



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 151, S.D. 2, RELATING TO LAW ENFORCEMENT REFORM.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, March 16, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Adrian Dhakhwa, Deputy Attorney General, or
Amy Murakami, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on the bill.

The bill adds two new sections to chapter 139, Hawaii Revised Statutes (HRS), and amends section 139-6, HRS. The first new section establishes mandatory requirements for law enforcement use of force policies (page 1, line 4, to page 5, line 4). The second new section establishes reporting requirements for incidents involving "the use of force . . . beyond that which is necessary" by law enforcement officers (page 5, line 5, to page 7, line 19). The bill also amends section 139-6(a), HRS, to add a requirement that no person may be appointed as a law enforcement officer unless the person has received "training designed to minimize the use of force, including but not limited to legal standards, de-escalation techniques, crisis intervention, mental health response, implicit bias, and first aid" (page 8, lines 5 - 8).

The Department has the following concerns with the bill.

First, the second new section added to chapter 139 by section 1 of the bill, beginning on page 5, line 5, proposes a new section entitled, "Reports of use of force by law enforcement officers." The title should reflect that the force that must be reported is "excessive force" (addition underscored): "Reports of use of excessive force by law enforcement officers."

Second, the proposed statute mandates reporting of an incident by an officer who observes another officer using "force . . . beyond that which is necessary, . . . based on upon the totality of information actually known to the officer . . ." (page 5, lines 6-14). Because there are two officers involved, it is unclear whether the duty to report is based on the totality of the information known to the observing officer or to the officer using the force. The information known to the two officers is not necessarily the same. The observing officer may have arrived at the scene after the other officer or may have had an obstructed view or been otherwise occupied when the situation necessitating the use of force arose. If the duty to report is based on the observing officer's knowledge, the section should be amended to read (additions underscored): "totality of information actually known to the reporting law enforcement officer" (page 5, lines 10 - 11). If the duty to report is based on the observing officer knowing what the officer using the force knew, then the subsection (page 5, lines 9 - 14) can be amended to read (deletions are stricken and additions are underscored):

(a) It shall be the duty of a law enforcement officer who observes another officer using excessive force ~~that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, based upon the totality of information actually known to the officer~~ to notify the division head of the officer who exercised the use of force. The notice shall be submitted in writing immediately or as soon as is practicable after observing the use of force.

Third, subsection (b) on page 5, line 15-19, requires a division head to complete the investigation involving an officer's use of excessive force within fifteen days. However, the existing collective bargaining agreement pertaining to an administrative investigation allows for various conditions that typically result in the inability to close an investigation within the proposed timeframe. As a result, the Department proposes the following wording (deletions are stricken and additions are underscored):

(b) ~~Within fifteen days of~~ After receiving written notification, the division head shall complete an investigation pursuant to subsection (c) as soon as practicable, and notify the chief of police of the respective county or the state department deputy director, as applicable, of the outcome of the investigation in writing.

Fourth, if the division head is suspected of using excessive force, the reporting officer is required to report the division head to the division head who will be responsible for investigating himself or herself. And if the officer that used the force has higher authority than a division head, the section is unclear who will receive or conduct the investigation. One possible solution is to require those reports to be made to the police chief or the state department head.

Fifth, subsection (e) on page 6, lines 17-20, states that "[i]f the department head is the subject of the use of force report, the reporting officer shall report directly to the police commission . . . or the state department director, as applicable" (emphasis added). The bill defines "department head", on page 7, lines 13-15, but does not define "department director". In the State's executive branch, the single executive department head is the department director. Consequently, subsection (e) requires the reporting officer to report the department director's excessive use of force to the department director. A possible solution is to require the report of the use of excessive force by a state department head be made to the Attorney General who will be responsible for the investigation.

Sixth, the new section refers to "excessive force" (page 6, lines 4, 5, and 7) but the term is not defined. The Department suggests defining "excessive force." The following definition, which is based on the reporting standard set forth in subsection (a) (page 5, lines 6-12), can be inserted on page 7, after line 19:

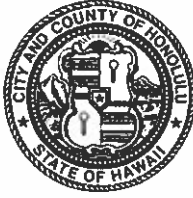
"Excessive force" means force that is beyond what is reasonably necessary, as determined by an objectively reasonable law enforcement officer, under the circumstances as actually and reasonably known to the law enforcement officer exercising the force.

Thank you for the opportunity to provide comments on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MH-SK

March 16, 2023

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

Subject: Senate Bill No. 151, S.D. 2, Relating to Law Enforcement Reform

I am Manuel Hernandez, Major of the Training Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent of Senate Bill No. 151, S.D. 2, Relating to Law Enforcement Reform, and submits the following comments and recommendations for your consideration.

The HPD supports Section 139-, Law enforcement use of force policies, Hawaii Revised Statutes (HRS), and currently has policies and procedures in place that either meet or exceed those proposed in the bill. This includes reasonableness in the use of force, a duty to intervene with regard to unlawful use of force, and use of force training and reporting.

However, the HPD has concerns regarding the language under Section 139-, Reports of use of force by law enforcement officers, HRS.

Our concern is the fifteen-day timeline contained in the bill in which a division head is to complete an investigation into the reported use of force incident. Administrative investigations into any use of force incident may be complex, and this timeline is not feasible for a thorough investigation to be completed. The HPD currently has procedures and protocols in place to properly investigate such incidents to ensure

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that appropriate corrective action is administered in the event that inappropriate or unreasonable use of force was utilized.

If the concern is the transparency and regular updating of the status of the investigation in question, the HPD recommends that the language of the bill be changed to provide updates to the Legislature and Honolulu Police Commission on the status of these aforementioned investigations at regular intervals, such as every sixty days, until the completion of the investigation.

The HPD appreciates the committee's consideration of our comments regarding Senate Bill No. 151, S.D. 2, Relating to Law Enforcement Reform, and thanks you for the opportunity to testify.

Sincerely,



Manuel Hernandez, Major
Training Division

APPROVED:


Arthur J. Logan
Chief of Police



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

March 14, 2023

VIA ONLINE

The Honorable David A. Tarnas
Chair
The Honorable Gregg Takayama
Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol, Rooms 442, 404
415 South Beretania Street
Honolulu, HI 96813

Re: **SB 151 SD2 - Relating to Law Enforcement Reform**

Dear Chair Tarnas, Vice-Chair Takayama, 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 SB 151 SD2. Respectfully, the amendments made to this measure do not go far enough to account for the inherent dangers in our jobs that require split second life and death decisions while under extreme duress. This bill continues to add unnecessary scrutiny and burden on our police officers when multi-layers of safeguards are already in place that hold each and every county police officer accountable for their individual actions and omissions, both administratively and criminally.

This bill requires any department or agency employing a law enforcement officer to maintain a publicly available policy that provides a minimum standard on the use of force with nineteen (19) sub-requirements, allows the use of force policies and training to be considered in legal proceedings involving a law enforcement officer’s use of force, requires a report and investigation of any force “beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances,” and requires that law enforcement officers receive training designed to minimize the use of force.

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As police officers, we have a Code of Ethics:

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held as long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

We are by no means perfect and have never claimed to be. We have the same human frailties as our neighbors and yes some of us do make mistakes. We are no less human than the politicians arrested for drunk driving or who have been caught accepting bribes. However, three recent cases involving our officers who were severely injured in the line of duty should highlight and stand as a stark reminder to you and your committee of the inherent dangers involved with our job. One suspect viciously and critically attacked one of our officers with a crowbar/tire iron while he was responding to a call. Another officer was critically injured while responding to a motor vehicle collision. Yet another officer was severely injured after responding to a call

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involving a driver who reportedly intentionally ran over an innocent woman pushing a baby in a stroller and then attacked a bystander with a crowbar. These cases flare up and spiral out of control in a matter of split seconds leaving our officers with little to no time to react other than to rely on their training.

There is no stated purpose included with this bill although it seeks to inject another layer of bureaucracy into the business of professional policing. After the Sykap incident, each of the three officers involved had to answer for their actions with HPD's investigators and commanders, the prosecutor's office, a grand jury, and at the end they stood in judgment in a courtroom before a judge who determined that the officers had acted appropriately and within the boundaries of the law.¹ SB 151 SD2 was not needed for this level of accountability and transparency to happen. Despite being exonerated, our officers still face a civil lawsuit that jeopardizes their personal and family's financial security and well-being. That is the life of a police officer and the sacrifices we make to protect our community.

This bill requires each department or agency employing a law enforcement officer to maintain a policy that provides a "minimum standard" on the use of force, delineates nineteen (19) detailed requirements for such a policy, and mandates that it be made public. It even goes so far as to specify that such a policy may be introduced as evidence in proceedings involving a law enforcement officer's use of force. This bill also requires all law enforcement officers to receive training "designed to minimize the use of force." In doing so, this bill duplicates procedures, certifications, standards, and law enforcement training already established and managed by the respective county police departments through their training academies. All four (4) county police departments and their respective police academies are accredited by the Commission on Accreditation for Law Enforcement Agencies ("CALEA").² 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

¹ There is also Internal Affairs, Professional Standards Office, police commissions, Department of the Attorney General, FBI, and the Department of Justice that provides accountability and transparency. The civil rights laws provide a further check and balance on the use of force by our officers.

² We also find it highly ironic that this same legislative body is pushing for funding to have DLNR's conservation and resources enforcement program obtain CALEA certification. See HB 767 and SB 70. By endorsing CALEA certification, this legislative body clearly believes CALEA is a credible and valid accreditation.

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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 much in common, but they also have special provisions and aspects tailored to each island's unique demands and diverse communities.

Standards on the use of force have already been established over the many years by each respective county in conjunction with their human resources departments. No one has pointed out where any current county police training academy has somehow failed to establish or meet "minimum" use of force standards. Notification of any use of excessive force is already a duty and responsibility of every officer in every county police department. Moreover, every complaint of criminal misconduct is required to be in writing and is fully investigated by the police department's internal affairs division. The completed investigation is thereafter submitted to the Chief of Police. Thus, the substance of SB 151 SD2 is already in place within the county's departments which need not be disturbed or interfered with by the legislature.

The bill infers that the county police departments and their respective training curriculums are subpar, do not currently incorporate acceptable and reasonable minimum standards of the use of force, and do not have acceptable criminal justice curriculums. We are not aware of a single legislator who has come forward with any evidence that there is any truth to this in the slightest. This bill, in essence, will usurp the training curriculum and standards implemented by the respective county police department's training academies, paints with a broad brush, and seeks to add another needless bureaucratic layer at an inopportune time when we are in the midst of a staffing crisis like we have never seen before. Rather than doing something productive to help us recruit and retain police officers, SB 151 SD2 makes it that much more difficult for us to recruit and retain an adequate number of police officers to police our communities and unnecessarily burdens our existing police force. For example, as to the bill's mandate of reporting uses of force "beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances" to a "division head," which is defined as "the official or officer who, subject to the authority of the department head or chief of police, has the most managerial or administrative authority within a division in the state department or county agency." That is something that, in principle, is already required and occurs in our State. Officers who use force to effectuate an arrest must complete a use of force form and a narrative report that explains in detail the level of force that was used, why force was used, and the justification for the force. These reports are provided to, reviewed, and signed by the officer's supervisor. Body worn cameras are also widely used by our officers and further documents events where force was employed. These videos are downloaded and saved as evidence.

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This bill further adds a section to HRS chapter 139 requiring that any time an officer observes use of force “beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances,” he/she must notify the exercising officer’s division head in writing. This bill provides that an investigation must occur within specified timelines upon receipt of a written notification and requires the outcome of the investigation to be shared with the state department director or police commission. In addition, the bill calls for the county police commissions or state department director to investigate reports of the use of force in certain circumstances. In addition, this bill appears to conflict with a county’s charter and the powers, duties and functions bestowed on each police commission.³ The bill further assumes that a police commission has the expertise and that its investigators are trained and experienced to conduct such an investigation as opposed to other agency investigators such as the prosecutor’s office who are trained for this very purpose, not to mention the conflicts that may arise with witnesses and other aspects of an investigation when two separate agencies are investigating the same incident.

Changing the verbiage from requiring reporting any use of force to the use of force “that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances” does not change the fact that this measure will redirect an officer’s attention away from the suspect and toward the other officers at the scene who must now be fortune tellers and second guess each other as to what they are doing or what they are about to do. This may create a chilling effect and cause an officer to prematurely intervene, thus escalating a situation and making a dangerous situation even more dangerous for the officers involved. Officers will be trying to anticipate what level of force their fellow officers are about to use and whether that anticipated force is “objectively reasonable” without having all of the relevant information to make such an assessment. Officers will undoubtedly misconstrue what they may believe is excessive force because they are unaware the suspect had earlier brandished a gun or knife before the officer arrived at the scene. In performing their duties, the officer’s concentration should be on what they immediately need to do to protect the public and keep everyone safe. Each officer is responsible for their own actions. Assessing a highly charged scene with people running around screaming and reports of deadly weapons requires an officer to quickly determine who the suspects are, what type and how many weapons are involved, who may be helping the suspects, the surroundings to determine if it is safe to use a firearm, and to evaluate a host of other considerations. It is often the case that we do not have

³ For example, the Honolulu Police Commission (“HPC”) is only authorized to investigate charges brought by the public and those findings are submitted to the Chief of Police. In addition, the HPC is prohibited from interfering “in any way with the administrative affairs of the department.” See Revised Charter, Section 6-1606. This bill conflicts with the limited power bestowed upon the HPC which is intended to prevent inference with police operations.

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the luxury of time to figure everything out or carefully prepare a response because we must react instinctively in accordance with our training. That is our reality.

In summary, this bill appears to dictate best practices to the county police departments relating to arrest and control tactics that should be employed or not used to effect an arrest. Our police departments are para-military organizations. I am not aware of anyone on this committee having law enforcement experience or the extensive training our officers receive in the use of force that would allow them to be subject matter experts on tactics to employ or not employ on an armed and/or violent suspect.

Rather than finding ways to make it more difficult to hire and retain officers, we respectfully ask for your help in finding ways to help replenish our ranks to fight the escalating crime occurring in our community. We are suffering a critical shortage of police officers and it is directly affecting our ability to protect the public. The statistics reflecting the closure and clearance rates of property crimes averages about 6%, and the average clearance rate for violent crimes is a dismal 33.77%. These statistics are downright shameful and embarrassing. In other words, more than half of the people committing violent and property crimes are getting away with it. Those numbers should be alarming for everyone, and this bill does nothing to address this critical problem. Instead, of expending time figuring out how to make it more difficult to serve one's community as a police officer, we should be expending and dedicating that same energy to figuring out how we can recruit and retain officers.

Constructive efforts to support law enforcement is what we need. Subjecting our officers to constant attack by bills such as this which makes their jobs tenuous, dangerous, and exposes them to civil liability, is not what is needed at this time. The reality is that this bill discourages women and men in our community from aspiring to be police officers to fill our depleted ranks.

We thank you for allowing us to be heard on this very important issue and we hope your committee will unanimously oppose SB 151 SD2.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

HAWAI‘I HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

HEARING:

Public Hearing on Senate Bill 151, Mar. 16, 2023

DATE OF TESTIMONY:

Mar. 15, 2023

TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW IN SUPPORT OF S.B. 151 AND S.B. 372 AND RECOMMENDING ADDITIONAL IMPROVEMENTS

The Policing Project at NYU School of Law is an organization that believes that one of the best ways to ensure transparent, effective, and ethical policing is for the public to be democratically involved in setting expectations for police practices *before* police act, instead of *after* something has gone wrong.¹ S.B. 151 and S.B. 372 both align with this fundamental mission: they advance democratic accountability in policing and help set clear expectations of when and how officers may use force. For that reason, we submit this testimony in support of S.B. 151 and S.B. 372 and urge this committee to recommend passage of both bills. While passing these bills as-is would be an important reform for Hawaiian residents and police, we also offer suggestions for strengthening the bills even further.

Comprehensive Use of Force Reform Will Help Hawaiian Communities and Officers

Police officers are the only government employees tasked with carrying guns and permitted to use force against people in the community. Yet despite the seriousness of this responsibility and the grave consequences that accompany it, many states provide very little direction governing when a police officer may – or may not – use force. This lack of clarity results in a widespread pattern of excessive force by police, which falls most disproportionately on Black and Brown communities. The lack of legislative guidance on when force is permissible hurts officers as well. It creates uncertainty and fosters conditions that lead to violent interactions, which harm officer mental health and wellbeing. The status quo undermines the legitimacy of policing, diminishes community trust, and impedes cooperation between communities and the police.

¹ As part of its mission to advance democratic accountability in policing, the Policing Project has created a number of model policies, all of which are informed by best practices in existing legislation and vetted by an advisory committee consisting of law enforcement officials, academics, police reform experts, and impacted community members. Our [comprehensive use of force model policy](#) is additionally informed by the American Law Institute’s Principles of Policing on Use of Force.

In Hawai‘i, the need for legislation to provide guidance on use of force for officers is particularly pressing. Existing Hawai‘i statutes lump police and members of the public together when describing when force is permitted to protect people or property, creating a standard that lacks the nuance and specificity that the police need. Although state law does generally describe when police may use force, and to what degree, to effect an arrest,² it lacks sufficient guidance for officers, particularly when it comes to the use of non-deadly force. In addition, because the various provisions regulating officer use of force are scattered across the Hawai‘i statutes, it is difficult for officers and the public to know when police have a duty to intervene or report when their fellow officers use excessive force.

The Policing Project Supports the Improvements Made by S.B. 151 and S.B. 372

S.B. 151 and S.B. 372 make big strides in improving the clarity of the state’s use of force standard, setting Hawai‘i on a path to better policing. The bills include many of the provisions that the Policing Project recommends as global best practices. If Hawai‘i enacts these bills, the use of force standards in the state will be among the clearest, strongest, and most effective in the country.

S.B. 151 does the important work of creating a clearer use of force standard. Requiring all law enforcement agencies to have policies requiring de-escalation and alternatives to force when possible, and proportional force only when necessary, significantly improves the clarity of existing use of force law. Clear use of force standards allow police to understand what is expected of them and to act accordingly.

In addition, both S.B. 151 and S.B. 372 clarify officers’ duty to intervene in and report excessive force they witness from other officers, which will go a long way towards reducing excessive force and rebuilding public trust in policing over time.

The reporting requirements set forth in S.B. 372 are also vitally important. Currently, Hawai‘i lacks comprehensive information about police uses of force. Without this information, communities do not have insight into the ways that law enforcement is or is not working for them, and lawmakers cannot create good policy without this kind of data. Requiring that this data be collected and reported annually will ensure that this legislature can create and pass helpful, effective legislation to make communities safer and reduce excessive force incidents.

S.B. 151’s directive that law enforcement agencies develop clear policies about citizen complaints is also important. Procedural fairness is a critical component of police legitimacy.³ Community members must feel they have a means of redress for misconduct for procedural justice to exist.

These provisions – among others – in S.B. 171 and S.B. 372 make advances in the state’s use of force laws. This committee should recommend passage of the bills.

² See Hi. Rev. Stat. §§ 703-300 - 703-310; § 803-7.

³ See, e.g., Zara Abrams, “What Works to Reduce Police Brutality,” 51 Am. Psych. Assoc. 7 at 30 (Oct. 1, 2020).

S.B. 151 and S.B. 372 Could Be Strengthened Further

Although we encourage this committee to recommend passage of these important bills, we do believe they could be strengthened further with the changes identified below. We are available to assist and suggest specific language on all or any of our suggested revisions.

Use of Force Standard

Because of the current generality and insufficient guidance in state use of force laws, we believe S.B. 151 could be strengthened by setting forth, as a matter of law, when force and deadly force are authorized. In particular, the statute should make clear that force must not only be *necessary* to overcome the level of resistance (the current standard under 803-7(a)), but also *reasonable* in light of the seriousness of the offense for which an officer is attempting to take someone into custody. S.B. 151 requires agencies to include this in their policies, but it would be stronger to require this as a matter of law statewide as well.

Specific Requirements for Law Enforcement Agency Use of Force Policies

The requirement in S.B. 151 that law enforcement agencies create use of force policies on particular issues is helpful to both officers and communities. Nonetheless, these policies would be even more effective if the legislature provided more specific guidance about the content of these policies. For example, we would suggest that S.B. 151:

- Specifically articulate when officers are permitted to shoot at a moving vehicle. Some jurisdictions, for example, prohibit such shooting unless the driver poses an imminent risk of death or serious injury to another. Instead of creating uniformity and clarity, the current version of the bill delegates this decision to individual agencies.
- Require that agencies accept anonymous/unsworn/unsigned complaints and complaints submitted by third parties as well as complaints submitted by email, phone, or in-person. The current version of the bill authorizes law enforcement agencies to decide which complaints their policy will deem acceptable, which will likely result in differing complaint policies (and thus different justice) across the state.
- Add specific minimum standards that agency policies must include regarding the deployment of canines (e.g., requiring that officers not permit a canine to bite someone absent that person posing an imminent risk of harm to another) and protests & demonstrations (e.g., prohibiting the discharge of chemical weapons indiscriminately into a crowd).

Duties to Intervene and Report

While we recognize the advances S.B. 151 and S.B. 372 make in creating a duty to intervene and report excessive force, the provisions in these bills are not entirely consistent with one another and have some slight deficiencies that could be resolved with minimal changes. Both bills should create

both (a) a legal duty to intervene when safe to do so and (b) a legal duty to report, in all instances when an officer reasonably believes that another officer is using or about to use unlawful force.

In their current versions:

- On duty to report, S.B. 151 has it exactly right and we wholeheartedly endorse it. SB 372, by contrast, only applies the duty to use of force on arrestees, which is too narrow, failing to include officer uses force to, for example, protect people or property, or carry out a search.
- On duty to intervene, S.B. 372 almost has the standard exactly right, *except* we suggest (a) applying the duty to *all* officer uses of force, not just uses of force on arrestees, and (b) requiring officers to intervene when they observe another officer who is using or *about to use* excessive force. S.B. 151, by contrast, would only require an officer to intervene when force is *clearly* excessive—a high bar that would make it difficult to prove that an officer violated the duty in all but the most extreme circumstances. It should be changed to mirror the standard set forth in S.B. 372, with the alterations we suggest here.

Conclusion

By creating a clear, workable use of force standard and strong duties to intervene and report when other officers use excessive force, S.B. 151 and S.B. 372 make significant strides towards good front-end accountability for policing in Hawai‘i. These standards could be strengthened further with the recommendations we suggest above, but even without those changes, the bills represent a significant improvement to existing law on police use of force. Accordingly, the Policing Project commends the House Judiciary and Hawaiian Affairs Committee for hearing these important pieces of legislation and encourages the Committee to recommend their passage, ideally with the changes suggested above.

SB-151-SD-2

Submitted on: 3/14/2023 12:19:17 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Samuel M Mitchell | Individual | Support | Written Testimony Only |

Comments:

I strongly support SB151 SD2

Samuel Mitchell Makiki NB10 & NARFE V.P.

SB-151-SD-2

Submitted on: 3/15/2023 7:32:37 AM

Testimony for JHA on 3/16/2023 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Will Caron | Individual | Support | Written Testimony Only |

Comments:

Without a complete overhaul of the law enforcement and criminal legal system, police violence will continue to plague communities. We need to redefine our system so that it protects public health and wellbeing, not property and wealth. Restorative justice delivers peace and helps people heal after the trauma that crime inflicts.

In the short term, we can strengthen the laws that regulate police conduct and require much tighter oversight. But we need to continue working toward systemic change. SB151 SD1 can work in concert with SB372 SD1 to reduce instances of police brutality and excessive use of force. Together, they represent a significant step in the right direction. Please pass them both.

SB-151-SD-2

Submitted on: 3/15/2023 10:10:14 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Regina Gregory | Individual | Support | Written Testimony Only |

Comments:

Long overdue

SB-151-SD-2

Submitted on: 3/16/2023 7:19:06 AM

Testimony for JHA on 3/16/2023 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Shannon Rudolph | Individual | Support | Written Testimony Only |

Comments:

Support