

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

February 23, 2015

S.B. No. 640: RELATING TO RESISTING ARREST

Chair Keith-Agaran and Members of the Committee:

This measure would create the offenses of resisting arrest in the first and second degree. If during the course of a lawful arrest, a suspect attempted to remove a law enforcement officer's firearm, he would be charged with resisting arrest in the first degree, a class C felony. Resisting arrest would be reclassified as resisting arrest in the second degree, a misdemeanor.

The Office of the Public Defender opposes S.B. 2021.

Previous testimony in support of this measure suggests the deterrent effect of making resisting arrest in the first degree a felony offense. They believe that a suspect will think twice about reaching for an officer's firearm if this bill is passed.

The deterrent effect of enacting stiff penalties is overstated, and in this instance, a fallacy. A person who resists arrest is usually drunk, under the influence of drugs, mentally ill and/or emotionally disturbed. A felony resisting arrest law will not cause them to stop and think twice before deciding to disobey a law enforcement officer. They are angry, high or out of their mind, and thus incapable of rational thought.

A law enforcement officer's job is not without perils. Sometimes they are put in situations where they must take a life, and in other situations, give their life. But it is their job, and they receive proper training and equipment to help ensure their safety.

A law enforcement officer's firearm is holstered to his belt. During a scuffle, his sidearm, which protrudes from his hip, may accidentally be hit, touched or grabbed by the suspect. We are concerned that officers will be quick to say that the suspect reached for their gun, and charge the felony rather than a misdemeanor.

Finally, in the course of our practice in the criminal court system, we have found that the resisting arrest charge is frequently used as a cover-up for police brutality. In these situations, when an officer has used unjustifiable and excessive physical force in apprehending a member of the public, he or she claims that the arrestee resisted arrest thus forming a justification for the conduct. It is suggested that this measure should not be seriously considered unless all police officers are outfitted with body cameras such that firm evidence can be recorded so that courts and juries can sort out these situations.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
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TESTIMONY
ON
SB 640 - RELATING TO THEFT OF PERSONAL ELECTRONIC DEVICES

February 23, 2015

The Honorable Gilbert S. C. Keith Agaran
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 640 - Relating to Theft of Personal Electronic Devices. SB 640 establishes a Class C felony for theft of personal electronic devices that may be used to store or retrieve personal information.

Today's personal electronic devices - smart phones, tablets, laptops and the like - are able to contain various items of personal information. The law needs to reflect this change in technology.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committee PASS SB 640.

Thank you very much for the opportunity to provide testimony on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE RS-NTK

February 23, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 640, Relating to Resisting Arrest

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

The Honolulu Police Department supports Senate Bill No. 640, Relating to Resisting Arrest.

Police officers face inherent dangers during arrest situations involving violent and combative offenders. The most dangerous arrest situations occur when an offender is armed with a firearm or attempts or manages to forcibly take an officer's firearm, placing police officers, victims, and the general public in jeopardy. Establishing the offense of resisting arrest in the first degree as a class C felony promotes safety for police officers and the public, provides consistent penalties for firearm-related offenses, and serves as a deterrent.

The Honolulu Police Department urges you to support Senate Bill No. 640, Relating to Resisting Arrest.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Louis M. Kealoha in black ink.

LOUIS M. KEALOHA
Chief of Police

Handwritten signature of Richard C. Schaab in black ink.

RICHARD C. SCHAAB, Captain
Criminal Investigation Division

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

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February 20, 2015

Senator Gilbert S.C. Keith-Agaran
Chairperson and Committee Members
Committee On Judiciary and Labor
415 South Beretania Street, Room 016
Honolulu, Hawai`i 96813

Re: Senate Bill 640 Relating To Resisting Arrest

Dear Senator Keith-Agaran:

The Hawai`i Police Department strongly supports the passage of Senate Bill 640, Relating to Resisting Arrest. The purpose of this Bill is to establish the offense of Resisting Arrest in the First Degree as a felony for anyone who either removes or attempts to remove a firearm from the person of a law enforcement officer who is acting under the color of his authority.

The Hawai`i Police Department is well aware that all law enforcement officers receive detailed training in the facts and circumstances that must be present in order to ensure their use of a firearm is appropriate. The necessary facts and circumstances must not only be in accordance with the applicable statutes but must also take into account the safety of all persons nearby as well. It is our firm belief that anyone who would knowingly attempt to disarm a law enforcement officer who is acting under the color of his/her authority, has already displayed malicious conduct and becomes an immediate threat not only to the officer but to any other persons present. Further, any person based on their own ill-conceived desire to disarm an officer would thereby place their own life at jeopardy as they would then be viewed as an immediate threat to the safety and well-being of not only the officer but to all persons present.

For these reasons, we urge this committee to approve this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to Senate Bill 640.

Sincerely,

HARRY S. KUBOJIRI
POLICE CHIEF

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB640 on Feb 23, 2015 09:00AM*
Date: Friday, February 20, 2015 7:50:58 AM

SB640

Submitted on: 2/20/2015

Testimony for JDL on Feb 23, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Max Cooper	Hawaii Rifle Association	Support	No

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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