



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 922, RELATING TO LAW ENFORCEMENT REFORM.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Wednesday, March 1, 2023      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Adrian Dhakhwa,  
Deputy Attorney General, at 586-1160)

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Chair Rhoads and Members of the Committee:

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

The purposes of this bill are to: (1) add a new section to chapter 139, Hawaii Revised Statutes (HRS), that requires a law enforcement officer who observes another law enforcement officer commit "criminal misconduct" to report in writing the misconduct to the second officer's department head, requires the department head of the second officer to complete an investigation and notify the chief of police of the respective county in writing within fifteen days, and requires the chief of police to then notify the respective police commission of the outcome of the investigation; (2) amend the definition of "law enforcement officer" in section 139-1, HRS, to exclude adult correctional officers; (3) amend section 139-6, HRS, to require a law enforcement officer to have "passed a psychological screening test battery"; (4) amend section 139-8, HRS, to require the law enforcement standards board to adopt rules regarding the denial, suspension, or revocation of a law enforcement officer's certification and to take into consideration whether the law enforcement officer failed to report or committed criminal misconduct; and (5) amend section 703-307, HRS, to define "chokehold" and to establish that the use of a chokehold by a law enforcement officer is not justifiable unless the use of deadly force is justifiable pursuant to the statute.

The Department has the following concerns with this bill.

First, as written, the new section proposed to be added to chapter 139 in section 1 of the bill is unclear whether the reporting requirement is intended to apply to a law enforcement officer who is observed by another law enforcement officer to have committed "criminal misconduct" regardless of whether either of the officers is on duty. Presumably, an off-duty officer who is observed to have committed criminal misconduct would be subject to standard arrest and reporting procedures. Moreover, the typical criminal offenses for which off-duty law enforcement officers have been arrested are not included within the proposed definition of "criminal misconduct". For example, operating a vehicle under the influence of an intoxicant and abuse of a family or household member do not fall within the proposed definition.

The Department suggests that the following underscored wording be inserted at page 1, lines 5-8, to clarify that this proposed new section only applies to criminal misconduct that is observed to have been committed while the law enforcement officers were on duty:

"(a) It shall be the duty of [a] an on-duty law enforcement officer who observes criminal misconduct by another on-duty law enforcement officer to notify the department head of the officer who committed the criminal misconduct."

However, if the intent of the proposed section is to cover all instances of misconduct regardless of whether either law enforcement officer is on duty, the underscored clarifying wording should be inserted on page 1, lines 5-8:

"(a) It shall be the duty of a law enforcement officer who observes criminal misconduct by another law enforcement officer to notify the department head of the officer who committed the criminal misconduct[-] , regardless of whether either law enforcement officer was on duty at the time."

Second, in subsection (h) of the new section on page 3, lines 14-17), "criminal misconduct" is defined to mean "assault, sexual assault, bribery, coercion, fraud, theft, tampering with physical evidence, tampering with a witness, use of a chokehold as defined in section 703-307, or excessive use of force." Some of the terms listed in the definition are established crimes: assault (section 707-710, HRS, through section 707-712, HRS), sexual assault (section 707-730, HRS, through section 707-733, HRS),

bribery (section 710-1040, HRS), theft (section 708-830, HRS, through section 708-833.5, HRS), tampering with physical evidence (section 710-1076, HRS), and tampering with a witness (section 710-1072, HRS). Some of the listed terms, like "coercion" and "fraud," are not established crimes and do not have established legal definitions. And some of the terms within the proposed definition of "criminal misconduct" may not be "criminal": while the use of a chokehold is generally prohibited, it may still be legally permissible if the suspect is using deadly force against the officer (as noted in section 5 on page 9, line 20, to page 10, line 2). Moreover, excessive use of force may not be readily apparent in every situation where officers respond to rapidly dynamic events. The Department suggests limiting the definition of "criminal misconduct" (page 3, lines 14-17) to those acts that are already legally established (additions are underscored and deletions are stricken):

"'Criminal misconduct' means assault, sexual assault, bribery, [~~coercion, fraud,~~] theft, tampering with physical evidence, or tampering with a witness[~~, use of a chokehold as defined in section 703-307, or excessive use of force~~]."

Third, it is unclear what burden of proof is required to establish whether there is "sufficient evidence" (page 2, line 3). It is unclear whether the goal of this statute is to ensure that the offending law enforcement officer is prosecuted for the criminal misconduct or whether administrative action is to be taken against the offending law enforcement officer. For criminal prosecution, the burden of proof is beyond a reasonable doubt; whereas in civil or administrative proceedings, the burden of proof may only be by a preponderance of the evidence. If the intent is for administrative action to be taken, it appears the lower burden is applicable. The underscored clarifying wording should be inserted on page 2, lines 2-4, as follows:

"If the investigation determines that, in the determination of the department head, [~~sufficient~~] a preponderance of the evidence shows that the individual committed an act of criminal misconduct, . . . ."

Fourth, subsection (b) of the proposed new section (page 1, lines 11-14), requires the department head to notify the chief of police of the outcome of the investigation. As defined, "'Department head' means the official or officer having the most managerial or administrative authority in the State or county agency or department

(page 3, lines 18-20). At the county level, the "department head" would be the respective county chief of police. Accordingly, as currently proposed and applied to county law enforcement officers, subsection (b) would require the police chiefs to both complete an investigation and then notify themselves of the investigation. As applied to state law enforcement officers, subsections (b) and (c) would require the department head to notify the county police chief, who does not have any supervisory jurisdiction over the state law enforcement officers. As stated above, it is unclear whether the goal of this statute is to ensure that the offending law enforcement officer is prosecuted for the criminal misconduct or whether administrative action is to be taken against the offending law enforcement officer. If it is the former, then the investigation should be referred by the department head to the appropriate prosecuting authority, i.e., the county prosecutor or the Department. If the goal is administrative action, the department head would be in the best position to take the appropriate action and a referral to the police commission would be unnecessary except perhaps for reporting purposes. Referral to the police commission for investigation would only be appropriate if a county chief of police is the person being accused of "criminal misconduct". In the event a department head of a state law enforcement agency is suspected of "criminal misconduct", the report should be made to the Department for investigation and appropriate action, whether it be criminal prosecution or reporting of the misconduct to the Governor. Proposed amendments to subsections (b), (c), (e), and (f) in section 1 would depend on whether the goal of the statute is criminal prosecution, administrative sanctions, or both. The Department is available to work with the Committee on possible amendments.

Fifth, the proposed timelines of fifteen days in subsections (b), (d), and (e) on page 1, line 11, page 2, line 12, and page 3, line 1, do not appear to be realistic. The 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. Moreover, this proposal usurps the state and county law enforcement agencies' ability to investigate criminal misconduct within their own departments.

Given all of the foregoing concerns, the Department recommends deleting the proposed reporting scheme in subsections (b) through (f), and renumbering subsections (g) and (h) as (b) and (c), respectively. This would allow the proposed mandatory reporting of criminal misconduct to remain intact while balancing the respective law enforcement agencies' ability to conduct both criminal and administrative investigations regarding an incident involving criminal misconduct.

The Department has no constitutional or legal concerns with the remaining sections of this bill.

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



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

February 25, 2023

**VIA ONLINE**

The Honorable Karl Rhoads  
Chair  
The Honorable Mike Gabbard  
Vice-Chair  
Senate Committee on Judiciary  
Hawaii State Capitol, Rooms 228, 201  
415 South Beretania Street  
Honolulu, HI 96813

Re: **SB 922 -Relating to Law Enforcement Reform**

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 on behalf of our Union, I write in strong **opposition** to SB 922. This bill is another attempt to have government intervene in matters that are the kuleana of the county police departments and their respective police chiefs. The bill also does not account for the existing layers of safeguards that ensure each and every county police officer is held accountable for their individual actions and omissions, both administratively and criminally.

SB 922 appears to be an attempt to appease a small group of people who are anti-police and want to defund the police. Without our police officers, society cannot maintain its civility or its rule of law. Our Hawaii citizens understand and appreciate the protection and law enforcement services provided by our dedicated officers. The public's strong support for our three officers charged in the Sykap case was a testament to our community's appreciation of the dangerous work our officers perform each and every day.

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.

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The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice-Chair  
Senate Committee on Judiciary  
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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, we do make mistakes. We are no less human than the politicians arrested for drunk driving or who have been bribed. 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 involving a driver who reportedly intentionally ran over an innocent woman pushing a baby in a stroller and then attacked an innocent 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 in reliance on their extensive training.

I note that 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

The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice-Chair  
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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.<sup>1</sup> All these levels of accountability and transparency happened without SB 922. 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.

However, we also expect politicians like yourselves to support us in our efforts to protect and make our community safe. The difficulties of hiring new officers combined with seasoned officers retiring as soon as they become eligible has created a critical mass resulting in a shortage of officers that is compromising public safety. The spike in violent crimes is no coincidence.

This bill further requires an officer to report on another officer involved in "criminal misconduct." However, that is already a duty and responsibility of every officer in every county police department. Moreover, the bill speaks in terms of reporting misconduct to a "department head." In our case, that would be the police chiefs who are the heads of each county police departments. 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 chief of police. Thus, the substance of SB922 is already in place within the county's departments which need not be disturbed or interfered with by the legislature. In addition, the bill calls for the county police commissions to investigate criminal complaints made by an officer against another officer. However, this may conflict with a county's charter and the powers, duties and functions bestowed on each police commission. 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. The bill also assumes that a police commission has the expertise and investigators experienced to conduct a criminal investigation, not to mention the conflicts this may cause with witnesses and other aspects of an investigation when you have other agencies investigating the same criminal complaint such as the prosecutor's office.

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<sup>1</sup> 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.



The Honorable Karl Rhoads, Chair  
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This bill further imposes a psychological screening test before an individual can become a police officer. Again, psychological screening is already a part of the hiring process administrated by the counties.

In addition, the legislature through this bill seems to be telling the police departments what type of arrest and control tactics they should employ or not use 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 arrest and control tactics that would allow them to dictate what tactics to use or not use on an armed and violent suspect.

Rather than finding ways to make it more difficult to hire and retain officers, we respectfully ask that you please find 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. Instead, of expending time figuring out how to make it more difficult to hire police officers, 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 we need. 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 922.

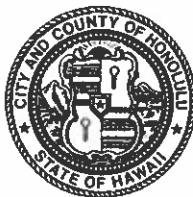
Respectfully submitted,

ROBERT "BOBBY" CAVACO  
SHOPO President

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CHIEF

KEITH K. HORIKAWA  
RADE K. VANIC  
DEPUTY CHIEFS

OUR REFERENCE MH-SK

March 1, 2023

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State Senate  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: Senate Bill No. 922, Relating to Law Enforcement Reform

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

The HPD opposes Senate Bill No. 922, Relating to Law Enforcement Reform.

The HPD has policies and procedures in place relating to the duty to intervene and the banning of chokeholds, except in situations involving deadly force, that are in line with the proposed bill. The HPD opposes the bill based on the time frame stipulated to complete an investigation into possible criminal misconduct.

The current language of the bill states that any department head notified of criminal misconduct has fifteen days to complete an investigation into the misconduct and notify the chief of police of their respective county of the outcome of the investigation.

Due to the complexities involved in investigations of this nature, having a window of fifteen days is not sufficient to conduct a thorough, in-depth investigation wherein a crime has occurred. There are several reasons for this, such as the constitutional rights

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of the accused, in-place collective bargaining agreements, as well as interviewing witnesses, obtaining surveillance, and many other detailed, time-consuming actions that must be undertaken to ensure a thorough, in-depth investigation.

The HPD urges you to oppose Senate Bill No. 922, as written, due to the aforementioned language requiring such investigations into misconduct to be completed within fifteen days. We appreciate the committee's consideration of these concerns.

Thank you for the opportunity to testify.

Sincerely,



Manuel Hernandez, Captain  
Training Division

APPROVED:

  
\_\_\_\_\_  
Arthur J. Logan  
Chief of Police

**SB-922**

Submitted on: 2/24/2023 5:27:26 PM

Testimony for JDC on 3/1/2023 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| B.A. McClintock     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Please support this bill. Mahalo.

**SB-922**

Submitted on: 2/25/2023 9:45:07 AM

Testimony for JDC on 3/1/2023 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Caroline Azelski    | Individual          | Support                   | Written Testimony<br>Only |

Comments:

In support of. Thank you.

**SB-922**

Submitted on: 2/25/2023 5:13:27 PM

Testimony for JDC on 3/1/2023 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Will Caron          | Individual          | Support                   | Written Testimony<br>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 crime can inflict.

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. Please support SB922.

**SB-922**

Submitted on: 2/26/2023 1:32:50 PM

Testimony for JDC on 3/1/2023 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Support                   | Written Testimony<br>Only |

Comments:

If the Tyre Nichols tragedy in Memphis taught us anything, this needs to become law. The police lied in their written reports. It was the body cams and especially the pole cam footage, shown on many news stations nationally, which showed the viciousness and inhumanity of the officers. At least seven have been fired. plus several EMTs, with ongoing investigations. Please pass.

**SB-922**

Submitted on: 2/27/2023 10:22:50 AM

Testimony for JDC on 3/1/2023 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Shannon Rudolph     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Support



**SB-922**

Submitted on: 2/28/2023 10:26:40 AM

Testimony for JDC on 3/1/2023 9:30:00 AM



| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Nikos Leverenz      | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Judiciary Committee:

I strongly support this measure.

However, it's unfortunate that statutory language is required to (1) clarify that law enforcement officers have an obligation to report observed criminal misconduct and (2) explicitly prohibit the use of chokeholds.

That a psychological screening tool like the Minnesota Multiphasic Psychological Inventory is not currently used to screen law enforcement candidates makes Hawaii an outlier among the sisterhood of states.

Mahalo for the opportunity to provide testimony.

**LATE**

**SB-922**

Submitted on: 2/28/2023 12:39:25 PM

Testimony for JDC on 3/1/2023 9:30:00 AM

| <b>Submitted By</b>                        | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|--|---------------------|---------------------------|---------------------------|
| Minister, Hector Hoyos<br>(aka) SisterFace | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Far too often as a citizen who follows the law and is a loud civil rights advocate I have seen in our state of Hawaii or city of Waikiki and Honolulu business district proper. I've seen many police officers witness other police officers do things that were questionable. We all know that this happens on a daily basis not just here in Hawaii, but most all of our country and even different countries, it's not not supporting the police by supporting this bill. This is supporting the police and good police procedure. I think this will enable our police officers the protection Vayne made also or being retaliated against because an officer, a partner, a coworker, or a higher up ranked police officer may have witnessed , we do live in a time where police are over, burdened by the ever-changing dangerous society we live in, but at the same time the police need to police themselves and we need to as a local government and state government make that easier for them to do because most all of our police are good people and police officers are human and do make mistakes and have moments of emotion And anger so this is a good bill a good start. I hope that the police department and various departments all support this bill it's important matter & subject, we locals and citizens do you think of this and what happens when a police officer does have to report another police officer for anything that's not good anything that makes that officer that has to report it feel uncomfortable and any procedure that helps that function operate smoother is good for everyone and the police department and the state of Hawaii, i Support Loudly