



Hawai'i

Committee: Senate Committee on Judiciary
Hearing Date/Time: Thursday, March 29, 2018, 9:30 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in support of H.B. 1849, H.D. 2 S.D. 1, Relating to Public Safety

Dear Chair Taniguchi, Vice Chair Rhoads, and Committee Members:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") writes **in support of** H.B. 1849, H.D. 2 S.D. 1, which requires police departments to disclose the identity of police officers upon the officer's final suspension or discharge.

Police transparency and accountability are not only necessary to public trust in the police but they are also integral to public safety and the protection of civil rights. Presently, obtaining the disciplinary records of county police officers often requires protracted and costly litigation with potentially uncertain results. *See Peer News LLC v. City & County of Honolulu*, 376 P.3d 1 (Haw. 2016) (holding that under current law, "[d]isclosure of the [county police disciplinary] records is appropriate only when the public interest in access to the records outweighs [the] privacy interest [of the police officer].").

This bill seeks to treat county police officers on terms more equal to those of other government employees, whose disciplinary records are more readily available to the public, without necessarily requiring county police departments to also disclose disciplinary matters that do not result in suspension or discharge. *See* H.R.S. § 92F-14(b)(4)(B)(v) (treating disciplinary actions, except discharge, taken against "a county police department officer" differently from all other government employees for purposes of public records law). The current unequal treatment of county police officers makes little sense, because—given the extraordinary responsibility delegated to the police—the public interest in access to their disciplinary records is much stronger than that for most other government employees.

Consequently, we hope your Committee will pass H.B. 1849, H.D. 2 S.D. 1, unamended. Thank you for the opportunity to testify.

Sincerely,

Mateo Caballero
Legal Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for 50 years.

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SENATE COMMITTEE ON JUDICIARY
Thursday, March 29, 2018, 9:30 AM, Conference Room 016
HB 1849, SD 1 RELATING TO PUBLIC SAFETY

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Taniguchi and Committee Members:

HB 1849, SD 1 would make UIPA apply to the suspension of a police officer.

The League of Women Voters of Hawaii believes that UIPA should apply to police officers in exactly the same manner that UIPA applies to other public employees. It should not be necessary to file a lawsuit and obtain a court order to compel disclosure of the identity of, and summary information about misconduct by, county police officers who have been suspended but not discharged for **serious** misconduct.

Thank you for the opportunity to submit testimony.

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Senate Committee on Judiciary
Honorable Brian T. Taniguchi, Chair
Honorable Karl Rhoads, Vice Chair

RE: Testimony Supporting H.B. 1849 H.D. 2, S.D. 1, Relating to Public Safety
Hearing: March 29, 2018 at 9:30 a.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 **supporting** H.B. 1849 H.D. 2, S.D. 1.

The community entrusts police officers with the authority to enforce the law and use deadly force when necessary. That significant responsibility requires public oversight of police conduct. The public needs access to maintain trust and confidence that the police departments are enforcing the law uniformly with honesty and integrity.

The vast majority of police officers are examples of the best that Hawai'i has to offer. Hiding information about the few (approximately 2% per year) who engage in criminal, dishonest, or abusive behavior or other misconduct only damages public confidence in law enforcement generally and does a disservice to the rest of the police officers.

If a police officer has beat a suspect or significant other, lied in an official investigation, given favorable treatment to friends or fellow officers, or engaged in criminal conduct of any kind, then the public deserves to learn what happened. And as a practical matter, that does not happen under the current law.

Police officers are not disciplined for split-second life-or-death decisions. Below, we have broadly categorized the incidents identified in the recent Honolulu Police Department annual misconduct report. The Law Center recognizes that the descriptions in the annual reports often are lacking in sufficient detail, which is why greater disclosure is needed; for example, a report several years ago referred to a woman's alleged rape as the officer "conduct[ing] personal business while on duty." We did not include incidents that resulted in a final discharge (*i.e.*, records that are currently public), but we have included incidents with a non-final recommended discharge because a grievance or arbitration may reduce the discipline.

Assault

- 15-042 (unreasonable force by striking the suspect multiple times with his baton causing serious bodily injury)
- 16-041 (physical altercation with complainant after a motor vehicle collision)

Domestic Violence

- 15-054 (observed on video engaged in physical altercations with his girlfriend)
- 16-040 (slapped and kicked his girlfriend during an argument)
- 16-049 (physical altercation with ex-wife causing numerous injuries, in the presence of a minor under the age of 14)

Hit-and-Run

- 15-037 (unattended parked vehicle)
- 16-046 (off-duty collision with guardrail, operated vehicle while intoxicated)
- 16-052 (off-duty collision with another vehicle causing injury and damage, operated vehicle while intoxicated)
- 17-010 (accident involving damage to property, operated vehicle while intoxicated)

Dishonesty

- 15-037 (untruthful during administrative investigation)
- 15-062 (falsified time sheet)
- 16-010 (false statements during the course of the investigation)
- 16-011 (false statements during the course of the investigation)
- 16-021 (untruthful to a superior officer)
- 16-046 (untruthful during the investigation)
- 17-007 (did not accurately record on-duty mileage and submitted mileage for days when off-duty)
- 17-010 (was untruthful on multiple occasions, falsified daily attendance report)
- 17-032 (made untruthful statements to investigators at scene of motor vehicle collision and during investigation)
- 17-046 (recovered drugs and failed to submit items into evidence, was untruthful and/or falsified and omitted information in reports)

Criminal conduct, not otherwise categorized

- 15-001 (negligent operation of HPD vehicle causing injury)
- 15-032 (kidnapping and sexual assault)
- 16-006 (harassment)
- 16-008 (sexual assault)
- 16-026 (harassment)
- 16-044 (shoplifting)
- 17-003 (operated vehicle in a hazardous manner and with revoked driver's license)
- 17-032 (operated vehicle while intoxicated, resulting in motor vehicle collision)

Failure to Remain Impartial

- 16-036 (told another officer to not attend court so that a DUI case would be dismissed)
- 16-037 (misclassified a motor vehicle collision by failing to indicate that alcohol related)

Covered for Another Officer

- 15-055 (failed to notify a supervisor to respond to a crime scene involving another officer)
- 15-059 (failed to ensure a thorough investigation involving another officer)
- 16-012 (failed to properly supervise his subordinates at the scene of an off-duty shooting incident)
- 16-013 (failed to properly supervise his subordinates at the scene of an off-duty shooting incident)
- 16-014 (failed to properly supervise his subordinates at the scene of an off-duty shooting incident)
- 16-015 (failed to properly supervise his subordinates at the scene of an off-duty shooting incident)
- 16-016 (failed to properly investigate an off-duty shooting incident)
- 16-017 (failed to properly investigate an off-duty shooting incident)
- 16-018 (failed to properly investigate an off-duty shooting incident)
- 16-019 (failed to properly investigate an off-duty shooting incident)
- 16-048 (failed to immediately investigate a motor vehicle collision involving another officer)
- 17-033 (failed to lead a thorough investigation at the scene of a motor vehicle collision involving an HPD officer)
- 17-034 (failed to lead a thorough investigation at the scene of a motor vehicle collision involving an HPD officer)
- 17-035 (failed to conduct a thorough investigation at the scene of a motor vehicle collision involving an HPD officer)
- 17-036 (failed to conduct a thorough investigation at the scene of a motor vehicle collision involving an HPD officer)

Failed Drug Test

- 17-006 (tested positive during mandatory urinalysis)
- 17-020 (tested positive during mandatory urinalysis)

Sexual harassment

- 14-031 (co-worker)
- 17-022 (subordinate officer)
- 17-023 (subordinate officer)

Failure to Perform Normal Police Duties (reports, court appearances, investigations)

- 15-045 (failed to submit evidence in a criminal case)
- 16-029 (did not generate a police report for the complainant)
- 16-030 (did not generate a police report for the complainant)
- 16-053 (failure to follow rules regarding motor vehicle pursuit)
- 17-001 (failure to submit police report, third violation in a year)
- 17-004 (did not investigate call about a hazardous driver)
- 17-009 (failed to report on-duty motor vehicle collision)
- 17-013 (failed to appear in court, second violation in a year)
- 17-015 (failed to document why individual handcuffed and detained for 15 minutes, then released without arrest)
- 17-016 (failed to document why individual handcuffed and detained for 15 minutes, then released without arrest)
- 17-017 (failed to document why individual handcuffed and detained for 15 minutes, then released without arrest)
- 17-018 (entered a residence without permission to question a suspect)
- 17-019 (entered a residence without permission or search warrant)
- 17-021 (failed to return to duty despite medical clearance to do so)
- 17-024 (failed to submit a timely police report)
- 17-025 (failed to properly investigate a trespassing incident)
- 17-026 (failed to properly investigate a trespassing incident)
- 17-027 (failure to document attempted traffic stop)
- 17-028 (failure to document attempted traffic and motor vehicle pursuit)
- 17-029 (failed to appear in court, third violation in a year)
- 17-030 (failed to appear in court, third violation in a year)
- 17-040 (failed to conduct thorough investigation and submit police report)
- 17-041 (failed to appear in court, third violation in a year)

Unauthorized Disclosure of Information

- 16-022 (provided a confidential document to an unauthorized recipient)
- 16-023 (provided a confidential document to an unauthorized recipient)
- 17-038 (provided police reports of active investigations without authorization)
- 17-045 (used police resources to obtain information and share it with unauthorized persons)

Unprofessional or Insubordinate Conduct

- 17-002 (posted unprofessional and offensive caption on social media)
- 17-005 (retaliated against subordinate officer by speaking in an unprofessional manner)
- 17-011 (reported to work while displaying signs of alcohol consumption)
- 17-012 (sent unprofessional and disparaging e-mail to subordinate officer)
- 17-031 (was unprofessional and made inappropriate comments when posting a video on social media)
- 17-037 (used unprofessional language and conduct toward a superior officer)

- 17-039 (attended event in uniform while off-duty and was unprofessional with former family member who attended event)
- 17-044 (used profanity and unprofessional language when interacting with a supervisor)

Thank you again for the opportunity to testify.



March 29, 2018

Sen. Brian Taniguchi
Senate Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: HB 1849, HD2, SD1

Sen. Taniguchi and Committee Members:

We support this bill, which would allow disclosure of the names of disciplined police officers as are the identities of other disciplined public employees.

Such disclosure will go a long way to assuring the public that the minority of bad officers will be held accountable. Its trust is important because of police responsibility due to their powers.

This seemed to be the case before the 1980s, when the Honolulu Police Commission would routinely list on agendas the names of officers to be disciplined under the Sunshine Law.

We hope the committee will help end years of secrecy about disciplined officers' identities.

Sincerely,

Stirling Morita
President, Hawaii Chapter SPJ



Aloha Chair Taniguchi, Vice Chair Rhoads and members of the Senate Committee the Judiciary,

On behalf of the 653 registered members of the Young Progressives Demanding Action (YPDA) Hawaii, I would like to express **support** for HB1849 HD2 SD1 with suggestions.

The Uniform Information Practices Act (“UIPA”) should only protect government employees' reasonable rights to privacy when there is no possible repercussions to public health and safety. It should not be a shield behind which law enforcement officers may hide indiscretions from public scrutiny, and from other law enforcement agencies that might hire officers with records of misconduct. As has been tragically demonstrated, the ability of law enforcement officers to hide behind the UIPA can and does, in fact, represent a significant risk to public health and safety.

It's obvious that not all law enforcement agents are bad people capable of abusing their power an privilege and causing physical, psychological and emotional harm to victims. But it is also obvious that some law enforcement officers do abuse their power and do cause significant harm to victims. Whether we are talking about HPD Sgt. Darren Cachola, who was caught on camera viciously beating—not “fighting with”—his girlfriend, and remaining on the force until last year; or whether its Ethan Ferguson, hired by DLNR after being fired by HPD for misconduct that should have rendered him ineligible to wear a badge of any kind, there are multiple examples of misconduct swept under the rug and left unaddressed, with disgusting and vile consequences.

It's time we treated law enforcement officers the same as other public employees. They hold a high degree of power and privilege over the average citizen and are entrusted with a high degree of responsibility. They are, therefore, more than deserving of a higher level of scrutiny than other government employees, not a lower level. They ought to be held to the highest standard of behavior and excellence and they ought to be held accountable for their actions by the public, whom they must answer to.

We recommend that the committees consider amending the bill to simply treat county police officers like other state law enforcement and every other government employee. To achieve this, the committees would only need to amend H.B. 1849, H.D. 1, to provide that Hawai'i Revised Statutes Section 92F-14(b)(4) be amendment to strike out its last sentence as follows:

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

(4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:

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

(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 nonjudicial 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 or, for decisions involving county police department officers, ninety days have elapsed following the issuance of the decision; ~~provided that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer;~~

Mahalo,

Will Caron

Social Justice Action Committee Chair

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 29, 2018, 9:30 a.m.
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 1849, H.D. 2, S.D. 1
Relating to Public Safety

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 limit a clause giving special treatment to information about police officers’ misconduct. As amended by the S.D. 1, this proposal would treat information about an officer’s suspension the same way as information about any other government employee’s suspension, and would require police departments to identify officers receiving a suspension in their annual reports to the Legislature. To reach the same result with less confusing statutory language, OIP has recommended an amendment to S.D. 1 of the bill.

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. **The S.D. 1 version of this bill would no**

longer provide a special statutory privacy interest for an officer's suspension.

OIP notes as a technical matter, however, that because of the way this bill was originally written, the statutory language proposed by the S.D. 1 ended up more complicated than is necessary and could be simplified by taking out the police officer exception altogether, as under the S.D. 1 the exception would no longer provide for any different treatment of misconduct information than what is set out for public employees in general.

The current law first sets out a general rule that suspension and termination information is not private, then an exception to that general rule for police officer misconduct information, and then an exception to that exception for police officer terminations. The bill as originally introduced proposed to broaden the exception-to-the-exception to remove the privacy protection for second or subsequent suspensions as well. The S.D. 1 further broadened that to remove the privacy protection for all suspensions, which means that the exception-to-the-exception has now swallowed the original exception – in other words, there is no longer any reason to set out an exception at all, since the S.D. 1 proposes to treat suspension or termination information regarding a county police department officer in the same way as the general rule provides for.

To simplify the proposed amendment and avoid confusion, OIP recommends that instead of the added language in bill page 5, line 10, “discharge or suspension of . . .,” this Committee should amend this bill by entirely removing the exception for misconduct information about a county police department officer, so that the language at bill page 5, lines 8-11 would read as follows:

~~“decision; [provided that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer;]”~~

The UIPA amendment proposed by this bill would close the gap between treatment of law enforcement officers’ misconduct information and that of other government employees, and provide a greater level of government accountability. OIP therefore supports the S.D. 1 version of this bill, with a recommended amendment to simplify the language and an effective date of upon approval.

Thank you for considering OIP’s testimony and suggested amendment.