

## **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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>2</sup> 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.