



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
ROSS M. HIGASHI  
EDUARDO P. MANGLALLAN  
PATRICK H. MCCAIN  
EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 15, 2022  
1:00p.m.  
State Capitol, Teleconference

**H.B 1239, H.D. 1**  
**RELATING TO LAW ENFORCEMENT**

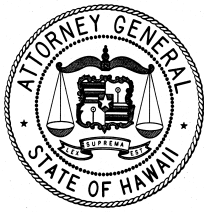
Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Department of Transportation (DOT) provides **comments** on this bill which would make changes to the Law Enforcement Standards Board (LESB) membership and provide much needed funding for the LESB to perform their duties of certifying law enforcement officers.

The Legislature wisely established the LESB in 2018 to perform this very important function and provided that the Chiefs of Police and the Attorney General be members of the board. The aspect that we would like to draw attention to is the funding.

At present, the board is not adequately funded. We believe the challenges ahead for the board are many and it's important that it receives appropriate attention and resources to ensure its success in meeting these challenges. We would ask that the funding level more accurately reflect Hawaii's commitment to law enforcement standards.

Thank you for the opportunity to provide testimony on this very important measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1239, H.D. 2, RELATING TO LAW ENFORCEMENT.

**BEFORE THE:**

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS

**DATE:** Tuesday, March 15, 2022                      **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 229, and Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Lance Goto, Deputy Attorney General

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Chair Nishihara and Members of the Committee:

The Department of the Attorney General (Department) submits the following comments.

This bill makes amendments to the laws regarding the Law Enforcement Officer Independent Review Board (LEOIRB) and the Law Enforcement Standards Board (LESB). For the LEOIRB, this bill: (1) specifies the terms of LEOIRB board members as four-years; and (2) makes the LEOIRB a permanent board by removing the sunset date of June 30, 2022. For the LESB, this bill: (1) reduces the board membership of the LESB by one member by removing the two law enforcement officer members and adding one additional member of the public; (2) allows all nine of the ex-officio board members of the LESB to have designees; and (3) adds that the LESB conduct studies or consider studies relevant to LESB responsibilities.

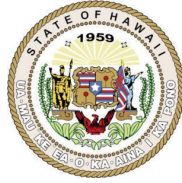
Regarding the amendments to LESB laws, the Department prefers the provisions contained in House Bill No. 892, H.D. 2 (H.B. No. 892), Relating to Law Enforcement, with certain amendments as recommended to this Committee in its testimony on H.B. No. 892, which is also being heard at this hearing. The recommended amendments include an increased appropriation amount of \$483,000 for fiscal year 2022-2023. H.B. No. 892 is supported by the LESB and contains important provisions for the LESB that this bill does not. H.B. No. 892 provides needed funding and resources to the board and gives the board more time to accomplish its mission. This bill does not do this.

H.B. No. 892 also increases the number of law enforcement officer board members from two to five, while this bill eliminates the two law enforcement officer board members. The additional law enforcement officer members would give the board more experience and expertise in the area of law enforcement training standards, and also give the board more flexibility in its operations. H.B. No. 892 also amends section 76-16, Hawaii Revised Statutes, to add the board administrator position to the list of positions that are exempt from civil service requirements to give the board more flexibility in working with this key position.

If the Committee decides to pass this bill, we respectfully recommend that it remove the provisions relating to the LESB and allow those to be addressed via H.B. No. 892.

The Department appreciates this opportunity to provide comments.

DAVID Y. IGE  
GOVERNOR



**STATE OF HAWAII**  
**LAW ENFORCEMENT STANDARDS BOARD**  
425 QUEEN STREET  
HONOLULU, HAWAII 96813

March 15, 2022

Testimony of Chair Todd G. Raybuck  
On Behalf of the  
Law Enforcement Standards Board

TODD G. RAYBUCK  
CHAIR

**BOARD MEMBERS**  
SHERRY BIRD  
JADE BUTAY  
SUZANNE D. CASE  
ISAAC W. CHOY  
NICHOLAS R. COURSON  
ADRIAN DHAKHWA  
PAUL FERREIRA  
HARRY S. KUBOJIRI  
MAX N. OTANI  
JOHN PELLETIER  
HOLLY SHIKADA  
CRAIG TANAKA  
RADE VANIC

Before the  
Senate Committee on  
Public Safety, Intergovernmental, and Military Affairs  
March 15, 2022, 1:00 pm  
via Videoconference

In consideration of  
House Bill 1239 HD2  
Relating to Law Enforcement

Honorable Chair Nishihara, Honorable Vice Chair DeCoite, and Members of the Committee:

I submit the following testimony on behalf of the Members of the Law Enforcement Standards Board ("Board") regarding House Bill 1239 HD2 Part III, Relating to Law Enforcement, to respectfully request this Committee's **support with the amendments** contained in this testimony.

The language set forth in the below requested amendments matches the language contained in HB 892 HD2 that is also before this Committee on March 15, 2022.

The Board requests the following Amendments to House Bill 1239 HD2 Part III:

1. Amend Section 4 relating to Section 139-2 (a), Hawaii Revised Statutes, to read as follows:
  - "... The law enforcement standards board shall consist of the following voting members: nine ex officio individuals ~~[, two law enforcement officers,]~~ or their designees, five law enforcement officers, and four members of the public."
  - (2) The ~~[two]~~ five law enforcement officers shall ~~[each]~~ be persons other than the chiefs of police or designees described in paragraph (1)(F) and shall consist of:
    - (A) One county law enforcement officer from each of the four counties; and
    - (B) One state law enforcement officer.Each law enforcement officer described in this paragraph shall have at least ten years of experience as a law enforcement officer ~~[and]~~ shall be appointed by the governor~~],~~ and, notwithstanding section 26-34, shall serve without the advice and consent of the senate; and

- (3) The ~~[four members of the]~~ public members shall consist of one member ~~[of the public]~~ from each of the four counties ~~[and]~~ , each of whom shall be appointed by the governor ~~[–]~~ , and, notwithstanding section 26-34, shall serve without the advice and consent of the senate. At least two of the four members ...
  - (3)(D) Have work experience in a law enforcement capacity ~~[; provided that experience in a county police department shall not itself be sufficient to qualify under this paragraph].~~
2. Amend Section 4 relating to Section 139-2 (b), Hawaii Revised Statutes, to read as follows:
- The law enforcement members and the members of the public on the board shall serve for a term of ~~[three]~~ four years ~~[–]~~ ; provided ...

Thank you for allowing the Law Enforcement Standards Board to provide this testimony.



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS  
" A Police Organization for Police Officers Only "  
Founded 1971

March 14, 2022

**ONLINE/FAX: 808-586-6879; 808-587-7230**

The Honorable Clarence K. Nishihara  
Chair  
The Honorable Lynn DeCoite  
Vice-Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Hawaii State Capitol, Rooms 214, 231  
415 South Beretania Street  
Honolulu, HI 96813

Re: **HB1239 HD2-Relating to Law Enforcement**

Dear Chair Nishihara, Vice-Chair DeCoite, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union in **strong opposition** to HB1239 HD2. This bill seeks to use the Law Enforcement Standards Board ("Board") to add yet another bureaucratic layer to the many layers of oversight that already exist, and duplicate certifications, standards, and law enforcement training that is already established and managed by the respective county police departments through their accredited training academies. What is particularly disturbing is that the bill deletes the two (2) law enforcement officer positions from the Board (page 4, lines 9-11), thus excluding our officers from being at the table when they will be most directly impacted by the Board's decisions and actions. This deletion also makes the process that much less transparent to our Union members when there should be at least four (4) county police officers at the rank of lieutenant or below serving on the Board.

The constant and perpetual beating of the anti-police drum, ad nauseum, and raising the question of the public's trust in law enforcement at a time when the public's trust in the legislature is an all-time low, is simply hypocritical. When we see a bill like HB1239 HD2 that states it is the legislature's purpose to enhance the public's trust in law enforcement, we ask the legislature to look in the mirror before pointing their fingers at our hard working and courageous officers who are out there every day, 24 hours a day, 365 days a year, putting their lives on the line for you and our community. Rather than finding ways to continue the unyielding attacks against our officers, how about helping us and our community find ways to fill the empty beats

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The Honorable Clarence K. Nishihara, Chair  
The Honorable Lynn DeCoite, Vice-Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Re: HB1239 HD2-Relating to Law Enforcement  
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that is compromising our community's safety and exposing our most vulnerable community members such as our senior citizens to be targets and victims of broad daylight assaults and robberies. The simple fact is that our community is in danger when there are not enough officers available to respond to a citizen's call for help. But that is the current reality and we need to do something about it.

We, as a Union, can say that we are doing something about it by demanding meetings and collaborating with our police chiefs and county councils to come up with creative ways to get our beats fully staffed with limited resources. This includes altering our work schedules which tasks our officers with working longer hours and being away from their families, but is a sacrifice we are willing to make and have been making for the safety of our community. In contrast, HB1239 HD2 provides no help but only seeks to make it that much harder to find recruits to get into and successfully through our training academies.

The legislature may not understand what happens to an officer who is merely suspected of engaging in wrongdoing or is arrested or charged with a criminal act without this bill. Mere allegations can trigger an avalanche of investigations against any officer accused of wrongdoing. Our officers are subject to full blown criminal **and** administrative Internal Affairs and/or Professional Standards Office investigations by our respective police departments, even if the officer is acquitted in a court of law or the allegations are later dismissed. This is an addition to the investigations that the officer is put through with the prosecutor's office, the police commissions, and when there are conflicts of interest the Attorney General's ("AG") office which will conduct its own independent investigation. We have had officers in the past who were acquitted of charges or had allegations dismissed, but they were nonetheless severely disciplined and fired despite the outcome in court. That is the existing strict scrutiny and oversight our officers are currently subjected to without having HB1239 HD2. Unless you are questioning the integrity or have no confidence in those who have the duty and responsibility to investigate and hold our officers accountable, including the prosecutor's office who recently charged three of our officers with murder after they stopped a suspect on a crime spree that terrorized our community, HB1239 HD2 appears to be nothing but another avenue to fuel the anti-police movement. We need to stop this anti-police rhetoric because it provides no solutions.

The bill and the establishment of this Board directly infers that the county police departments and their respective training academies are subpar, do not currently incorporate acceptable and reasonable minimum standards of employment, and do not have acceptable criminal justice curriculums. The Board, in essence, wants to usurp the training curriculum and standards implemented by the respective county police department's training academies. This is simply duplicative of what already exists and a complete waste of money.

The Honorable Clarence K. Nishihara, Chair  
The Honorable Lynn DeCoite, Vice-Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Re: HB1239 HD2-Relating to Law Enforcement  
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Aside from the significant monetary expenditures associated with this Board and the baseless assumption that our county police academies are substandard or deficient, it is unclear why this Board is needed for “certifications” when all four (4) county police departments and their respective police academies are accredited by the Commission on Accreditation for Law Enforcement Agencies (“CALEA”). CALEA is nationally known as the gold standard benchmark in law enforcement and its accreditation seals are internationally recognized as the “Marks of Professional Excellence” for public safety agencies. Our county officers are highly trained, experienced, and investigate the broad range of crimes set forth in the Hawaii penal code as codified in the Hawaii Revised Statutes. Our officers are held to the highest professional standards and are investigated and held accountable for the slightest deviations or infractions. The policies and training of each county police department have many in common, but they also have special provisions and aspects tailored to each island’s unique demands and diverse communities. The money required to fund this Board could be better spent on expanding our prison system so that the same criminals we arrest over and over can be properly incarcerated rather than being allowed to roam the streets to continue terrorizing our law abiding citizens.

In addition, decisions made by the Board could impact collective bargaining and undermine the mandatory negotiation requirements set forth in HRS §89-9 that are part of our constitutional rights under the Hawaii Constitution. The Board can also act to revoke an officer’s certification which may also indirectly conflict with our collective bargaining agreement, the outcome of a grievance proceeding, and HRS §89. We do not believe these intended or unintended ramifications were thoroughly considered and vetted before the Board was established in the first instance. The Board will require a labor specialist to fully understand HRS §89 and its implications, which does not appear to be the criteria for any of the Board members. In addition, it is an inherent conflict of interest to have the four county police chiefs serving in an ex officio capacity on the Board who will also be reviewing an officer’s certification for cases that may have already been adjudicated through the grievance process and resulted in the grievance being sustained. In essence, the chief will get a second bite at the apple by revoking the officer’s certification. This will for all intents and purposes completely undermine and subvert the collective bargaining process and our collective bargaining rights guaranteed under the Hawaii Constitution.

To make the Board truly all-inclusive and transparent, we recommend that a Board position be created for the appointment of a representative from our Union for the purpose of providing insight and input on training, certification, standards, and collective bargaining. This would be in addition to having four (4) county police officers representing each county at the rank of lieutenant or lower having a seat on the Board. Our Union and members operate on the front lines in the battle against crime and have the necessary training, current experience and knowledge that others on the Board will not possess. If the true intent is to make things better,



The Honorable Clarence K. Nishihara, Chair  
The Honorable Lynn DeCoite, Vice-Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
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having a Union representative and a police officer from each county on the Board will further that objective.

The existing statute also requires officers to participate in continuing education programs. I am not sure if you realize that our officers already attend refresher (recall) training every year as part of our continuing education training. The training covers various subject matters, including use of force, escalation and de-escalation of force, arrest laws, firearms recertification, community issues relating to mental illness and drug addiction, self-defense training, and other relevant law enforcement topics. Given our existing training the bill should be amended to eliminate this requirement.

Last, we suggest that the appointment of anyone to the Board should be with the advice and consent of the senate like any other board or commission, and that a study relating to the “centralized state enforcement division or agency” exclude the county police departments who operate on a county budget and county needs and requirements.

In summary, this bill duplicates existing levels of officer misconduct review that already exist. We also believe that the funding required for this Board could be better spent on other meaningful projects especially given the economic hardship many in our community are suffering from the Covid-19 pandemic.

We thank you for allowing us to be heard and to share our concerns on this bill and hope your committee will unanimously reject this bill and withhold funding until further consideration is given to the issues and concerns we have raised.

Respectfully submitted,

ROBERT “BOBBY” CAVACO  
SHOPO President



Hawai'i

**LATE**

Committee: Senate Committee on Public Safety, Intergovernmental,  
and Military Affairs  
Hearing Date/Time: Thursday, March 15, 2022, 1:00 P.M.  
Place: Via videoconference  
Re: *Testimony of the ACLU of Hawai'i; Comments on HB 1239 HD2 Relating to Law Enforcement*

Dear Chair Nishihara, Vice Chair DeCoite and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i) provides **comments on HB 1239 HD 2**, which amends the law officer independent review board to include review of any specific incident of alleged misconduct recommended by certain officials and makes it a permanent board. The bill amends the membership of the board and the term for members of each board to four years.

As you consider the fate of the Law Enforcement Officer Independent Review Board, we urge you to consider the bigger picture and reimagine the role of police in our society, a role that is limited, but more appropriate. Shrinking the police footprint will better protect communities disproportionately policed – Native Hawaiians, Pacific Islanders and other people of color - and begin to repair decades of harm and violence inflicted onto those communities. These savings from a limited police role must be reinvested into non-police public safety measures, healthcare, housing, employment and education. Ultimately, divesting from police and reinvesting into communities disparately targeted and impacted by policing will safeguard civil rights and civil liberties, restore the ideals of our democracy, and better protect public safety for everyone.

Compared to other public institutions, law enforcement operates under a shroud of secrecy with far less democratic accountability. As noted in the *President's Task Force on 21st Century Policing*, policing fails its community when it is not constitutional, when it lacks integrity and a clear mission, and when it is not conducted by unbiased and adequately trained officers, supervisors, managers and executives.<sup>1</sup>

As long as policing exists, the ACLU advocates for fair and consistent policing, building or rebuilding trust between officers and the communities they serve and preventing avoidable deaths and injuries to citizens and police officers. During the past decade, our community has become increasingly aware of corruption and misconduct within the police department that has resulted in federal criminal convictions, documented racial disparities in policing, abuse of overtime and killings by police officers.

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<sup>1</sup> <https://cops.usdoj.gov/RIC/Publications/cops-p341-pub.pdf>

In response to growing demands for law enforcement transparency and accountability in Hawai'i, lawmakers created the Law Enforcement Officer Independent Review Board. Per Act 161, the Board, housed within the Department of the Attorney General, would make recommendations to county prosecuting attorneys in all four counties. In turn, county prosecuting attorneys could decide whether to prosecute or conduct further investigation. In addition, the findings would be made public and the board would receive funding to fulfill its mandate.

To date, however, efforts to reform our policing system through the Law Enforcement Officer Independent Review Board has been ineffective for the following reasons.

First, the system is reactive, allowing review only after incidents of killings by police have occurred. It does not prevent those deaths in the first place, nor does it help police departments implement best practices to reduce killings by officers in the first place.

Second, the Law Enforcement Officer Independent Review Board is structurally flawed as it lacks the elements necessary to make an independent oversight or civilian review board effective. As noted by the National Association for Civilian Oversight of Law Enforcement, Citizen Oversight Law Enforcement bodies were created to provide meaningful civilian oversight with the overarching goals of promoting transparency and accountability within policing to the communities they serve.<sup>2</sup>

Independent oversight through multiple overlapping forms of accountability is critical and must include the following:

1. Transfer funding from exiting prosecutorial budgets to establish independent prosecutors to investigate and prosecute officers who kill community members and other serious officer misconduct.
2. Establish independent and strong community oversight or civilian review boards to hold police officers accountable for wrongdoing, including racist conduct and policing. These boards should:
  - a. Be nominated by civic organizations and representative of the communities most impacted by policing
  - b. Have broad scope to review complaints
  - c. Have independent investigatory authority, including subpoena power
  - d. Have disciplinary authority
  - e. Be able to audit policies and practices
  - f. Have ample funding
  - g. Have the power to review and implement policy that is not subjected to a unilateral veto by police or county government officials
  - h. Publish reports on their work and findings regularly for residents

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2 The National Association for Civilian Oversight of Law Enforcement (NACOLE) is a non-profit organization that brings together individuals and agencies working to establish or improve oversight of police officers in the United States. <https://www.nacole.org/>

Chair Nishihara and Members of the Committee on Finance  
March 15, 2021, 1:00 P.M.

We urge this Committee to include amendments that will incorporate all of the critical elements of a truly independent and strong Oversight Civilian Review Board listed above in order to promote transparency and accountability.

We also express strong concerns about the current and proposed composition of the Review board – it is stacked with nine ex-officio (9) governmental and law enforcement officials. Moreover, the criteria to hold one of the five (5) positions appointed by the Governor as a “public” member is skewed towards work experience in a law enforcement capacity and the legal profession. The criteria includes zero public members nominated by civic organizations and representative of the communities most impacted by policing.

Without adequate representation of the communities most impacted by policing, and the aforementioned elements for independent oversight, the Law Enforcement Officer Independent Review Board will not work as a meaningful oversight body with checks on abuses of police power. Civilian oversight bodies must be given real power or else they risk being performative political statements with no actual “teeth” or power.

Thank you for the opportunity to submit comments relating to **HB 1239 HD 2**.

Sincerely,

**Carrie Ann Shirota**

Carrie Ann Shirota  
Policy Director  
ACLU of Hawai‘i  
[cshiota@acluhawaii.org](mailto:cshiota@acluhawaii.org)

*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 over 50 years.*

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