



Committee: Committee on Public Safety
Hearing Date/Time: Thursday, February 7, 2013, 9:00 a.m.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawaii in Support of H.B. 1114, Relating to Arrests

Dear Chair Aquino and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1114, which seeks to unnecessarily expand police power and the potential for its abuse in Hawaii by giving Federal Protective Service officers the right to arrest individuals under state law without a warrant. The opportunity for abuse of this right is great, given that these federal officers lack the same familiarity, training and oversight as Hawaii state law enforcement officers with regard to the Hawaii Constitution and state law.

H.B. 1114 muddies the distinction between state and federal law and authorities and subsequently threatens the civil rights of Hawaii citizens. This bill threatens our system of government, which is based on principles of federalism and allocates powers between the states and the federal government. This Committee should be mindful of bills that seek to erode Hawaii’s independence by freely giving away powers to the federal government. Federal officers have great powers under federal law and may attempt to use these powers to circumvent privacy rights under the Hawaii Constitution. For instance, under H.B. 1114, federal officers may use Hawaii law as a pretext to search individuals without a warrant, particularly those individuals seeking to visit a federal building for immigration documentation purposes or to exercise their First Amendment rights. The legislature should consider alternative ways of combating crime rather than allowing federal authorities to evade the mandates of the Hawaii Constitution and abuse the rights of Hawaii citizens.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
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Chair Aquino and PBS Committee Members

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About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society’s most vulnerable members are denied, everyone’s rights are imperiled.

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Homeland Security

February 6, 2013

My name is Eric Broughton and I am the Area Commander for Federal Protective Service (FPS), Region 9, Pacific Command. I am responsible for managing FPS operations in the State of Hawaii, Guam, Saipan and American Samoa.

FPS is the uniformed and investigative law enforcement component of the Department of Homeland Security. The mission of FPS is to provide police services to federally owned, leased or occupied properties, and investigate crimes that affect those properties and personnel, per 40 USC 1315. There are 55 such properties in the State of Hawaii, 25 of which are on the Island of Oahu. The most notable facility is the Prince Jonah Kuhio Kalaniana'ole (PJKK) Federal Building located at 300 Ala Moana Blvd, Honolulu. Many of the facilities share space with non-federal entities, such as the Social Security facilities in Kapolei and Hilo, and the Federal Appellate and Bankruptcy Court on Bishop St in Honolulu. While in or around those facilities, FPS officers routinely encounter situations which require some police action that may or may not constitute a federal crime.

Military installations are typically exclusive and concurrent federal jurisdiction properties. As such, state laws are assimilated for the purposes of federal prosecution per 18 USC 13 (Assimilative Crimes Act). Nearly all of the properties serviced by FPS, however, are proprietary federal jurisdiction, which are excluded from 18 USC 13 and violations of state statutes are not enforceable in federal courts. For example, if two persons engage in a fight at a Social Security office, FPS officers in Hawaii currently have no authority to make an arrest for simple battery, as no such federal statute exists. Similarly, if a vehicle (such as a Ryder moving van) stops at the no parking curb directly in front of the federal building, FPS officers currently have no authority to issue a citation or tow the vehicle. In order to take action related to a state violation which occurs on federal property, FPS is currently required to devote resources to respond and investigate the incident, and then request that Honolulu Police also devote resources to respond, investigate and assume responsibility for the incident. This duplicity is a drain both resources and taxpayer dollars, particularly when it is the primary mission of FPS to carry out this function.

Hawaii Revised Statutes section 803-16 provides certain Hawaii state peace officer powers of arrest to specified federal law enforcement officers. Originally, FPS was included in the specified categories, however, in 2010 FPS transferred from Immigration and Customs Enforcement (ICE) to another component of the Department of Homeland Security which is not specified under HRS 803-16. Considering the mission of FPS, which requires uniformed federal police officers to respond to a variety of law enforcement calls for service throughout the State of

Hawaii, we request amendment of HRS 803-16 to once again include FPS in the list of designated law enforcement agencies.

California Penal Code section 830.8 contains specific language that is also found in memorandums of agreement between FPS and police agencies throughout the nation. That language grants FPS law enforcement officers with the authority to enforce public offenses “in conjunction with the protection of federal property owned or possessed by the United States government and the persons thereon, enforce state and local law within that property or on any street, sidewalk, or property adjacent thereto”. This language specifically applies to federal law enforcement officers only, and not contracted security personnel. It also limits action taken by FPS law enforcement officers to those state law violations which are directly related to carrying out their duties on and immediately adjacent to federal properties.

We appreciate your assistance in addressing this bill to correct an oversight and return specified state peace officer powers of arrest to FPS, and to create a statutory process permitting prosecution of FPS enforcement actions in Hawaii State courts.