

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the House Committee on Judiciary**

February 3, 2011

H.B. No. 256: RELATING TO THE PENAL CODE.

Chair Keith-Agaran and Members of the Committee:

We oppose the passage of H.B. No. 256. This bill would expand criminal liability under the offenses of Terroristic Threatening 1° and Robbery 1° for commission of those offenses with the use of “replica firearms.” Currently, if a person uses a replica firearm, such offenses are classified as Terroristic Threatening 2°, a misdemeanor, and Robbery 2°, a class B felony.

The reason that Terroristic Threatening and Robbery offenses that are committed with the use of an actual firearm are treated more seriously under our current statutes is that the introduction of an actual firearm into such situations increases the potential for someone to suffer death or serious bodily injury. If a person intentionally has a replica firearm, that person has made a conscious decision NOT to employ the use of an actual firearm. In other words, that person has made a conscious decision NOT to put another person at risk of death or serious bodily injury.

As such, the person holding a replica firearm should be treated separately under the law from one who uses an actual firearm. Under the change proposed in this legislation, a defendant in a Robbery case who had possessed a replica firearm that was incapable of causing death or serious bodily injury would receive a mandatory 20 year prison term because Robbery 1<sup>st</sup> Degree is a Class A felony that is not probationable. It does not make sense to impose such a harsh mandatory sentence on someone who chose not to use an instrument capable of significant harm.

Indeed the main danger that the person possessing the replica might present is to himself or herself because the police or other armed persons present might treat the replica as an actual firearm and take action accordingly.

Thank for the opportunity to comment on this measure.