

# **SB 497**

## **RELATING TO POLICE DEPARTMENTS**

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

PSM, JDL

# OFFICE OF INFORMATION PRACTICES

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

From: Cheryl Kakazu Park, Director

Date: February 10, 2015, 1:15 p.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 497  
Relating to Police Departments

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports this bill, which would amend the Uniform Information Practices Act (“UIPA”), chapter 92F, HRS, to delete a clause giving special treatment to information about police officers’ misconduct.

In section 92F-14(b)(4), HRS, the UIPA recognizes a government employee’s significant privacy interest in information about possible misconduct, up to a point. 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. This bill puts police officers on the same footing as other government employees and is 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

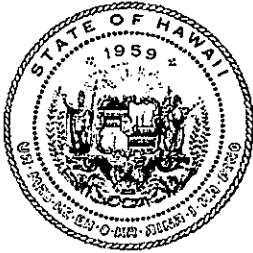
intimate information” and thus not covered by Hawaii’s constitutional privacy protection.

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. More recently, on June 10, 2014, Judge Karl K. Sakamoto entered a judgment in favor of online news site Civil Beat in its lawsuit seeking Honolulu Police Department disciplinary suspension records under the UIPA. The State of Hawaii Organization of Police Officers, which intervened in the case, filed an appeal of the decision that is currently pending.

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 statutory treatment of suspended police officers’ misconduct information to what it was prior to 1995. **Therefore, OIP supports this bill.**

Thank you for the opportunity to testify.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

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February 9, 2015

To: Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair  
Members of the Senate Committee on Public Safety, Intergovernmental  
and Military Affairs

From: Cathy Betts, Executive Director  
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 497, Relating to Police Departments

The Commission supports SB 497, which would repeal the privacy exemption under our Uniform Information Practices Act ("UIPA") for county police department officers. All other government employees' misconduct information is accessible by the public. However, police officers in Hawaii enjoy a privacy exemption under UIPA. This exemption prevents public disclosure and allows police officers' misconduct and disciplinary records to be completely protected.

Two national studies have found domestic violence occurs more frequently in families with a police officer. However, victims are often silenced and afraid to come forward for fear they will not be believed. In domestic violence cases involving police officers, public disclosure and transparency of those misconduct and disciplinary records are needed to ensure public trust and safety. Further, repealing this exemption is consistent with our state constitution and is consistent with how all other government employees are treated under UIPA.

The Commission requests that you pass SB 497. Thank you for your consideration of this important bill.

# SHOPO



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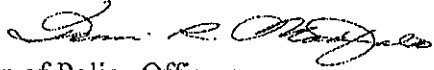
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TO: The Honorable Will Espero, Chair  
Senate Committee on Public Safety, Intergovernmental  
& Military Affairs

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

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

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

DATE: February 5, 2015

SUBJECT: Testimony on S.B. No. 497, Relating to Police Departments

HEARING DATE: Tuesday, February 10, 2015  
1:15 p.m. Conference Room 229

This bill repeals an exemption under 92F-14, Hawaii Revised Statutes, which protects the privacy interest of police officers who are suspended. The State of Hawaii Organization of Police Officers ("SHOPO") opposes this bill.

The *State of Hawaii Org. of Police Officers v. Soc'y of Professional Journalists- University of Hawaii Chapter*, 83 Haw. 378, 927 P.2d 386 (Haw. 1996) was decided before the privacy exemption for police officers was passed by the legislature. The Office of Information Practices Opinion 04-05 provides that "current or former officers who have not been discharged from duty will, in ordinary circumstances, have a significant privacy interest in the Honolulu Police Commission's closed investigative records that are about them."

Further, the legislature receives annual misconduct reports from each of the four county police departments. Additionally, the Chiefs of Police of the county police departments 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.

Finally, release of officers' names that have been suspended may have a chilling effect on the extent of action taken by officers who often have to make split second decisions. It impacts not only the officers but their families, too. Though other employees are subject to release of their names for suspensions, rarely, if ever, does that happen because of the level of news worthiness. Thank you for your consideration.



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SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS  
Hearing Scheduled 1:15 pm Tuesday, February 10, 2015, Conference Room 229  
SB 497 RELATING TO POLICE DEPARTMENTS  
TESTIMONY  
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Espero, Vice-Chair Baker, and Committee Members:

**The League of Women Voters of Hawaii strongly supports SB 497** which amends the Uniform Information Practices Act (UIPA) to implement court rulings which require disclosure of the names of county police officers who have been suspended but not discharged for misconduct. UIPA should apply exactly the same way to county police officers who have been suspended for misconduct as to other public employees who have been suspended for misconduct. There is no compelling public benefit from keeping secret the name of any public employee who has been suspended for misconduct.

Thank you for the opportunity to submit testimony.



TO: Chair Will Espero  
Vice Chair, Roz Baker  
Members of the Committee on Public Safety

FR: Nanci Kreidman, M.A.

RE: SB 497 Support

Aloha and thank you for considering the importance of strengthening accountability by law enforcement to the community. This Bill is one measure that will help achieve that.

As public servants charged with the critical and life altering role of responding to domestic violence in our community's homes, it is essential that our law enforcement officers are accountable to those they serve in their professional capacity.

The training, supervision and accountability owed to the community by law enforcement should mirror that of other public servants. As held by the Hawaii Supreme Court, the right to privacy will not be violated with the disclosure of discipline and termination when it has resulted from misconduct.

Thank you for your favorable action to repeal the privacy exemption within the Uniform Information Practices Act for county police department officers.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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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 Supporting S.B. 497, Relating to Police Departments**  
Hearing: February 10, 2015 at 1:15 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. 497. The Law Center supports this bill.

S.B. 497 requires mandatory disclosure of specified disciplinary information about suspended police officers (as already required for all other government employees), notwithstanding the officers' privacy concerns.

In 1995, the Legislature removed the mandatory disclosure provision for suspended officers out of concern that police departments more frequently suspend for minor departmental infractions. H. Stand. Comm. Rep. No. 1584, in 1995 House Journal at 1627 ("Your Committee finds that police officers, unlike most government and private employees, are subject to para-military discipline which manifests itself in the form of frequently applied suspensions from duty for misconduct or violation of departmental rules. Your Committee further finds that the use of such tough disciplinary measures is accepted by most officers because they realize the necessity for strict regulation of the broad powers they wield."). As Representative Alcon expressed at the time, "You mean to say, just because the policeman did not shine his shoes that we will have to publish his name in the paper?" 1995 House Journal at 682.

The 1995 Legislature, however, only had anecdotal information on police discipline provided by the departments. Now, there is a substantial body of empirical evidence about the nature of police discipline based on the annual reports submitted to the Legislature pursuant to HRS § 52D-3.5. Those reports reveal that officers are suspended for serious misconduct concerning their performance of police duties, not minor infractions.



One-day suspensions (presumably the least significant misconduct) for the Honolulu Police Department last year involved:<sup>1</sup>

**Assault, bullying, or harassment**

- “Struck the hand of the complainant with an electric gun, causing injury. Failed to provide name and badge number upon request. Failed to submit a written report regarding this incident.”\*
- “Made inappropriate and sexual remarks toward member of the public.”
- “Was hostile and intimidating toward another officer. Made hostile remarks directed at another officer.”
- “Sent 23 unwanted e-mail messages to the complainant.”\*

**Improper use of public resources**

- “Had a surfboard on a city-owned and a police subsidized vehicle on several occasions and was surfing while on duty. . . .”

**Hit-and-run**

- “Fled the scene of a motor vehicle collision and failed to initiate a report of involvement with a subsidized vehicle.”\*

**Falsified reports**

- “Worked special duty assignments that overlapped with scheduled work shift. Falsified the Daily Attendance Report.”\*
- “Claimed miles accumulated on his Daily Auto Record as police business when he was actually off duty. Inaccurately recorded on-duty mileage.”

**Failure to properly investigate**

- “Failed to properly investigate a motor vehicle collision. Made derogatory comments and was rude and sarcastic toward a member of the public.”

Moreover, S.B. 497 merely conforms the UIPA to judicial and OIP interpretations of existing law.<sup>2</sup>

As it stands, without the proposed mandatory disclosure provision for police disciplinary suspensions in S.B. 497, agencies must determine whether disclosure of

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<sup>1</sup> An incident marked with “\*” reflects HPD’s determination that the conduct was punishable as a crime.

<sup>2</sup> The Law Center represents the online publication Civil Beat in a lawsuit to enforce the judicial and OIP interpretations of existing law. *Peer News LLC v. City and County of Honolulu*, Civil No. 13-1-2981-11 KKS. In that case, after the circuit court ordered disclosure of police disciplinary suspension files, SHOPO appealed; the Honolulu Police Department did not appeal the disclosure order. SHOPO’s appeal is pending before the Intermediate Court of Appeals, No. CAAP-14-889, and Civil Beat recently requested that the Hawai’i Supreme Court take the case, No. SCAP-14-889.

information will violate privacy rights. Under the State Constitution and the UIPA, that determination requires agencies to balance privacy interests against the public interest in disclosure. HRS § 92F-14(a); *State of Hawai'i Organization of Police Officers v. Society of Professional Journalists, University of Hawai'i Chapter (SHOPO v. SPJ)*, 83 Hawai'i 378 (1996).

In 1996, the Hawai'i Supreme Court balanced the privacy interests of suspended police officers under the Hawai'i Constitution (not the UIPA) and held that the public interest in disclosure of police misconduct far outweighed any privacy concerns. The Court summarized: "[I]nformation regarding charges of misconduct by police officers, in their capacities as such, that have been sustained after investigation and that have resulted in suspension or discharge is not 'highly personal and intimate information' and, therefore, is not within the protection of Hawai'i's constitutional right of privacy." *SHOPO v. SPJ*, 83 Hawai'i at 399. OIP subsequently held that the same balancing applies to privacy claims by suspended police officers under the UIPA. OIP Op. No. 97-01 ("[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.").

Nevertheless, for more than 10 years, SHOPO has pressured county police departments into asserting an aggressive misreading of the UIPA.<sup>3</sup> Under SHOPO's interpretation, no information about police misconduct may be distributed to the public – except the HRS § 52D-3.5 annual reports – unless the officer was discharged. Applying that interpretation, police departments routinely refused access to any document that described police misconduct. SHOPO even goes so far as to claim that police departments cannot release de-identified misconduct information that has been redacted to remove any personal information that would identify the disciplined police officer. *E.g., SHOPO v. City & County of Honolulu*, Civil No. 14-1-2625-12 KKS.

In effect, SHOPO continues to doggedly push the idea that the 1995 Legislature granted **absolute confidentiality** to any document that mentions police misconduct (unless the officer was discharged). A pending lawsuit is expected to resolve the interpretation of existing law. But if this Legislature wants to ensure that the public may access information about police misconduct beyond the annual reports, S.B. 497 would provide clarity.

Thank you again for the opportunity to testify.

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<sup>3</sup> Before 2013, two circuit court decisions on the issue were split, and neither case was appealed. As noted above, there is a case currently pending on appeal that would address the validity of OIP Opinion 97-1.

The logo for the Society of Professional Journalists Hawaii Chapter, featuring the letters 'SPJ' in a stylized, overlapping font within a square frame.

**SOCIETY OF  
PROFESSIONAL  
JOURNALISTS**  
Hawaii Chapter

P.O. Box 3141  
Honolulu, HI 96802  
Feb.10, 2015

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
State Capitol  
415 S. Beretania St.

**Re: Senate Bill 497**

Chairman Will Espero and Committee Members:

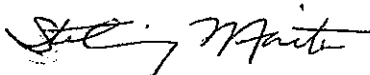
The Hawaii chapter of the Society of Professional Journalists supports the intent of SB 497 to require disclosure of the names of suspended police officers.

In 1995, the Legislature passed a bill that made secret the names of disciplined police officers after courts ruled in favor of a student journalist that the names should be public.

We have long maintained that the names of suspended police officers should be released. One way to tell if police commissions and police chiefs are doing the the correct job of disciplining officers is to know who was disciplined. Serious violations are seemingly met with minor suspensions, and it would be helpful to know who the suspended officers are. Also this would shine the light brighter on repeat offenders.

Plus this bill would disclose disciplinary information about suspended police officers as is the case for every other public employee. We feel this measure that merits your support.

Thank you for your time,

A handwritten signature in black ink, appearing to read 'Stirling Morita'.

Stirling Morita  
President, Hawaii Chapter SPJ

**From:** mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
**Sent:** Friday, February 06, 2015 10:00 AM  
**To:** PSMTestimony  
**Cc:** wusstig@gmail.com  
**Subject:** \*Submitted testimony for SB497 on Feb 10, 2015 13:15PM\*

**SB497**

Submitted on: 2/6/2015

Testimony for PSM on Feb 10, 2015 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kenny Wusstig	Individual	Support	No