

DAVID Y. IGE
GOVERNOR



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ATTORNEY GENERAL

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DEPARTMENT OF THE ATTORNEY GENERAL
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DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

December 27, 2018

The Honorable Ronald D. Kouchi
President of the Senate
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the House of
Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

For your information and consideration, I am transmitting one (1) copy for each of you of the Department of the Attorney General's Report on the Law Enforcement Standards Board as required by section 139-9, Hawaii Revised Statutes (HRS). In accordance with Section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>. If you have any questions or concerns, please feel free to call me at 586-1282.

Sincerely,

A handwritten signature in blue ink that reads "Russell A. Suzuki".

Russell A. Suzuki
Attorney General

c: David Y. Ige, Governor
Josh Green, Lieutenant Governor
Legislative Reference Bureau (Attn.: Karen Mau)
Leslie Kondo, State Auditor
Laurel A. Johnston, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, PhD., President, University of Hawaii

Enclosure

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State of Hawai'i
Department of the Attorney General



REPORT ON THE LAW
ENFORCEMENT STANDARDS BOARD

Pursuant to Section 139-9, Hawaii Revised Statutes

Submitted to
The Thirtieth State Legislature
Regular Session of 2019

Section 139-9, Hawaii Revised Statutes, requires the Law Enforcement Standards Board, established within the Department of the Attorney General, State of Hawaii to submit a report to the Legislature that includes:

- (1) A description of the activities of the board;
- (2) An accounting of the expenditures from the law enforcement standards board special fund in the previous fiscal year and the remaining balance of the fund; and
- (3) Recommended legislation, if any.

The Law Enforcement Standards Board:

The Law Enforcement Standards Board (“Board”) was established by Act 220, Session Laws of Hawaii 2018, which added to the Hawaii Revised Statutes a new chapter that is codified as Chapter 139. The Board is charged with providing programs and standards for training and certification of law enforcement officers. Specifically, as set forth in section 139-3, the Board shall:

- (1) Adopt rules in accordance with chapter 91 to implement this chapter;
- (2) Establish minimum standards for employment as a law enforcement officer and to certify persons to be qualified as law enforcement officers;
- (3) Establish criteria and standards in which a person who has been denied certification, whose certification has been revoked by the board, or whose certification has lapsed may reapply for certification;
- (4) Establish minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for schools operated by or for the State or a county for the specific purpose of training law enforcement officers;
- (5) Consult and cooperate with the counties, agencies of the State, other governmental agencies, universities, colleges, and other institutions concerning the development of law enforcement officer training schools and programs of criminal justice instruction;
- (6) Employ, subject to chapter 76, an administrator and other persons necessary to carry out its duties under this chapter;
- (7) Investigate when there is reason to believe that a law enforcement officer does not meet the minimum standards for employment, and in so doing, may:
 - (A) Subpoena persons, books, records, or documents;
 - (B) Require answers in writing under oath to questions asked by the board; and
 - (C) Take or cause to be taken depositions as needed in investigations, hearings, and other proceedings, related to the investigation;
- (8) Establish and require participation in continuing education programs for law enforcement officers;
- (9) Have the authority to charge and collect fees for applications for certifications as a law enforcement officer; and
- (10) Establish procedures and criteria for the revocation of certification issued by the board.

Activities of the Board

The Board met on November 7, 2018, and (1) elected Attorney General Russell A. Suzuki as the Chairperson of the Board and Chief Tivoli Faaumu, County Police Department, as the Vice-Chairperson of the Board; (2) passed a rule to limit public testimony at Board meetings to three minutes per testifier, per agenda item, in the interest of time; and (3) discussed legislation to amend Act 220.

Specifically, the Board discussed legislation that would address the difficulties in accomplishing its responsibilities. The Board members expressed concerns regarding:

- (1) How the certification requirements would comport with existing hiring practices;
- (2) How to establish certification and training requirements that would not conflict with existing union or contractual requirements;
- (3) The conflicts between actions on certifications (suspension, revocation, etc.) and existing employment action processes;
- (4) How to determine uniform training requirements considering the already existing specific and varied training requirements for each county police department and other law enforcement officers;
- (5) Whether a central training academy or training academies on each island are necessary;
- (6) When the certification requirement would be imposed – before or after the training academy; or after recruit school;
- (7) Whether the trainers need to be certified;
- (8) Whether different certification tiers should be imposed;
- (9) Whether certification requirements could be satisfied by educational institutions;
- (10) What would be the impact on recruitment;
- (11) Allowing the Chiefs of Police, the Attorney General, and the Director of Public Safety to assign Board responsibilities to their designees;
- (12) Whether diluted uniform standards would risk de-certification of other standards;

After a lengthy discussion of the above concerns, the Board determined that it is near impossible to implement Act 220, particularly within the short time allotted for implementation and with insufficient funding. Therefore, the Board agreed to propose legislation that would provide for an additional four years to study the above concerns to ensure that the Board's decisions would not adversely impact or outright conflict with current contractual, collective bargaining, or other legal requirements.

Accounting of Expenditures

The Board has not yet expended any funds. The \$100,000 deposited into the Law Enforcement Standards Board Special Fund remains in the special fund.

Recommended Legislation

The Board agreed to propose legislation that would:

- (1) Explain the need to delay implementation of Act 220 along the lines discussed above to allow further study;
- (2) Clarify that all ex officio members can have their designees serve on the Board;
- (3) Increase the number of law enforcement Officer Board members from two to five, to ensure representation from each county and the State;
- (4) Delete the county police department experience restriction for law enforcement officer Board members;
- (5) Require consideration of the Legislative Reference Bureau's study conducted pursuant to Act 124, Session Laws of Hawaii 2018, and require the Board's own study to evaluate how to efficiently and effectively satisfy its duties in accordance with the law;
- (6) Delay the effective date of the certification, training, employment, and revocation and denial requirements of Act 220 to July 1, 2023;
- (7) Request an appropriation of \$275,000 to accomplish the proposed amendments; and
- (8) Request one administrator and one clerical position to assist the Board.

The Board's proposed legislation will be included in the Administration's legislative package. A copy of the Board's proposed legislation is attached hereto as appendix A.

APPENDIX A

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A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature, by Act 220, Session Laws of
2 Hawaii 2018, enacted chapter 139, Hawaii Revised Statutes, to
3 create a law enforcement standards board for the certification
4 of law enforcement officers, including county police officers,
5 state public safety officers, and employees with police powers
6 at the departments of transportation, of land and natural
7 resources, of the attorney general, and of taxation.

8 The board is responsible for establishing minimum standards
9 for employment as a law enforcement officer and certifying
10 persons qualified as law enforcement officers. It is also
11 responsible for establishing minimum criminal justice curriculum
12 requirements for basic, specialized, and in-service courses and
13 programs for the training of law enforcement officers. It must
14 consult and cooperate with the counties, state agencies, other
15 governmental agencies, universities and colleges, and other
16 institutions, concerning the development of law enforcement
17 officer training schools and programs. The board is also

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1 responsible for regulating and enforcing the certification
2 requirements of law enforcement officers.

3 These are important and substantial duties that require
4 evaluation to ensure that existing legal obligations are not
5 compromised. Before imposing new standards impacting the
6 employment of law enforcement officers, the board must consider
7 collective bargaining and other employment requirements. At a
8 minimum, the board must evaluate how probationary periods,
9 training requirements (i.e., the types of training, the number of
10 hours of training, and the availability of training facilities),
11 and the issuance, suspension, and revocation of certification
12 will impact obligations already established by law.

13 Such evaluation should include consideration of the study
14 conducted by the legislative reference bureau pursuant to Act
15 124, Session Laws of Hawaii 2018, and any additional study
16 necessary to determine the impact of uniform standards,
17 certification, and training for all law enforcement.

18 The board has determined that it will need significantly more
19 time and funds to accomplish its mission.

20 The purposes of this Act are to clarify board membership
21 requirements to facilitate participation and representation, to
22 enable the board to research the impact of uniform standards,
23 certification, and training on existing legal requirements, to
24 establish new and more realistic deadlines for the completion of
25 the board's significant responsibilities, and to provide

1 appropriate funds and resources to enable the board to
2 accomplish its mission.

3 SECTION 2. Section 139-2, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) There is established the law enforcement standards
6 board within the department of the attorney general for
7 administrative purposes only. The purpose of the board shall be
8 to provide programs and standards for training and certification
9 of law enforcement officers. The law enforcement standards
10 board shall consist of the following voting members: nine ex
11 officio individuals [~~7~~ ~~two~~] or their designees, five law
12 enforcement officers, and four members of the public.

13 (1) The nine ex officio members of the board shall consist
14 of the:

15 (A) Attorney general [~~7~~] or the attorney general's
16 designee;

17 (B) Director of public safety [~~7~~] or the director's
18 designee;

19 (C) Director of transportation or the director's
20 designee;

21 (D) Chairperson of the board of land and natural
22 resources or chairperson's designee;

23 (E) Director of taxation or the director's designee;

- 1 and
- 2 (F) Chiefs of police of the four counties or the
- 3 designee of each of the chiefs of police;
- 4 (2) The [~~two~~] five law enforcement officers shall be from
- 5 each of the four counties and one from the State,
- 6 shall each have at least ten years of experience as a
- 7 law enforcement officer, [~~and~~] shall be appointed by
- 8 the governor and notwithstanding section 26-34, shall
- 9 not be subject to senatorial confirmation; and
- 10 (3) The four members of the public shall consist of one
- 11 member of the public from each of the four counties
- 12 and shall be appointed by the governor. At least two
- 13 of the four members of the public holding a position
- 14 on the board at any given time shall:
- 15 (A) Possess a master's or doctorate degree related to
- 16 criminal justice;
- 17 (B) Possess a law degree and have experience:
- 18 (i) Practicing in Hawaii as a deputy attorney
- 19 general, a deputy prosecutor, a deputy
- 20 public defender, or a private criminal
- 21 defense attorney; or
- 22 (ii) Litigating constitutional law issues in
- 23 Hawaii;

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1 (C) Be a recognized expert in the field of criminal
2 justice, policing, or security; or

3 (D) Have work experience in a law enforcement
4 capacity [~~provided that experience in a county~~
5 ~~police department shall not itself be sufficient~~
6 ~~to qualify under this paragraph~~].

7 (b) The law enforcement officers and the members of the
8 public on the board shall serve for a term of [~~three~~] four
9 years, provided that the initial terms shall be staggered, as
10 determined by the governor."

11 SECTION 3. Section 139-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§139-3[+] Powers and duties of the board. The board
14 shall:

15 (1) Adopt rules in accordance with chapter 91 to implement
16 this chapter;

17 (2) Establish minimum standards for employment as a law
18 enforcement officer and to certify persons to be
19 qualified as law enforcement officers;

20 (3) Establish criteria and standards in which a person who
21 has been denied certification, whose certification has
22 been revoked by the board, or whose certification has
23 lapsed may reapply for certification;

- 1 (4) Establish minimum criminal justice curriculum
- 2 requirements for basic, specialized, and in-service
- 3 courses and programs for schools operated by or for
- 4 the State or a county for the specific purpose of
- 5 training law enforcement officers;
- 6 (5) Consult and cooperate with the counties, agencies of
- 7 the State, other governmental agencies, universities,
- 8 colleges, and other institutions concerning the
- 9 development of law enforcement officer training
- 10 schools and programs of criminal justice instruction;
- 11 (6) Employ[~~7 subject to chapter 76,~~] an administrator and
- 12 other persons necessary to carry out its duties under
- 13 this chapter;
- 14 (7) Investigate when there is reason to believe that a law
- 15 enforcement officer does not meet the minimum
- 16 standards for employment, and in so doing, may:
- 17 (A) Subpoena persons, books, records, or documents;
- 18 (B) Require answers in writing under oath to
- 19 questions asked by the board; and
- 20 (C) Take or cause to be taken depositions as needed
- 21 in investigations, hearings, and other
- 22 proceedings,
- 23 related to the investigation;

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- 1 (8) Establish and require participation in continuing
- 2 education programs for law enforcement officers;
- 3 (9) Have the authority to charge and collect fees for
- 4 applications for certification as a law enforcement
- 5 officer; [and]
- 6 (10) Establish procedures and criteria for the revocation
- 7 of certification issued by the board[-];
- 8 (11) Consider studies relevant to the board's objectives,
- 9 including but not limited to the study that examines
- 10 consolidating the law enforcement activities and
- 11 responsibilities of various state divisions and
- 12 agencies under a single, centralized state enforcement
- 13 division or agency, conducted pursuant to Act 124,
- 14 Session Laws of Hawaii 2018; and
- 15 (12) Conduct its own study to evaluate how to efficiently
- 16 and effectively satisfy its duties in accordance with
- 17 the law."

18 SECTION 4. Act 220, Session Laws of Hawaii 2018, is
19 amended by amending section 6 to read as follows:

20 "SECTION 6. This Act shall take effect on July 1, 2018;
21 provided that [~~the law enforcement standards board established~~
22 ~~under this Act shall finalize its standards and certification~~
23 ~~process by July 1, 2019.] sections -5 through -8, of the new~~

1 chapter in section 2 of this Act shall not be enforced until
2 July 1, 2023."

3 SECTION 5. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$275,000 or so much
5 thereof as may be necessary for fiscal year 2019-2020 for
6 deposit into the law enforcement standards board special fund.

7 SECTION 6. There is appropriated out of the law
8 enforcement standards board special fund the sum of \$275,000 or
9 so much thereof as may be necessary for the fiscal year
10 2019-2020 for:

- 11 (1) One permanent administrator position (1.0 FTE) exempt
12 from chapter 76, Hawaii Revised Statutes, and one
13 permanent clerical position (1.0 FTE) subject to
14 chapter 76, Hawaii Revised Statutes; and
- 15 (2) Administration and operating costs of the law
16 enforcement standards board.

17 The sum appropriated shall be expended by the law
18 enforcement standards board.

19 SECTION 7. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before the effective date of this Act.

22 SECTION 8. Statutory material to be repealed is bracketed
23 and stricken. New statutory material is underscored.

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1 SECTION 9. This Act shall take effect upon its approval.

2

3 INTRODUCED BY: _____

4

BY REQUEST

5

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1 **Report Title:**
2 Law Enforcement Standards Board

3
4 **Description:**
5 Clarifies membership and certain powers and duties of the Law
6 Enforcement Standards Board, establishes new and more realistic
7 deadlines for the completion of board responsibilities, and
8 provides appropriate funds and resources to enable the board to
9 accomplish its mission.

10
11
12
13
14 *The summary description of legislation appearing on this page is for informational purposes only and is*
15 *not legislation or evidence of legislative intent.*

