



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

March 22, 2024

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
Senate Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: **HB 1611 HD2 SD1 – Relating to Law Enforcement Officers**

Dear Chair Rhoads, Vice-Chair Gabbard, 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 HD2 SD1**. While well intentioned, this bill’s broad reporting mandate to the National Decertification Index (“NDI”) before certifying existing police officers is problematic for several reasons.

Significantly, if passed, this bill will inevitably lead to situations where, despite an independent arbitrator’s finding that was an officer’s termination was improper, that same officer is terminated anyway because he/she is not able to be certified due to what is reported to the NDI. The CBAs between SHOPO and the counties contain a grievance procedure for disciplinary actions, which was negotiated and agreed to by the parties, and reflect the essential requirements of due process. Article 32 grants and invests an impartial arbitrator with wide discretion to rule on matters presented and a decision is rendered after carefully hearing testimony of witnesses and weighing the evidence presented. As indicated above, 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. The reporting requirement also leads to additional issues. Proposed subsection (b) requires the Board to report to NDI each time the board opens a “disciplinary investigation” of a law enforcement officer. “Disciplinary investigation” does not appear to be defined in the proposed measure, but said investigations may be reported to NDI *before* an officer’s due process rights are exercised and exhausted under the negotiated grievance procedure. In other words, if the grievance process subsequently overturned any disciplinary action taken against an officer, the officer would be cleared, and the disciplinary action would become null and void.

Main Office & Honolulu Chapter Office
1717 Hoe Street
Honolulu, Hawaii 96819-3125
Tel: (808) 847-4676 "84 SHOPO"
www.shopohawaii.org Fax: (808) 841-4818

Hawaii Chapter Office
688 Kinoole Street, Room 220B
Hilo, Hawaii 96720-3877
Tel: (808) 934-8405
Fax: (808) 934-8210

Kauai Chapter Office
3176 Oihana Street, Suite 104, Lihue
Mailing Add: P. O. Box 1708
Lihue, Hawaii 96766-5708
Tel: (808) 246-8911

Maui Chapter Office
1887 Wili Pa Loop, Suite 2
Wailuku, Hawaii 96793-1253
Tel: (808) 242-6129
Fax: (808) 242-9519

The Honorable Karl Rhoads, Chair
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However, under the existing language of this bill, any disciplinary investigation would have already been reported to NDI without regard for the status of a related grievance process. Disclosing a disciplinary investigation to NDI before any related grievance is final would be premature and serves no valid purpose. Although we feel that the County police department's annual reports to the legislature suffice, in fairness to our officers, reports to NDI should only be suspensions or terminations disclosed only after any related grievance process has concluded.

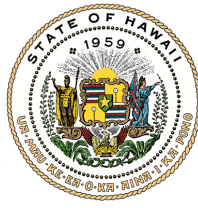
In addition, it is unclear who has access to the information in the NDI. The website indicates that the Index is intended for use by law enforcement agencies and POST organizations, but also states that "in cases of legitimate need, access to the NDI may be granted to other individuals" by making a simple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

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



JORDAN LOWE
DIRECTOR

MICHAEL VINCENT
Deputy Director
Administration

JARED K. REDULLA
Deputy Director
Law Enforcement

SYLVIA LUKE
LT GOVERNOR
KE KE'ENA

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 2, SENATE DRAFT 1
RELATING TO LAW ENFORCEMENT OFFICERS

Before the Senate Committee on Judiciary

Wednesday, March 27, 2024; 9:45 a.m.

State Capitol Conference Room 016, Via Videoconference

WRITTEN TESTIMONY ONLY

Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

The Department of Law Enforcement (DLE) submits the following comments on House Bill 1611, HD2 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, 2025, 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 submit comments on 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..."



Hawai'i

Committee: Judiciary
Hearing Date/Time: Wednesday, March 27, 2024 at 9:45AM
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB 1611, HD2, SD1 Relating to Law Enforcement Officers**

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:
The ACLU of Hawai'i **supports H.B. 1611 H.D. 2, S.D. 1** which requires law enforcement agencies and the Law Enforcement Standards Board to consult the National Decertification Index (NDI) and report certain information related to a law enforcement officer's certification status to the Index.

This is a good governance measure and a small step towards accountability and documenting instances of law enforcement misconduct.

Law Enforcement officers have de facto power to stop anyone, at any time, for any reason, and that these encounters can result in injury or death.

The other reality is that under-resources communities, particularly Native Hawaiians and Pacific Islanders, are more likely to be subjected to law enforcement action and misconduct. This propels individuals into the revolving door of the criminal legal and carceral system, increasing exposure to trauma, isolation, shame, violence, and reduced access to work force opportunities to provide for the needs of the individual and their family.

This measure would strengthen 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.

Please pass **H.B. 1611 H.D. 2, S.D. 1**.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i
cshirota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

HAWAI‘I SENATE COMMITTEE ON JUDICIARY

HEARING:

Public Hearing on House Bill 1611 H.D. 2 S.D. 1, March 27, 2024

DATE OF TESTIMONY:

March 26, 2024

TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW IN SUPPORT OF H.B. 1611 H.D. 2 S.D. 1

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

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. 2 S.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. One small amendment could help H.B. 1611 get even further toward this laudable goal.

We thus submit this testimony in support of H.B. 1611, with one suggested amendment.

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 Index 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 even stronger if the effective date were changed from July 2025 to summer or fall 2024.² Before hiring new officers, Hawaii's law enforcement agencies should be tasked as soon as possible with consulting the NDI to ensure they know of officers who have been decertified for egregious misconduct in other states.

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 an earlier effective date for the bill.

Thank you for considering our testimony.

² In parallel, we recommend using the same earlier effective date for § 139(c), which would require the Board to periodically review the NDI website or communicate with the International Association of Directors of Law Enforcement Standards and Training to determine if they are accepting any new information or records.