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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LAW ENFORCEMENT

Ka 'Oihana Ho'okō Kānāwai

715 South King Street
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TESTIMONY ON HOUSE BILL 2458
RELATING TO THE DEPARTMENT OF LAW ENFORCEMENT
Before the House Committee on Judiciary & Hawaiian Affairs
Thursday, February 22, 2024; 2:00 p.m.
State Capitol Conference Room 325, Via Videoconference
Testifiers: Michael Vincent or Jared Redulla

Chair Tarnas, Vice Chair Takayama, and members of the Committee:

The Department of Law Enforcement (DLE) **strongly supports**, House Bill 2458.

This bill clarifies that the Director of Law Enforcement has authority to issue subpoenas as part of the investigative powers of the department.

Act 67, Session Laws of Hawai'i, 2023, established the DLE to consolidate and administer state criminal law enforcement and investigations responsibilities of various state law enforcement agencies. The Director of Law Enforcement currently has subpoena powers for purpose of investigations under the Uniform Controlled Substances Act, (§329-69, HRS), but this bill is necessary to clarify that the Director's subpoena powers extend to other investigations conducted by the DLE.

The subpoena powers addressed by this bill do not eliminate the need for a search warrant in criminal investigations. However, the subpoena powers contemplated by this bill are necessary to competently conduct investigations and are similar to the investigative powers currently given to other officials and agencies in Hawai'i, some of which include: the Attorney General (§§28-2.5(b), 467B-9.3, 480-18 HRS), Crime Victim Compensation Commission (§351-13, HRS), Department of Agriculture (§§159-8, 486-23, HRS), Director of Commerce and Consumer Affairs (§487-9, HRS), Director of Labor and Industrial Relations (§§371-6, 386-86, 387-10, HRS), Director of Taxation

(§231-7(c), HRS), Elections Commission (§11-401, HRS), Insurance Commissioner (§431:11-107), Legislative Auditor (§23-5, HRS), Liquor Commission (§281-21, HRS), Various boards and commissions (§92-16, HRS), and even the President of the Senate and Speaker of the House (§21-8, HRS).

This bill is needed to clarify that the Director of Law Enforcement also has the necessary subpoena powers to conduct investigations.

Thank you for the opportunity to testify in support of this bill.

State of Hawai‘i
The Office of the Public Defender

H.B. No. 2458: RELATING TO THE DEPARTMENT OF LAW
ENFORCEMENT

Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

This bill confers subpoena powers to investigators with the power to issue subpoenas as part of an investigation, not as part of an established case in court. While the bill requires subpoenas to identify the rights of the recipient, it does not explicitly identify the most important right in these situations: the right to counsel.

Moreover, indigent targets of these subpoenas are at a great disadvantage. The State’s Office of the Public Defender is limited to cases in which the accused has been charged in court. Constitutional requirements already compel our deputies to assist those who have invoked their right to counsel when being questioned by the police, but no statutes, administrative rules, or funding reflects this phase of representation.

The concern here is that without additional funding, staffing, and other bureaucratic needs to represent those clients who have not been charged, but have been subpoenaed to meet with investigators and in some cases provide physical evidence and documents, the Office of the Public Defender will fall behind in its statutory and constitutional responsibilities.