



**Office of the Public Defender
State of Hawaii**



**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor
March 31, 2017, 9:30 a.m.**

H.B. No. 461, HD1: 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. The current offense of resisting arrest would be reclassified as resisting arrest in the second degree, a misdemeanor. The Office of the Public Defender opposes H.B. No. 461, HD1.

The deterrent effect of enacting a stiffer penalty is often overstated and should be questioned. Persons who resist arrest are often 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.

A law enforcement officer's firearm is often 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. In the vast majority of cases, only the officer's allegation will exist that a suspect was attempting to remove the officer's firearm. There will be no scientific or objective evidence of the incident.

Finally, the history of the resisting arrest charge suggests that it 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 evidence preservation devices such as "body cameras" such that firm evidence can be recorded so that courts and juries can sort out these situations.

Thank you for the opportunity to provide testimony in this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 461, H.D. 1, RELATING TO RESISTING ARREST.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 31, 2017

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (the Department) recommends amending section 2 of this bill.

The purpose of this bill is to create a new class C felony offense of resisting arrest in the first degree that prohibits a person from removing or attempting to remove a firearm from a law enforcement officer while that officer effects an arrest.

Section 2 of the bill proposes the new offense as follows:

A person commits the offense of resisting arrest in the first degree if the person intentionally or knowingly uses or attempts to use force to remove a firearm from the person of a law enforcement officer acting under color of the law enforcement officer's official authority.

The validity of section 2 of the bill may be challenged based on a possible violation of Article III, section 14, of the Constitution of the State of Hawaii, which provides in part that: "Each law shall embrace but one subject, which shall be expressed in its title." The title of this bill is "A BILL FOR AN ACT RELATING TO RESISTING ARREST." It identifies a very narrow and specific subject. But the new offense proposed in section 2 of the bill does not prohibit conduct committed while an officer effects an arrest. It only refers to an officer "acting under color of the law enforcement officer's official authority." That means that the officer could be engaged in any law enforcement activity, not necessarily an arrest.

The Department recommends amending the new offense to read as follows:

A person commits the offense of resisting arrest in the first degree if the person intentionally or knowingly uses or attempts to use force to remove a firearm from the person of a law enforcement officer while the law enforcement officer, acting under color of the law enforcement officer's official authority, effects an arrest.

The Department appreciates the Committee's consideration of this recommendation.