



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2350, RELATING TO ARREST BY FEDERAL OFFICERS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 14, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark S. Tom, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General strongly supports this bill and offers the following comments.

The purpose of the bill is to authorize law enforcement officers of the Federal Bureau of Investigation (FBI) to effect arrests in Hawaii under the Hawaii Penal Code in certain circumstances by amending section 803-16, Hawaii Revised Statutes (HRS).

The FBI is highly equipped to fight cross-border crimes, and its ability and resources to conduct highly complex criminal or cybercrime investigations is exceptionally valuable. The FBI already provides and dedicates great resources to state law enforcement efforts, but the collaborative efforts can be hindered due to the lack of arrest power by the FBI under state law.

For example, the FBI leads several essential task forces in Hawaii with state and local law enforcement personnel being task force members. These task forces are a great force multiplier in combating various complex crimes such as public corruption, economic fraud, and human trafficking. The FBI's lack of power to make arrests in Hawaii pursuant to the Hawaii Penal Code could potentially hinder the investigative efforts or even jeopardize the safety of the officers involved.

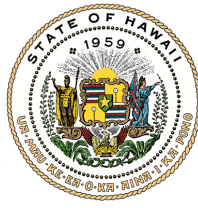
Furthermore, a federal, state, and county partnership is particularly needed during major events and natural disasters. The FBI has provided tremendous resources and assistance during past major events and natural disasters in our state, which is

critical for a multi-island state such as Hawaii. Conferring arrest power on the FBI will further ensure the safety of our citizens and the orderly handling of emergencies during these events and disasters.

Section 803-16, HRS, already confers arrest powers on special agents of the United States Immigration and Customs Enforcement-Homeland Security Investigations and the United States Customs and Border Protection. The same power conferred upon law enforcement officers of the FBI will provide vital support to state and county law enforcement efforts.

We respectfully ask your committee to pass this bill. Thank you for the opportunity to provide support for this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



JORDAN LOWE
DIRECTOR

MICHAEL VINCENT
Deputy Director
Administration

JARED K. REDULLA
Deputy Director
Law Enforcement

SYLVIA LUKE
LT GOVERNOR
KE KE'ENA

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LAW ENFORCEMENT

Ka 'Oihana Ho'okō Kānāwai

715 South King Street
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 2350
RELATING TO LAW ENFORCEMENT

Before the House Committee on Judiciary and Hawaiian Affairs

Wednesday, February 14, 2024; 2:00 p.m.

State Capitol Conference Room 325, Via Videoconference

Testifiers: Michael Vincent, or Jared Redulla

Chair Tarnas, Vice Chair Takayama, and members of the Committee:

The Department of Law Enforcement (DLE) **supports** House Bill 2350.

This bill authorizes law enforcement officers of the Federal Bureau of Investigation (FBI) to effect arrests under the Hawai'i Penal Code in limited circumstances.

This bill is long overdue as State and county law enforcement agencies have struggled over the years while participating in law enforcement operations or events with the FBI and limitations on FBI agent's limitations on the use of police powers. This bill will eliminate the current restriction of FBI agents to federal law in the exercise of their police powers by authorizing them to exercise police powers under the Hawai'i Penal Code thereby greatly expanding their ability to participate with State or county law enforcement agencies.

Thank you for the opportunity to testify in support of this bill.

State of Hawai‘i
The Office of the Public Defender

H.B. No. 2350: RELATING TO ARREST BY FEDERAL OFFICERS

Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

Hawai‘i Revised Statutes § 803-16 empowers agents of the United States Immigration and Customs-Homeland Security Investigations or the officers for border protection the power to arrest people who may be violating parts of the Hawai‘i Penal Code. These agents investigate and cover a distinct kind of case under federal law.

But giving the same arrest powers to any and all agents of the Federal Bureau of Investigation is an extraordinary expansion of power. FBI agents cover a wide range of cases.

It also raises constitutional concerns. The State Constitution affords far more protections than the United States Constitution. FBI agents are less likely to be sensitive to these constitutional nuances and are not necessarily bound to strictures within the Hawai‘i Constitution. This bill allows federal agents to make arrests and possibly obtain evidence that would be constitutionally permissible under the federal constitution, but impermissible under the Hawai‘i Constitution. This loophole to constitutional protections must be avoided.

Committee on Judiciary & Hawaiian Affairs:

Hearing Date/Time: February 14, 2024 at 2:00PM HST.

Place: Honolulu, Hawaii.

Re: Testimony of Steven B. Merrill, Special Agent in Charge, FBI Honolulu Division in Support of H.B. 2350 Relating to FBI Powers of Arrest Under Hawaii Revised Statutes in Limited Circumstances.

Chair and Members of the Committee:

The Federal Bureau of Investigation (FBI), Honolulu Division strongly supports this bill.

House Bill (H.B.) 2350 seeks to amend the list of Hawaii-based federal law enforcement agencies authorized to perform arrests for certain offenses under Hawaii state law to include the FBI. This statutory grant of limited arrest powers will allow FBI agents to provide vital support to Hawaii state and county law enforcement efforts when it is requested as well as in times of necessity.

Our purpose in supporting this proposed grant of limited authority is to be able to better assist and support Hawaii's own law enforcement officers. The bill grants those authorities only when an FBI officer is on duty and the Special Agent in Charge of the FBI Honolulu Division, in coordination with the FBI Chief Division Counsel, certifies to the state that the authorized officers have received proper training on the power. Even when those criteria are met, FBI officers would have arrest powers only in enumerated circumstances, such as when a person commits and assault or other crime involving physical harm in the presence of an officer. FBI agents will not be blind in having these powers, but will be familiar with the state law relevant to their duties. The FBI will ensure proper training is received on the Hawaii Revised Statutes in coordination with

the Hawaii State Attorney General's Office and the respective County Prosecutors' offices.

Like state and county law enforcement officers, FBI special agents act under a sworn duty to protect the citizens of the United States of America. In order to faithfully and effectively carry out this duty, there are situations where federal agents must intervene and arrest persons engaged in activity that disrupts the peace and endangers the public. However, without limited arrest powers under Hawaii state law, the FBI agent's authority to perform an arrest for non-federal crimes, is reduced to that of an ordinary citizen. As a result, agents are put into a difficult situation where the performance of their sworn duty unduly exposes them to potential criminal and civil charges. The extension of Hawaii state arrest powers to FBI special agents will support and augment the day-to-day objectives of Hawaii State's local police departments and further protect Hawaii's citizens.

The recent tragic August 2023 Maui wildfire and its aftermath highlight the vital importance of allowing the FBI limited arrest powers in Hawaii. During the Maui fires, the Maui County Police Department asked the FBI to assist on several fronts, including guarding the Lahaina perimeter for safety and looting purposes. Without the power to make arrests under Hawaii state law, the FBI special agents were severely limited in their ability to provide the needed security and safety support requested by Maui County to help Hawaiian citizens in their time of need during and in the wake of that terrible tragedy.

FBI special agents are highly trained law enforcement officers who are authorized to carry weapons and perform arrests under federal authority. The FBI's presence in the State of Hawaii is a valuable resource to support and augment the police department's peace keeping efforts in situations where: (1) an immediate response to a dangerous or undesirable situation is required; and (2) police officers are not present or are unavailable.

The ability to receive federal law enforcement assistance during certain times of need is critical for a multi-island state such as Hawaii. Hawaii state's ability to receive federal assistance; however, is limited because there is no statutory authorization for FBI special agents to perform arrests for violations of Hawaii state law. H.B. 2350 will remedy this situation and ensure that federal agents are empowered to assist Hawaii when the need arises.

Collaborative efforts between federal, state, and county law enforcement agencies ensure the most efficient use of each agency's limited resources and should be encouraged. Especially during difficult fiscal times, agencies need to consider economic savings. But more importantly, collaboration enables law enforcement to better fight crime and even address natural disaster responses. Hawaii state and county law enforcement agencies frequently rely on FBI support for collaborative joint-task-force investigations and for assistance during major events. Task forces are considered central to the success of the FBI, particularly when addressing specific crime problems such as narcotics or vehicular thefts. For example, the Maui Police Department, the Hawaii County Police Department, and the Kauai Police Department frequently request the assistance of FBI special agents for the investigation of Internet crimes against children, the execution of arrest warrants for criminal offenders/fugitives, and the investigation and apprehension of persons violating state sex offender registration laws. However, without limited arrest powers under Hawaii state law, the FBI is reluctant to participate with local law enforcement agencies due to potential criminal and tort liability, and other jurisdictional issues.

H.B. would also bring Hawaii in line with the majority of the U.S. in allowing the FBI to have limited peace officer powers. These types of statutes are not at all atypical across the United States, as there are at least thirty-eight (38) states¹ that

¹ Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North

grant the FBI some type of peace officer powers. For example, some states will include federal law enforcement officers in the definition of peace officers: Arizona,² Colorado,³ Illinois,⁴ Kentucky,⁵ New Mexico,⁶ North Dakota,⁷ Oklahoma,⁸ Rhode Island,⁹ South Dakota,¹⁰ and Utah.¹¹ There are also states that do not define FBI as peace officers but still grant limited peace officer powers: Delaware,¹² Idaho,¹³ New York,¹⁴ Oregon,¹⁵ and Texas.¹⁶

H.B. 2350 would provide Hawaii citizens with the additional protection of increased law enforcement capacity, and it will not reduce or otherwise modify any rights of individuals. The FBI also supports the investigations of state and local authorities in certain civil rights cases. Even with these investigative powers, the protections extended to individuals under the Hawaii Constitution will maintain full force and effect, and criminal defendants will continue to be protected by the Hawaii Rules of Evidence, the Hawaii Rules of Penal Procedure, and other state precedents.

Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

² Ariz. Rev. Stat. §§ 13-3875; 13-3833 (2023).

³ Colo. Rev. Stat. §§ 16-2.5-101; 16-3-110 (2023).

⁴ 720 Ill. Comp. Stat. §§ 5/2-13 (2023).

⁵ Ky. Rev. Stat. Ann § 61.365 (2023).

⁶ N.M. Stat. Ann. § 29-1-11 (2023).

⁷ N.D. Cent. Code §§ 29-05-10; 12.1-01-04; 19-06-01 (2023).

⁸ Okla. Stat. Ann. tit. 21 § 99 (2023).

⁹ R.I. Gen. Laws § 12-7-21 (2023).

¹⁰ S.D. Codified Laws §§ 23A-45-9; 23A-3-25; 23A-3-24 (2023).

¹¹ Utah Code Ann. §§ 53-13-102; 53-13-106; 53-1-102 (2023).

¹² Del. Code Ann. tit. 11 §§ 1901; 1912 (2023).

¹³ Idaho Code Ann. §§ 37-2701; 19-510; 6-808; 18-8102; 19-5101; 72-1103 (2023).

¹⁴ N.Y. CPL §§ 2.10, 2.15, 2.20, 140.25 (McKinney 2023).

¹⁵ Or. Rev. Stat. §§ 161.015; 133.245 (2023).

¹⁶ Tex. Code Crim. Proc. § 2.122 (2023).

The FBI and Hawaii state/local agencies also participate in various federal task forces such as the Joint Terrorism Task Force (JTTF) and High Intensity Drug Trafficking Area (HIDTA) Task Force. These federal task forces investigate both federal and state crimes, and the lack of arrest powers under Hawaii state law could jeopardize the effectiveness of those task forces and even the safety of the officers.

The Federal Bureau of Investigation, Honolulu Division respectfully requests the passage of this bill.

Submitted by:



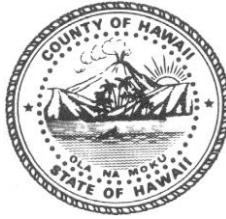
Steven B. Merrill
Special Agent in Charge
FBI Honolulu Division



Date

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OFFICE OF THE PROSECUTING ATTORNEY
TESTIMONY IN SUPPORT OF HOUSE BILL 2350

A BILL FOR AN ACT
RELATING TO ARREST BY FEDERAL OFFICERS

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 14, 2023 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 312
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Takayama and Members of the Committee on Judiciary and Hawaiian Affairs. The County of Hawai‘i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill No. 2350.

The purpose of this act is to authorize law enforcement officers of the Federal Bureau of Investigation (“FBI”) to effect arrests for certain state offenses within Hawai‘i. The passage of this bill will support law enforcement’s efforts to collaboratively address criminal activity including those that may cross jurisdictional boundaries or involve federal interests.

On April 27, 2022, Governor David Ige signed Act 13, SB2780 (“Relating to the Power of Arrest”) into law which updated the list of federal agencies whose law enforcement officers may make arrest for certain offenses under state law by adding Unites States’ Immigration and Customs Enforcement-Homeland Security Investigations (“HSI”).

In addition to HSI, Hawai‘i County law enforcement regularly works with on-island FBI personnel. Their combined resources are invaluable to assisting and enhancing local law enforcement’s response to criminal activity and threats. In working hand-in-hand with local law enforcement in joint investigations and prosecutions, it is inherent that the FBI agents have the necessary arrest powers with their HSI counterparts.

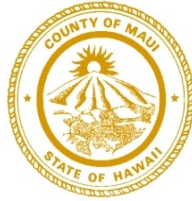
Providing FBI agents the authority to appropriately and justifiably effect arrests will deter escalation of violence and enhance public safety. In order to ensure compliance, this bill provides guidelines and certification requirements so that law enforcement officers are properly trained and authorized to exercise these arrest powers, minimizing the risk of misuse, or any misunderstandings of authority.

For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney supports the passage of House Bill No. 2350. Thank you for the opportunity to testify on this matter.

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



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TESTIMONY
ON H.B. 2350 RELATING TO
ARREST BY FEDERAL OFFICERS

TO: Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary and Hawaiian Affairs

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: February 13, 2024

SUBJECT: SUPPORT OF HB 2350, ARREST BY FEDERAL OFFICERS

Thank you for the opportunity to testify in **SUPPORT** of HB 2350. This measure would allow law enforcement officers of the Federal Bureau of Investigation to arrest offenders for certain violations of Hawai'i state law. We support this bill for the following reasons.

In the aftermath of the recent wildfires in Lahaina, the Federal Bureau of Investigation provided critical assistance to our community's recovery efforts. However, their lack of authorization to enforce state laws meant they were unable to assist with Maui Police Department requests to assist with maintaining the Lahaina perimeter. Similarly, this legislation would allow the use of Federal Bureau of Investigation resources and personnel during emergent situations such as natural disasters and active shooter scenarios that require swift and comprehensive assistance from all available government entities.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the passage of HB 2350. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

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

HB-2350

Submitted on: 2/13/2024 10:36:55 AM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Support	Written Testimony Only

Comments:

.Support

HB-2350

Submitted on: 2/14/2024 9:10:57 AM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ryan Willis	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE