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**THE HONORABLE KARL RHOADS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2013**  
**State of Hawai`i**

March 12, 2013

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

Chair Rhoads, Vice-Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 2. The purpose of this bill is to amend Sections 707-716 and 708-840, Hawaii Revised Statutes ("HRS"), to include the use of a simulated firearm in the offenses of terroristic threatening in the first-degree, and robbery in the first degree.

Because simulated firearms are increasingly more difficult to discern from real firearms, and will generally induce the same level of fear in potential victims, simulated firearms are in fact being used to commit serious criminal offenses. Given the circumstances and/or appearance of the weapon, victims of crime involving a simulated firearm are often led to believe that the simulated firearm is real, and are thus terrified that their life is in imminent danger.

While we do support S.B. 2 in its current version, we also note that the definition of "simulated firearm," as proposed in H.B. 1011, may provide better clarification and guidance for interpretation by courts, juries and the public.

For the foregoing reasons, the Department of the Prosecuting Attorney supports the passage of S.B. 2. Thank you for the opportunity to testify on this matter.

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

March 12, 2013

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

Chair Rhoads 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<sup>o</sup> and Robbery 1<sup>o</sup> 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<sup>o</sup>, a misdemeanor, and Robbery 2<sup>o</sup>, 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  
**CITY AND COUNTY OF HONOLULU**

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DEPUTY CHIEFS

OUR REFERENCE RR-NTK

March 12, 2013

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

Dear Chair Rhoads 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.

The Honorable Karl Rhoads, Chair  
and Members  
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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.

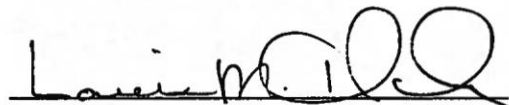
Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Major  
Criminal Investigation Division

APPROVED:



LOUIS M. KEALOHA  
Chief of Police



# Hawaii Rifle Association

State Affiliate of the National Rifle Association

Founded in 1857

January 28, 2013

Testimony on SB2

Before: JUD, March 12, 2013, 2pm, Rm 325

Comment

Hon. Chair, Co-Chair, Members,

HRA supports the intent of this bill. We agree with the proponents that using or brandishing a simulated firearm as an act of terroristic threatening should be a felony, not a misdemeanor.

We agree with the Public Defender that the 2<sup>nd</sup> degree felony charge for using a simulated firearm in a robbery is sufficient.

We believe the language in (1)(e) (i) and (ii) is too vague and should be replaced with:

- (i) Is a replica or model of a firearm but incapable of firing ammunition;
- (ii) Is made or manufactured to the same appearance as a firearm

The firearms demonstrated in HPD testimony are best described thus, and “resembles a firearm” is insufficient.

Thank you for the opportunity to testify on behalf of HRA

Dr. Maxwell Cooper

Legislative Liaison  
225-6944