



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2077, RELATING TO EMPLOYEES OF THE DEPARTMENT OF THE ATTORNEY GENERAL.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, February 3, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Via Videoconference 325

TESTIFIER(S): Holly T. Shikada, Attorney General,
James E. Halvorson, Deputy Attorney General, or
J Grant Giventer, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and offers the following comments.

The purpose of this bill is to convert the positions of the administrator of the Hawaii Criminal Justice Data Center and the chief special investigator of the Department from civil service status to exempt status.

The Department employs an administrator to supervise the Hawaii Criminal Justice Data Center and a chief special investigator to supervise the Investigations Division of the Department. These positions are the only supervisory positions for the legal services and public services divisions within the Department that are not exempt from the civil service system. The supervisory positions have complex responsibilities, including handling highly sensitive confidential information, and require a set of skills that are unique to the Department.

Moreover, these positions, like other supervisory positions within the Department, are not just supervisory positions but managerial positions in charge of divisions. In the Department, the supervisors are an extension of the Office of the Attorney General, and they are heavily relied upon to implement the priorities of the Office of the Attorney General. It is therefore important for the Office of the Attorney General to be able to supervise all supervisors in a consistent, uniform manner and in accordance with the priorities and business needs of the Department.

The Office of the Attorney General also needs the ability and flexibility to direct the duties and functions of all supervisors so that the Department may act in a coordinated manner to meet the needs of the State, as determined by Office of the Attorney General, in consultation with the Governor. At times, the execution of those duties and function is to address crisis situations and requires the full confidence of the Office of the Attorney General to develop, coordinate, and promptly implement the policies, activities, and programs as specified by Office of the Attorney General. Given the highly specialized nature and expectations of the supervisory positions in the Department, these managerial positions are not appropriate for the civil service system.

Exempting these positions from civil service will ensure that the Attorney General has the authority to appoint the best candidates for the positions and will allow the Attorney General to supervise these positions consistently and equally with the twenty-three other employees of the Department who hold supervisory positions. The change would also more accurately reflect the specialized needs of the Department's supervisory positions.

This bill would benefit the public indirectly by authorizing the Attorney General to employ the best candidates in these public service positions. The Department would also benefit from the consistency of having all of its supervisors equally accountable to the Attorney General. Finally, there are no fund requests associated with this bill and no other agencies would be affected by its implementation.

The Department respectfully requests the passage of this bill.

I am in opposition of this bill to remove the civil service status of the chief special investigator of the Investigations Division in the Department of the Attorney General and the Administrator of the Hawaii Criminal Justice Data Center.

The position of the chief special investigator is to serve the State of Hawaii in supervising and conducting unbiased, honest, ethical investigations without the flavor of favoritism and politics when conducting his assigned investigations. At times, these assigned investigations are high-profile events and place the Attorney General under intense scrutiny. There may be pressure/order placed upon the chief special investigator to get assignments done in a particular way to appease the chain of the hierarchy involved in pursuing these complaints (or not pursuing these complaints) and resolving them under political pressure in an unjust manner. I believe this is why the position was designed at inception to be a civil service position so that it would not be politicized. Switching the position to an exempt position would mean the chief special investigator can be terminated without due process and be denied the right of a hearing at the Merit Appeals Board should he have disagreements with the Attorney General on how the chief special investigator supervises an investigation.

From the date of inception, decades ago, the chief special investigator's position has held civil service status. In a realm of competent management, it is more likely that conversions from exempt positions are made into civil service positions. In every State of Hawaii position where there is a chief investigator, all those positions are civil service.

The bill states that, "These positions are the only supervisory positions for the legal services and public services division that are not exempt from the civil service system. The supervisory positions have complex responsibilities, including handling sensitive confidential information and require a set of skills that are unique to the department. Moreover, these positions, like other supervisory positions within the department, are not just supervisory positions but managerial positions in charge of divisions."

The bill further argues that "Exempting these positions from civil service will ensure that the Attorney General has to authority to appoint the best candidates for the positions and will allow the Attorney General to supervise these positions consistently and equally with the twenty-three other employees of the Department of the Attorney General who holds supervisory positions."

If this logic was fair and just, why isn't the Attorney General not including the position of the administrator of her Human Resources Division who also has a civil service position and serves as a manager in charge of her own division?

The position of the chief special investigator requires superior qualification and the civil service screening and hiring process serves as checks and balances to ensure that the best candidate is selected. Should the civil service position be eliminated, the attorney general can appoint an unqualified person as a political reward and this community will not be served in its best interest.

This bill may have originated from the Office of the Attorney General due to the chief special investigator filing a federal age discrimination complaint against the administration of the Office of the Attorney General. After filing the complaint with the federal agency, the federal agency charged the Department of the Attorney General of being in violation of the federal age discrimination act it committed against the chief special investigator and placed the Department of the Attorney General under investigation for its discriminatory conduct. The investigation is continuing.

Purely, this bill appears to be retaliatory in nature against the chief special investigator and this retaliation is being committed by the Office of the Attorney General who is unjustly, unethically, and fraudulently using the legislative process to create an avenue to remove the chief special investigator and politicize the position. . The attorney general wants to set an unprecedented trend to weaponize the legislative process to convert a civil service position to an exempt position.

The Office of the Attorney General via policy should work collaboratively with those involved, yet she never discussed the bill with her chief special investigator. This behavior, by restricting the chief special investigator participation, is contrary to, and violates the spirit of Hawaii Revised Statutes **§89-1 Statement of findings and policy**, where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators.

The Office of the Attorney General also retaliated against the chief special investigator in support SB 3139 and HB 2171, by breaking up his division and sending parts of it to the proposed law enforcement department.

If the bill passes, the Office of the Attorney General will succeed in utilizing the legislature as a tool for retaliation against the chief special investigator. It will politicize the position of the chief special investigator and his ability and authority to conduct fair and impartial investigations will be diminished.

Testimony in strong opposition to HB2077

Chair Rhoads and Members of the Committee:

My name is Christopher Young. I currently serve as the Administrator of the Hawaii Criminal Justice Data Center, Department of the Attorney General (DAG), and was selected for the position in December 2017. This written testimony is submitted as an individual citizen. Any comments made below are personal and not made on behalf of the DAG.

I strongly oppose converting position #37374 (HCJDC Administrator) from civil service to an exempt at-will non-civil service position. Converting the administrator (formerly referred to as director) position to an exempt at-will position is unwarranted and not in the best interest of the Hawaii Criminal Justice Data Center (HCJDC), the DAG, or the public. The HCJDC administrator has been in a civil service position within the DAG for thirty-five (35) years. Nine (9) prior attorneys general have effectively managed and supervised the HCJDC administrator as a civil servant. The preceding attorney generals found no reason or need to convert this position to an exempt non-civil service at-will position.

H.B. 2077 lacks a legitimate basis or justification to convert the HCJDC administrator's position to an exempt non-civil service at-will position. Being a civil service division supervisor has not prohibited proper supervision or execution of DAG policies or initiatives. The conversion of a civil service position to an exempt at-will position is contrary to Chapter 76, HRS, and the operational history of the position.

Hawaii's civil service system is based on the merit principle. "The merit principle is the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance. It is also the purpose of this chapter to build a career service in government, free from coercive political influences, to render impartial service to the public at all times, according to the dictates of ethics and morality, and in compliance with all laws. (Emphasis added) See §76-1, HRS.

There have been only three administrators of HCJDC since it became a state program. Steven E. Vindinha served for ten years (1981-1991), Liane M. Moriyama served for twenty-five years (1992-2017), and I for the past four years (2017-present). The current civil service position has ensured continuity of services, long term data center direction, the ability to properly budget for projects on a long-term basis, and allowed HCJDC administrator to the national level by gaining seniority when participating in the various federal boards and nonprofit groups relating to criminal data centers and the collection of criminal justice data. The HCJDC Administrator has been able to work in an office environment where frank, open, and honest discussions can occur without fear or threat of retaliation or removal.

The HCJDC does not provide legal advice and is not a policy-driven legal division. It is a technology-focused division whose activities and duties are controlled by Chapter 846, HRS,

and Federal rules and laws. The DAG classifies and operationally treats HCJDC as a “non-legal public service division.” The history of HCJDC best illustrates why this bill is not required. HCJDC was previously known as the statistical analysis center (SAC) and was initially attached to the judiciary and started as a federally funded program. The initial director of SAC was a retired judge hired on a contractual basis, and the original administrator position was established as an exempt non-civil service position. The data center was officially established as a state agency in 1979 and transferred to the DAG on July 1, 1981. The exempt at-will position was transferred to DAG as is. The position remained exempt from civil service until April 1986, when then-Attorney General Warren Price III determined that the administrator position should be converted to a permanent civil service position. The DAG submitted legislation that resulted in Act 65, S.B. 1552-86, HD 2, Session Laws of Hawaii 1986. Act 65 was signed into law on April 21, 1986, and took effect on July 1, 1986. Act 65 established the Hawaii criminal justice data center as the formal name of the data center. It made the HCJDC’s administrator position (formerly referred to as director) a civil service position subject to Chapters 76 and 77, Hawaii Revised Statutes (HRS). Chapter 77, HRS was repealed in 2000. Attorney General Price’s justification for the conversion of the position was to ensure continuity of service, selection of an administrator based on merit, and minimize the effect of political interference at HCJDC.

The current DAG administration fails to explain or justify why changing the administrator position to an exempt at-will position is required. The bill references the need to make the position exempt is because the HCJDC Administrator is a manager, deals with confidential data, must address public emergencies. It also references a need to supervise all division supervisors similarly. The bill fails to explain or justify how these issues are impacted if a division supervisor remains in a civil service position. The only thing gained by having all division-level supervisors in exempt at-will positions is to provide the DAG administration with authority to hire and fire without the need to follow the merit-based civil service rules provided in Chapter 76, HRS. No basis has been provided that indicates why the current civil service position prohibits the DAG administration from effectively supervising, ensuring that policies and orders are followed, and disciplining an employee who fails to follow lawful directions.

As I begin my 31st year of government service, I humbly ask this committee to allow the current DAG administration to open this position to coercive political influences. Allowing the HCJDC administrator’s position to continue as a merit-based civil service position ensures continuity of leadership for HCJDC. I served for twenty-seven (27) years in an exempt at-will deputy prosecutor and deputy attorney general position. I understand firsthand how being in an exempt at-will position subjects a person to political influences, personality conflicts, and the ability for administrations to move or fire you, not because you are not doing a good job, but because they want a new direction, political affiliations or to help a friend or colleague.

The HCJDC administrator has and continues to be appropriately supervised and held accountable as a civil servant.

I appreciate the opportunity to provide written testimony on this bill.