

ACT 112

H.B. NO. 2133

A Bill for an Act Relating to Police Departments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that domestic violence is an epidemic affecting individuals in every community, regardless of age, economic status, race, religion, nationality, or educational background. According to the National Coalition Against Domestic Violence, one in every four women will experience domestic violence in her lifetime. Between 2008 and 2012, there was an eighteen per cent increase statewide in arrests relating to abuse of family or household members. During this same time period, there was also an increase in the number of persons served by various statewide agencies who provide services to victims of domestic violence.

The legislature further finds that the Honolulu police department has been heavily criticized by lawmakers and the public in the wake of a recent high-profile incident involving an off-duty Honolulu police department sergeant. In September 2014, the off-duty sergeant was captured on surveillance video punching his then-girlfriend in a Waipahu restaurant. However, the sergeant was not arrested at the scene and responding officers failed to file a report. According to news reports, it was only on the following day, after a citizen provided the Honolulu police department and the press with the surveillance video, that the department took action to remove the sergeant of his police powers and began an internal investigation into the incident. An Oahu grand jury later determined there was not enough evidence to indict the sergeant for his actions, although the internal investigation into the sergeant and the responding officers was still ongoing.

The sergeant's actions sparked concern about the way police handle domestic violence cases and triggered an informational briefing at the state capitol, where Honolulu's then-police chief and two of his deputies were intensively questioned about the Honolulu police department's policies regarding domestic violence investigations.

Service providers who assist domestic violence victims were also at the informational briefing. Some of these providers expressed concern that the incident involving the Honolulu police department sergeant reflects a larger problem within the department. Between May 2013 and September 2014, the Hawaii state commission on the status of women received approximately thirty-eight separate complaints from women who said officers with the Honolulu police department did not respond appropriately to allegations of abuse. According to the commission, approximately one-third of these instances involved a police officer or a relative of a police officer as the alleged abuser. The commission believes that the September 2014 incident involving the off-duty sergeant was not an isolated incident, but rather a pattern of inappropriate handling by some police officers in response to allegations of domestic violence.

The then-Honolulu police chief and his deputies told lawmakers at the informational briefing that the Honolulu police department has a zero tolerance policy when it comes to domestic violence and other serious offenses. However, the department's record on disciplining officers for domestic violence-related misconduct was called into question by lawmakers at the briefing.

Pursuant to section 52D-3.5, Hawaii Revised Statutes, the chief of each county police department is required to submit an annual report to the legislature that includes, among other things, a summary of the facts and the nature of the misconduct for incidents which resulted in the suspension or discharge of a police officer and the disciplinary action imposed for each incident. The Honolulu police department's 2012 annual report to the legislature indicates thirty-five incidents which resulted in discipline against an officer. Of these, three specifically involved domestic-related incidents, including an officer who was involved in a domestic dispute that escalated into a physical altercation causing pain to the complainant, an officer repeatedly contacting an ex-girlfriend after being told the contact was unwanted, and an officer repeatedly contacting an estranged spouse after being told the contact was unwanted. Each of these three incidents resulted in a one-day suspension.

In comparison, other non-domestic related incidents in the 2013 report resulted in much harsher disciplinary action. For instance, an officer arrested for possession of marijuana and driving under the influence received a twenty-day suspension. Another officer conspired with other officers relating to special duty assignments and received a ten-day suspension. Another officer was discharged for failing a drug urinalysis test. Furthermore, a Honolulu Civil Beat analysis of annual Honolulu police department misconduct summaries turned up twenty-five incidents of domestic violence from 2000 through 2012. Three officers were discharged but, according to information provided to Honolulu Civil Beat by the Honolulu police department, their dismissals were not upheld.

This disciplinary disparity leads the legislature to question whether the Honolulu police department is minimizing the problem of domestic violence, particularly when incidents involve a police officer. The legislature also questions whether any potential minimization of alleged incidents of domestic violence involving police officers is based on concern over the Lautenberg Amendment, a federal law that forbids anyone, including a police officer, with a misdemeanor domestic violence conviction from owning or possessing a firearm.

The legislature additionally finds that as part of the police union's collective bargaining agreement, all external complaints against a police officer must be in writing and sworn to by the complainant. The legislature is concerned that this requirement may discourage individuals involved in a domestic dispute with a police officer from reporting the abuse. The legislature is also concerned that this requirement revictimizes a complainant, by forcing the complainant to swear to something in writing.

The legislature acknowledges that the majority of police officers enforce the law and act appropriately toward members of the public. However, there are also police officers who do not respond to domestic violence situations appropriately when the perpetrator is a fellow police officer. Such actions lessen the public's trust in the police and bring down the reputation of police departments as a whole.

The purpose of this Act is to avoid the revictimization of officer-involved domestic violence victims by ensuring that individuals who wish to report allegations of officer-involved domestic abuse against a family or household member do not have to do so by filing a notarized or sworn written statement.

SECTION 2. Chapter 52D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§52D- Citizen administrative complaints; officer-involved domestic violence. Citizen administrative complaints against a police officer that involve allegations of domestic abuse by the police officer against a family or household member shall not be required to be filed as a notarized or sworn written statement.

For purposes of this section, “family or household member” has the same meaning as in section 709-906.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 5, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.