

STAND. COM. REP. NO. **2235**

Honolulu, Hawaii

APR 23 2019

RE: GOV. MSG. NO. 543

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Public Safety, Intergovernmental, and Military Affairs, to which was referred Governor's Message No. 543, submitting for study and consideration the nomination of:

DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY

G.M. No. 543 NOLAN P. ESPINDA,
for a term to expire at noon on 12-05-2022,

begs leave to report as follows:

Your Committee has reviewed the personal history, resume, and statement submitted by Nolan P. Espinda for service as the Director of Public Safety.

Testimony

Your Committee received testimony in support of the nomination for the reappointment of Mr. Espinda from the Governor; Department of Labor and Industrial Relations; Department of Hawaiian Home Lands; Department of Accounting and General Services; Department of Business, Economic Development, and Tourism; Department of Human Resources Development; Department of Taxation; Department of Land and Natural Resources; Department of Defense; Department of Health; Department of Human Services; Department of Transportation; Department of Commerce and Consumer Affairs; Department of Agriculture; Office of Enterprise Technology Services; Office of Planning; Hawaii Paroling Authority; County of Hawai'i Police Department; Kaua'i Police Department; one member of the Honolulu City Council; United Public Workers, AFSCME, Local 646, AFL-CIO; Hawaii Operating Engineers

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Industry Stabilization Fund; Oahu Economic Development Board; Hawaii Laborers Union, Local 368; and ninety-seven individuals. Your Committee received testimony in opposition to the nomination for the reappointment of Mr. Espinda from the Ho'omanapono Political Action Committee, Hawai'i Justice Coalition, 'Ohana Ho'opakele, Ka Lāhui Hawai'i Political Action Committee, Young Progressives Demanding Action, Malu 'Aina, Community Alliance on Prisons, and forty-eight individuals. Your Committee received comments on the nomination for the reappointment of Mr. Espinda from the American Civil Liberties Union of Hawai'i, Akamai Cannabis Clinic, and four individuals.

Your Committee acknowledges the testimony received in support of Mr. Espinda to continue to serve as the Director of Public Safety. Specifically, your Committee notes Mr. Espinda's lengthy experience of working within the Department of Public Safety in various capacities.

Senate's Constitutional Role

Your Committee notes that under the Hawaii State Constitution, the Senate has the responsibility of reviewing gubernatorial nominations and determining whether the Senate advises and consents to such nominations. In going through the advise and consent process, the Senate must remain cognizant of its vital role in assuring that those nominated have the qualifications and character to serve in that position.

Your Committee notes that the Senate's practice of holding public hearings on all gubernatorial nominees gives the public an opportunity to participate in the screening of each nominee. The nomination process and public participation help to assure the public that each nominee is qualified for the position and possesses the integrity and character necessary for an important leadership role in state government.

In addition to the hearing on Mr. Espinda's nomination, your Committee held an informational briefing on April 9, 2019, to discuss the circumstances, timeline of events, departmental policies and procedures, and subsequent response of the leadership of the Department of Public Safety to several events, including but not limited to the March 11, 2019, riot at the Maui Community Correctional Center and the fatal shooting of a man by a state sheriff on State Capitol grounds on February 17, 2019 (hereinafter



"informational briefing"). Your Committee believes that the information discussed and additional detail sought from the Department during that informational briefing relates to the determination by your Committee as to whether your Committee should recommend that the Senate advise and consent or not advise and consent to Mr. Espinda's nomination.

Your Committee recognizes the challenges the Department of Public Safety faces, however for the reasons discussed below, your Committee finds that Mr. Espinda is not the appropriate person to lead the Department of Public Safety going forward.

Excessive Use of Force and Inadequate Training and Equipment

Your Committee finds that recent incidents involving the use of force by Department of Public Safety employees, information gleaned from the testimony in opposition to the nomination for the reappointment of Mr. Espinda, and various media reports on the Department's actions highlight problems within the Department that weighed heavily in your Committee's recommendation. Specifically, concerns regarding the use of lethal force where non-lethal force may have been appropriate, lack of training on the use of non-lethal force, and inadequate equipment.

In February 2019, a deputy sheriff shot and killed a homeless man during a struggle on the State Capitol grounds. While previous requests had been made to provide sheriffs with non-lethal weapons such as tasers or pepper balls, the Department has either failed to adopt any type of policy regarding non-lethal use of force or to purchase non-lethal weapons.

In addition, other equipment that the Department has purchased that might assist sheriffs in performing their duties has never actually been issued to the sheriffs because use of the equipment does not comply with existing policies or lack of training on the proper use of such equipment. For example, since 2016, the Department of Public Safety spent more than \$77,000 on ninety-six Sig Sauer rifles. However, these long guns cannot be used by sheriffs because state policy bans this type of rifle. The Department of Public Safety has also spent more than \$65,000 to buy one hundred twenty Remington Model 870 shotguns since 2016. These shotguns are allowed under the policy, but instead they have sat in the armory for three years without use because the Department has not issued them.



Correctional Facilities Conditions, Treatment of Staff and Inmates, and Inadequate Staffing

Your Committee finds that the correctional facilities run by the Department of Public Safety have faced numerous issues relating to overcrowding, mistreatment of inmates, failure to protect inmates from sexual abuse, and lack of in-person visitation.

Your Committee finds that the Department of Public Safety has not been forthright about deaths at correctional facilities and how individuals with disabilities and mental health issues are treated while incarcerated. In addition, the Department of Public Safety has withheld other important information from the public and family members of the deceased and those who have suffered abuse or injury. According to testimony, your Committee notes that suicide by inmates has increased during Mr. Espinda's tenure as Director of Public Safety.

Your Committee finds that staffing continues to be a problem within the State's correctional facilities. Your Committee believes that Mr. Espinda has attempted to save the State money by cutting back on overtime and failing to hire enough staff despite positions being authorized and funded. This has created unsafe conditions in the State's correctional facilities. For example, despite Maui Community Correctional Center being authorized one hundred sixty-eight positions, only one-hundred twenty-eight, according to Mr. Espinda, were filled at the time of the riot, and even less staff were on duty at that time due to extended leave and vacations.

In addition, during the informational briefing, allegations were raised that leadership at the Department of Public Safety passed over the hiring or promoting of female staff if such hiring or promotion would cause the Department to incur overtime costs. While this may be seen as a cost cutting initiative, the lack of an adequate number of female staff has created unsafe situations for female inmates.

Furthermore, the American Civil Liberties Union of Hawai'i sued the Department of Public Safety on January 6, 2017, alleging overcrowded, unconstitutional conditions at the State's correctional facilities. The complaint raised the following concerns, among others: insufficient shelter, unsanitary conditions, inadequate medical care and mental health services,



food shortages, and chronic understaffing at several of the correctional facilities.

Additionally, the Correctional Reform Task Force, formed pursuant to House Concurrent Resolution No. 85 (Regular Session of 2016), met from June 2016 through 2018, and published an interim report in February 2017 and a final report in December 2018, with recommendations on how to improve the State's correctional facilities. According to testimony, these recommendations have not been implemented and have been largely ignored.

Culture of Fear

Additional testimony in opposition suggests that there is a culture of fear at the Department of Public Safety. Staff, inmates, and relatives are afraid to speak out against abuses or suggest ways the Department of Public Safety's policies and programs can be improved out of a fear of retaliation, job loss, or further abuse. While some testifiers identified themselves, others submitted testimony anonymously for fear of retaliation. Your Committee also received testimony alleging that Mr. Espinda leads with a pattern of corruption, cover-ups, and favoritism, including nepotism and is concerned that the Department of Public Safety lacks an atmosphere that encourages suggestions for how to improve the system. As Mr. Espinda admitted in the informational briefing, the Department of Public Safety follows a strict chain of command, so it is possible that complaints may never reach him.

Maui Community Correctional Center Riot

Your Committee acknowledges that an internal investigation of the riot at Maui Community Correctional Center is ongoing and notes that the internal investigation is being investigated by an employee of the Department of Public Safety who was chosen and appointed for this task by Mr. Espinda. During the informational briefing, your Committee allowed Mr. Espinda to sit with an attorney and refuse to answer questions about the riot that might relate to the internal or other investigations, unless the questions concerned information that was already made public.

During the informational briefing, Mr. Espinda testified that only handcuffs, a radio, and gloves were issued to employees at Maui Community Correctional Center at the time of the riot. Other equipment was locked up in the armory and was not accessible to staff. Through testimony on Mr. Espinda's nomination, your



Committee learned that during the riot, some of the leadership at Maui Community Correctional Center appeared more concerned for other inmates than for their staff who tried to prevent other officers from being burned or otherwise tried to contain the riot with only a pair of handcuffs.

Although the investigation on the riot is ongoing, several testifiers testified that the uprising at Maui Community Correctional Center could have been avoided. According to testimony, more men and women could have been placed on work furlough, extended furlough, or electronic monitoring furlough rather than being overcrowded at Maui Community Correctional Center. Furthermore, the phones in the pod where the riot started were broken, which prohibited inmates from speaking with their counsel and loved ones, which some testified was the issue that sparked the riot. Staff and inmates notified authorities of the broken phones long before the riot occurred, yet administration did nothing to remedy the situation.

Department of Public Safety Audit

Your Committee notes that Mr. Espinda was largely unaware of the 2010 legislatively-mandated audit of the Department of Public Safety by the State Auditor (Report No. 10-06, *Audit of the Department of Public Safety, Sheriff Division*), which appears to be the most recent management audit of the Department of Public Safety. While Mr. Espinda was a warden at the time the audit was conducted, upon becoming Director, it appears Mr. Espinda did not utilize the findings of this audit to help improve the Department of Public Safety and address the Department's many long standing issues.

Lack of Strategic Vision

Your Committee understands that generally one person cannot be blamed for all of the Department of Public Safety's problems. However, your Committee finds that as the Director of Public Safety since 2015, Mr. Espinda has failed to take responsibility for the numerous issues and challenges the Department faces and has failed to show leadership in moving the Department forward. Under Mr. Espinda's leadership, the Department of Public Safety has failed to fulfill its mission to uphold justice and public safety by providing correctional and law enforcement services to Hawaii's communities with professionalism, integrity, and fairness in every instance.



When questioned during the informational briefing, Mr. Espinda generally did not appear to have a concrete plan for addressing the lack of training, the lack of options for non-lethal use of force, or for recruiting and hiring more people to fill vacant positions. When asked about physical and sexual assault within the Department of Public Safety, Mr. Espinda failed to address your Committee's concerns. In short, your Committee was not satisfied with Mr. Espinda's answers on how he would lead the Department of Public Safety in a new and improved direction.

Recommendation

Based on all of the information received, your Committee believes that the negative testimony outweighs the testimony in support of Mr. Espinda's nomination. Your Committee notes that the negative testimony has a similar theme of a lack of leadership at the Department of Public Safety. Based on the serious concerns raised about the Department of Public Safety under Mr. Espinda's direction, your Committee finds that Mr. Espinda is not the right person to lead the Department going forward, and accordingly, cannot recommend the nomination of Mr. Espinda for reappointment as the Director of Public Safety.

As affirmed by the record of votes of the members of your Committee on Public Safety, Intergovernmental, and Military Affairs that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, recommends that the Senate not advise and consent to the nomination.

Respectfully submitted on
behalf of the members of the
Committee on Public Safety,
Intergovernmental, and Military
Affairs,

Clarence K. Nishihara

CLARENCE K. NISHIHARA, Chair



