

JAN 17 2013

A BILL FOR AN ACT

RELATING TO RESISTING ARREST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii's existing
2 penal code does not adequately address situations in which an
3 offender takes or attempts to take a law enforcement officer's
4 firearm. In the past, such an offender may have been arrested
5 for the offense of attempted theft or attempted escape, but
6 these offenses were not prosecuted because they do not fulfill
7 the elements of theft or the escape statutes. The offender is
8 not trying to deprive the officer permanently of his weapon as
9 is required by the theft statute nor is the offender attempting
10 to get away from the officer as required by the escape statute;
11 rather, the offender is often trying to temporarily disarm the
12 law enforcement officer. Officers frequently wrestle with
13 offenders while trying to make an arrest, which places their
14 firearms in close proximity to an offender's grasp. Over the
15 last few years, this has become a more regular occurrence. This
16 is a very dangerous situation for the law enforcement officer
17 and the offender because a gun in close quarters can discharge
18 and maim or kill the persons involved or bystanders. The



1 legislature believes that elevating the offense of resisting
2 arrest to a felony will have a long term deterrent effect, as
3 well as create a safer working environment for law enforcement
4 personnel.

5 The purpose of this Act is to establish the offense of
6 resisting arrest in the first degree as a felony and to
7 establish the existing resisting arrest misdemeanor offense as
8 resisting arrest in the second degree.

9 SECTION 2. Chapter 710, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§710- Resisting arrest in the first degree. (1) A
13 person commits the offense of resisting arrest in the first
14 degree if the person intentionally prevents a law enforcement
15 officer acting under color of the law enforcement officer's
16 official authority from effecting an arrest by removing or
17 attempting to remove a firearm from the person of a law
18 enforcement officer.

19 (2) Resisting arrest in the first degree is a class C
20 felony."

21 SECTION 3. Section 710-1026, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§710-1026 Resisting arrest[-] in the second degree. (1)

2 A person commits the offense of resisting arrest in the second
3 degree if the person intentionally prevents a law enforcement
4 officer acting under color of the law enforcement officer's
5 official authority from effecting an arrest by:

6 (a) Using or threatening to use physical force against the
7 law enforcement officer or another; or

8 (b) Using any other means [~~creating~~] that creates a
9 substantial risk of causing bodily injury to the law
10 enforcement officer or another.

11 (2) Resisting arrest in the second degree is a
12 misdemeanor."

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19

INTRODUCED BY: Will Evers
Randy De Be

S.B. NO. 78

Report Title:

Resisting Arrest in the First Degree

Description:

Creates the offense of resisting arrest in the first degree as a class C felony if the person intentionally prevents a law enforcement officer acting under color of the law enforcement officer's official authority from effecting an arrest by removing or attempting to remove a firearm from the person of a law enforcement officer.

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