

THE POLICING PROJECT AT NYU SCHOOL OF LAW URGES GOVERNOR GREEN TO SIGN S.B. 151 AND S.B. 372 INTO LAW

The Policing Project at NYU School of Law is an organization that believes that 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 S.B. 151 and S.B. 372 both align with this fundamental mission: they advance democratic accountability in policing and help set clear expectations of when and how officers may use force. For that reason, we urge Governor Green to sign S.B. 151 and S.B. 372 into law.

Comprehensive Use of Force Reform Will Help Hawaiian Communities and Officers

Police officers are the only government employees tasked with carrying guns and permitted to use force against people in the community. Yet despite the seriousness of this responsibility and the grave consequences that accompany it, many states provide very little direction governing when a police officer may – or may not – use force. This lack of clarity results in a widespread pattern of excessive force by police, which falls most disproportionately on Black and Brown communities. The lack of legislative guidance on when force is permissible hurts officers as well. It creates uncertainty and fosters conditions that lead to violent interactions, which harm officer mental health and wellbeing. The status quo undermines the legitimacy of policing, diminishes community trust, and impedes cooperation between communities and the police.

In Hawai‘i, the need for legislation to provide guidance on use of force for officers is particularly pressing. Existing Hawai‘i statutes lump police and members of the public together when describing when force is permitted to protect people or property, creating a standard that lacks the nuance and specificity that the police need. Although state law does generally describe when police may use force, and to what degree, to effect an arrest,² it lacks sufficient guidance for officers in that context and others, particularly when it comes to the use of non-deadly force. In addition, because the various provisions regulating officer use of force are scattered across the Hawai‘i statutes, it is difficult for officers and the public to know when police have a duty to intervene or report when their fellow officers use excessive force.

S.B. 151 and S.B. 372 Significantly Improve Hawai‘i’s Use of Force Laws

S.B. 151 and S.B. 372 make big strides in improving the clarity of the state’s use of force standard, setting Hawai‘i on a path to better policing. The bills include a number of the provisions that the Policing Project recommends as global best practices.

¹ As part of its mission to advance democratic accountability in policing, the Policing Project has created a number of model policies, all of which are informed by best practices in existing legislation and vetted by an advisory committee consisting of law enforcement officials, academics, police reform experts, and impacted community members. Our [comprehensive use of force model policy](#) is additionally informed by the American Law Institute’s Principles of Policing on Use of Force.

² See Hi. Rev. Stat. §§ 703-300 to -310; § 803-7.

S.B. 151 does the important work of creating a clearer use of force standard. Requiring all law enforcement agencies to have policies requiring de-escalation and alternatives to force when possible, and proportional force only when necessary, significantly improves the clarity of existing use of force law. Clear use of force standards allow police to understand what is expected of them and to act accordingly.

In addition, both S.B. 151 and S.B. 372 clarify officers' duty to intervene in and report excessive force they witness from other officers, which will go a long way towards reducing excessive force and rebuilding public trust in policing over time.

The reporting requirements set forth in S.B. 372 are also vitally important. Currently, Hawai'i lacks comprehensive information about police uses of force. Without this information, communities do not have insight into the ways that law enforcement is or is not working for them, and lawmakers cannot create good policy without this kind of data. Requiring that this data be collected and reported annually will ensure that this legislature can create and pass helpful, effective legislation to make communities safer and reduce excessive force incidents.

S.B. 151's directive that law enforcement agencies develop clear policies about citizen complaints is also important. Procedural fairness is a critical component of police legitimacy.³ Community members must feel they have a means of redress for misconduct for procedural justice to exist.

Governor Green Should Sign S.B. 151 and S.B. 372 Into Law

These provisions – among others – in S.B. 171 and S.B. 372 make advances in the state's use of force laws. While we believe that additional legislation is needed in future years to fully modernize police use of force in Hawai'i, most notably by enacting these standards as law rather than relying on agency policies, these bills nonetheless make significant strides towards good front-end accountability for policing in Hawai'i. Accordingly, the Policing Project commends the Hawai'i state legislature for passing these bills and urges Governor Green to sign both pieces of legislation into law.

³ See, e.g., Zara Abrams, "What Works to Reduce Police Brutality," 51 Am. Psych. Assoc. 7 at 30 (Oct. 1, 2020).