

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

January 29, 2013

H.B. No. 147: RELATING TO SIMULATED FIREARMS

Chair Rhoads and Members of the Committee:

We oppose the passage of H.B. No. 147. This bill would expand the criminal liability under the offenses of Terroristic Threatening 1° and Robbery 1° for commission of those offenses with the use of “simulated firearms.” Currently, if a person uses a simulated 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 use of an actual firearm are treated more seriously is that the introduction of a firearm into such situations increases the potential for someone suffering death or serious bodily injury. If a person intentionally uses a simulated firearm, that person should not be treated in the same class as one who possesses an actual firearm. While the simulated firearm might scare people, that person who uses it has made a conscious decision not to employ the use of an actual firearm and should be treated separately under the law from one who uses an actual firearm. Indeed the main danger that the person possessing the simulated firearm might present is to himself or herself because the police or other armed persons present might treat the object as an actual firearm and take action accordingly.

Thank for the opportunity to comment on this measure.

POLICE DEPARTMENT
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January 29, 2013

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State House of Representatives
Hawaii State Capitol
514 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: House Bill No. 147, Relating to Simulated Firearms

I am Richard Robinson, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 147, Relating to Simulated Firearms. Passage of this bill would make a critically needed change to the Penal Code.

The goal of this legislation is to address a gap in the existing law when a suspect uses a simulated firearm in the commission of a robbery or in a threatening case. Currently, if the weapon is not a real firearm, the suspect cannot be charged with the higher offense of Robbery in the First Degree or Terroristic Threatening in the First Degree.

Simulated firearms are increasingly more difficult to discern from real firearms and as a result are being used to facilitate serious criminal offenses. The victims in these crimes believe the weapons are real and are justifiably terrorized when threatened with one. Since 2009 when this bill was first introduced, we have continued to see an increase in simulated firearms being used in robberies and in terroristic threatening cases. In the last four years, there have been at least 35 robbery cases and 42 threatening cases where a simulated firearm was utilized.

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The current trend is that suspects who are arrested after an investigation for terroristic threatening produce a simulated firearm and state that the simulated weapon was the weapon used in the crime. This reduces the crime that occurred to a misdemeanor.

As written, the current definition of a "Dangerous Instrument" does not include simulated firearms and therefore does not allow for the appropriate prosecution of these cases. This denies the victims of these crimes the commensurate justice they deserve. Similar laws have been passed in 24 other states.

The Honolulu Police Department urges you to support House Bill No. 147, Relating to Simulated Firearms.

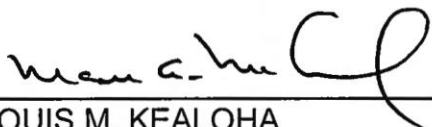
Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Major
Criminal Investigation Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 27, 2013 2:37 AM
To: JUDtestimony
Cc: w9w@hotmail.com
Subject: Submitted testimony for HB147 on Jan 29, 2013 14:00PM

HB147

Submitted on: 1/27/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kurt Hanson	Individual	Oppose	No

Comments: This is a vary vague and poorly written bill. What exactly is a SIMULATED FIREARM? A water pistol? A video-game controller? I appose this overreach of state authority. We need laws that are logical and actually make us safer.

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Dear Esteemed Members of the Judiciary Committee;

This proposed and unnecessary change to Sections 708-840 and 707-716, Hawaii Revised Statute goes beyond protecting the public. Rather, it further restricts individual rights and may place an undue burden upon an individual through frivolous lawsuits.

First, the definition of "simulated firearm" could easily be misconstrued to include using one's index finger to make a point in a heated discussion.

Second, it contains the potential of placing a victim in danger of having actions turned against them by an assailant. The process of obtaining a license to carry a firearm in public for purposes of self-defense makes it nearly impossible to legally do so. Should a person choose to use a simulated firearm and words of the effect of "back off or I'll shoot you!" to deter an attacker, that attacker could then accuse the victim of terroristic threatening.

Finally, the use of simulated firearms in the commission of a crime in this state is nearly unheard of. This legislation proposes to protect citizens from a situation that is not likely to occur. It does not address any known issue in the state of Hawai'i but rather proposes to protect the citizens of this state from an imagined but highly unlikely threat.

Thank you for your time and consideration in allowing me to testify in this matter.