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S.B. NO. 151

A Bill for an Act Relating to Law Enforcement Reform.

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

SECTION 1. Chapter 139, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§139- Law enforcement use of force policies. (a) Any department or agency employing a law enforcement officer shall maintain a policy that provides a minimum standard on the use of force that shall include:

- (1) A requirement that law enforcement officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible;
- (2) A requirement that a law enforcement officer may only use a level of force that the law enforcement officer reasonably believes is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance;
- (3) A requirement that law enforcement officers report potential excessive force to a superior law enforcement officer when present and observing another law enforcement officer using force that the observing law enforcement officer believes to be beyond that which is necessary, as determined by an objectively reasonable law enforcement officer under the circumstances, based upon the totality of information actually known to the observing law enforcement officer;
- (4) Clear and specific guidelines regarding situations in which law enforcement officers may or may not draw a firearm or point a firearm at a person;
- (5) A requirement that law enforcement officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm;
- (6) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents;
- (7) A requirement that a law enforcement officer intercede when present and observing another law enforcement officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable law enforcement officer under the circumstances, taking into account the possibility that other law enforcement officers may have additional information regarding the threat posed by a subject;
- (8) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force;
- (9) An explicitly stated requirement that law enforcement officers carry out duties, including use of force, in a manner that is fair and unbiased;
- (10) Comprehensive and specific guidelines for the application of deadly force;
- (11) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident;
- (12) The role of supervisors in review of use of force applications;
- (13) A requirement that law enforcement officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so;
- (14) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by law enforcement officers, investigators, and supervisors;
- (15) Training and guidelines regarding vulnerable populations, including children; elderly persons; people who are pregnant; and people having physical, mental, and developmental disabilities;
- (16) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted;
- (17) Factors for evaluating and reviewing all use of force incidents;

- (18) Minimum training and course titles required to meet the objectives in the use of force policy; and
 - (19) A requirement for the regular review and updating of the use of force policy to reflect evolving practices and procedures.
- (b) Each department or agency employing a law enforcement officer shall make its use of force policy adopted pursuant to this section accessible to the public.
- (c) A department or agency's use of force policies and training pursuant to this section may be introduced as evidence in proceedings involving a law enforcement officer's use of force.

§139- Reports of use of excessive force by law enforcement officers. (a) It shall be the duty of a law enforcement officer who observes another law enforcement officer using force that the observing law enforcement officer believes to be beyond that which is necessary, as determined by an objectively reasonable law enforcement officer under the circumstances, based upon the totality of information actually known to the observing law enforcement officer to notify the division head of the law enforcement officer who exercised the use of excessive force. The notice shall be submitted in writing immediately or as soon as is practicable after observing the use of excessive force.

(b) After receiving written notification, the division head shall complete an investigation pursuant to subsection (c) as soon as practicable and notify the state department deputy director or chief of police of the respective county, as applicable, of the outcome of the investigation in writing.

(c) Any division head who receives a report of use of excessive force under this section shall immediately begin conducting an investigation and reach a timely determination on the merits. If the division head determines that sufficient evidence shows that the law enforcement officer used excessive force, the name of the law enforcement officer who exercised the use of excessive force and act of excessive force shall be disclosed to the state department deputy director or chief of police of the respective county, as applicable. If the division head determines that evidence of use of excessive force is insufficient, the division head shall provide the state department deputy director or chief of police of the respective county, as applicable, with the outcome of the investigation but shall redact any personally identifiable information of the individuals involved in the investigation.

(d) Within fifteen days of receiving written notification of the outcome of the investigation, the state department deputy director or chief of police who received the written notification shall notify the state department director or police commission of the respective county, as applicable, of the outcome of the investigation in writing.

(e) If the department head or division head is the subject of the use of excessive force report, the reporting law enforcement officer shall report to:

- (1) In the case of a state department head or division head, the attorney general; or
- (2) In the case of a county department head or division head, the police commission of the respective county,

who shall be responsible for the investigation.

(f) The attorney general or police commission who receives a report of use of excessive force pursuant to subsection (e) shall begin conducting an investigation as soon as practicable and reach a timely determination on the merits.

(g) No discriminatory, disciplinary, or retaliatory action shall be taken against any reporting law enforcement officer for any information provided or

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disclosed by the reporting law enforcement officer in good faith in the course of making a report of use of excessive force under this section.

(h) For purposes of this section:

“Department head” means the official or officer having the most managerial or administrative authority in the state department or county agency, including the chief of police.

“Division head” means the official or officer who, subject to the authority of the department head, has the most managerial or administrative authority within a division in the state department or county agency.

“Excessive force” means force that is beyond what is reasonably necessary, as determined by an objectively reasonable law enforcement officer, under the circumstances as actually and reasonably known to the law enforcement officer exercising the force.”

SECTION 2. Section 139-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person may be appointed as a law enforcement officer unless the person:

- (1) Has satisfactorily completed a basic program of law enforcement training approved by the board; ~~[and]~~
- (2) Has received training designed to minimize the use of excessive force, including legal standards, de-escalation techniques, crisis intervention tactics, mental health response, implicit bias, and first aid; and
- ~~[(2)]~~ (3) Possesses other qualifications as prescribed by the board for the employment of law enforcement officers, including minimum age, education, physical and mental standards, citizenship, good conduct, moral character, and experience.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 2024.

(Approved July 3, 2023.)

Note

1. Edited pursuant to HRS §23G-16.5.