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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
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 1611 HOUSE DRAFT 1

RELATING TO LAW ENFORCEMENT OFFICERS

Before the House Committee on Judiciary and Hawaiian Affairs

Wednesday, February 14, 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) **supports** House Bill 1611, HD1 with a recommended effective date of July 1, 2026.

This bill seeks to give law enforcement agencies in Hawai'i tools to help ensure that law enforcement officers serving in our communities possess the highest moral standards and character by requiring the use of the National Decertification Index as part of a law enforcement agency's determination of an applicant's employment suitability. To that end, the DLE is supportive of this bill. However, the DLE notes that section 2 of the bill requires both the Law Enforcement Standards Board (LESB) and the employing law enforcement agency to consult, or report to, the National Decertification Index before employing any officer or when taking disciplinary action against an officer. The DLE reviewed the LESB's Annual Report to the 2024 Legislature and further notes that the LESB reported that it is currently in considerations for employing its own staff and infrastructure.ⁱ Consequently, the DLE is concerned that the effective date of this bill, July 1, 2024, may be too soon.

The DLE is recommending **July 1, 2026** as the effective date of this bill be to give the LESB and law enforcement agencies time to meet the requirements of this bill.

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

ⁱ Report on the Law Enforcement Standards Board submitted to the Thirty-Second Legislature, Page 4, subsection (4) "...concerns regarding consistency with Act 278 of the 2022 Legislative Session, future funding of the board, clarification of Board powers, deadlines for Board to meet statutory requirements, additional Board staffing..."



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

February 13, 2024

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: **HB 1611 – Relating to Law Enforcement Officers**

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 HB 1611**. This bill seeks to amend HRS chapter 139 by adding a new section requiring broad mandates for reporting “disciplinary action” and consultation of the National Decertification Index before certifying existing police officers and employing new ones. There are myriad issues with the bill, which will be discussed below.

Proposed subsection (a) of the bill states that “Before certifying or employing any law enforcement officer, the board and the employing officer shall consult the National Decertification Index.” The mandate to consult the NDI before certifying an existing law enforcement officer, has the effect, by design, of circumventing the collective bargaining¹ rights of law enforcement officers.

As you may know, the constitutional right “to organize for the purpose of collective bargaining” is a fundamental right under Article XIII, Section 1 of the Hawaii State Constitution.

¹ “Collective bargaining” means the performance of the mutual obligations of the public employer and the exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the Hawai‘i public employees health fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession.

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The CBA between SHOPO and the counties contain a grievance procedure for disciplinary actions, which was negotiated and agreed to by the parties. This grievance procedure reflects the essential requirements of due process, which are notice and an opportunity to respond to allegations and disciplinary actions. Under Article 13 of the CBA, the parties agreed that records and information related to the grievance process, including investigations, “shall be considered confidential[.]”² Article 32 grants and invests an independent and impartial arbitrator with the discretion to rule on matters presented to him/her and the arbitrator makes his/her decision after carefully hearing testimony of witnesses and weighing the evidence presented. In some instances, an arbitrator may decide that discipline has been issued without “just cause,” and in those cases, the arbitrator has the power to set aside, reduce, or otherwise change, the discipline, including removing the discipline and/or complaint from the law enforcement officer’s personnel file and record.

Significantly, if passed, this bill could be read as permitting the decertification of an officer accused of misconduct despite an independent arbitrator’s finding that was an officer’s termination was improper. For example, after hearing the evidence, an Arbitrator could find that a termination was excessive, and replace that disciplinary action with a written reprimand for a minor violation not related to the material allegations against an officer. However, the misconduct allegations may still be reported to NDI with the result being a written reprimand. Certainly, the disclosure of misconduct under this bill cannot be compared to the painstaking review an independent arbitrator undergoes at an arbitration hearing, including hearing from witnesses and reviewing evidence, but it appears that the decertification process can be used to override an arbitrator’s decision.

This leads us to another issue, the bill’s reporting requirement to the NDI is unquestionably vague. Proposed subsection (b) of the bill requires the Board and an employing law enforcement agency to ensure that each “disciplinary action” taken against a law enforcement officer is reported to NDI. This could mean that disciplinary actions would be reported before the officer’s due process rights are exercised and exhausted under the negotiated grievance procedure. In other words, if the grievance process subsequently overturned the disciplinary action taken against the officer, the officer would be cleared, and the disciplinary action would become null and void. However, under the existing language of the bill the discipline would have already been reported to NDI without regard to whether the grievance process has concluded. Disclosing any discipline to NDI before any grievance is final would be premature and serve no valid purpose. In fairness to our officers, if the Legislature ultimately passes this bill into law, “disciplinary action” to be reported to NDI should only be suspensions or terminations and should only be disclosed after the grievance process has concluded after the officer’s due process rights provided by the grievance process have been exercised and exhausted.

² This provision is subject to the existing Uniform Information Practices Act.

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Moreover, as you know, the County police departments are already mandated to submit annual reports to the legislature of misconduct incidents that resulted in suspension or discharge of a police officer pursuant to HRS § 52D-3.5. These reports summarize the facts and the nature of the misconduct for each incident; specify the disciplinary action imposed for each incident; identify any other incident in the annual report committed by the same police officer; state whether the highest nonjudicial grievance adjustment procedure timely invoked by the police officer or the police officer's representative has concluded.

In addition, it is unclear who has access to the information in the NDI. The website indicates that the Index is intended for use by law enforcement agencies and POST organizations, but also states that “in cases of legitimate need, access to the NDI may be granted to other individuals” by making a simple private email request.

Finally, SHOPO agrees that law enforcement officers should be held to the highest standards. As you may already know, all four (4) county police departments and their respective police academies are accredited by the Commission on Accreditation for Law Enforcement Agencies (“CALEA”). 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 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. Ironically, this same legislative body is currently pushing for DLNR’s conservation and resources enforcement program to obtain CALEA certification, see e.g., SB 70, and thus, this legislative body clearly believes CALEA is a credible and valid accreditation.

We thank you for allowing us to be heard to share our serious concerns with this bill and hope your committee will unanimously reject this bill until further consideration is given to the issues and concerns we have raised.

Respectfully submitted,

ROBERT “BOBBY” CAVACO
SHOPO President

HAWAI‘I HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

HEARING:

Public Hearing on House Bill 1611 H.D. 1, Feb. 14, 2024

DATE OF TESTIMONY:

Feb. 14, 2024

TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW IN SUPPORT OF H.B. 1611 H.D. 1

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 In 2018, Hawai‘i took an enormous step toward this kind of democratic accountability in policing when it joined nearly every other state in the country by empowering a state agency—the Law Enforcement Standards Board (“the Board”)—to license officers and suspend or revoke officers’ licenses if they engage in certain narrow categories of egregious misconduct. H.B. 1611 H.D. 1 (“H.B. 1611”) would supplement and strengthen this law by requiring the Board to share license suspension and revocation information with the National Decertification Index (“NDI”) and requiring law enforcement agencies to review the NDI before hiring new officers. Both components of H.B. 1611 would help address the wandering officer problem, in which officers who engage in serious misconduct simply move on to another agency rather than face any meaningful accountability. A few small amendments could help H.B. 1611 get even further toward this laudable goal.

We thus submit this testimony in support of H.B. 1611 and the amendments suggested below.

¹ As part of its mission to advance democratic accountability in policing, the Policing Project has aided numerous states across the country in establishing and strengthening their decertification statutes and regulations. We have vetted our thinking on officer discipline & decertification with an advisory committee consisting of law enforcement officials, academics, policing experts, and affected community members. We have also created a number of model statutes, all of which are informed by best practices in existing legislation and vetted by our advisory committee. One of those statutes is our [comprehensive decertification statute](#); that statute is additionally informed by the [American Law Institute’s Principles of Policing on certification and decertification](#).

H.B. 1611 Would Help Address The Wandering Officer Problem

The 2018 Law Brought Hawai‘i in Line With Nearly Every Other State in the Country

Act 220, enacted in 2018, created the Law Enforcement Standards Board and modernized Hawai‘i’s approach to policing. That Act and follow-up legislation:

1. requires all Hawai‘i law enforcement officers to receive training to minimize the use of excessive force, including de-escalation and crisis intervention techniques;
2. commissions the Board with setting minimum age, education, physical and mental health, and moral character standards for officers; and
3. empowers the Board to certify officers who meet the above standards and, after a full hearing, suspend or revoke the certification of any officer who fails to meet those standards or engages in egregious misconduct.

See Haw. Rev. Stat. §§ 139-5, 139-6. The narrow categories of egregious misconduct are set forth in the statute, and include being convicted of a felony and knowingly making material false statements to the Board. *Id.* at § 139-8.

Critically, existing law empowers the Board to strip some of the worst officers of their badge, even if they are not fired or do not resign from their employing agency. The Board, in other words, serves as a backstop to ensure officers who undercut the reputation of Hawai‘i law enforcement and pose a danger to the public are held accountable.

The existing law, and forthcoming implementing regulations from the Board, also help address the wandering officer problem, in which officers who engage in serious misconduct simply move on to another agency rather than face any accountability. If an officer comes from another state, the Board must ensure that officer meets Hawai‘i’s minimum standards before certifying the officer. And if an officer leaves one of Hawai‘i’s four county agencies (or a state agency) after engaging in serious misconduct, this existing law helps ensure that the officer cannot just move and obtain employment at another Hawai‘i agency.

In addition, the existing law follows best practices for protecting officers’ due process rights, by granting officers a full hearing before the Board takes any action against the officer. *See* Haw. Rev. Stat. § 139-8(c).

H.B. 1611 Would Bolster the 2018 Law By Further Addressing The Wandering Officer Problem Through Increased Information Sharing

H.B. 1611 would require the Board and law enforcement agencies to consult the National Decertification before hiring new officers and to submit Board disciplinary information to the NDI. These provisions are laudable in helping to curb the inter-state wandering officer problem, in which an officer may get decertified after engaging in serious misconduct in one state but move to another state and get hired to work as a law enforcement there. If that officer's state peace officer standards and training board ("POST") contributes to the NDI, and a Hawai'i hiring agency checks the NDI before hiring the officer, that will ensure they learn of the officer's prior decertification before making any decision to hire the officer. Conversely, if an officer has their license revoked by the Hawai'i Board and moves to another state, H.B. 1611 would ensure law enforcement agencies in that other state would be able to see if the officer had their license revoked before hiring that officer.

H.B. 1611 Would Be Strengthened With Amendments

The amendments described below would strengthen H.B. 1611, ensuring the Board and law enforcement agencies are only submitting records and information to the NDI that the NDI accepts and will accept in the future.

First, we recommend amending Section 2 of H.B. 1611 to ensure the Board is reporting to the NDI only information that the NDI is currently accepting: officer certification suspensions, revocations, and reports that an officer is under investigation by the Board. Section 139(b) & (c) require the Board and employing law enforcement agencies to send all disciplinary actions and domestic violence records to the NDI. But the NDI currently only collects and reports state-level Board certification suspensions, revocations, and reports that an officer under investigation by the Board.² The NDI *does not* currently track law enforcement agency-level discipline nor does it accept or collect domestic violence records.

Moreover, the NDI only accepts reports of suspensions, revocations, and the initiation of Board investigations from state-level POST boards, not from law enforcement agencies.

Thus, we suggest amending H.B. 1611 to provide that the Board (and only the Board) shall report all certification suspensions, revocations, and notices that an officer is under investigation by the Board to the NDI.

² See *NDI Frequently Asked Questions (FAQ)*, International Association of Directors of Law Enforcement Standards and Training ("IADLEST"), <https://www.iadlest.org/Portals/0/Files/NDI/NDI%20FAQ%20.pdf?ver=xINUE3YRiwlF2JimncZFkA%3d%3d>

Second, we also recommend amending Section 2 of H.B. 1611 to require the Board to periodically communicate with the NDI, or check their website, and promulgate regulations requiring and setting forth a process for reporting any additional information or records the NDI accepts in the future. Indeed, the organization that maintains the NDI is in the process of expanding the NDI to collect additional information like sustained complaints and civil judgments against officers, but that process is currently only at the Request for Proposal stage.³ Our suggested amendment would enable the Board and law enforcement agencies to report additional information to the NDI once the NDI announces it is accepting the information.

Conclusion

H.B. 1611 would strengthen supplement Hawai'i's 2018 decertification law by sharing officer certification suspension and revocation information with other states through the NDI and require hiring agencies to review the same information before hiring new officers. However, we recommend making amendments to the bill to ensure the Board and law enforcement agencies only submit and information to the NDI that the NDI accepts.

Thank you for considering our testimony.

³ *NDI Expansion Project – Request for Proposals*, IADLEST, <https://www.iadlest.org/our-services/ndi/about-ndi/ndi-rfp-resources>.

HB-1611-HD-1

Submitted on: 2/13/2024 2:28:01 PM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nicholas Chagnon	Individual	Support	Written Testimony Only

Comments:

To the esteemed members of the committee,

Hawaii has seen its fair share of officer misconduct and consequent lack of accountability. This is one way to enhance accountability at the state and national levels. I ask that you support this bill.

Sincerely,

Nick Chagnon, Ph.D

HB-1611-HD-1

Submitted on: 2/13/2024 6:18:06 PM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

HB-1611-HD-1

Submitted on: 2/13/2024 9:39:07 PM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Scott Kidd	Individual	Support	Written Testimony Only

Comments:

I support this measure as law enforcement still need to ensure accountability are in place for adverse behaviors.