

THE CIVIL BEAT
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Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Honorable Clarence K. Nishihara, Chair
Honorable Glenn Wakai, Vice Chair

RE: Testimony Supporting H.B. 285 H.D. 1, Relating to Public Safety
Hearing: March 19, 2019 at 1:35 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony in support of H.B. 285 H.D. 1. The Law Center **strongly supports this bill because it will measurably increase public access to information about police discipline.**

This bill is NOT about the hundreds of police officers who perform their duties professionally every day under stressful and difficult circumstances; who appreciate the responsibility to the community that comes with enforcing the laws; who understand the gravity of their authority to use reasonable force, even lethal force, against citizens when necessary; and who serve as a model for our community in both their professional and personal lives. *This bill concerns the small percentage of police officers who violate statutes, rules, and regulations resulting in their suspension.*

Bills to fix the issues with public access to records of suspended police officers have been introduced every year since 2015. After nearly 25 years, it is apparent that the reasons that the 1995 Legislature distinguished police officers from other government employees (because police officers might be suspended for minor offenses, such as failing to shine their shoes) are no longer legitimate concerns.¹

¹ E.g., 1995 House Journal at 682 (remarks of Rep. Alcon): “You mean to say, just because the policeman did not shine his shoes that we will have to publish his name in the paper?” Because the 1995 Legislature required annual reports from police departments regarding the nature of discipline imposed, we now have evidence from which to judge the assumptions that motivated the original change to the law. From reviewing HPD’s annual reports, the Law Center is not aware of any instance in which a police officer was suspended solely for such innocuous conduct. (For example, HPD suspended an officer in 2015 for not wearing his duty belt, but he also stole a jacket from another police officer, an offense that HPD referred to the prosecutor.)

The long history of police discipline reflected in the annual legislative reports shows that suspended police officers have committed exceptionally troubling conduct. The public deserves clear and timely access to information about suspended police officers.

HPD's most recent disciplinary report to the Legislature shows that other officers have been suspended (despite HPD's efforts to discharge them) for: (1) "slap[ing] and kick[ing] his girlfriend during an argument" (No. 16-040); (2) "a physical altercation with his ex-wife, causing numerous injuries . . . in the presence of a minor less than 14 years of age" (No. 16-049); (3) DUI and hit-and-run (No. 16-052); (4) DUI, hit-and-run, lying during an investigation, and falsifying records (No. 17-010); (5) stealing drug evidence and lying and/or falsifying records (No. 17-046); and (6) DUI (No. 18-008).

In 2018, the Honolulu Police Department reinstated Sgt. Darren Cachola despite a 2014 video that captured him beating a women in a restaurant. *HPD wanted to disclose his suspension records*; the Department wanted to explain to the public why it was required to reinstate Sgt. Cachola, rather than terminate him. But SHOPO filed a lawsuit to stop HPD from telling the public why Sgt. Cachola is still a police officer.²

That lawsuit is based on the language that this bill would fix. Even though the circuit court recently agreed with HPD that the records should be publicly disclosed, SHOPO already plans an appeal that could tie up public access to the Cachola files for years. Unless the Legislature makes police officers like all other government employees, *every* record requested about a suspended police officer will be held up for years—regardless how strong the public interest.

In 2013, Honolulu Civil Beat filed a lawsuit to require access to records about suspended police officers who used malicious force, lied during investigations, falsified records, hindered a federal investigation, and committed hit and runs. Five years later, that request also is still in litigation, and no records have been disclosed.

This bill is NOT about split-second decisions that police officers must make when confronting violent suspects in the field. For example, as it concerns use of force by police officers in the 2018 HPD report, this bill concerns domestic violence (Nos. 15-054, 16-040, 16-049, 18-018), fighting with a fellow officer (No. 18-016), and using unreasonable force while effecting an arrest (18-019).

This bill is NOT about simply naming suspended police officers. Without the details provided by investigative reports, the information available in the annual disciplinary reports to the Legislature is incomplete and can be misleading. For example, as it concerns Sgt. Cachola, the annual report reflects that HPD tried to discharge him after

² The Law Center represents Honolulu Civil Beat in that litigation, but submits this testimony on its own behalf.

he publicly beat a woman in a restaurant, but an arbitrator reinstated him with a six-month suspension. Why? The underlying records will explain the circumstances that justify the ongoing public trust conferred with a police officer's badge and weapon.³

This bill is NOT about losing police officers to Washington and California. While subject to appropriate redaction, as would remain true even if H.B. 285 were enacted (see the discharge file referenced in footnote 3), Washington police departments may not withhold internal investigation files from the public. *E.g., Sargent v. Seattle Police Dep't*, 314 P.3d 1093 (Wash. 2013); *Cowles Publ'g Co. v. State Patrol*, 748 P.2d 597 (Wash. 1988). And California recently rolled back four decades of secrecy related to police disciplinary files. Moreover, retention of police officers should not be a race to the bottom in competition with other States that focuses on keeping the handful of individuals found to have committed serious misconduct resulting in suspension.⁴

And this bill is NOT about the Law Center or the news media.⁵ The testimony previously submitted in support of this bill reflects the serious *community* concerns about public accountability for police officers.

Thank you again for the opportunity to testify in support of H.B. 285 H.D. 1.

³ The discharge records of another police officer provide a different example. The annual report stated that he was discharged because he “[f]ailed to inform dispatch of status and location and failed to initiate a report for a domestic argument. Transported the complainant to another district without the supervisor’s approval. Conducted personal business while on duty.” (2012 HPD Report, No. 6) Because the officer was discharged, the public had access to the underlying investigative report that revealed that the “personal business” concerned the officer allegedly raping the woman involved in the domestic argument. www.slideshare.net/civilbeat/james-easley-investigation. The annual summaries are useful, but are not a substitute for access to the actual records for purposes of public accountability.

⁴ In prior testimony, SHOPO made the questionable assumption that potential police recruits anticipate engaging in serious misconduct that will result in their being suspended and thus seek out a police department that will cover up such future behavior.

⁵ From its limited perspective concerning the multiple lawsuits that it has filed to obstruct public access to police records—in which it is ably represented by its own attorneys—SHOPO erroneously claims that the Law Center is the “personal law office” for Honolulu Civil Beat. As reflected on its website, the Law Center represents individuals, organizations, and the general public—including, but not limited to Civil Beat—in lawsuits and other advocacy concerning government transparency.