Supreme Court's opinion in *State of Hawai'i Org. of Police*  
8 *Officers (SHOPO) v. Soc'y of Prof'l Journalists-Univ. of Hawai'i*  
9 *Chapter*, 927 P.2d 386 (Haw. 1996) (*SHOPO v. SPJ*), the removal of  
10 the exemption under section 92F-14, Hawaii Revised Statutes,  
11 will not violate the privacy rights of individual police  
12 officers. The Hawaii Supreme Court held in *SHOPO v. SPJ* that,  
13 "[t]he information that must be disclosed pursuant HRS §  
14 92F-14(b)(4)(B) regarding a public employee's employment-related  
15 misconduct and resulting discipline, is not "highly personal and  
16 intimate information" and is, therefore, not within the scope of  
17 Hawai'i's constitutional right to privacy."

18 Accordingly, the purpose of this Act is to increase public  
19 accountability for police officers whose misconduct results in  
20 suspension or termination and ensure police officers are held to  
21 the same standards as other government employees by repealing



1 the privacy exemption within the Uniform Information Practices  
2 Act for county police department officers.

3 SECTION 2. Section 92F-14, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) The following are examples of information in which  
6 the individual has a significant privacy interest:

- 7 (1) Information relating to medical, psychiatric, or  
8 psychological history, diagnosis, condition,  
9 treatment, or evaluation, other than directory  
10 information while an individual is present at such  
11 facility;
- 12 (2) Information identifiable as part of an investigation  
13 into a possible violation of criminal law, except to  
14 the extent that disclosure is necessary to prosecute  
15 the violation or to continue the investigation;
- 16 (3) Information relating to eligibility for social  
17 services or welfare benefits or to the determination  
18 of benefit levels;
- 19 (4) Information in an agency's personnel file, or  
20 applications, nominations, recommendations, or



1 proposals for public employment or appointment to a  
2 governmental position, except:

3 (A) Information disclosed under section 92F-  
4 12(a)(14); and

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

8 (i) The name of the employee;

9 (ii) The nature of the employment related  
10 misconduct;

11 (iii) The agency's summary of the allegations of  
12 misconduct;

13 (iv) Findings of fact and conclusions of law; and

14 (v) The disciplinary action taken by the agency;

15 when the following has occurred: the highest  
16 nonjudicial grievance adjustment procedure timely  
17 invoked by the employee or the employee's  
18 representative has concluded; a written decision  
19 sustaining the suspension or discharge has been issued  
20 after this procedure; and thirty calendar days have  
21 elapsed following the issuance of the decision or, for





1 decisions involving county police department officers,  
2 ninety days have elapsed following the issuance of the  
3 decision; [~~provided that subparagraph (B) shall not~~  
4 ~~apply to a county police department officer except in~~  
5 ~~a case which results in the discharge of the officer,]~~

6 (5) Information relating to an individual's  
7 nongovernmental employment history except as necessary  
8 to demonstrate compliance with requirements for a  
9 particular government position;

10 (6) Information describing an individual's finances,  
11 income, assets, liabilities, net worth, bank balances,  
12 financial history or activities, or creditworthiness;

13 (7) Information compiled as part of an inquiry into an  
14 individual's fitness to be granted or to retain a  
15 license, except:

16 (A) The record of any proceeding resulting in the  
17 discipline of a licensee and the grounds for  
18 discipline;

19 (B) Information on the current place of employment  
20 and required insurance coverages of licensees;

21 and



- 1 (C) The record of complaints including all
- 2 dispositions;
- 3 (8) Information comprising a personal recommendation or
- 4 evaluation;
- 5 (9) Social security numbers; and
- 6 (10) Information that if disclosed would create a
- 7 substantial and demonstrable risk of physical harm to
- 8 an individual."

9 SECTION 3. Statutory material to be repealed is bracketed  
10 and stricken.

11 SECTION 4. This Act shall take effect upon its approval.

12

INTRODUCED BY: *[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*

# S.B. NO. 2365

**Report Title:**

County Police Departments; Police Officer; Uniform Information Practices Act; Privacy Interests; Disclosure; Misconduct

**Description:**

Repeals the privacy exemption within the Uniform Information Practices Act for county police department officers.

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