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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 29, 2019, 9:30 a.m.
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 285, H.D. 1, 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 remove a clause giving special treatment to information about police officers’ misconduct. 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.

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 would no longer provide a special statutory privacy interest for an officer’s suspension.**

Senate Committee on Judiciary
March 29, 2019
Page 2 of 2

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 this bill.

Thank you for considering OIP's testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Glenn Wakai, Vice Chair

RE: Testimony Supporting H.B. 285 H.D. 1 S.D. 1, Relating to Public Safety
Hearing: March 29, 2019 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 in support of H.B. 285 H.D. 1 S.D. 1. The Law Center **strongly supports this bill because it will measurably increase public access to information about police discipline.**

This bill is NOT about the hundreds of police officers who perform their duties professionally every day under stressful and difficult circumstances; who appreciate the responsibility to the community that comes with enforcing the laws; who understand the gravity of their authority to use reasonable force, even lethal force, against citizens when necessary; and who serve as a model for our community in both their professional and personal lives. *This bill concerns the small percentage of police officers who violate statutes, rules, and regulations resulting in their suspension.*

Bills to fix the issues with public access to records of suspended police officers have been introduced every year since 2015. After nearly 25 years, it is apparent that the reasons that the 1995 Legislature distinguished police officers from other government employees (because police officers might be suspended for minor offenses, such as failing to shine their shoes) are no longer legitimate concerns.¹

¹ *E.g.*, 1995 House Journal at 682 (remarks of Rep. Alcon): “You mean to say, just because the policeman did not shine his shoes that we will have to publish his name in the paper?” Because the 1995 Legislature required annual reports from police departments regarding the nature of discipline imposed, we now have evidence from which to judge the assumptions that motivated the original change to the law. From reviewing HPD’s annual reports, the Law Center is not aware of any instance in which a police officer was suspended solely for such innocuous conduct. (For example, HPD suspended an officer in 2015 for not wearing his duty belt, but he also stole a jacket from another police officer, an offense that HPD referred to the prosecutor.)

The long history of police discipline reflected in the annual legislative reports shows that suspended police officers have committed exceptionally troubling conduct. The public deserves clear and timely access to information about suspended police officers.

HPD's most recent disciplinary report to the Legislature shows that other officers have been suspended (despite HPD's efforts to discharge them) for: (1) "slap[ing] and kick[ing] his girlfriend during an argument" (No. 16-040); (2) "a physical altercation with his ex-wife, causing numerous injuries . . . in the presence of a minor less than 14 years of age" (No. 16-049); (3) DUI and hit-and-run (No. 16-052); (4) DUI, hit-and-run, lying during an investigation, and falsifying records (No. 17-010); (5) stealing drug evidence and lying and/or falsifying records (No. 17-046); and (6) DUI (No. 18-008).

In 2018, the Honolulu Police Department reinstated Sgt. Darren Cachola despite a 2014 video that captured him beating a women in a restaurant. *HPD wanted to disclose his suspension records*; the Department wanted to explain to the public why it was required to reinstate Sgt. Cachola, rather than terminate him. But SHOPO filed a lawsuit to stop HPD from telling the public why Sgt. Cachola is still a police officer.²

That lawsuit is based on the language that this bill would fix. Even though the circuit court recently agreed with HPD that the records should be publicly disclosed, SHOPO already plans an appeal that could tie up public access to the Cachola files for years. Unless the Legislature makes police officers like all other government employees, *every* record requested about a suspended police officer will be held up for years – regardless how strong the public interest.

In 2013, Honolulu Civil Beat filed a lawsuit to require access to records about suspended police officers who used malicious force, lied during investigations, falsified records, hindered a federal investigation, and committed hit and runs. Five years later, that request also is still in litigation, and no records have been disclosed.

This bill is NOT about split-second decisions that police officers must make when confronting violent suspects in the field. For example, as it concerns use of force by police officers in the 2018 HPD report, this bill concerns domestic violence (Nos. 15-054, 16-040, 16-049, 18-018), fighting with a fellow officer (No. 18-016), and using unreasonable force while effecting an arrest (18-019).

This bill is NOT about simply naming suspended police officers. Without the details provided by investigative reports, the information available in the annual disciplinary reports to the Legislature is incomplete and can be misleading. For example, as it concerns Sgt. Cachola, the annual report reflects that HPD tried to discharge him after

² The Law Center represents Honolulu Civil Beat in that litigation, but submits this testimony on its own behalf.

he publicly beat a woman in a restaurant, but an arbitrator reinstated him with a six-month suspension. Why? The underlying records will explain the circumstances that justify the ongoing public trust conferred with a police officer's badge and weapon.³

This bill is NOT about losing police officers to Washington and California. While subject to appropriate redaction, as would remain true even if H.B. 285 were enacted (see the discharge file referenced in footnote 3), Washington police departments may not withhold internal investigation files from the public. *E.g., Sargent v. Seattle Police Dep't*, 314 P.3d 1093 (Wash. 2013); *Cowles Publ'g Co. v. State Patrol*, 748 P.2d 597 (Wash. 1988). And California recently rolled back four decades of secrecy related to police disciplinary files. Moreover, retention of police officers should not be a race to the bottom in competition with other States that focuses on keeping the handful of individuals found to have committed serious misconduct resulting in suspension.⁴

And this bill is NOT about the Law Center or the news media.⁵ The testimony previously submitted in support of this bill reflects the serious *community* concerns about public accountability for police officers.

Thank you again for the opportunity to testify in support of H.B. 285 H.D. 1 S.D. 1.

³ The discharge records of another police officer provide a different example. The annual report stated that he was discharged because he “[f]ailed to inform dispatch of status and location and failed to initiate a report for a domestic argument. Transported the complainant to another district without the supervisor’s approval. Conducted personal business while on duty.” (2012 HPD Report, No. 6) Because the officer was discharged, the public had access to the underlying investigative report that revealed that the “personal business” concerned the officer allegedly raping the woman involved in the domestic argument. www.slideshare.net/civilbeat/james-easley-investigation. The annual summaries are useful, but are not a substitute for access to the actual records for purposes of public accountability.

⁴ In prior testimony, SHOPO made the questionable assumption that potential police recruits anticipate engaging in serious misconduct that will result in their being suspended and thus seek out a police department that will cover up such future behavior.

⁵ From its limited perspective concerning the multiple lawsuits that it has filed to obstruct public access to police records – in which it is ably represented by its own attorneys – SHOPO erroneously claims that the Law Center is the “personal law office” for Honolulu Civil Beat. As reflected on its website, the Law Center represents individuals, organizations, and the general public – including, but not limited to Civil Beat – in lawsuits and other advocacy concerning government transparency.



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SENATE COMMITTEE ON JUDICIARY
Friday, March 29, 2019, 9:30 AM, Conference Room 016
HB 285, SD 1, Relating to Public Safety

TESTIMONY

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

Chair Rhoads and Committee Members:

The League of Women Voters strongly supports HB 285, SD 1. This bill requires county police departments to disclose to the Legislature the identify of an officer upon that officer's suspension or discharge and amends UIPA to allow public disclosure of information about employment misconduct that results in the suspension of a police officer.

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

Thank you for the opportunity to submit testimony.



March 29, 2019

Sen. Karl Rhoads
Senate Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: HB 285, HD1 SD1

Chairman Rhoads and Committee Members:

We support this bill, which would allow disclosure of the names of disciplined police officers in annual reports by the police departments to the Legislature and the public. This would put such officer discipline on a par with that 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. Trust is important because of police responsibility due to their powers.

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

Sincerely,

Stirling Morita
President, Hawaii Chapter SPJ



Common Cause Hawaii • 307A Kamani St. • Honolulu, HI 96813 • 808.275.6275

March 16, 2019

**Testimony IN SUPPORT of HB 285 HD1 SD1
Relating to Public Safety**

TO: Chair Karl Rhoads, Vice Chair Glen Wakai, and
Members of the Senate Committee on the Judiciary

FROM: Barbara Polk, on behalf of the Board of Common Cause Hawaii

Major focuses of Common Cause Hawaii are transparency and accountability in government. For these reasons, we **strongly support HB 285** that would require the release to the legislature of the names of police officers who have been suspended or dismissed, as well as other information about their infractions, whether or not referred for prosecution, and the status of any prosecution or appeals.

It is very important for people to trust and respect police officers, but that is difficult to do when the public lacks information on the integrity of the police. Although this bill does not require notification of the public, it does break the code of secrecy within county police departments and allows for legislators to identify any action needed to further protect the public. The names of the people the police arrest are made public, as are disciplinary actions against other public employees. There is no reason to exempt the police.

Over the past few years, and especially recently, there have been many incidents that call into question the behavior of police and the willingness of the police department to call officers to account for their misdeeds. In some cases, it appears that criminal behavior is involved in suspensions or dismissals, but those crimes are not pursued. Better information would increase the respect for police and perhaps also make police officers more careful, if their misdeeds were to be reported publicly.

Please pass HB 285 HD1 SD1.



LATE

Committee: Senate Committee on Judiciary
Meeting Date/Time: Friday, March 29, 2019, 9:30 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in support of H.B. 285, H.D. 1, S.D. 1, Relating to Public Safety


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

The American Civil Liberties Union of Hawai'i ("*ACLU of Hawai'i*") writes ***in support of*** H.B. 285, H.D. 1, S.D. 1, which requires county police departments to disclose the identity of police officers upon the officer's 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 and liberties. 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 equal terms as other government employees, whose disciplinary records are more readily available to the public. *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 urge the Committee to support H.B. 285, H.D. 1, S.D. 1. Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy 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.

American Civil Liberties Union of Hawai'i
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RE: Testimony in SUPPORT of HB285 HD1 SD1

LATE

ATTN: Chair Rhoads, members of the Senate Judiciary Committee,

The Young Progressives Demanding Action (YPDA), representing 800+ registered members, supports increased transparency and accountability from our county police agencies and strongly urges the committee to pass this long-overdue measure forward. The recent spate of fatal police shootings highlights the need for measures like this.

As part of the social contract, we citizens have agreed to cede some of our liberty to law enforcement agencies. We have given them power over us in an extreme way, with the understanding that this power will be wielded in the service of justice and peace. But we would be foolish to think that this power is never abused. In a day-and-age in which camera phones are as ubiquitous as automobiles, the increased documentation of police misconduct has shown the public what civil rights advocates have known for decades: police departments around the country routinely abuse this grave power that we, as citizens, have entrusted to them. In this context, it is vitally necessary, and in the public interest, to question the official story police departments put out when incidents like these occur. We know for a fact that police misconduct does occur in Hawai'i, and that people have been injured, traumatized or have lost their lives as a result.

Whether it is the former girlfriend of Honolulu Police Department (HPD) Sgt. Darren Cachola, who was beaten in a restaurant and then forced to watch as a union arbiter reinstated her abuser to active duty; or the family of Collin Elderts whose son was murdered by federal agent Christopher Deedy, and who have had to watch as three successive trials failed to bring either closure or justice; or the Big Island teenager who was raped by a Department of Land and Natural Resources officer who was hired despite being removed from duty with HPD for similar misconduct; or the multiple women who have come forward now to tell their stories of how HPD officers participated in their sex-trafficking, and the many more who have remained silent out of fear; or the multiple people who have been injured by the

cruelty and alleged misconduct of the former police chief and his former prosecutor wife, Katherine Kealoha—we know that a lack of transparency and lack of accountability have resulted in the abuse of policing power in Hawai‘i.

And so, in light of these recent tragedies, and all the ones that have come before, we are calling on legislators to finally pass meaningful legislation that would require the disclosure of police misconduct to the public record. HB285 would eliminate the exemption police currently enjoy that prevents public notice about officers that have been suspended or removed from duty because of misconduct. While this is merely a first step, it is a meaningful one that will assist in keeping our law enforcement agencies honest. Oversight is clearly badly needed, and it's time the legislature recognized the public need for a higher standard of police accountability.

YPDA

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O`ahu County Democrats Legislative Priorities Committee

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair

DATE: Friday, March 29, 2019
TIME: 9:30 a.m.

PLACE: Conference Room 016, State Capitol

LATE

RE: SUPPORT TESTIMONY FOR HB 201, HD1, SD1, Relating to Invasive Species

To the Honorable Karl Rhoads, Chair; the Honorable Glenn Wakai, Vice Chair; and Members of the Committee on Judiciary:

My name is Melodie Aduja and I serve as Chair of the O`ahu County Democrats Legislative Priorities Committee of the Democratic Party of Hawai`i (“DPH”). Mahalo for this opportunity to submit testimony on HB 201, HD1, SD1. The O`ahu County Democrats Legislative Priorities Committee (“OCDLPC”) hereby submits its testimony in **SUPPORT of HB 201, HD1, SD1, Relating to Invasive Species.**

HB 201, HD1, SD1, clarifies that a state department that is a member of the invasive species council, counties, and its employees and authorized agents, have authority to enter private property to control and eradicate invasive species when there is a reasonable suspicion that invasive species are present on the property.

The Democratic Party of Hawai`i Platform states that agriculture in our state must be preserved and its future strengthened. Enough prime agricultural lands must be maintained for the health, economic well-being and sustenance of the people. We believe in an integrated approach to agricultural innovation and sustainability. We encourage the responsible development of ocean resources and aquaculture to achieve sustainability in our State, of our marine resources and ensure and improve the health of our reef and marine life.

This approach includes, but is not limited to, the adoption of the Native Hawaiian concept of ahupua`a, an integrated approach to land management. This could also include development of economic, land and ocean use policies that foster sustainable crops both for local consumption and for export, policies to foster agriculture-related infrastructure at shipping points, and

increased inspection to protect against invasive species and to encourage reduced holding times. We need to ensure food safety, strive towards food security and strive to set the highest standards for food quality and nutrition. *Democratic Party of Hawai'i Platform (2018), p. 9, In. 5-16.*

We support **adequate resources to address the various invasive species** on this island beginning at point of entry. *Democratic Party of Hawai'i Platform (2018), p. 9, In. 43-44.*

The Democratic Party of Hawai'i makes protecting the environment and our cultural assets a high priority by advancing measures that re-establish healthy Climate and Environment for humans and fellow species (including ban on use of chemicals that harm our marine waters such as oxybenzone; address climate change crisis, ban use of polystyrene for food uses, protect indigenous and organic food farms from contamination; require truth in labeling on all agricultural products and 50% Hawai'i grown to be labeled as Hawai'i grown; advance "Buy Local" and "Blue Zone Project" and other community wellness programs; restrict marine aquarium harvesting; give priority to alternative energy and nature based solutions such as promoting use of compost and recycling policies and avoidance of incineration; restrict the use of insecticides and herbicides deleterious to the web of life and **implement the State biosecurity plan to address invasive species**; protect and preserve our fragile ecosystems and cultural assets by requiring environmental and cultural assessments in advance of all development; advance set asides for Native Hawaiian Cultural Reserves and Parks, and reclaim ancient trails across the island). *Democratic Party of Hawai'i Platform (2018), p. 2, In. 23-34.*

For the foregoing reasons, to wit, to protect the people of Hawai'i and their property against various invasive species on this island, OCDLPC supports HB 201, HD1, SD1, and urges its passage out of the Committee on Judiciary.

Mahalo nui loa
Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja
Chair, O`ahu County Democrats Legislative Priorities Committee
Ph. (808) 258-8889
Email: legislativepriorities@gmail.com

HB-285-SD-1

Submitted on: 3/27/2019 1:01:31 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Arbeit	Individual	Support	No

Comments:

I strongly support this bill. It's in the public's interest to know the identity of a police officer upon suspension or discharge. This is not a privacy issue; it is a safety issue.

Wendy Arbeit

Makiki, O`ahu

HB-285-SD-1

Submitted on: 3/27/2019 4:51:38 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William Caron	Individual	Support	No

Comments:

Aloha Chair Rhoads,

I strongly urge passage of HB285 HD1 SD1. County police officers are the only government employees whose misconduct is shielded from the public and, yet, in many ways they are the government employees whose misconduct the public has the strongest need to know about. This is because, as part of the social contract, we citizens cede some of our independence, freedom and self-determination over to law enforcement in the interest of the public good, keeping the peace, etc. These law enforcement agents are given authorization to use deadly force if needed.

The power they wield over average citizens is therefore great. And with the advent of ubiquitous camera phone technology, it has become readily aparent that, as civil rights advocates have been saying for decades, there exists far too much abuse of this power within law enforcement agencies. Transparency and accountability are the aboslute bare minimum that these agencies owe the public, whom they exerise this vast power over and whom they are meant to serve and protect.

Think of the Big Island teenager who was raped by a DLNR agent who was hired by the state agency after being fired from a county police force for sexual misconduct. The fact that this individual was fired for sexual misconduct was hidden from the public, which meant that DLNR either did not know about it when they hired him, or they at least have plausible deniability about their knowledge of that fact. That man should never have worn another badge after being fired. That girl should never have been raped. But both things happened because police officers are allowed to hide behind a wall of opacity when it comes to their behavior.

This is not conducive to the power dynamic described above. It promotes abuse and dysfunction. The recent spate of fatal police shootings reinforces the need for this wall to come down. Don't let there ever be another Darren Cachola on the police force - a man who would beat his own girlfriend. But more importantly, don't let there be another scenario in which such a crime can be committed and the assailant can walk away without justice simply because he is wearing blue.

Please pass HB285. Mahalo.

