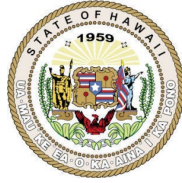


DAVID Y. IGE
GOVERNOR



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

February 16, 2022

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

Before the
Committee on Judiciary and Hawaiian Affairs
February 16, 2022, 2:00 pm
via Videoconference

In consideration of
House Bill 1239
Relating to Law Enforcement

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

Honorable Chair Nakashima, Honorable Vice Chair Matayoshi, 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 Part III, Relating to Law Enforcement, to respectfully request this Committee's **support with the amendments** contained in this testimony.

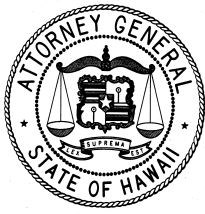
The language set forth in the below requested amendments matches the language contained in HB 892 HD1 that was approved by this Committee on February 8, 2022.

The Board requests the following Amendments to House Bill 1239 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."
 - (1) The nine ex officio members of the board shall consist of the:
 - (A) Attorney general[;] or the attorney general's designee;
 - (B) Director of public safety[;] or the director's designee;
 - (C) Director of transportation or the director's designee;
 - (D) Chairperson of the board of land and natural resources or the chairperson's designee;
 - (E) Director of taxation or the director's designee; and
 - (F) Chiefs of police of the four counties[;] or the designees of each of the chiefs of police;

- (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 ...
 3. Make no amendments, as annotated in House Bill 1239, to Section 4 relating to Section 139-2 (c).
 4. Amend Section 5 relating to Section 139-3, Hawaii Revised Statutes, to read as follows:
 - (6) Employ ~~[- subject to chapter 76,]~~ an administrator, without regard to chapter 76, and other persons necessary ...
 5. Adopt amendments, as annotated in House Bill 1239, in Section 5 relating to Section 139-3, (11), (12), (13), and (14) Hawaii Revised Statutes.

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



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 16, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

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

Chair Nakashima 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) to do the following: (1) expand the scope of responsibilities for the LEOIRB to include any specific incidents of alleged misconduct recommended by certain specified officials; (2) remove the sunset date of June 30, 2022, for the LEOIRB, to make it permanent; and the Law Enforcement Standards Board (LESB) to do the following: (1) reduce 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) allow all nine of the ex officio board members of the LESB to have designees; and (3) add that the LESB conduct studies or consider studies to the LESB responsibilities.

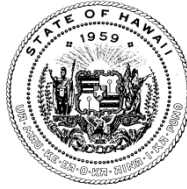
The Department considers the amendment on page 2, line 17, to page 3, line 8, that expands the scope of responsibilities for the LEOIRB to include any specific incidents of alleged misconduct recommended by certain officials to be ambiguous. It is not clear what kind of "alleged misconduct" could be referred to the board. As the board's function is to make recommendations regarding prosecution, it is assumed that the misconduct would have to be of a criminal nature, but the provision could be

clarified. It should be noted that the LEOIRB is already working extremely hard to address the cases of officer involved deaths that have been referred to it.

As for the provisions regarding the LESB, the Department prefers the provisions contained in House Bill No. 892, Relating to Law Enforcement, which this Committee passed out as an H.D. 1 on February 8, 2022. That bill was fully supported by the LESB and contains important provisions for the LESB that this bill does not. H.B. No. 892, H.D. 1, provides needed funding and resources to the board, and gives the board the necessary time to accomplish its mission. H.B. No. 892, H.D. 1, 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, H.D. 1, also exempts the board administrator from civil service requirements to give the board more flexibility in working with this key position, while this bill does not do so. The Department has no comment on the provisions regarding the LESB's consideration of studies or that the LESB conduct studies.

The Department appreciates this opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



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

February 16, 2022
2:00p.m.
State Capitol, Teleconference

H.B 1239
RELATING TO Law Enforcement

House Committee on Judiciary and Hawaiian Affairs

The Department of Transportation (DOT) **supports** 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 bill would not appropriate funding for the operation of the office. At the last board meeting, the issue of lack of funding was discussed and we're confident that the LESB can fulfill its duties and responsibilities if given the proper resources.

Thank you for the opportunity to provide testimony.

SHOPO



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

" A Police Organization for Police Officers Only "
Founded 1971

February 15, 2022

ONLINE/FAX: 808-586-6684; 808-586-8474

The Honorable Mark M. Nakashima
Chair
The Honorable Scot Z. Matayoshi
Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol, Rooms 331, 432
415 South Beretania Street
Honolulu, HI 96813

LATE

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

Dear Chair Nakashima, Vice-Chair Matayoshi, 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. This bill seeks to add yet another investigatory layer to the many layers of oversight that already exist.

Let me start off by saying that we find it highly hypocritical for the legislature and its politicians to be raising the question of the public's trust in law enforcement at a time when the public's trust in the legislature is, in our view, at an all-time low. From our vantage point, we see politicians getting arrested and charged with crimes, yet the legislature, which supposedly has a duty to oversee and police its own members, has to be prodded with a public outcry into initiating an inquiry or follow-up investigation into the wrongdoing. So when we see a bill like this that has the legislature stating its purpose is to enhance the public's trust in law enforcement, we ask you to please look at yourselves and your own house before you point the 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 a relentless attack against our officers, how about helping us find ways to fill the empty beats that severely compromises the community's safety and leaves our most vulnerable community members such as our senior citizens targets of broad daylight assaults and robberies.

In contrast to how the legislature conducts its business and executes its oversight over its members, please understand that if an officer is merely suspected of engaging in wrongdoing, is arrested, or charged with a criminal act, that officer is subjected to a full blown criminal **and** administrative Internal Affairs and/or Professional Standards Office investigations

The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
February 15, 2022
Re: HB1239-Relating to Law Enforcement
Page 2

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 what our officers are currently subjected to without HB1239. 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 appears to be nothing but another publicity ploy to make certain people look good.

This bill will add another unnecessary layer of investigation and inquiry to the multiple levels of investigation that are currently in place and which our officers must face and are subjected to any time there is an allegation of misconduct. Moreover, the bill designates the police chiefs and police commissions as sources that can initiate a review with the Law Enforcement board. However, that would be duplicative because the police chiefs and police commissions already conduct investigations into such issues as part of their responsibilities. In addition, the bill identifies the AG's office, Director of Public Safety, mayors, and council members as additional sources who can initiate a review. This creates further duplication and the unnecessary waste of resources because the AG and Director of Public Safety have their own investigative units that undertake such investigations. In addition, the mayors and council members currently can initiate an investigation at any time through the police commissions or directly with the police departments.

In summary, this bill duplicates existing investigations and levels of review that already exist and will usurp those that have those duties and responsibilities. We also believe that the funding required to expand this board's responsibilities as set forth in the bill could be better spent on other projects such as building a new prison to keep the revolving door of criminals off the streets to make our community safer.

We thank you for allowing us to be heard and to share our concerns on this proposal and hope your committee will unanimously reject this bill.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

LATE



Hawai'i

Committee: House Committee on Judiciary and Hawaiian Affairs
Hearing Date/Time: Friday, February 16, 2022, 2:00 P.M.
Place: Via videoconference
Re: Testimony of the ACLU of Hawai'i; Comments on HB 1239 Relating to Law Enforcement

Dear Chair Nakashima, Vice Chair Matayoshi and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") provides **comments on HB 1239**, 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.¹

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.

¹ <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.²

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

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/>

- 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

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.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota
Policy Director
ACLU of Hawai'i
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.

American Civil Liberties Union of Hawai'i
P.O. Box 3410 Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org www.acluhawaii.org

HB-1239

Submitted on: 2/15/2022 10:26:22 AM

Testimony for JHA on 2/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Alan Urasaki	Individual	Support	No

Comments:

I support passage of this measure. Thank you.