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DEPARTMENT OF LAW ENFORCEMENT

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TESTIMONY ON SENATE BILL 3009, SENATE DRAFT 1
RELATING TO THE DEPARTMENT OF LAW ENFORCEMENT
Before the Senate Committees on Ways and Means and Judiciary
Thursday, February 22, 2024; 9:46 a.m.
State Capitol Conference Room 211, Via Videoconference

WRITTEN TESTIMONY ONLY

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and members of the Committees:

The Department of Law Enforcement (DLE) submits comments on Senate Bill 3009, Senate Draft 1.

This bill proposes to: 1) Specify the responsibilities of the Department of Law Enforcement's Sheriff Division regarding judicial and legislative security, and 2) Require the Sheriff Division to pursue, obtain, and maintain accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. The bill is not needed because the proposed changes to the law are already provided in two existing statutes.

First, section 353C-4 of the Hawaii Revised Statutes provides in part:

(c) The duties of state law enforcement officers shall include conducting law enforcement operations and investigations throughout the State and maintaining public safety in state buildings as well as the personal protection of government officials and employees while in the conduct of their duties.

Under section 353C-4, the DLE is already statutorily mandated to provide judicial and legislative security because that section directs that DLE's law enforcement officers "maintain public safety in state buildings" and provide "personal protection" of "government officials and employees" while in the conduct of their duties. All judiciary

and legislative buildings and all judiciary and legislative buildings are already currently being patrolled and serviced by the DLE's Sheriff Division, as well as its criminal investigators. Moreover, all of DLE's deputy sheriffs and other law enforcement officers have been appointed by the DLE's Director to have all the powers of police officers. Therefore, every DLE law enforcement officer may enforce every criminal and traffic law, and every rule and regulation pertaining to criminal acts in both judiciary and legislative buildings grounds, roadways, and parks.

Second, section 353C-9 provides:

[\$353C-9] Department accreditation required. The department shall pursue and obtain accreditation for the sheriff division from the Commission on Accreditation for Law Enforcement Agencies, Inc.

One of SB 3009's stated purposes are to, "require the Sheriff Division to pursue, obtain, and maintain accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. However, the existing statute in Section 353C-9 already mandates that the DLE pursue accreditation. Additionally, SB 3146, an administration measure, seeks to amend Section 353C-9 to require accreditation for all divisions within the DLE.

Finally, as shown above, the requirements of SB 3009 are already in statute. For that reason, DLE respectfully requests that this bill be held.

However, should the Legislature intend to move this bill forward, then the DLE recommends the following revisions to clarify legal authorities while preserving the mandates of the DLE to the community:

Section 1 of the bill should be removed because the focus of the language is very limited and may be construed to be in conflict with the remaining language of the bill with respect to creating priorities, core, or mandated responsibilities.

Section 2 of the bill should be amended to read as follows:

SECTION 2. Chapter 353C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§353C- Authority. (a). The department shall have the final authority regarding law enforcement and security requirements for law enforcement activities and the protection and securing of state, judicial and legislative facilities and personnel; provided that the department shall take into consideration as much as possible the views and concerns of the agencies, judiciary and the legislature regarding those protection and security requirements when determining staffing levels, setting priorities, and allocating appropriate law enforcement and security resources."

Section 3 of the bill should be amended to read as follows:

SECTION 3. Section 353C-2, Hawaii Revised Statutes, is amended to read as follows:

"§353C-2 Director of law enforcement; powers and duties. The director of law enforcement shall administer the public safety programs of the department and shall be responsible for the formulation and implementation of state goals and objectives for state law enforcement programs and homeland security, including the deployment of adequate resources and coordination with county police departments to protect the health and safety of the community and the homestead communities on Hawaiian home lands[-]; and protecting and securing state, judicial and legislative facilities and personnel. In the administration of these programs, the director may:

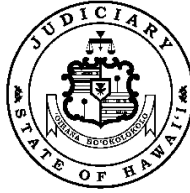
- (1) Preserve the public peace, prevent crime, detect and arrest offenders against the law, protect the rights of persons and property, enforce traffic laws and regulations, and enforce and prevent violation of all laws and administrative rules of

the State as the director deems to be necessary or desirable or upon request, to assist other state officers or agencies that have primary administrative responsibility over specific subject matters or programs;

- (2) Train, equip, maintain, and supervise the force of law enforcement officers and other employees of the department;
- (3) Serve process both in civil and criminal proceedings;
- (4) Perform other duties as may be required by law including collaboration with external law enforcement and other agencies during a mutual aid incident;
- (5) Adopt, pursuant to chapter 91, rules that are necessary or desirable for the administration of state law enforcement programs; and
- (6) Enter into contracts on behalf of the department and take all actions deemed necessary and appropriate for the proper and efficient administration of the department."

Section 4 of the bill should be eliminated.

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



LATE

The Judiciary, State of Hawaii

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

Senate Committee on Ways and Means
Senator Donovan Dela Cruz, Chair
Representative Sharon Moriwaki, Vice Chair

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Representative Mike Gabbard, Vice Chair

Wednesday, February 22, 2024, 9:46 a.m.
Conference Room 211 & Via Videoconference

by
Tim Kozak
Special Assistant to the Administrative Director of the Courts for Judiciary Security

Bill No. and Title: Senate Bill No. 3009, Senate Draft 1, Relating to the Department of Law Enforcement.

Purpose: Specifies the statutory duty of the Department of Law Enforcement's (DLE) Sheriff Division to protect legislative and judicial personnel and facilities of the State of Hawaii. Requires the Sheriff Division to obtain national accreditation. Requires representatives from DLE, the Judiciary, and the Legislature to meet annually to determine staffing levels, priorities, and allocation of resources for legislative and judicial security programs.

Judiciary's Position:

The Judiciary strongly supports this measure, which would ensure that the Sheriff Division's official functions and priorities under the newly established DLE specifically include the protection of legislative and judicial personnel and facilities.

This measure addresses an escalating problem of threats and safety risks faced by public agencies and their employees from some members of the public who have negative reactions to government decisions or actions. Some of the most recent examples include:



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- The number of threats and other inappropriate communications made towards Hawaii State Judiciary employees increased from 7 in 2017 to 60 in 2023.
- In 2023, security checkpoints with metal detectors were installed at various entrances into the Hawaii State Capitol due to growing security concerns.
- On January 3, 2024, the Hawaii State Capitol was evacuated in response to a mass email claiming that explosives had been placed in state capitol buildings across the country. On January 4, 2024, state courthouses in Honolulu, Kapolei, and Lihue were evacuated in response to bomb threats included in a similar mass email sent to courthouses in multiple states. The bomb threats, which prompted the evacuation of government buildings nationwide on consecutive days, were later found to be false, but in each case sheriff deputies were called upon to search Hawaii facilities to confirm there was no threat.

In the face of these growing threats to public employees and facilities, this measure promotes the continuity of government by statutorily requiring a coordinated effort between the executive, legislative, and judicial branches to provide the security resources necessary to ensure that governance and essential functions continue to be performed in the event of an emergency. The provisions of this measure are consistent with national best practices for law enforcement agencies that provide protection to other government branches. On a broader level, the best practices included in this measure will facilitate any modern policing initiative that the DLE may develop in the future as part of a statewide strategy to address targeted violence against government entities.

As the Sheriff Division begins a new era under the direction of the DLE, this measure will provide the Division with a clearly defined role and duty to protect legislative and judicial resources that face growing security threats. This provision is critical to the Judiciary's operations because the Sheriff Division's role in providing judicial security is not specifically defined by statute. That means the DLE currently exercises broad discretion in allocating resources for the Judiciary's security needs, which are at risk of being deprioritized as the new department assumes expanded responsibilities. As detailed below, a similar concern was raised in 2010 when the State Auditor found that the Sheriff Division's struggles to meet expanded law enforcement duties were largely attributable to broad statutory authority that failed to specify focus areas to meet the State's growing law enforcement needs. While the Judiciary has been in continuous communication with the DLE to ensure that the Sheriff Division's transition over to the new department does not negatively impact judicial safety, the best way to ensure that the Division continues to prioritize judicial and legislative security is to specifically define this duty in statute, as this measure provides.



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This measure also fulfills the recommendations the State Auditor made in 2010 to improve the Sheriff Division's ability to carry out its functions. In the 2010 report,¹ the State Auditor found that since its transfer to the former Department of Public Safety (DPS) in 1989, the Sheriff Division, because of its ill-defined role and a lack of mission clarity, was struggling to meet its expanded law enforcement duties and responsibilities. The report noted that as the State's law enforcement needs expanded, confusion over the extent of the State's law enforcement responsibilities had grown. This confusion and uncertainty was attributed in part to vague constitutional language and a broad interpretation of statutory authority. The report also noted a lack of Sheriff Division procedures related to the staffing and service of the courts, raising safety issues. The report included DPS' acknowledgement that there were not enough deputy sheriffs to carry out its functions at many of the courts. Further, in the absence of a formal agreement with the courts, the Sheriff Division lacked staffing standards for the safety of deputy sheriffs, the custodies, and court personnel. The Auditor recommended that DPS perform a risk assessment of each section of the Sheriff Division and consider proposing statutory amendments to align with the division's duties and functions as indicated by the risk assessment. The Auditor further recommended that DPS pursue national accreditation for the Sheriff Division to ensure that proper law enforcement policies and procedures would be enacted and followed.

Accordingly, this measure directly addresses the Auditor's 2010 recommendations by specifying the Sheriff Division's statutory duty to protect legislative and judicial personnel and facilities, and requiring the Division to obtain national accreditation. Further, by requiring DLE, the Legislature, and the Judiciary to meet annually to discuss security requirements, this measure ensures that these parties engage in a continuous dialogue to determine staffing levels, priorities, and resource allocations that appropriately respond to changing security needs over time.

The Judiciary has a strong interest in ensuring the success of the Sheriff Division's operations, as the administration of justice requires effective protection of state judges, judicial proceedings, and judicial facilities. The Judiciary looks forward to enhancing its partnership with the Sheriff Division through this measure, which will improve the Division's ability to assign a sufficient number of onsite sheriff deputies to protect legislative and judicial facilities, avoid a historically under-resourced law enforcement presence in state courthouses, and ensure adequate levels of security resources to protect legislative and judicial operations, employees, and the public.

Thank you for the opportunity to testify on this measure.

¹ Audit of the Department of Public Safety, Sheriff Division, Hawaii State Auditor Report No. 10-06, June 2010.