

HAWAII LAW ENFORCEMENT STANDARDS BOARD**DATE AND TIME OF MEETING:**

Thursday, November 6, 2025 at 10:30 am

DATE OF TESTIMONY:

November 4, 2025

Re:

Administrator's Draft Model Vehicle Pursuit Policy & Statement in Support

TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW

Dear Chair Dhakhwa and Board members:

Police vehicle pursuits are highly dangerous, posing risks of serious injury or death to members of the public and police officers. The Policing Project supported the passage of Act 210, a comprehensive vehicle pursuits law, this past session to advance public safety, provided clear guidance to law enforcement, and avoid needless fatalities and injuries.

Act 210 requires this Board to issue a model vehicle policy “consistent with the requirements” of the new law and to seek public comment on that policy under chapter 91. Haw. Rev. Stat. § 139(i)(2). Of course, this Board, police departments, and officers are required to follow all enacted laws, including Act 210.

A. The Revised Model Policy is Inconsistent with Act 210

While we applaud the Board for its thoughtful policy language regulating pursuit tactics and intervention options, several core components of the revised draft model policy are not consistent with the pursuits statute.

The statute provides that that “no law enforcement officer shall engage in a vehicular pursuit unless” four different conditions are all satisfied. See *id* §139(a).

Two of those mandatory conditions are that (1) “the vehicular pursuit is necessary to identify or apprehend the person”; and (2) the person “poses a serious risk of harm to others and the law enforcement officer reasonably believes that, under the circumstances, the safety risks of failing to identify or apprehend the person are greater than the safety risks of the vehicular pursuit.” *Id.* § 139(a)(2), (3). The model policy is inconsistent with the statute by failing to require that these

two conditions be satisfied before an officer may start a pursuit; instead, the policy provides that officers should simply “consider” these factors. *See* §XX-3(b).

Another important condition (the “offense list” condition) of Act 210 requires that “the officer has a reasonable suspicion to believe that a person in the vehicle to be pursued is attempting to commit, has committed, or is committing one or more of” nine listed types of criminal offenses. *See* Haw. Rev. Stat. §139(a)(1). If the officer does not have such suspicion of one of the nine types of crimes, no pursuit is allowed. But the revised model policy allows pursuits, not only when those nine types of crimes are committed, but also when there “is an imminent threat of death or serious bodily injury,” supervisory authorization, and no other reasonable means available to prevent the threatened harm. While that exception now reads, “[t]his subsection shall not be interpreted to expand beyond the limitations of Act 210 and shall be applied narrowly,” the exception still violates Act 210, by allowing a pursuit when the necessary statutory conditions for a pursuit are not satisfied (e.g., when someone is not suspected of committing an offense on the offense list).

B. The Model Policy’s Inconsistencies with Act 210 Raise Significant Concerns

If the Board were to issue a model policy permitting pursuits when any one of the necessary statutory conditions are not satisfied, the policy would set officers up for failure; such a policy would create confusion (should officers follow the law, or the model policy?), and open officers, police departments, and municipalities up to significant liability for engaging in pursuits that comply with the policy, but violate the statute.

Inclusion of the four necessary conditions was discussed at length in the testimony heard by the legislature. Indeed, the offense list was significantly broadened through amendments, with more offenses added in response to testimony from the Board, police departments, and the Policing Project. For example, after amendment, any felony in which there is even a threat or significant risk of injury to another person, even if no injury results, can be a basis for a pursuit.

Only permitting pursuits for listed offenses, and when the other conditions are satisfied, is a core component of Act 210. It provides officers and their supervisors with a clear standard for when they can pursue rather than tasking officers and supervisors with applying a fuzzy balancing test on the fly. It helps officers to quickly and clearly rule out many pursuits that might have otherwise landed their employing department or county in litigation.

Because of these benefits, just like Hawai’i, jurisdictions and police leaders across the country have adopted laws and policies that only permit pursuits for listed serious offenses, including NYPD (with the support of the largest police union in the country), Miami, New Orleans, Michigan State Police, Boise, and right here in Hawai’i, the Kaua’i Police Department. Hawai’i is not taking a new path here.

C. Constitutional or Agency Deadly Force Standards Do Not and Cannot Override Act 210’s Requirements

The Administrator’s Statement in Support of the model vehicle pursuit policy (“Statement”) (revised Oct. 30, 2025) acknowledges the inconsistency between one of the conditions (the

statutory offense list) and the model policy's extraordinary circumstances exception, noting that the exception must be "revised or deleted to preserve full statutory compliance." Statement at 1.

The Statement, however, incorrectly asserts that "when deadly force becomes lawfully justified" "the governing principles of officer decision-making transition from pursuit authorization under Action 210 to the established standards for use of deadly force." Statement at 1-2. The Statement makes clear that those "established standards" are "constitutional and departmental deadly-force standards." Statement at 2.

This reasoning misunderstands the relationship between state statutes, constitutional excessive force limitations, and department policy. It is axiomatic that federal and state Constitutions set a floor, that "a State is free as a matter of its own law to impose greater restrictions on police activity than those [the Supreme] Court holds to be necessary upon federal constitutional standards." *Oregon v. Hass*, 420 U.S. 714, 719 (1975); see *Fourth Amendment*, Legal Information Institute, Cornell Law School (2025), https://www.law.cornell.edu/wex/fourth_amendment ("States can always establish higher standards for protection of searches and seizures than what is required by the Fourth Amendment."); Megan McGlynn, *Competing Exclusionary Rules in Multistate Investigations: Resolving Conflicts of State Search-and-Seizure Law*, 127 Yale L. J. 406, 408 (2017) (same). And when states exercise that statutory authority to impose stricter standards than the constitutional floor, officers and agencies are required to follow those standards, without exception.

For example, several states have passed laws categorically banning the tactic of using a chokehold. In those states, chokeholds are absolutely prohibited as a matter of law. In those states, officers cannot assert they may legally use a chokehold when deadly force is authorized because the Fourth Amendment or department policy permits officers to use a chokehold when a suspect presents an imminent risk of serious injury or death to another. That would clearly violate the statute.

The same logic applies here. Just like a chokehold, a police pursuit is a tactic. If a statute only allows pursuits if certain conditions are satisfied (as Act 210 does), it is binding law that those conditions must be satisfied before an officer can engage in pursuit; the Fourth Amendment or department policy does not and cannot operate to override those statutory restrictions.

The various guidance documents the Statement cites change none of the above; these documents offer guidance for department policies, and do not alter the clear statutory requirements of Act 210. If the Board hoped for the standards set forth in those guidance documents to be part of the law, they could have expressed as much in its testimony to the legislature; the Board does not have the authority to rewrite the law.

As it stands, however, the Statement only amplifies the concerns we express in Section B above, by casting doubt on whether the restrictions set forth in Act 210 are always binding. They *are*, and any guidance to the contrary would open officers and departments up to confusion and significant liability, for violating Act 210 when it indisputably applies.

Thank you for considering our testimony.