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February 25, 2008

LATE TESTIMONY

The Honorable Representative Tommy Waters, Chair
Committee on the Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chairman Waters and Committee Members:

Re: HB 2204

The County of Hawai'i supports House Bill No. 2204, which would clarify that the provisions of Hawai'i Revised Statutes (HRS) §663-9.5 do not apply to governmental entities. HRS §663-9.5 currently states that an owner of a firearm is strictly liable for damages which proximately cause personal injury or damage.

There is currently no clear exemption for governmental entities in the current version of HRS §663-9.5, although HRS §663-10.5 states that governmental entities shall be liable for no more than that percentage share of damages attributable to the government entity. In other words, while governmental entities may be responsible for harm that they cause, they should not be held strictly liable for the actions of others without regard to whether the action was taken within their scope of employment as an employee of the governmental agency.

The County of Hawai'i issues firearms to its police officers, but remains the technical "owner" of the firearms. Although there is an exemption for circumstances where discharge of a firearm is legally justified, this exemption does not sufficiently insulate the County from liability under a strict reading of HRS §663-9.5. For example, if an off-duty officer uses his County-issued firearm to intentionally harm someone, a plain reading of HRS §663-9.5 would hold the County strictly liable for the harm, even when the officer was not acting within his scope of employment. Such a result could not have been intended by the legislature when it originally enacted this statute.

Therefore, the amendment, which makes clear that HRS §663-9.5 does not apply to governmental entities, is necessary to ensure that that spirit of HRS §663-9.5 cannot be abused.

Aloha,

Harry Kim
MAYOR

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