

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Labor**

January 30, 2013

S.B. No. 2: RELATING TO SIMULATED FIREARMS

Chair Hee and Members of the Committee:

We oppose the passage of S.B. No. 2. 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.

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THE HONORABLE CLAYTON HEE, CHAIR
SENATE JUDICIARY AND LABOR COMMITTEE
Twenty-seventh State Legislature
Regular Session of 2013
State of Hawai`i

January 30, 2013

RE: S.B. 2; RELATING TO SIMULATED FIREARMS.

Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 2, which includes the use of a simulated firearm in the first-degree offenses of terroristic threatening and robbery.

S.B. 2 amends Section 707-716, Hawaii Revised Statutes to state “A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening with the use of a dangerous instrument or a simulated firearm.” Simulated firearms are increasingly more difficult to discern from real firearms and as a result, they are being used to commit serious criminal offenses. The victims in these crimes believe the weapons are real and are terrified that their life is imminently in danger when threatened with one.

It is for this reason; we support the passage of S.B. 2. Thank you.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 10:56 PM
To: JDLTestimony
Cc: jkaramatsu@honolulu.gov
Subject: Submitted testimony for SB2 on Jan 30, 2013 09:30AM
Attachments: SB2 130130 JDL simulated guns testimony.doc

SB2

Submitted on: 1/28/2013

Testimony for JDL on Jan 30, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jon Riki Karamatsu	Department of the Honolulu Prosecuting Attorney	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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POLICE DEPARTMENT
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OUR REFERENCE

RR-NTK

January 30, 2013

The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. 2, Relating to the Simulated Firearms

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

The Honolulu Police Department supports Senate Bill No. 2, 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.

Serving and Protecting With Aloha

The Honorable Clayton Hee, Chair
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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 Senate Bill No. 2, Relating to the Simulated Firearms.

Thank you for the opportunity to testify.

Sincerely,


RICHARD C. ROBINSON, Major
Criminal Investigation Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

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.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 27, 2013 3:41 PM
To: JDLTestimony
Cc: medman@prodigy.net
Subject: Submitted testimony for SB2 on Jan 30, 2013 09:30AM
Attachments: SB 2 and reference to simulated firearms.docx

SB2

Submitted on: 1/27/2013

Testimony for JDL on Jan 30, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Quimby	Individual	Oppose	No

Comments:

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