

SB 236

Measure Title:

RELATING TO JUSTIFIABLE USE OF FORCE

Report Title:

Justifiable Use of Force

Description:

Amends chapter 703, HRS, to remove requirement to retreat or surrender possession of a thing before the use of force is considered justifiable.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 236
RELATING TO JUSTIFIABLE USE OF FORCE

By

Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Public Safety and Military Affairs
Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

Thursday, February 5, 2009; 1:15pm
State Capitol, Conference Room 229

Senator Espero, Senator Bunda, and Members of the Committee:

The Department of Public Safety opposes Senate Bill 236. This bill effectively removes the ability of duly sworn law enforcement officers and Adult Correctional Officers from being able to perform some of their most difficult duties. This bill places an impossible standard on the officers when in the performance of their duties, while under stress and obligation to protect the best interests of the public in general, their peers, and themselves. If this measure were to pass, these officers would be unable to use the appropriate and professionally accepted necessary force in the performance of their duties without placing themselves in legal jeopardy.

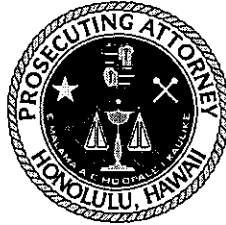
The current professional nationally accepted use of force continuum is what both, law enforcement and correctional officers and officials in Hawaii follow.

Thank you for this opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE WILLIE ESPERO, CHAIR
PUBLIC SAFETY AND MILITARY AFFAIRS COMMITTEE**

**Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai`i**

February 05, 2009

RE: S.B. 236; RELATING TO JUSTIFIABLE USE OF FORCE.

Chair Espero, and members of the Senate Committee on Public Safety and Military Affairs, the Department of the Prosecuting Attorney submits the following testimony in opposition of S.B. 236.

The purpose of S.B. 236 is to delete the duty to retreat from state statutory provisions regulating the use of force in self-protection and the use of force for the protection of others.

Under current state law regarding the use of force, the underlying policy has always been that in places outside of the home or a workplace, people have a duty to use reasonable means to avoid an attack before they can justifiably use force. This reflects a policy decision that is intended to minimize physical altercations and potential injuries to bystanders. This bill would drastically alter this policy by deleting the statutory to: 1) retreat when retreat can be done safely; 2) surrendering property when another person claims a right to the property; or 3) refraining from an action which the actor has no duty to take. We are concerned about the effect on public safety that this deletion may have; we are concerned that this deletion might actually decrease the public's sense of safety and increase injuries and death as a result of acts of self-defense.

For instance, if a driver cuts off a car containing two large men who pull into the same parking lot as the driver. The two men exit the vehicle and approach the driver yelling at the driver for cutting them off, but the driver can safely drive away from the incident. Under the current law, since the driver can retreat in complete safety, he or she must do so before using force against the two men. If this bill were to pass and the duty to retreat was eliminated, might the driver be more inclined to use deadly force if he or she feared death or serious bodily injury?

We also have concerns that in some instances, particularly where firearms are involved, that since the duty to retreat is eliminated as to public places, will there be an increased risk of

injuries to innocent bystanders if an assailant and a victim end up in a gunfight on a sidewalk or a street? We believe that there is the possibility that passage of this bill may actually result in segments of the state's population feeling and being less safe. For this reason we oppose the passage of S.B. 236 and respectfully request that this bill be held.

Thank you for the opportunity to testify.



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

February 3, 2009

Testimony on SB 236, Relating to Justifiable Use of Force

IN STRONG SUPPORT

Before the Committee on Public Safety and Military Affairs

Senator Will Espero, Chair

Senator Robert Bunda, Vice Chair

DATE: Thursday, February 5, 2009

TIME: 1:15 PM

PLACE: Conference Room 229

PSMTestimony@Capitol.hawaii.gov

Honorable Chair, Vice Chair, and Members,

I would like to provide testimony in **STRONG SUPPORT** of this bill.

This bill would eliminate the requirement that an "actor" first attempt to retreat or surrender property before qualifying for the defense of justifiable use of deadly force.

It may be a "Monday morning quarterback" call to say that someone has to retreat first, but in the heat of the moment, when your life, or the life of a family member is in harm's way, an innocent person who is forced to, out of the necessity of a bad guy, choose to use deadly force to defend himself or other innocents, should not be dictated to first attempt retreat.

Although retreat is often the best choice, and the best fight is the one avoided, there are many situations that either it is not an option, or is tactically disadvantage. They say that if you ever stumble on a Grizzly in the woods, the worst thing to do is to run. It triggers a predator-prey attack instinct in the aggressor. Human beings react the same way. My choice would be to try the best I could to manage and control the situation, not to become the lamb, and therefore submit to the attackers will.

Please help innocent, law-abiding citizens by protecting us from such predatory actions. Passage of this bill will send a loud and unified message that the people of Hawaii are getting tough on crime.

Please **SUPPORT** the passage of this bill.

Sincerely,

Mr. Mark Plischke
Legislative Co-Chair
Hawaii Rifle Association
478-9393

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Robert Bunda, Vice Chair

Re: SB 236 Relating to Justifiable use of force

Chair Espero, Vice-Chair Bunda, Members of the committee, thank you for allowing me to testify in support of SB 236. I know I was here earlier this week as the Hawaii Rifle Association's Director and Secretary, but I am here today as a firearms instructor for Lessons in Firearms Education, or LIFE.

LIFE, as an organization teaching firearms safety and use, is mandated, under HRS 134-2(g)(4)(b) to instruct their students on Hawaii law regarding all aspects of firearm ownership and use. This includes the justifiable use of force. It is a fact that most firearms in the US are obtained not for hunting or sporting use, but for self-defense. As a result of that, one of the most frequently asked questions from students is when is it legal to use a gun to defend yourself? As an organization, LIFE is trying to be proactive and involve itself in the process to improve the current laws that seem to favor the criminal and unduly burden the law-abiding citizen. SB 236 contains what we believe are beneficial changes to the current laws pertaining to self-defense and the use of force.

The major changes to the current law under SB 236 are: removing the requirement to retreat and removing the requirement to surrendering whatever the criminal asks for before the use of force can be legally justified.

We teach our students that they should avoid confrontations and try to deescalate situations that have the potential to turn violent. Sometimes, removing yourself from the situation is a good choice, and sometimes it isn't. Sometimes giving up your wallet or other possessions is the best course of action, and then again, sometimes it's not and it certainly doesn't guarantee your safety. Requiring either before the use of force can be legally justified is applying unreasonably static requirements to what can only be described as an extremely dynamic and challenging situation. It severely hampers the law-abiding citizen with mental exercises during a time where the natural physiologic reaction of the "adrenalin dump," the so called "flight or fight" response, can severely restrict cognitive ability¹ and therefore hamper the ability to effectively evaluate the situation for safe alternatives to employing the use of force. Of course, evaluating the situation in the 20/20 perspective of hindsight, without the physiologic impairments of the adrenaline effect, could

¹ Shari R. Waldstein and Leslie I. Katzel Stress-induced blood pressure reactivity and cognitive function. *Neurology*, May 2005; 64: 1746 - 1749.

well identify a choice that was not then apparent to the victim. This is the type of scrutiny that should not be heaped upon an already traumatized victim.

Besides, retreat may not be the best course of action, even when it seems “safe.” A clear example of why requiring retreat may be tactically unsound is the case of the woman who was raped when an intruder tried to break into her basement. She attempted to retreat, and as she tried to flee out the front door, she was punched in the face by the criminal, a registered sex offender, and brought back into the house and raped. The irony of the story is that the same criminal, released in less than a week after the initial attack, broke into that same woman’s home. This time, unable to call 911 because the electricity had been cut by the criminal, she went to a secure area of the house and waited with a gun. When the intruder finally found her, and threatened to rape her again, she shot and killed him.² Clearly she was safer not retreating and remaining in a strategically advantageous position.

And, complying with the demands of robbers, the “surrendering” currently required under the current law, may not prevent injury or death. Such was the case of Dr. William Petit and his family. They complied fully with the demands of two criminals; even to the extent that Dr. Petit’s wife accompanied one of the robbers to the Petit’s bank to withdraw money. Neither of the criminals, who both had multiple burglaries on their records, had any history of violent crimes. That was, of course, until they raped and set fire to Dr. Petit’s wife and two daughters and beat Dr. Petit severely. He was the only one that survived.

We are fortunate in Hawaii that crime rates are lower than in many parts of the country. But, the crimes of thefts and burglaries here were up in 2007³ and will probably get worse, in part due to the economy. “Market economics affect criminal statistics, that we can be sure of as the economy deteriorates and when the housing market takes a hit,” said Ronald F. Becker, an attorney and director of the criminal justice program at Chaminade University.⁴ As anyone who has been following current events will tell you, the economic decline continues. Home sales have fallen by 50%, the lowest levels since the late 1990s, unemployment is at an all-time high, and hotel occupancy is at the lowest levels since 9/11. Certainly, if one believes the statements of Mr. Becker, the prospect of falling victim to those intent on depriving us of our hard earned possessions is very likely to increase. Considering that much of the criminal activity in Hawaii is fueled by drugs such as methamphetamine and cocaine, it is not difficult to see how even simple robberies and burglaries

² Downloaded at:

<http://www.stltoday.com/stltoday/news/stories.nsf/laworder/story/9C58494B45470714862574F3006D0CA6?OpenDocument> on 2/3/09

³ Downloaded at:

<http://www.honoluluadvertiser.com/apps/pbcs.dll/article?AID=/20080108/NEWS01/801080345/1001/NE> on 1/8/08

⁴ Id

could easily escalate to a deadly encounter. Even the Honolulu Advertiser seems to validate similar concerns, when it published a December 9, 2007, article entitled "Hawaii [is] ripe for drug-ring violence"⁵ The recent stabbings on a Kokohead trail are further evidence of the unpredictable and violent behavior of these drug abusers and how quickly a situation can turn violent.

We must start seeing the criminal as the problem, not the law-abiding citizen who defends himself and his loved ones. We must not allow the victims of these violent attacks to be victimized once again in the legal system, a system that currently allows criminals more benefit of the doubt over a violent encounter than the victim. It reminds me of an incident in Makiki in March 2006. A man was arrested after a methamphetamine crazed criminal, who had assaulted the man and his wife on two prior occasions that same night, returned and broke into the house and began strangling the man's wife. Unable to pull the intruder off of his wife, the man grabbed a knife from the kitchen and stabbed and killed the intruder, undoubtedly saving his wife's life. Despite what City Prosecutor Peter Carlisle described as a "clearly justified"⁶ use of deadly force, the husband was taken to jail, where he spent the night while his wife stayed in their apartment, alone, injured, and with a broken front door.

Passing SB 236 will be a great first step to making sure victims, like the Makiki man and his wife, aren't further victimized by a system meant to protect them.

Thank you.

Bill Richter

⁵ Downloaded at: <http://the.honoluluadvertiser.com/article/2007/Dec/09/ln/hawaii712090351.html> on 12/10/07

⁶ Downloaded at: <http://archives.starbulletin.com/2006/03/23/news/story09.html> on 10/21/08

From: Kevin O'GradyEsquire [mailto:KevinOGradyEsquire@hawaii.rr.com]
Sent: Wednesday, February 04, 2009 1:56 PM
To: PSM Testimony
Subject: Re SB 236

To the Committee on Public Safety and Military Affairs

RE: SB 236- Amending chapter 703 HRS to remove the requirement to retreat or surrender possession of a thing before the use of force is considered justifiable.

I write in support of this proposed measure. Please consider adopting this measure. In examining this measure please consider the following: The level of force used to defend oneself as well as one's possessions should be reasonable considering all of the circumstances of the particular incident. A jury can consider those particulars. There is no benefit from the requirement as it now stands. If a victim chooses to submit, surrender an item or retreat, assuming retreat is possible, then each victim can make that choice. If the victim makes that choice and only loses the possession that he surrendered and he is happy with that, then so be it. If however a person can use a particular level of force to defend himself and his belongings and that level of force results in the attacker being turned away or captured then the victim should have that choice. As it stands if before employing some level of force the victim did not retreat or surrender an item, then in a subsequent prosecution, his one defense, justification, has been taken away. This requirement insults the victim and the populace at large. Please remember that the perpetrator has instigated the event. A jury can consider whether or not a victim employed a reasonable level of force considering the circumstances. Thank you.

Sincerely,

Kevin O'Grady, Esquire.

The Law Office of Kevin O'Grady, LLC
1136 Union Mall, Suite 704
Honolulu, Hawaii 96813
Telephone 808-521-3367
Facsimile 808-521-3369

WWW.CriminalAndMilitaryDefenseHawaii.com

From: Gary Fuchikami [mailto:wh6c@yahoo.com]
Sent: Tuesday, February 03, 2009 4:26 PM
To: PSM Testimony
Subject: SB 236 Testimony Feb. 5, 2009 @ 1:15pm Conference Room 229

To Whom It May Concern,

I'm writing to express my support for SB 239 relating to justifiable use of force. The current statute that requires retreat or surrender of some article/possession is not realistic. The idea that someone could force their way into your home, etc., and that you're not able to defend yourself unless you first try to run away or give the perpetrator something is unrealistic. A person may not have the time or ability to retreat if the person is grabbing them at the door, not to mention that a traumatic incident like that creates much anxiety and causes confusion in the thinking process. I firmly believe that if one is threatened after someone illegally enters your domain, you should be able to resort to deadly force, if necessary, to protect yourself and/or your family members.

I'm a mere 120 lbs. and if a 6 foot 185 lbs. person were to break into my home, I think it's unreasonable for me to have to do these things before I can take action. My action would be to warn the person that if he/she did not immediately stop and drop to the floor with arms and legs extended, I will fire my weapon. If the person obeys, I would then call 911 and have the police arrest and take this person away. If, however, this person continues to approach me and I feel in jeopardy of being threatened with bodily harm, I will shoot him/her until he/she stops. I am responsible for protecting myself and my family and I refuse to give up that responsibility to protect them. Please support this bill so that the law-abiding public can feel that criminals aren't being given more rights than the we are.

Thank you very much for your help and consideration of this bill.

Aloha,
Gary Fuchikami
91-1038 Niolo St.
Ewa Beach, HI 96706

From: John.C.Pang@kp.org [mailto:John.C.Pang@kp.org]
Sent: Wednesday, February 04, 2009 11:42 AM
To: PSM Testimony
Subject: Testimony SB 236

As voter in the Aiea/Pearl City district I support Mr. Gabbard's bill to revise current "castle Doctrine" law to require retreat and/or surrender. For much too long have the rights of the law abiding citizen been trampled by the criminal element in Hawaii. Why should law require its citizens' to be victimized by crime? It makes no sense and only serves to protect the criminal and allow them to possibly punish the victim with a civil or legal suit with the support of law. The current situation is ridiculous and is indeed in need of revision. Allowing the law abiding to defend themselves will not turn the streets of Honolulu into some sort of Dodge City, but instead will correct the balance of law back toward neutral, and not in the favor to robbers, thieves and drug users who would seek opportunities to steal from us.

Please support Mr. Gabbard and SB236

John C. Pang
Multimedia Specialist, Corporate Branding Consultant

Kaiser Foundation Health Plan
2828 Pa'a Street, Suite #2157
Honolulu, Hawaii 96819

(808) 432-5812

-----Original Message-----

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Monday, February 02, 2009 8:00 PM
To: PSM Testimony
Cc: watanabep002@hawaii.rr.com
Subject: Testimony for SB236 on 2/5/2009 1:15:00 PM

Testimony for PSM 2/5/2009 1:15:00 PM SB236

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Patrik Watanabe
Organization: Individual
Address: 258 Alaloa Road Hilo, HI
Phone: 808 9596602
E-mail: watanabep002@hawaii.rr.com
Submitted on: 2/2/2009

Comments:

I strongly support SB236. I believe it is very important for the lawful public to have the right to defend themselves from criminals. This bill will help to, rightfully, restore protection to the innocent.

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Wednesday, February 04, 2009 9:28 AM
To: PSM Testimony
Cc: rodney@flex.com
Subject: Testimony for SB236 on 2/5/2009 1:15:00 PM

Testimony for PSM 2/5/2009 1:15:00 PM SB236

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Rodney Shishido
Organization: Individual
Address:
Phone:
E-mail: rodney@flex.com
Submitted on: 2/4/2009

Comments:
Aloha,
I support SB236.

The requirement to retreat or surrender possession of a thing before the use of force is considered justifiable is supportive of the person committing the crime. This requirement makes the "victim" have to prove that

From: Paul Tanigawa [mailto:paul.tanigawa@pyramidins.com]

Sent: Wednesday, February 04, 2009 11:02 AM

To: PSM Testimony

Subject: SB 236

To Whom It May Concern:

I voice my support of SB 236 revising Chapter 703 HRS to remove the requirement that a person must retreat or give up a type of property before use of force is justifiable.
Please pass this SB 236 for the benefit of Hawaii residents.

Mahalo for allowing me to provide my testimony in favor of SB 236.

Aloha,
Paul T. Tanigawa
51 Keleawe Street
Makawao, HI 96768

-----Original Message-----

From: brian@hcc.hawaii.edu [mailto:brian@hcc.hawaii.edu]

Sent: Tuesday, February 03, 2009 4:02 PM

To: PSM Testimony

Subject: SB236 SUPPORT

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Thursday, February 5, 2009, 1:15pm, Room 229

SB 236 - SUPPORT

We should do everything we can to discourage criminals in their illegal activities. Many states have passed measures such as this one to allow honest citizens to repel criminals without having to surrender or retreat. Requiring victims to cower and run when confronted by individuals with bad intent only encourages more and worse criminal behavior. Witness England, where crime is rampant, and citizens have no right to defend themselves. Crime there has increased substantially, and honest people fear both criminals and their police, should they try to fend off the criminals. In a society with correct values, criminals should be the people living in fear, not honest citizens. Criminals should know that when they threaten honest people, a stout defense, and then swift prosecution, is what they should expect. That might encourage them to take up honest work, rather than crime.

Brian Isaacson
Kailua, HI

-----Original Message-----

From: NormanN@nagamineokawa.com [mailto:NormanN@nagamineokawa.com]

Sent: Tuesday, February 03, 2009 10:46 AM

To: PSM Testimony

Subject: SB 236 Relating to Justifiable Use of Force - Testimony In Support

To: Committee on Public Safety and Military Affairs

Subject: SB 236 Relating to Justifiable Use of Force Testimony

Hearing on: Feb. 5, 2009, 1:15 pm - 2:45 pm, Conference Room 229

Dear Senator Espero and Committee Members,

This is to express my support of SB 236. I feel a person has the right to protect himself and his property without being required to surrender possessions and hope the attacker be satisfied and will go away. This bill corrects the current defect in the law.

Thank you for allowing my testimony. I can be reached at 536-2626 if you have any comments or questions.

Norman Nagamine
1303 Hoolaulea St.
Pearl City, Hawaii 96782

Original Message-----

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Wednesday, February 04, 2009 11:04 PM
To: PSM Testimony
Cc: rglivinghi@aol.com
Subject: Testimony for SB236 on 2/5/2009 1:15:00 PM

Testimony for PSM 2/5/2009 1:15:00 PM SB236

Conference room: 229
Testifier position: support
Testifier will be present: Yes
Submitted by: Ronald G Livingston
Organization: Individual
Address: 7021 Kamilo St Honolulu, HI
Phone: 808-395-6559
E-mail: rglivinghi@aol.com
Submitted on: 2/4/2009

Comments:

I am one of many people that have leg problems and can not move fast to always get out of harms way. This would allow me to legally protect myself from someone intent on doing me or someone in my home harm.