



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2292, RELATING TO ELECTRIC GUNS.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

DATE: Wednesday, February 12, 2020 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Clare E. Connors, Attorney General, or
Amy Murakami, Deputy Attorney General

Chair Takayama and Members of the Committee:

The Department of the Attorney General (Department) supports this bill with amendments.

The purpose of this bill is to protect the health and safety of the public by regulating the sale and use of electric guns.

The constitutionality of Hawaii's electric gun ban has been drawn into question by the United States Supreme Court decision in Caetano v. Massachusetts, 136 S. Ct. 1027 (2016). And a pending lawsuit in the United States District Court for the District of Hawaii, Roberts v. Ballard, 18-00125 HG-KSC, is seeking a declaratory judgment and injunction to invalidate Hawaii's electric gun ban. If Hawaii's electric gun ban is invalidated by the courts, there will be no regulations on the purchase, possession, and use of electric guns by the public.

This bill repeals Hawaii's ban on electric guns and creates a regulatory scheme that restricts the use of electric guns to self defense and requires sellers of electric guns to be licensees and keep records of inventory and sales. The bill also creates criminal offenses for the use or possession of electric guns in the commission of a misdemeanor or felony.

It is the Department's understanding that the county police chiefs support a regulatory scheme that would require electric guns that use projectiles, such as Tasers,

be subject to a permitting and registration process similar to firearms. The attached draft creates a permitting and registration process for electric guns that use projectiles while maintaining the licensing requirements for sales of electric guns that do not use projectiles.

We respectfully ask the Committee to pass this bill with the amendments contained in the attached draft.

1 "Electric gun" means any portable device that is designed
2 to discharge electric energy, charge, voltage, or current into
3 the body through direct contact or utilizing a projectile.

4 "Electric gun" includes but is not limited to devices commonly
5 referred to as stun guns. It does not include any automatic
6 defibrillator used in emergency medical situations.

7 "Electric projectile gun" means any electric gun that is
8 designed to discharge electric energy, charge, voltage, or
9 current into the body through a projectile. "Electric
10 projectile gun" includes but is not limited to a Taser.

11 "Law enforcement agency" means any county police
12 department, the department of public safety, the department of
13 the attorney general, the division of conservation and resources
14 enforcement of the department of land and natural resources, and
15 any other state or county public body that employs law
16 enforcement officers.

17 "Law enforcement officer" means a sheriff or deputy
18 sheriff, police officer, enforcement officer within division of
19 conservation and resources enforcement of the department of land
20 and natural resources, special agent of the department of the
21 attorney general, and any other public servant vested by law
22 with a duty to maintain public order, to make arrests for

1 offenses, or to enforce criminal laws, whether that duty extends
2 to all offenses or is limited to a specific class of offenses.

3 "Licensee" means a person licensed to sell or distribute
4 electric guns pursuant to section 134-E.

5 "Person" means an individual, firm, corporation,
6 partnership, association, or any form of business or legal
7 entity.

8 "Transfer" means the granting of possession or ownership to
9 another, and includes the granting of temporary possession to
10 another.

11 **§134-B Restrictions on use, sale, and transfer of electric**
12 **guns.** (a) It shall be unlawful for any person to knowingly or
13 recklessly use an electric gun for any purpose except:

14 (1) Self-defense;

15 (2) Defense of another person; or

16 (3) Protection of property of the person or of another
17 person.

18 (b) It shall be unlawful for any person to knowingly sell,
19 offer for sale, distribute, or otherwise transfer an electric
20 gun or cartridge without a license obtained pursuant to section
21 134-E.

1 It is an affirmative defense to prosecution pursuant to
2 this subsection, that the person is an adult employee of a
3 licensee acting within the scope of the person's employment.

4 (c) It shall be unlawful for a licensed person or employee
5 of a licensee to knowingly sell, distribute, or otherwise
6 transfer an electric gun or cartridge at a place other than the
7 licensee's designated place of business.

8 (d) It shall be unlawful for any person to knowingly sell,
9 offer for sale, distribute, or otherwise transfer an electric
10 gun or cartridge to a minor.

11 (e) It shall be unlawful for any person, other than a
12 licensee, a law enforcement agency, or the army or air national
13 guard to knowingly or recklessly purchase, obtain, or otherwise
14 receive an electric gun or cartridge from a person who does not
15 have a license issued pursuant to section 134-E.

16 (f) Any person violating this section shall be guilty of a
17 misdemeanor.

18 **§134-C Permits to acquire electric projectile gun.** (a)
19 No person shall acquire the ownership of an electric projectile
20 gun, whether usable or unusable, serviceable or unserviceable,
21 registered by a prior owner or unregistered, either by purchase,
22 gift, inheritance, request, or in any other manner, whether

1 procured in the State or imported by mail, express, freight, or
2 otherwise, until the person has first procured from the chief of
3 police of the county of the person's place of business or, if
4 there is no place of business, the person's residence or, if
5 there is neither place of business nor residence, the person's
6 place of sojourn, a permit to acquire the ownership of an
7 electric projectile gun as prescribed in this section. When
8 title to any electric projectile gun is acquired by inheritance
9 or bequest, the foregoing permit shall be obtained before taking
10 possession of an electric projectile gun; provided that upon
11 presentation of a copy of the death certificate of the owner
12 making the bequest, any heir or legatee may transfer the
13 inherited or bequested electric projectile gun directly to a
14 dealer licensed under section 134-E without complying with the
15 requirements of this section.

16 (b) The permit application form shall include the
17 applicant's name, address, sex, height, weight, date of birth,
18 place of birth, country of citizenship, social security number,
19 alien or admission number, and information regarding the
20 applicant's mental health history and shall require the
21 fingerprinting and photographing of the applicant by the police
22 department of the county of registration; provided that where

1 fingerprints and a photograph are already on file with the
2 department, these may be waived.

3 (c) An applicant for a permit shall sign a waiver at the
4 time of application, allowing the chief of police of the county
5 issuing the permit access to any records that have a bearing on
6 the mental health of the applicant. The permit application form
7 and the waiver form shall be prescribed by the attorney general
8 and shall be uniform throughout the State.

9 (d) The chief of police of the respective counties may
10 issue permits to acquire electric projectile guns to citizens or
11 legal aliens of the United States of the age of eighteen years
12 or more.

13 (e) The permit application form shall be signed by the
14 applicant and by the issuing authority. One copy of the permit
15 shall be retained by the issuing authority as a permanent
16 official record. Except for sales to dealers licensed under
17 section 134-E, no permit shall be issued to an applicant earlier
18 than fourteen calendar days after the date of the application;
19 provided that a permit shall be issued or the application denied
20 before the twentieth day from the date of application. Permits
21 issued to acquire any electric projectile gun shall be void
22 unless used within ten days after the date of issue. Permits to

1 acquire an electric projectile gun shall require a separate
2 application and permit for each transaction. The issuing
3 authority shall perform an inquiry on an applicant by using the
4 International Justice and Public Safety Network, including the
5 United States Immigration and Customs Enforcement query, and the
6 National Crime Information Center, pursuant to section 846-2.7
7 before any determination to issue a permit or to deny an
8 application is made.

9 (f) In all cases where an electric projectile gun is
10 acquired from another person within the State, the permit shall
11 be signed in ink by the person to whom title to the electric
12 projectile gun is transferred and shall be delivered to the
13 person who is transferring title to the electric projectile gun,
14 who shall verify that the person to whom the electric projectile
15 gun is to be transferred is the person named in the permit and
16 enter on the permit in the space provided the following
17 information: name of the person to whom the title to the
18 electric projectile gun was transferred; names of the
19 manufacturer and importer; model; and serial number, as
20 applicable. The person who is transferring title to the
21 electric projectile gun shall sign the permit in ink and cause
22 the permit to be delivered or sent by registered mail to the

1 issuing authority within forty-eight hours after transferring
2 the electric projectile gun.

3 In all cases where receipt of an electric projectile gun is
4 had by mail, express, freight, or otherwise from sources without
5 the State, the person to whom the permit has been issued shall
6 make the prescribed entries on the permit, sign the permit in
7 ink, and cause the permit to be delivered or sent by registered
8 mail to the issuing authority within forty-eight hours after
9 taking possession of the electric projectile gun.

10 (g) No person shall be issued a permit under this section
11 unless the person, at any time prior to the issuance of the
12 permit, has completed an electric projectile gun safety or
13 training course, offered by the county, or approved by the
14 county, that focuses on:

- 15 (1) The safe use and handling of electric projectile guns;
16 (2) Current information about the effects, dangers, risks,
17 and limitations of electric projectile guns; and
18 (3) Education on the current state laws on electric
19 projectile guns.

20 (h) No person shall sell, give, lend, or deliver into the
21 possession of another any electric projectile gun except in
22 accordance with this part.

1 (i) No fee shall be charged for permits, or applications
2 for permits, under this section, except for a single fee
3 chargeable by and payable to the issuing county, for individuals
4 applying for their first permit, in an amount equal to the fee
5 charged by the Hawaii criminal justice data center pursuant to
6 section 846-2.7.

7 (j) Any person, including any licensee, violating
8 subsections (a), (f), or (h) shall be guilty of a misdemeanor.

9 **§134-D Registration.** (a) Every person arriving in the
10 State who brings or by any other manner causes to be brought
11 into the State an electric gun of any description, whether
12 usable or unusable, serviceable or unserviceable, shall register
13 the electric gun within five days after arrival of the person or
14 of the electric gun, whichever arrives later, with the chief of
15 police of the county of the person's place of business or, if
16 there is no place of business, the person's residence or, if
17 there is neither a place of business nor residence, the person's
18 place of sojourn

19 Every person registering an electric gun under this
20 subsection shall be fingerprinted and photographed by the police
21 department of the county of registration; provided that this
22 requirement shall be waived where fingerprints and photographs

1 are already on file with the police department. The police
2 department shall perform an inquiry on the person by using the
3 International Justice and Public Safety Network, including the
4 United States Immigration and Customs Enforcement query, and the
5 National Crime Information Center, pursuant to section 846-2.7
6 before any determination to register an electric gun is made.
7 If the electric gun has no serial number, an application for a
8 permit pursuant to section 134-D shall be completed and the
9 permit number shall be entered in the space provided for the
10 serial number, and the permit number shall be engraved upon the
11 electric gun prior to registration.

12 (b) Every person who manufactures an electric gun shall
13 register the electric gun in the manner prescribed by this
14 section within five days of manufacture. A licensee shall not
15 be required to have the electric guns physically inspected by
16 the chief of police at the time of registration.

17 Every person registering an electric gun under this
18 subsection shall be fingerprinted and photographed by the police
19 department of the county of registration; provided that this
20 requirement shall be waived where fingerprints and photographs
21 are already on file with the police department. The police
22 department shall perform an inquiry on the person by using the

1 International Justice and Public Safety Network, including the
2 United States Immigration and Customs Enforcement query, and the
3 National Crime Information Center, pursuant to section 846-2.7
4 before any determination to register an electric gun is made.
5 If the electric gun has no serial number, an application for a
6 permit pursuant to section 134-D shall be completed and the
7 permit number shall be entered in the space provided for the
8 serial number, and the permit number shall be engraved upon the
9 electric gun prior to registration.

10 (c) Every person who acquires an electric projectile gun
11 pursuant to section 134-F shall register the electric projectile
12 gun in the manner prescribed by this section within five days of
13 acquisition. If the electric projectile gun has no serial
14 number, the permit number shall be entered in the space provided
15 for the serial number, and the permit number shall be engraved
16 upon the electric projectile gun prior to registration.

17 (d) The registration shall be on forms prescribed by the
18 attorney general, which shall be uniform throughout the State,
19 and shall include the following information: name of the
20 manufacturer and importer; model; serial number; and source from
21 which receipt was obtained, including the name and address of
22 the prior registrant. All registration data that would identify

1 the individual registering the electric gun by name or address
2 shall be confidential and shall not be disclosed to anyone,
3 except as may be required:

- 4 (1) For processing the registration;
- 5 (2) For database management by the Hawaii criminal justice
6 data center;
- 7 (3) By a law enforcement agency for the lawful performance
8 of its duties; or
- 9 (4) By order of a court.

10 (c) A licensee shall register electric projectile guns
11 pursuant to this section on registration forms prescribed by the
12 attorney general and shall not be required to have the electric
13 projectile guns physically inspected by the chief of police at
14 the time of registration.

15 (d) No fee shall be charged for the registration of a
16 electric gun under this section, except for a fee chargeable by
17 and payable to the registering county for persons registering a
18 electric gun under subsection (a) or (b), in an amount equal to
19 the fee charged by the Hawaii criminal justice data center
20 pursuant to section 846-2.7.

21 (e) Any person, including any licensee, violating this
22 section shall be guilty of a misdemeanor.

1 **§134-E License to sell or distribute electric guns; fee.**

2 (a) Any person desiring to sell, offer for sale, distribute, or
3 otherwise transfer electric guns or cartridges to a person in
4 the State, either at wholesale or retail, shall annually file an
5 application for a license to do so with the county in which the
6 person desires to conduct business or within the county to which
7 the person intends the electric guns to be distributed, using
8 forms prescribed by the county.

9 (b) If the applicant is an individual, the application and
10 supporting documentation must establish at least the following,
11 in addition to any other information the county may require:

12 (1) The legal name, date of birth, and the last four
13 digits of the social security number of the
14 individual;

15 (2) The street address, telephone number, fax number, and
16 email address of the individual;

17 (3) The name and location of the principal place of
18 business of the applicant and, if applicable, each
19 additional designated place of business from which the
20 applicant desires to sell electric guns;

21 (4) The applicant's Hawaii tax identification number;

22 (5) The applicant has had no convictions for any felony

1 offense; and

2 (6) Within the last three years, the applicant has
3 completed an electric gun safety or training course,
4 offered by the county, or approved by the county, that
5 focuses on:

6 (i) The safe use and handling of electric guns;

7 (ii) Current information about the effects, dangers,
8 risks, and limitations of electric guns; and

9 (iii) Education on the current state laws on electric
10 guns.

11 (c) If the applicant is not an individual, the application
12 and supporting documentation must establish at least the
13 following, in addition to any other information the county may
14 require:

15 (1) The name of the applying entity and any other name
16 under which the applying entity does business, if
17 applicable;

18 (2) The street address, telephone number, fax number, and
19 email address of the applying entity;

20 (3) The legal name, date of birth, and the last four
21 digits of the social security number of each of the
22 principals or members of the applying entity;

- 1 (4) The street address, telephone number, fax number, and
2 email address of each of the principals or members of
3 the applying entity;
- 4 (5) The name and location of the principal place of
5 business of the applying entity and, if applicable,
6 each additional designated place of business from
7 which the applying entity desires to sell electric
8 guns;
- 9 (6) The applying entity is registered to do business in
10 the State;
- 11 (7) The applying entity is composed of principals or
12 members who have had no convictions for any felony
13 offense;
- 14 (8) The applying entity has a Hawaii tax identification
15 number;
- 16 (9) The applying entity has a federal employer
17 identification number; and
- 18 (10) Within the last three years, at least one principal or
19 member of the applying entity has completed an
20 electric gun safety or training course, offered by the
21 county, or approved by the county, that focuses on:
22 (i) The safe use and handling of electric guns;

1 **§134-F The sale or transfer of electric guns.** (a) A
2 licensee shall post the license to sell or distribute electric
3 guns, or a certified copy thereof, in a location readily visible
4 to customers at each designated place of business. For internet
5 sales by a licensee, the license number shall be prominently
6 displayed and an electronic copy of the license shall be readily
7 accessible to the customer.

8 (b) An individual licensee shall complete, every three
9 years, an electric gun safety or training course, offered by the
10 county, or approved by the county, that focuses on:

- 11 (1) The safe use and handling of electric guns;
12 (2) Current information about the effects, dangers,
13 risks, and limitations of electric guns; and
14 (3) Education on the current state laws on electric
15 guns.

16 A licensee shall keep copies of the certificates of
17 completion of these training courses in the licensee's business
18 records.

19 (c) A licensee shall require employees who participate in
20 the sale or transfer of electric guns or cartridges, to
21 complete, every three years, an electric gun safety or training

1 course, offered by the county, or approved by the county, that
2 focuses on:

- 3 (1) The safe use and handling of electric guns;
- 4 (2) Current information about the effects, dangers,
5 risks, and limitations of electric guns; and
- 6 (3) Education on the current state laws on electric
7 guns.

8 A licensee shall not allow an employee to participate in
9 the sale or transfer of electric guns or cartridges until the
10 employee completes the electric gun safety or training course.

11 A licensee shall keep copies of the certificates of
12 completion of these training courses for each of these employees
13 in the licensee's business records.

14 (d) If there is no manufacturer serial number on an
15 electric gun or cartridge received into inventory by a licensee,
16 then the licensee shall engrave on the electric gun or cartridge
17 a legible unique serial number that begins with the licensee's
18 license number, followed by a hyphen and a unique identifying
19 number.

20 (e) A licensee shall keep records for all electric guns
21 and cartridges received into inventory within the State,
22 including:

- 1 (1) Information identifying the seller, distributor, or
2 transferor of the electric gun or cartridge; and
- 3 (2) The transaction record for the electric gun or
4 cartridge, including the date of receipt, a
5 description of the electric gun or cartridge, the
6 manufacturer's serial number or the unique identifying
7 serial number engraved by the licensee, and if
8 available, the manufacturer and the model number.

9 (f) Prior to completing a sale or other transfer of an
10 electric gun that does not require the purchaser to obtain a
11 permit, the licensee or an employee of the licensee shall
12 provide an informational briefing to the recipient that
13 includes, but is not limited to, the following:

- 14 (1) The safe use and handling of electric guns;
15 (2) Current information about the effects, dangers,
16 risks, and limitations of electric guns;
17 (3) Education on the current state laws on electric
18 guns; and
19 (4) The proper disposal of electric guns.

20 (g) Upon completion of the informational briefing, the
21 licensee shall provide a certification of informational briefing
22 that is signed and dated by the recipient and the person who

1 provided the briefing acknowledging the completion of the
2 briefing and that the recipient understood the briefing and
3 includes the names of the recipient and the person who provided
4 the informational briefing, and the date of the briefing. The
5 form of the certification shall be as provided by the county
6 office that issued the license to the licensee.

7 (h) A licensee shall keep a record of the information
8 provided to recipients during the informational briefings.

9 (i) A licensee shall keep records of all sales,
10 distributions, and other transactions of electric guns and
11 cartridges sold in the State or to a recipient in the State,
12 including:

13 (1) The recipient's name, date of birth, address, and
14 telephone number;

15 (2) A copy of the recipient's government-issued
16 identification card or document;

17 (3) The transaction record for the electric gun or
18 cartridge, including the date of the transaction, a
19 description of the electric gun or cartridge, name of
20 the manufacturer, serial and model numbers, and if
21 necessary, the unique serial number engraved by the
22 licensee; and

1 (4) A copy of the certification of informational briefing
2 signed and dated by the recipient and the person who
3 provided the briefing.

4 (5) For sales of an electric projectile gun, a copy of the
5 permit.

6 (6) For sales of a cartridge, a copy of the registration
7 for an electric projectile gun.

8 (j) A licensee shall also keep a record of the licensee's
9 current inventory of electric guns and cartridges.

10 (k) During normal business hours, a licensee shall allow
11 the chief of police of the appropriate county or designee to
12 inspect the licensee's books and records for all records
13 required to be kept by the licensee for electric guns and
14 cartridges. At the discretion of the chief of police of the
15 appropriate county or designee, the inspection of the records
16 may be conducted via facsimile transmittal of the records.

17 (1) A licensee shall keep records required by this section
18 for a minimum of ten years. If a licensee, as a result of death
19 or dissolution, cannot maintain the records, the records shall
20 be turned over to the chief of police of the appropriate county
21 or designee.

1 (m) When displaying or storing electric guns or cartridges
2 at designated places of business, a licensee shall display or
3 store the electric guns and cartridges in a locked cabinet or
4 area not accessible to the general public.

5 (n) During normal business hours, a licensee shall allow
6 the chief of police of the appropriate county or designee to
7 physically inspect all electric guns and cartridges in the
8 possession and control of the licensee wherever they may be
9 located within the State.

10 (o) A licensee shall only sell or transfer a cartridge to
11 a person who presents an original registration for an electric
12 projectile gun that is in the person's name.

13 (o) Any person, including any licensee, violating this
14 section shall be guilty of a misdemeanor.

15 (p) A license may be suspended or revoked for a violation
16 of any of the requirements of this section.

17 **§134-G Disposal of electrical gun.** A person who is not a
18 licensee pursuant to section 134-E may sell or otherwise
19 transfer an electric gun or cartridge to a licensee or may
20 surrender the electric gun or cartridge to the chief of police
21 of the appropriate county or designee. The chief of police may
22 either destroy the electric gun or cartridge, or utilize the

1 electric gun or cartridge for educational purposes. The chief
2 of police shall maintain records of all surrendered electric
3 guns and cartridges, including their disposition.

4 **§134-H Ownership or possession prohibited.** (a) No person
5 who is a fugitive from justice shall own, possess, or control an
6 electric gun.

7 (b) No person who is under indictment for, or has waived
8 indictment for, or has been bound over to the circuit court for,
9 or has been convicted in this State or elsewhere of having
10 committed a felony, or any crime of violence, or any illegal
11 sale of any drug shall own, possess, or control an electric gun.

12 (c) No person who:

- 13 (1) Is or has been under treatment or counseling for
14 addiction to, abuse of, or dependence upon any
15 dangerous, harmful, or detrimental drug, intoxicating
16 compound as defined in section 712-1240, or
17 intoxicating liquor;
- 18 (2) Has been acquitted of a crime on the grounds of mental
19 disease, disorder, or defect pursuant to section 704-
20 411; or
- 21 (3) Is or has been diagnosed as having a significant

1 behavioral, emotional, or mental disorders as defined
2 by the most current diagnostic manual of the American
3 Psychiatric Association or for treatment for organic
4 brain syndromes;

5 shall own, possess, or control an electric gun, unless the
6 person has been medically documented to be no longer adversely
7 affected by the addiction, abuse, dependence, mental disease,
8 disorder, or defect.

9 (d) No person who is less than twenty-five years of age
10 and has been adjudicated by the family court to have committed a
11 felony, or two or more crimes of violence, or an illegal sale of
12 any drug shall own, possess, or control an electric gun.

13 (e) No minor shall own, possess, or control an electric
14 gun.

15 (f) No person shall possess an electric gun that is owned
16 by another, regardless of whether the owner has consented to
17 possession of the electric gun.

18 (g) No person who has been restrained pursuant to an order
19 of any court from contacting, threatening, or physically abusing
20 any person or from possessing or owning a firearm, shall
21 possess, control, or transfer ownership of an electric gun, so
22 long as the protective order, restraining order, or any

1 extension is in effect, unless the order, for good cause shown,
2 specifically permits the possession of an electric gun. The
3 restraining order or order of protection shall specifically
4 include a statement that possession, control, or transfer of an
5 electric gun by the person named in the order is prohibited.
6 Such person shall relinquish possession and control of any
7 electric gun owned by that person to the police department of
8 the appropriate county for safekeeping for the duration of the
9 order or extension thereof.

10 In the case of an ex parte order that includes a
11 restriction on the possession, control, or transfer of an
12 electric gun, the affidavit or statement under oath that forms
13 the basis for the order shall contain a statement of the facts
14 that support a finding that the person to be restrained owns,
15 intends to obtain or to transfer, or possesses an electric gun,
16 and that the electric gun may be used to threaten, injure, or
17 abuse any person. The ex parte order shall be effective upon
18 service pursuant to section 586-6.

19 At the time of service of a restraining order involving
20 electric guns issued by any court, the police officer may take
21 custody of any and all electric guns in plain sight, those

1 discovered pursuant to a consensual search, and those electric
2 guns surrendered by the person restrained.

3 For the purposes of this subsection, good cause shall not
4 be based solely upon the consideration that the person subject
5 to restraint pursuant to an order of any court, including an ex
6 parte order as provided for in this subsection, is required to
7 possess or carry an electric gun during the course of the
8 person's employment. Good cause may include but need not be
9 limited to the protection and safety of the person to whom a
10 restraining order is granted.

11 (h) Any person disqualified from ownership, possession,
12 control, or the right to transfer ownership of an electric gun
13 under this section shall surrender or dispose of all electric
14 guns in compliance with section 134-G.

15 (i) For the purposes of enforcing this section, and
16 notwithstanding section 571-84 or any other law to the contrary,
17 any agency within the State shall make its records relating to
18 family court adjudications available to law enforcement
19 officials.

20 (j) Any person violating subsection (a) or (b) shall be
21 guilty of a class C felony. Any person violating subsection

1 (c), (d), (e), (f), (g), or (h) shall be guilty of a
2 misdemeanor.

3 **§134-I Exemptions.** (a) Sections 134-B, 134-C, 134-D, and
4 134-H(f) shall not apply to:

5 (1) Law enforcement agencies and law enforcement officers
6 acting within the course of their employment; and

7 (2) The army or air national guard and its members when
8 they are assisting civil authorities in disaster
9 relief, emergency management, or law enforcement
10 functions, subject to the requirements of section
11 121-34.5;

12 provided that the electric guns shall be acquired by the law
13 enforcement agencies or the army or air national guard and not
14 individual law enforcement officers or members of the army or
15 air national guard, and shall remain in the custody and control
16 of law enforcement agencies, or the army or air national guard.

17 (b) Law enforcement agencies that authorize use of
18 electric guns by its law enforcement officers and the army or
19 air national guard shall provide training from the manufacturer
20 or from a manufacturer-approved training program, as well as by
21 manufacturer-certified or manufacturer-approved instructors in

1 the use of electric guns prior to deployment of the electric
2 guns and related equipment in public.

3 (c) The law enforcement agencies that authorize use of
4 electric guns by its law enforcement officers and the army or
5 air national guard shall maintain records regarding every
6 electric gun in its custody and control. The records shall
7 report every instance of usage of the electric guns; in
8 particular, records shall be maintained in a similar manner as
9 for those of discharging of electric projectile guns. The law
10 enforcement agencies and the army and air national guard shall
11 annually report to the legislature regarding these records no
12 later than twenty days before the beginning of each regular
13 session of the legislature.

14 (d) The licensing requirement of sections 134-B(b) and
15 134-E shall not apply to the sale of electric guns and
16 cartridges by the electric gun manufacturers distributing
17 directly to law enforcement agencies, or the army or air
18 national guard.

19 **§134-J Storage of electric gun; responsibility with**
20 **respect to minors.** (a) No person shall store or keep any
21 electric gun on any premises under the person's control if the

1 person knows or reasonably should know that a minor is likely to
2 gain access to the electric gun, unless the person:

3 (1) Keeps the electric gun in a securely locked box or
4 other container or in a location that a reasonable
5 person would believe to be secure; or

6 (2) Carries the electric gun on the person or within such
7 close proximity thereto that the minor cannot gain
8 access or control of the electric gun.

9 (b) Any person violating this section shall be guilty of a
10 misdemeanor.

11 **§134-K Carrying or use of electric gun in the commission**
12 **of a separate misdemeanor.** (a) It shall be unlawful for a
13 person to knowingly carry on the person or have within the
14 person's immediate control or intentionally use or threaten to
15 use an electric gun, whether operable or not, while engaged in
16 the commission of a separate misdemeanor, provided that a person
17 shall not be prosecuted under this subsection when the separate
18 misdemeanor is a misdemeanor defined by this chapter.

19 (b) A conviction and sentence under this section shall be
20 in addition to and not in lieu of any conviction and sentence
21 for the separate misdemeanor; provided that the sentence imposed

1 under this section may run concurrently or consecutively with
2 the sentence for the separate misdemeanor.

3 (c) Any person violating this section shall be guilty of a
4 class C felony.

5 **§134-L Carrying or use of electric gun in the commission**
6 **of a separate felony.** (a) It shall be unlawful for a person to
7 knowingly carry on the person or have within the person's
8 immediate control or intentionally use or threaten to use an
9 electric gun, whether operable or not, while engaged in the
10 commission of a separate felony, provided that a person shall
11 not be prosecuted under this subsection when the separate felony
12 is a felony defined by this chapter.

13 (b) A conviction and sentence under this section shall be
14 in addition to and not in lieu of any conviction and sentence
15 for the separate felony; provided that the sentence imposed
16 under this section may run concurrently or consecutively with
17 the sentence for the separate felony.

18 (c) Any person violating this section shall be guilty of a
19 class B felony."

20 SECTION 3. Section 121-34.5, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "**§121-34.5 Use of electric guns.** Members of the army or
2 air national guard who have been qualified by training and are
3 authorized by their commanders may use electric guns, as
4 specifically provided in section [~~134-16(c) and (d)~~], 134-I,
5 when assisting civil authorities in disaster relief, emergency
6 management, or law enforcement functions; provided that
7 "training" for the purposes of this section means a course of
8 instruction or training in the use of any electric gun
9 authorized pursuant to this section, that is provided or
10 authorized by the manufacturer or is manufacturer-approved or is
11 an electric gun training program approved by the army or air
12 national guard, prior to deployment or issuance of electric guns
13 and related equipment."

14 SECTION 4. Section 134-1, Hawaii Revised Statutes, is
15 amended by deleting the definition of "electric gun":

16 [~~"Electric gun" means any portable device that is~~
17 ~~electrically operated to project a missile or electromotive~~
18 ~~force. It does not include any electric livestock prod used in~~
19 ~~animal husbandry and any automatic external defibrillator used~~
20 ~~in emergency medical situations.]~~

21 SECTION 5. Section 134-3.5, Hawaii Revised Statutes, is
22 amended to read as follows:

1 **"§134-3.5 Disclosure for firearm permit and registration**
2 **purposes.** A health care provider or public health authority
3 shall disclose health information, including protected health
4 care information, relating to an individual's mental health
5 history, to the appropriate county chief of police in response
6 to a request for the information from the chief of police;
7 provided that:

8 (1) The information shall be used only for the purpose of
9 evaluating the individual's fitness to acquire or own
10 a firearm or electric gun; and

11 (2) The individual has signed a waiver permitting release
12 of the health information for that purpose."

13 SECTION 6. Section 134-17, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) Any person who violates section 134-2, 134-4, 134-10,
16 or 134-15[~~, or 134-16(a)~~] shall be guilty of a misdemeanor. Any
17 person who violates section 134-3(b) shall be guilty of a petty
18 misdemeanor and the electric projectile gun shall be confiscated
19 as contraband and disposed of, if the electric projectile gun is
20 not registered within five days of the person receiving notice
21 of the violation."

1 SECTION 7. Section 134-16, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§134-16 Restriction on possession, sale, gift, or~~
4 ~~delivery of electric guns.~~ (a) ~~It shall be unlawful for any~~
5 ~~person, including a licensed manufacturer, licensed importer, or~~
6 ~~licensed dealer, to possess, offer for sale, hold for sale,~~
7 ~~sell, give, lend, or deliver any electric gun.~~

8 (b) ~~Any electric gun possessed, offered for sale, held for~~
9 ~~sale, sold, given, lent, or delivered in violation of subsection~~
10 ~~(a) shall be confiscated and disposed of by the chief of police.~~

11 (c) ~~This section shall not apply to:~~

12 (1) ~~Law enforcement officers of county police departments;~~

13 (2) ~~Law enforcement officers of the department of public~~
14 ~~safety;~~

15 (3) ~~Conservation and resources enforcement officers of the~~
16 ~~department of land and natural resources;~~

17 (4) ~~Members of the Army or Air National Guard when~~
18 ~~assisting civil authorities in disaster relief,~~
19 ~~emergency management, or law enforcement functions,~~
20 ~~subject to the requirements of section 121-34.5;~~

21 (5) ~~Law enforcement officers appointed by the director of~~
22 ~~transportation pursuant to section 266-24; and~~

1 ~~(6) Vendors providing electric guns to the individuals~~
2 ~~described in paragraphs (1) through (5);~~
3 ~~provided that electric guns shall at all times remain in the~~
4 ~~custody and control of the law enforcement officers of the~~
5 ~~county police departments, the law enforcement officers of the~~
6 ~~department of public safety, the conservation and resources~~
7 ~~enforcement officers of the department of land and natural~~
8 ~~resources, the members of the Army or Air National Guard, or law~~
9 ~~enforcement officers appointed by the director of~~
10 ~~transportation.~~

11 ~~(d) The county police departments of this State, the~~
12 ~~department of public safety, the department of land and natural~~
13 ~~resources, the army and air national guard, and the department~~
14 ~~of transportation shall maintain records regarding every~~
15 ~~electric gun in their custody and control. The records shall~~
16 ~~report every instance of usage of the electric guns; in~~
17 ~~particular, records shall be maintained in a similar manner as~~
18 ~~for those of discharging of firearms. The county police~~
19 ~~departments, the department of public safety, the department of~~
20 ~~land and natural resources, the army and air national guard, and~~
21 ~~the department of transportation shall annually report to the~~

1 ~~legislature regarding these records no later than twenty days~~
2 ~~before the beginning of each regular session of the legislature.~~

3 ~~(e) The department of land and natural resources, the~~
4 ~~department of public safety, and the department of~~
5 ~~transportation shall ensure that each of its conservation and~~
6 ~~resources enforcement officers and law enforcement officers who~~
7 ~~is authorized to use an electric gun and related equipment shall~~
8 ~~first receive training from the manufacturer or from a~~
9 ~~manufacturer approved training program, as well as by~~
10 ~~manufacturer-certified or approved instructors in the use of~~
11 ~~electric guns prior to deployment of the electric guns and~~
12 ~~related equipment in public. Training for conservation and~~
13 ~~resources enforcement officers of the department of land and~~
14 ~~natural resources, law enforcement officers of the department of~~
15 ~~public safety, and law enforcement officers of the department of~~
16 ~~transportation may be done concurrently to ensure cost savings.~~

17 ~~(f) No later than June 30, 2018, the conservation and~~
18 ~~resources enforcement program of the department of land and~~
19 ~~natural resources shall meet the law enforcement accreditation~~
20 ~~or recognition standards of the Commission on Accreditation for~~
21 ~~Law Enforcement Agencies, Inc., in the use of electric guns.~~

1 ~~(g) No later than June 30, 2024, the law enforcement~~
2 ~~officers appointed by the director of transportation shall meet~~
3 ~~the law enforcement accreditation or recognition standards of~~
4 ~~the Commission on Accreditation for Law Enforcement Agencies,~~
5 ~~Inc., in the use of electric guns."]~~

6 SECTION 8. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before the effective date of this Act.

9 SECTION 9. In codifying the new sections added to chapter
10 134, Hawaii Revised Statutes, by section 2 and referenced in
11 section 3 of this Act, the revisor of statutes shall substitute
12 appropriate section number for the letters used in designating
13 the new sections in this Act.

14 SECTION 10. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 11. This Act shall take effect upon its approval.

Report Title:

Electric Guns

Description:

Repeals section 134-16, Hawaii Revised Statutes, the current law that bans electric guns, and replaces it with a law that restricts the use, storage, transfer, and disposal of electric guns, regulates the sale of electric guns, requires training and education on electric guns, prohibits certain individuals from the possession and use of electric guns, prohibits the use of electric guns in the commission of crimes, and requires permits and registration of electric projectile guns.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE DN-DNK

February 12, 2020

The Honorable Gregg Takayama, Chair
and Members
Committee on Public Safety, Veterans, and
Military Affairs
House of Representatives
Hawaii State Capitol, Room 430
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Takayama and Members:

SUBJECT: House Bill No. 2292, Relating to Electric Guns

I am David Nilsen, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2292, Relating to Electric Guns, with several concerns.

This bill fails to provide for a permitting process to ensure a person prohibited in Section 134F, Hawaii Revised Statutes (HRS), from owning an electric gun, does not receive one. Additionally, there is no provision to HRS 134-3.5 that allows medical providers to release the medical information necessary to enforce the mental health prohibitions of Section 134F. The HPD supports changes to this bill similar to those made to Senate Bill No. 2437, Relating to Electric Guns.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in cursive script that reads "Susan Ballard".

Susan Ballard
Chief of Police

Sincerely,

A handwritten signature in cursive script that reads "David P. Nilsen".

David P. Nilsen, Major
Records and Identification Division

KM CONCEPTS

600 KAPIOLANI BLVD #103 HONOLULU HAWAII 96813

02/10/2020

Re: HB2292

To Whom it May Concern,

I am the owner of Gun Store and also a firearms instructor in Honolulu and I support the use of Electric Guns for personal defense, however I OPPOSE the way HB2292 is currently written.

As a store owner looking to sell Electric guns, both myself and my employees would be subject to mandatory classes every 3 years as well as pay annual licensing fees under HB2292. This would become very costly , for example the City & County License to sell Pepper Spray is only \$10 annually (not \$50 like proposed) and requires NO training classes and no engraved serial numbers. Only an in store presentation on proper storage and usage to the buyer along with a signed form saying he/she was informed by the seller are required to purchase pepper spray.

In a way this bill mirrors requirements to sell Pepper Spray, except more restrictive and costly to both the seller and consumer. I would like to see the bill amended with changes to the licensing from \$50 to \$10 annually, along with no training class requirements for sellers, and no serializing of electric guns. Electric guns should be made affordable to all law abiding citizens looking to protect themselves and not subject to price inflation due to the extra costs stemming from training and manpower to serialize these guns being passed down by sellers to consumers.

Mahalo for your time and consideration.

Regards,

Martin Lau
Owner

HB-2292

Submitted on: 2/10/2020 9:22:17 PM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James Michael Rosa	Rosa's Arms, LLC (FFL)	Oppose	No

Comments:

I'm a Federal Firearms Dealer on the Island of Kauai and this is a very bad bill for law abiding citizens in Hawaii. Here on Kauai you must go through this type of check to obtain pepper spray, which takes 2 weeks. This just may have cost a lady her life last year when she had NO defense against her ex-husband (with a TRO/ paper only) who shot her dead before the two week waiting period to purchase pepper spray was up. This is a very bad bill along with Kauai's pepper spray laws, while a criminal can purchase either pepper spray or an electric gun online or even break into a house and steal firearms while a law abiding citizen in Hawaii can't even defend themselves outside their own home. Those making this horrible laws must educate themselves of reality before bringing more harm to law abiding citizens of Hawaii.



COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

State Capitol, Room 430
Honolulu, Hawaii 96813
HEARING: Wednesday, February 12, 2020
TIME: 10:00AM
RE: HB2292

Aloha Members of the Senate Committee, The Hawaii Firearms Coalition OPPOSES HB2292

Hawaii Firearms Coalition is opposed to the changes being proposed to Hawaii's electric weapons laws because;

- This bill would severely hamper the public ability to own and use an electric weapon for self-defence
- The training required does not exist.
- Training would be costly.
- It prevents the gifting of electric weapons to a loved one or friend.
- The registration system would be burdensome to stores.
- Bill prevents online purchases.
- No other state has these requirements.
- Cheaper and/or easier to purchase a firearm,
- Items are not or can not be serialized.
- Impossible to enforce.

Andrew Namiki Roberts
Director
Hawaii Firearms Coalition
info@hifico.org

HB-2292

Submitted on: 2/11/2020 5:34:42 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Clifford Goo	Hawaii Rifle Association	Oppose	Yes

Comments:

HB2292 is very restrictive to say the least. 28 Pages of conditions and restrictions for the seller and buyer simply put.

There would not be an option for online purchases.

There are about 40 States that allow Stun Guns and Tasers with minimal to no restrictions.

The remaining States have more stringent restrictions but not nearly as much as Hawaii is considering.

Even California, as strict as they are with firearms acquisitions allow for purchase and possession of these **Non Lethal** tools for self defense. They have minimal requirements, sensible at least.

Hawaii would require a training program which is non-existent for the normal civilian.

Therefore even the cost of such training has not been determined.

Concerned citizens would not be able to give a stun gun or taser to a family member or loved one as a gift.

Though this bill is a step forward in acknowledging possible purchase and possession of these non-lethal tools for self defense, it is far from being realistic. We need to look at the other States requirements and adapt a more sensible approach. Why does Hawaii make it so hard for normal people to protect themselves.

HB-2292

Submitted on: 2/6/2020 7:27:41 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki	Individual	Support	No

Comments:

HB-2292

Submitted on: 2/9/2020 2:45:02 PM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Kacatin	Individual	Oppose	No

Comments:

OPPOSE. This law would make it cheaper to own a firearm than a taser, It does not allow for carrying outside of the home, place of sojourn or employment.

The training suggested in this measure does not exist and would be cost prohibitive should a training method be developed.

Overall, this entire measure only serves as a deterrent for law-abiding citizens that want a method of self defense if they chose to not own a firearm.

HB-2292

Submitted on: 2/10/2020 10:38:07 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcus Tanaka	Individual	Oppose	No

Comments:

I oppose this bill because it has strict requirements to buy an electric gun and as well for the sellers. This would increase the cost. Some people live on a tight budget and want to protect themselves, but cannot afford to do so if Hawaii makes all these requirements.

Also this would prevent tasers from being ordered online. Many other states do not have such requirements and allow online ordering.

PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of anthony kaauiwai <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 7:51 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is anthony kaauiwai

I am opposed to this bill, it will be just as hard if not harder and more expensive than an actual firearm

If you have any questions I can be reached at tktrailer@yahoo.com
The above testinony was written and submitted by anthony kaauiwai
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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Blaine Stuart <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 12:54 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Blaine Stuart

This bill has many flaws. It still prohibits the right of the people to “bear” these self defense weapons likely violating the second amendment. It also makes the permitting system unnecessarily burdensome and costly.

If you have any questions I can be reached at findbgs@gmail.com

The above testinony was written and submitted by Blaine Stuart

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of David Lau <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 12:43 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is David Lau

- This bill would severely hamper the public ability to own and use a taser for self-defense.
- The training required does not exist.
- Training would be costly.
- It prevents the gifting of tasers to a loved one or friend.
- The registration system would be burdensome to stores and retailers.
- Bill prevents online purchases.
- No other state has these requirements.
- Cheaper and/or easier to purchase a firearm.
- Items are not serialized

I oppose this bill.

If you have any questions I can be reached at vicness151@yahoo.com

The above testinony was written and submitted by David Lau

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of James Palicte <feedblitz@mail.feedblitz.com>
Sent: Monday, February 10, 2020 9:12 AM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is James Palicte

Aloha,

I am writing to provide testimony in opposition to HB2292. According to this bill, the ban on electric guns would be repealed. While initially I was for this bill, further research shows that this bill is again, entirely too restrictive. For one, the training requirement-training does not exist for taser use outside of military/LEO organizations. The registration system requirements are also burdensome and overbearing to stores and retailers. Other states across the nation readily sell electric guns with little to no regulation with little to no negative effect. Furthermore, electric guns are not serialized like firearms, which would make any attempt to track them next to impossible. With all the regulations and rules this bill requires, many would see it more logical to own a firearm over going through the process of obtaining a taser/electric gun. If this bill can be amended to loosen restrictions on law-abiding citizens, I could support it, however, as it stands, I cannot. Thank you for your consideration.

Mahalo,
-James P.

If you have any questions I can be reached at dewd019@gmail.com
The above testinony was written and submitted by James Palicte
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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Joseph Bussen <feedblitz@mail.feedblitz.com>
Sent: Monday, February 10, 2020 9:58 AM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Joseph Bussen

I am against anything that disarms law abiding citizens without mental or criminal issues. Oh and alcoholism is not a crime.

§134-7 Ownership or possession prohibited,

(1) Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;

If you have any questions I can be reached at josephbussen@gmail.com

The above testinomy was written and submitted by Joseph Bussen

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of MAKANI CHRISTENSEN <feedblitz@mail.feedblitz.com>
Sent: Monday, February 10, 2020 9:53 AM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is MAKANI CHRISTENSEN

I AM IN OPPOSITION TO HB2292

If you have any questions I can be reached at MAKANI.CHRISTENSEN@GMAIL.COM

The above testinony was written and submitted by MAKANI CHRISTENSEN

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Michael Rice <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 1:44 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Michael Rice

I oppose this bill because of the cost for the required training would make it a less viable option than buying and using a gun for self defense. Also many tasers are not serialized which would make it impossible to register the serial number with HPD. I also believe that existing laws would be sufficient to punish someone who uses a taser in a crime (it is a weapon, deadly or not).

If you have any questions I can be reached at michaelirice@outlook.com

The above testinony was written and submitted by Michael Rice

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Robert Coster <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 2:53 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Robert Coster

I am writing in opposition to HB2292. This bill if passed into law does not address any current issue in Hawaiian society. Again, another law which is search of a crime to solve that doesn't exist. Just more legislation for more government control. What needs to be submitted is a very simple bill that just vacates the current HRS 134-16 taking it off the books.

Regards,

Robert A. Coster

If you have any questions I can be reached at rcoster22@yahoo.com

The above testinony was written and submitted by Robert Coster

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Shyla Moon <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 4:52 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Shyla Moon

Oppose. I agree with all of these points below: This bill would severely hamper the public ability to own and use a taser for self-defense.

The training required does not exist.

Training would be costly.

It prevents the gifting of tasers to a loved one or friend.

The registration system would be burdensome to stores and retailers.

Bill prevents online purchases.

No other state has these requirements.

Cheaper and/or easier to purchase a firearm.

Items are not serialized.

Impossible to enforce.

Thank you,
Shyla Moon
District 16 Kauai

If you have any questions I can be reached at shyla.moon@ymail.com

The above testinony was written and submitted by Shyla Moon

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Tom Lodge <tom@tomlodgeinsurance.com>
Sent: Sunday, February 9, 2020 2:46 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Tom Lodge

This bill would severely hamper the public ability to own and use a taser for self-defense.
The training required does not exist.
Training would be costly.
It prevents the gifting of tasers to a loved one or friend.
The registration system would be burdensome to stores and retailers.
Bill prevents online purchases.
No other state has these requirements.
Cheaper and/or easier to purchase a firearm.
Items are not serialized.
Impossible to enforce.

If you have any questions I can be reached at tom@tomlodgeinsurance.com

The above testinony was written and submitted by Tom Lodge

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Wesley Ladera <feedblitz@mail.feedblitz.com>
Sent: Sunday, February 9, 2020 8:51 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Wesley Ladera

I oppose bill HB2292 for reasons that it will take away the right for my wife to protect herself from any harm. She works overnight shift from 10pm -6am in the morning. Going to work late at night and coming home at that time is a dangerous time for her walking to her car or arriving at home when dark as I'm usually not home and off to work. This will put her at risk to not have some kind of means to protect herself.

If you have any questions I can be reached at waimearim@yahoo.com

The above testinony was written and submitted by Wesley Ladera

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of William Chase <wmc@hawaii.edu>
Sent: Monday, February 10, 2020 9:59 AM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is William Chase

Do not like the fact it makes it almost impossible to obtain. How is this going to affect the elderly; who want an option other than a firearm to protect them selve but are unable to complete the requirements to own.

If you have any questions I can be reached at wmc@hawaii.edu
The above testinony was written and submitted by William Chase
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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Joel Jenkins <feedblitz@mail.feedblitz.com>
Sent: Monday, February 10, 2020 7:19 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Joel Jenkins

Would you rather people resort to gun violence? This bill would severely hamper the public ability to own and use a taser for self-defense. Doesn't it make more sense to give people an option for a less lethal form of self-defense?

This bill prevents the gifting of tasers to a loved one or friend.

Bill prevents online purchases.

No other state has these requirements.

Cheaper and/or easier to purchase a firearm.

Impossible to enforce.

If you have any questions I can be reached at jenkins785@gmail.com

The above testinony was written and submitted by Joel Jenkins

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PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Ron Klapperich <feedblitz@mail.feedblitz.com>
Sent: Monday, February 10, 2020 7:22 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Ron Klapperich

I oppose this bill because it is too restrictive.

This bill would severely hamper the public ability to own and use a taser for self-defense.

The training required does not exist.

Training would be costly.

It prevents the gifting of tasers to a loved one or friend.

The registration system would be burdensome to stores and retailers.

Bill prevents online purchases.

No other state has these requirements.

Cheaper and/or easier to purchase a firearm.

Items are not serialized.

Impossible to enforce.

If you have any questions I can be reached at rgklapp@yahoo.com

The above testinony was written and submitted by Ron Klapperich

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Ridiculous red-tape that serves absolutely no (“public safety”) purpose at all other than to continue the traitorous and contemptuous attempt by Hawaii progressive politicians to restrict ownership and possession of weapons in direct and obvious violation of their oath of office to abide by the Constitution which guarantees that government agents may not violate our natural rights, including the right to keep and bear arms for, among other purposes, self-defense and militia action.

Amend the HRS to delete any and all restrictions of any kind on the ownership of any and all weapons suitable for self-defense and/or militia action, including electric weapons.

I've included the reasoning of the Supreme Court of the United States in their unanimous Caetano decision, as well as the concurrence by Justices Alito and Thomas.

I've also included an amicus brief by Arming Women Against Rape and Endangerment (AWARE), and another amicus brief as well, demonstrating that your attempts to violate our rights are perversions of the very concept of government being the primary structure and guardian intended to “secure the blessings of liberty”. You, as in this case, consistently do the opposite.

Anything the state of Hawaii does that impedes, in any way at all, anyone from acquiring any self-defense weapon, including by imposing fees and training requirements on women wanting to use such arms as protection against rape and assault are gross violations of all American citizens natural, god-given rights as protected by the Constitution in the Bill of Rights.

SUPREME COURT OF THE UNITED STATES

JAIME CAETANO v. MASSACHUSETTS

on petition for writ of certiorari to the supreme judicial court of massachusetts
No. 14–10078. Decided March 21, 2016

Per??Curiam

The Court has held that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding,” *District of Columbia v. Heller*, 554 U. S. 570, 582 (2008), and that this “Second Amendment right is fully applicable to the States,” *McDonald v. Chicago*, 561 U. S. 742, 750 (2010). In this case, the Supreme Judicial Court of Massachusetts upheld a Massachusetts law prohibiting the possession of stun guns after examining “whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment.” 470 Mass. 774, 777, 26 N. E. 3d 688, 691 (2015).

The court offered three explanations to support its holding that the Second Amendment does not extend to stun guns. First, the court explained that stun guns are not protected because they “were not in common use at the time of the Second Amendment’s enactment.” *Id.*, at 781, 26 N. E. 3d, at 693. This is inconsistent with *Heller*’s clear statement that the Second Amendment “extends . . . to . . . arms . . . that were not in existence at the time of the founding.” 554 U. S., at 582.

The court next asked whether stun guns are “dangerous per se at common law and unusual,” 470 Mass., at 781, 26 N. E. 3d, at 694, in an attempt to apply one “important limitation on the right to keep and carry arms,” *Heller*, 554 U. S., at 627; see *ibid.* (referring to “the historical tradition of prohibiting

the carrying of ‘dangerous and unusual weapons’ ”). In so doing, the court concluded that stun guns are “unusual” because they are “a thoroughly modern invention.” 470 Mass., at 781, 26 N. E. 3d, at 693–694. By equating “unusual” with “in common use at the time of the Second Amendment’s enactment,” the court’s second explanation is the same as the first; it is inconsistent with *Heller* for the same reason.

Finally, the court used “a contemporary lens” and found “nothing in the record to suggest that [stun guns] are readily adaptable to use in the military.” 470 Mass., at 781, 26 N. E. 3d, at 694. But *Heller* rejected the proposition “that only those weapons useful in warfare are protected.” 554 U. S., at 624–625.

For these three reasons, the explanation the Massachusetts court offered for upholding the law contradicts this Court’s precedent. Consequently, the petition for a writ of certiorari and the motion for leave to proceed in forma pauperis are granted. The judgment of the Supreme Judicial Court of Massachusetts is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Concurrence

SUPREME COURT OF THE UNITED STATES

JAIME CAETANO v. MASSACHUSETTS

on petition for writ of certiorari to the supreme judicial court of massachusetts
No. 14–10078. Decided March 21, 2016

Justice Alito, with whom Justice Thomas joins, concurring in the judgment.

After a “bad altercation” with an abusive boyfriend put her in the hospital, Jaime Caetano found herself homeless and “in fear for [her] life.” Tr. 31, 38 (July 10, 2013). She obtained multiple restraining orders against her abuser, but they proved futile. So when a friend offered her a stun gun “for self-defense against [her] former boy friend,” 470 Mass. 774, 776, 26 N. E. 3d 688, 690 (2015), Caetano accepted the weapon.

It is a good thing she did. One night after leaving work, Caetano found her ex-boyfriend “waiting for [her] outside.” Tr. 35. He “started screaming” that she was “not gonna [expletive deleted] work at this place” any more because she “should be home with the kids” they had together. *Ibid.* Caetano’s abuser towered over her by nearly a foot and outweighed her by close to 100 pounds. But she didn’t need physical strength to protect herself. She stood her ground, displayed the stun gun, and announced: “I’m not gonna take this anymore. . . . I don’t wanna have to [use the stun gun on] you, but if you don’t leave me alone, I’m gonna have to.” *Id.*, at 35–36. The gambit worked. The ex-boyfriend “got scared and he left [her] alone.” *Id.*, at 36.

It is settled that the Second Amendment protects an individual right to keep and bear arms that applies against both the Federal Government and the States. *District of Columbia v. Heller*, 554 U. S. 570 (2008); *McDonald v. Chicago*, 561 U. S. 742 (2010). That right vindicates the “basic right” of “individual self-defense.” *Id.*, at 767; see *Heller*, *supra*, at 599, 628. Caetano’s encounter with her violent ex-boyfriend illustrates the connection between those fundamental rights: By arming herself,

Caetano was able to protect against a physical threat that restraining orders had proved useless to prevent. And, commendably, she did so by using a weapon that posed little, if any, danger of permanently harming either herself or the father of her children.

Under Massachusetts law, however, Caetano's mere possession of the stun gun that may have saved her life made her a criminal. See Mass. Gen. Laws, ch. 140, §131J (2014). When police later discovered the weapon, she was arrested, tried, and convicted. The Massachusetts Supreme Judicial Court affirmed the conviction, holding that a stun gun "is not the type of weapon that is eligible for Second Amendment protection" because it was "not in common use at the time of [the Second Amendment's] enactment." 470 Mass., at 781, 26 N. E. 3d, at 693.

This reasoning defies our decision in *Heller*, which rejected as "bordering on the frivolous" the argument "that only those arms in existence in the 18th century are protected by the Second Amendment." 554 U. S., at 582. The decision below also does a grave disservice to vulnerable individuals like Caetano who must defend themselves because the State will not.

I

The events leading to Caetano's prosecution occurred sometime after the confrontation between her and her ex-boyfriend. In September 2011, police officers responded to a reported shoplifting at an Ashland, Massachusetts, supermarket. The store's manager had detained a suspect, but he identified Caetano and another person in the parking lot as potential accomplices. Police approached the two and obtained Caetano's consent to search her purse. They found no evidence of shoplifting, but saw Caetano's stun gun. Caetano explained to the officers that she had acquired the weapon to defend herself against a violent ex-boyfriend.

The officers believed Caetano, but they arrested her for violating Mass. Gen. Laws, ch. 140, §131J, "which bans entirely the possession of an electrical weapon," 470 Mass., at 775, 26 N. E. 3d, at 689.1 When Caetano moved to dismiss the charge on Second Amendment grounds, the trial court denied the motion.

A subsequent bench trial established the following undisputed facts. The parties stipulated that Caetano possessed the stun gun and that the weapon fell within the statute's prohibition.² The Commonwealth also did not challenge Caetano's testimony that she possessed the weapon to defend herself against the violent ex-boyfriend. Indeed, the prosecutor urged the court "to believe the defendant." Tr. 40. The trial court nonetheless found Caetano guilty, and she appealed to the Massachusetts Supreme Judicial Court.

The Supreme Judicial Court rejected Caetano's Second Amendment claim, holding that "a stun gun is not the type of weapon that is eligible for Second Amendment protection." 470 Mass., at 775, 26 N. E. 3d, at 689. The court reasoned that stun guns are unprotected because they were "not 'in common use at the time' of enactment of the Second Amendment," *id.*, at 781, 26 N. E. 3d, at 693 (quoting *Heller*, *supra*, at 627), and because they fall within the "traditional prohibition against carrying dangerous and unusual weapons," 470 Mass., at 779, 26 N. E. 3d, at 692 (citing *Heller*, *supra*, at 627).

II

Although the Supreme Judicial Court professed to apply *Heller*, each step of its analysis defied *Heller*'s reasoning.

A

The state court repeatedly framed the question before it as whether a particular weapon was “ ‘in common use at the time’ of enactment of the Second Amendment.” 470 Mass., at 781, 26 N. E. 3d, at 693; see also *id.*, at 779, 780, 781, 26 N. E. 3d, at 692, 693, 694. In *Heller*, we emphatically rejected such a formulation. We found the argument “that only those arms in existence in the 18th century are protected by the Second Amendment” not merely wrong, but “bordering on the frivolous.” 554 U. S., at 582. Instead, we held that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Ibid.* (emphasis added).³ It is hard to imagine language speaking more directly to the point. Yet the Supreme Judicial Court did not so much as mention it.

Instead, the court seized on language, originating in *United States v. Miller*, 307 U. S. 174 (1939), that “ ‘the sorts of weapons protected were those “in common use at the time.” ’ ” 470 Mass., at 778, 26 N. E. 3d, at 692 (quoting *Heller*, *supra*, at 627, in turn quoting *Miller*, *supra*, at 179). That quotation does not mean, as the court below thought, that only weapons popular in 1789 are covered by the Second Amendment. It simply reflects the reality that the founding-era militia consisted of citizens “who would bring the sorts of lawful weapons that they possessed at home to militia duty,” *Heller*, 554 U. S., at 627, and that the Second Amendment accordingly guarantees the right to carry weapons “typically possessed by law-abiding citizens for lawful purposes,” *id.*, at 625. While stun guns were not in existence at the end of the 18th century, the same is true for the weapons most commonly used today for self-defense, namely, revolvers and semiautomatic pistols. Revolvers were virtually unknown until well into the 19th century,⁴ and semiautomatic pistols were not invented until near the end of that century.⁵ Electronic stun guns are no more exempt from the Second Amendment’s protections, simply because they were unknown to the First Congress, than electronic communications are exempt from the First Amendment, or electronic imaging devices are exempt from the Fourth Amendment. *Id.*, at 582 (citing *Reno v. American Civil Liberties Union*, 521 U. S. 844, 849 (1997), and *Kyllo v. United States*, 533 U. S. 27, 35–36 (2001)). As *Heller* aptly put it: “We do not interpret constitutional rights that way.” 554 U. S., at 582.

B

The Supreme Judicial Court’s holding that stun guns may be banned as “dangerous and unusual weapons” fares no better. As the *per curiam* opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is both dangerous and unusual. Because the Court rejects the lower court’s conclusion that stun guns are “unusual,” it does not need to consider the lower court’s conclusion that they are also “dangerous.” See *ante*, at 1–2. But make no mistake—the decision below gravely erred on both grounds.

1

As to “dangerous,” the court below held that a weapon is “dangerous *per se*” if it is “ ‘designed and constructed to produce death or great bodily harm’ and ‘for the purpose of bodily assault or defense.’ ” 470 Mass., at 779, 26 N. E. 3d, at 692 (quoting *Commonwealth v. Appleby*, 380 Mass. 296, 303, 402 N. E. 2d 1051, 1056 (1980)). That test may be appropriate for applying statutes criminalizing assault with a dangerous weapon. See *ibid.*, 402 N. E. 2d, at 1056. But it cannot be used to identify arms that fall outside the Second Amendment. First, the relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes. See *Heller*, *supra*, at 627 (contrasting “ ‘dangerous and unusual weapons’ ” that may be banned with protected “weapons . . . ‘in common use at the time’ ”). Second, even in cases where dangerousness might be relevant, the Supreme Judicial Court’s test sweeps far too broadly. *Heller* defined the “Arms” covered by the Second Amendment to include “ ‘any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.’ ” 554 U. S., at 581. Under the decision below, however, virtually

every covered arm would qualify as “dangerous.”

Were there any doubt on this point, one need only look at the court’s first example of “dangerous per se” weapons: “firearms.” 470 Mass., at 779, 26 N. E. 3d, at 692. If *Heller* tells us anything, it is that firearms cannot be categorically prohibited just because they are dangerous. 554 U. S., at 636. A fortiori, stun guns that the Commonwealth’s own witness described as “non-lethal force,” Tr. 27, cannot be banned on that basis.

2

The Supreme Judicial Court’s conclusion that stun guns are “unusual” rested largely on its premise that one must ask whether a weapon was commonly used in 1789. See 470 Mass., at 780–781, 26 N. E. 3d, at 693–694. As already discussed, that is simply wrong. See *supra*, at 4–6.

The court also opined that a weapon’s unusualness depends on whether “it is a weapon of warfare to be used by the militia.” 470 Mass., at 780, 26 N. E. 3d, at 693. It asserted that we followed such an approach in *Miller* and “approved its use in *Heller*.” 470 Mass., at 780, 26 N. E. 3d, at 693. But *Heller* actually said that it would be a “startling reading” of *Miller* to conclude that “only those weapons useful in warfare are protected.” 554 U. S., at 624. Instead, *Miller* and *Heller* recognized that militia members traditionally reported for duty carrying “the sorts of lawful weapons that they possessed at home,” and that the Second Amendment therefore protects such weapons as a class, regardless of any particular weapon’s suitability for military use. 554 U. S., at 627; see *id.*, at 624–625. Indeed, *Heller* acknowledged that advancements in military technology might render many commonly owned weapons ineffective in warfare. *Id.*, at 627–628. But such “modern developments . . . cannot change our interpretation of the right.” *Ibid.*

In any event, the Supreme Judicial Court’s assumption that stun guns are unsuited for militia or military use is untenable. Section 131J allows law enforcement and correctional officers to carry stun guns and Tasers, presumably for such purposes as nonlethal crowd control. Subduing members of a mob is little different from “suppress[ing] Insurrections,” a traditional role of the militia. U. S. Const., Art. I, §8, cl. 15; see also *ibid.* (militia may be called forth “to execute the Laws of the Union”). Additionally, several branches of the U. S. armed services equip troops with electrical stun weapons to “incapacitate a target without permanent injury or known side effects.” U. S. Army, Project Manager Close Combat Systems, PD Combat Munitions: Launched Electrode Stun Device (LESD), <http://www.pica.army.mil/pmccs/combatmunitions/nonlethalsys/taserx26e.html> (all Internet materials as last visited Mar. 18, 2016); see U. S. Marine Corps Administrative Message 560/08 (Oct. 2, 2008) (Marine Corps guidance for use of Tasers), <http://www.marines.mil/News/Messages/MessagesDisplay/tabid/13286/Article/113024/marine-corps-training-and-use-of-human-electromuscular-incapacitation-hemi-dev.aspx>; Joint Non-Lethal Weapons Directorate, Non-Lethal Weapons (NLW) Reference Book 3 (2012) (Department of Defense report stating that “[m]ultiple Services employ” Tasers), <http://dtic.mil/dtic/tr/fulltext/u2/a565971.pdf>.

C

As the foregoing makes clear, the pertinent Second Amendment inquiry is whether stun guns are commonly possessed by law-abiding citizens for lawful purposes today. The Supreme Judicial Court offered only a cursory discussion of that question, noting that the “number of Tasers and stun guns is dwarfed by the number of firearms.” 470 Mass., at 781, 26 N. E. 3d, at 693. This observation may be true, but it is beside the point. Otherwise, a State would be free to ban all weapons except handguns, because “handguns are the most popular weapon chosen by Americans for self-defense in the home.” *Heller*, *supra*, at 629.

The more relevant statistic is that “[h]undreds of thousands of Tasers and stun guns have been sold to private citizens,” who it appears may lawfully possess them in 45 States. *People v. Yanna*, 297 Mich. App. 137, 144, 824 N. W. 2d 241, 245 (2012) (holding Michigan stun gun ban unconstitutional); see Volokh, *Nonlethal Self-Defense, (Almost Entirely) Nonlethal Weapons, and the Rights To Keep and Bear Arms and Defend Life*, 62 *Stan. L. Rev.* 199, 244 (2009) (citing stun gun bans in seven States); Wis. Stat. §941.295 (Supp. 2015) (amended Wisconsin law permitting stun gun possession); see also Brief in Opposition 11 (acknowledging that “approximately 200,000 civilians owned stun guns” as of 2009). While less popular than handguns, stun guns are widely owned and accepted as a legitimate means of self-defense across the country. Massachusetts’ categorical ban of such weapons therefore violates the Second Amendment.

III

The lower court’s ill treatment of *Heller* cannot stand. The reasoning of the Massachusetts court poses a grave threat to the fundamental right of self-defense. The Supreme Judicial Court suggested that Caetano could have simply gotten a firearm to defend herself. 470 Mass., at 783, 26 N. E. 3d, at 695. But the right to bear other weapons is “no answer” to a ban on the possession of protected arms. *Heller*, 554 U. S., at 629. Moreover, a weapon is an effective means of self-defense only if one is prepared to use it, and it is presumptuous to tell Caetano she should have been ready to shoot the father of her two young children if she wanted to protect herself. Courts should not be in the business of demanding that citizens use more force for self-defense than they are comfortable wielding.⁶

Countless people may have reservations about using deadly force, whether for moral, religious, or emotional reasons—or simply out of fear of killing the wrong person. See Brief for Arming Women Against Rape & Endangerment as Amicus Curiae 4–5. “Self-defense,” however, “is a basic right.” *McDonald*, 561 U. S., at 767. I am not prepared to say that a State may force an individual to choose between exercising that right and following her conscience, at least where both can be accommodated by a weapon already in widespread use across the Nation.

* * *

A State’s most basic responsibility is to keep its people safe. The Commonwealth of Massachusetts was either unable or unwilling to do what was necessary to protect Jaime Caetano, so she was forced to protect herself. To make matters worse, the Commonwealth chose to deploy its prosecutorial resources to prosecute and convict her of a criminal offense for arming herself with a nonlethal weapon that may well have saved her life. The Supreme Judicial Court then affirmed her conviction on the flimsiest of grounds. This Court’s grudging *per curiam* now sends the case back to that same court. And the consequences for Caetano may prove more tragic still, as her conviction likely bars her from ever bearing arms for self-defense. See Pet. for Cert. 14.

If the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe.

Notes

1 Specifically, the statute prohibits the possession of any “portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure or kill.” Mass. Gen. Laws, ch. 140, §131J (2014). The statute includes exceptions for law-enforcement officers and weapon suppliers, who may possess electrical weapons “designed to incapacitate temporarily.” *Ibid.* Violations are punishable by a fine of

\$500 to \$1,000, imprisonment of 6 months to 2½ years, or both. *Ibid.*

2 Stun guns like Caetano’s “are designed to stun a person with an electrical current” by running a current between two metal prongs on the device and placing the prongs in direct contact with the person. 470 Mass. 774, 775, n. 2, 26 N. E. 3d 688, 689, n. 2 (2015). A similar device, popularly known by the brand name “Taser,” shoots out wires tipped with electrodes that can deliver an electrical current from a distance. *Tr.* 25–26. Tasers can also be used like a stun gun without deploying the electrodes—a so-called “dry stun.” *Id.*, at 26. As the Commonwealth’s witness testified at trial, these sorts of electrical weapons are “non-lethal force” “designed to incapacitate”—“not kill”—a target. *Id.*, at 27.

3 Stun guns are plainly “bearable arms.” As *Heller* explained, the term includes any “[w]eapo[n] of offence” or “thing that a man wears for his defence, or takes into his hands,” that is “carr[ied] . . . for the purpose of offensive or defensive action.” 554 U. S., at 581, 584 (internal quotation marks omitted).

4 See J. Bilby, *A Revolution in Arms: A History of the First Repeating Rifles* 23 (2006). Samuel Colt did not patent his famous revolver until 1836. *Ibid.*

5 See *Firearms: An Illustrated History* 166 (2014); see also W. Greener, *The Gun and Its Development* 524–529, 531–534 (9th ed. 1910) (discussing revolvers and self-loading semiautomatic pistols as “modern pistols”).

6 The court below also noted that Massachusetts no longer requires a license to possess mace or pepper spray. 470 Mass., at 783, 26 N. E. 3d, at 695. But the law was changed in 2014, after Caetano was convicted. A spray can also be foiled by a stiff breeze, while a stun gun cannot.

* * * * *

No. 14-10078

In the Supreme Court of the United States

—
JAIME CAETANO,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

—
*On Petition for Writ of Certiorari to the Supreme
Judicial Court of Massachusetts*

—
**BRIEF OF ARMING WOMEN AGAINST RAPE &
ENDANGERMENT AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether the Second and Fourteenth Amendments protect a right to keep and bear weapons that are less deadly (but also less common) than handguns.

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Other Sources

<i>Babylonian Talmud</i> , Sanhedrin 74a (I. Epstein ed., Jacob Schacter & H. Freedman trans., Soncino Press 1994)	4
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John Howard Yoder, <i>Nevertheless: The Varieties of Religious Pacifism</i> (1971)	4
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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae Arming Women Against Rape & Endangerment (AWARE) is a non-profit, tax-exempt charitable organization founded in 1990 to provide information and training to enable people, particularly women, to avoid, deter, repel, or resist crimes ranging from minor harassment to violent assault.

AWARE's board members and instructors are certified to teach a wide range of self-defense techniques ranging from chemical defensive sprays to firearms. Its staff members have given presentations at the American Society of Criminology and at annual training meetings of American Society of Law Enforcement Trainers, Women in Federal Law Enforcement, and the International Women Police Association. One of its board members has published more than a hundred articles in various magazines and journals regarding the defensive use of firearms and other aspects of personal protection.

This case is of significant interest to AWARE because AWARE believes that law-abiding Americans should have the right to choose whether to defend themselves with lethal weapons or nonlethal weapons.

¹No counsel for a party authored this brief in whole or part, nor did any person or entity, other than *amicus* or its counsel, financially contribute to preparing or submitting this brief. The parties' counsel of record received timely notice of the intent to file the brief under Rule 37. All parties have consented to this filing.

SUMMARY OF ARGUMENT

Hawaii, Massachusetts, New York, New Jersey, and Rhode Island, and cities such as Baltimore, New Orleans, Philadelphia, and Washington D.C., all ban the possession of stun guns. Yet hundreds of thousands of Americans who want to be able to defend themselves against crime possess stun guns for understandable and law-abiding reasons. Some people may have religious or ethical objections to using lethal weapons. Others may feel emotionally unable to pull the trigger of a firearm. Others may worry that children or a suicidal roommate may misuse the weapon. Still others worry that they may kill someone who they erroneously believe is an attacker.

The ruling below concludes that all these citizens lack the Second Amendment right to possess stun guns, because stun guns fit within the “dangerous and unusual weapons” exclusion recognized by *D.C. v. Heller*, 554 U.S. 570, 627 (2008). Yet the Michigan Court of Appeals in *People v. Yanna*, 297 Mich. App. 137 (2012), held that a ban on stun guns violated the Second Amendment (both as applied to the home and as applied to possession in public).

Moreover, the Connecticut Supreme Court has held that a ban on possessing dirk knives and police batons violated the Second Amendment, *State v. DeCiccio*, 315 Conn. 79 (2014), and the Connecticut court’s reasoning directly conflicts with the Massachusetts court’s. The Connecticut court held that such weapons should not be viewed as “dangerous and unusual” for Second Amendment purposes, because “dangerous” should be understood to mean *more* dangerous than constitutionally protected

handguns: “a category of arm that is less dangerous [than a handgun] clearly may not be prohibited.” *Id.* at 122. The Massachusetts court, on the other hand, held that stun guns satisfy the “dangerous” prong of the “dangerous and unusual” exclusion, because stun guns are designed to “incapacitate temporarily, injure, or kill” people, Pet. App. A, at 5 (citation omitted)—something that of course is true of all weapons.

The Connecticut court also held that police batons should not be seen as “unusual,” because they are routinely used by the police, and because they are “typically possessed by law-abiding citizens for lawful purposes.” *DeCiccio*, 315 Conn. at 129, 133; *see also Yanna*, 297 Mich. App. at 145. The Massachusetts court held the opposite, because stun guns are much less common than handguns, did not exist in 1791, and are not weapons of warfare used by the military. This Court should grant certiorari to resolve this conflict among the lower courts.

ARGUMENT

I. **The Ability to Possess Nonlethal Weapons Is an Important Aspect of the Right to Keep and Bear Arms**

Five states and more than a dozen cities and towns ban the possession of stun guns. *See* Eugene Volokh, *Nonlethal Self-Defense, (Almost Entirely) Nonlethal Weapons, and the Rights to Keep and Bear Arms and Defense Life*, 62 *Stan. L. Rev.* 199, 244-46 (2009). New stun gun bans have been proposed in several states. *Id.* at 246.

At the same time, “[h]undreds of thousands of tasers and stun guns have been sold to private citi-

zens, with many more in use by law enforcement officers.” *People v. Yanna*, 297 Mich. App. at 144. Many thousands of these weapons are likely possessed in jurisdictions in which they are illegal, even if they were originally bought in the many states where they are legal.

The ability to possess a stun gun instead of a handgun is an important aspect of the right to keep and bear arms. Some people have religious or ethical compunctions about killing.² Other religious and philosophical traditions, such as Judaism and Catholicism, believe that defenders ought to use the least violence necessary.³ Some adherents to these beliefs may therefore conclude that fairly effective

² For example, noted Mennonite theologian John Howard Yoder, noted Pentecostalist theologian David K. Bernard, and the Dalai Lama have expressed the view that while one ought not use deadly force even in self-defense, self-defense using non-deadly force is permissible. See John Howard Yoder, *Nevertheless: The Varieties of Religious Pacifism* 31 (1971); John Howard Yoder, *What Would You Do?* 28-31 (1983); David K. Bernard, *Practical Holiness: A Second Look* 284 (1985); Hal Bernton, *Students Urged to Shape World: Dalai Lama Preaches Peace in Portland*, *Seattle Times*, May 15, 2001, at B1. Some members of other religious groups, such as Quakers, share this view. See John Webster Gastill, *Queries on the Peace Testimony*, *Friends J.*, Aug. 1992, at 14, 15.

³ See *Catechism of the Catholic Church*, http://www.vatican.va/archive/ENG0015/_P7Z.HTM, at ¶ 2264; *Babylonian Talmud*, Sanhedrin 74a (I. Epstein ed., Jacob Schacter & H. Freedman trans., Soncino Press 1994); *The Code of Maimonides*, Book Eleven, The Book of Torts 197-98 (Hyman Klein trans., Yale Univ. Press 1954).

non-deadly defensive tools are preferable to deadly tools.

Still other people may feel emotionally unable to pull the trigger on a deadly weapon, even when doing so would be ethically proper.⁴ Others may worry about erroneously killing someone who turns out not to be an attacker.

Still others might be reluctant to kill a particular potential attacker, for instance when a woman does not want to kill an abusive ex-husband because she does not want to have to explain to her children that she killed their father, even in self-defense. Some might fear owning a gun because it might be misused by their children or by a suicidal roommate.

Some people who do own guns may prefer to own both a firearm and a stun gun, so that they can opt for a nonlethal response whenever possible, resorting to lethal force only when absolutely necessary. And people who live in states where it is hard to get licenses to carry concealed firearms may choose to get stun guns instead. Volokh, *supra*, at 214-16.

Yet, under the ruling below, all these residents are denied their right to possess nonlethal stun guns for protection. This is a serious burden on Americans'

⁴ Thus, for instance, Liqun Cao et al., *Willingness to Shoot: Public Attitudes Toward Defensive Gun Use*, 27 Am. J. Crim. Just. 85, 96 (2002), reports that 35% of a representative sample of Cincinnati residents age 21 and above said they would *not* be willing to shoot a gun at an armed and threatening burglar who had broken into their home.

Second Amendment rights, and one that merits this Court's consideration.

II. Lower Courts Disagree on the Meaning of "Dangerous and Unusual Weapons" in *Heller*

This Court has stated that the Second Amendment does not protect "dangerous and unusual weapons," such as machine guns. *D.C. v. Heller*, 554 U.S. 570, 627 (2008). But lower courts disagree on how this applies to nonlethal and less lethal weapons, both as to the word "dangerous" and as to the word "unusual." This case perfectly illustrates this disagreement.

A. "Dangerous"

The Michigan Court of Appeals recently ruled that, because "tasers and stun guns *** are substantially less dangerous than handguns," they do not "constitute dangerous weapons for purposes of Second Amendment inquires." *Yanna*, 297 Mich. App. at 145. Likewise, a recent Connecticut Supreme Court decision favorably cited *Yanna* in deciding that police batons and dirk knives are protected under the Second Amendment. *DeCiccio*, 315 Conn. at 123, 133. Using the same reasoning as in *Yanna*, the Connecticut Supreme Court found that, because batons and knives are far less dangerous than guns, they are not considered to be the sort of "dangerous" weapons that are excluded from Second Amendment protection. *DeCiccio*, 315 Conn. at 123, 133.

And this interpretation of "dangerous" in "dangerous and unusual weapons," as meaning "unusually dangerous," makes sense. All weapons are dangerous

in some measure, especially if one includes danger of pain and injury and not just death. When this Court articulated the “dangerous and unusual weapons” exclusion, it likely intended that “dangerous” have some independent meaning, rather than just being a restatement of an attribute that all weapons possess.

But the decision below uses a different approach. Stun guns, the Massachusetts high court concluded, qualify as “dangerous” for purposes of the “dangerous and unusual” exclusion simply because they were designed to “incapacitate temporarily, injure, or kill.” Pet. App. A, at 5 (citation omitted). Thus, the court essentially transformed the “dangerous *and* unusual weapon” exception into an “unusual weapon” exception. Dirk knives (which can often be deadly) and police batons (which can sometimes be deadly) would be even more clearly excluded from Second Amendment protection under the Massachusetts test—a result inconsistent with the Connecticut decision.

B. “Unusual”

Lower courts also disagree as to the meaning of “unusual” in the “dangerous and usual weapons” exclusion. The Michigan Court of Appeals concluded that stun guns were *not* unusual because they are legal in many states, are commonly used by law enforcement officers, and have been in use for decades. *Yanna*, 297 Mich. App. at 145. Similarly, the Connecticut Supreme Court concluded that police batons are not “unusual,” because they are “typically possessed by law-abiding citizens for lawful purposes” (rather than being “unique to the criminal element”), and because of their “widespread acceptance * * *

within the law enforcement community.” *DeCiccio*, 315 Conn. at 129, 133.

In contrast, the decision below found that stun guns *are* unusual because stun guns were “not ‘in common use at the time’ of enactment of the Second Amendment”; stun guns are not weapons of warfare that are “readily adaptable to use in the military”; and “the ‘number of Tasers and stun guns is dwarfed by the number of firearms.’” Pet. App. A, at 5-6.

But the view that Second Amendment protection extends only to weapons in common use in 1791 was rejected by this Court in *Heller*, 554 U.S. at 582. Indeed, this Court characterized that view as “bordering on the frivolous.” *Id.*; *see also* Pet. 6-9. Likewise, this Court has made clear that the “arms” protected by the Second Amendment include “weapons that were not specifically designed for military use and were not employed in a military capacity.” 554 U.S. at 581.

And the view that weapons that are much less common than firearms are so “unusual” that they are outside the scope of the Second Amendment is inconsistent with *DeCiccio* and *Yanna*. Neither of those cases compared the number of dirk knives, police batons, and stun guns in private hands to the number of handguns in private hands. Rather, *DeCiccio* and *Yanna* focused on whether those weapons were owned commonly enough by the police and by law-abiding private citizens, not on the relative number of such weapons compared to handguns.

This Court should grant certiorari to resolve how the “dangerous and unusual weapons” exclusion applies to nonlethal and less lethal weapons.

CONCLUSION

For the reasons given above, this Court should grant certiorari.

Respectfully submitted,

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No. 14-10078

In the Supreme Court of the United States

JAIME CAETANO,

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

*On Petition for a Writ of Certiorari to the Supreme
Judicial Court of Massachusetts*

**BRIEF FOR COMMONWEALTH SECOND AMENDMENT AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST OF *AMICUS CURIAE* Commonwealth Second Amendment (hereafter, "*Amicus*" or "Comm2A") is a Massachusetts based, non-profit dedicated to preserving and expanding the Second Amendment rights of individuals residing in New England and beyond. Comm2A works locally and with national organizations to promote a better understanding of the rights guaranteed by the Second Amendment to the United States Constitution. Comm2A has substantial expertise in the field of Second Amendment rights that would aid the Court.

The Court's ruling in the current case affects *Amicus* Comm2A's organizational interests, as well as those of its contributors and supporters, some of whom are directly affected by the law at issue in this case and who wish to enjoy the full exercise of their fundamental Second Amendment rights.

STATEMENT OF THE CASE

The case at bar challenges M.G.L. c. 140, § 131J; a statute prohibiting the use, and even possession, of a "stun gun." The statute defines them as any, "...portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure or kill."

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¹ All parties have been notified in writing on or before July 30th 2015 as to the filing of this *amicus* brief and have consented. No party, or counsel thereof, to this action has assisted in writing this brief nor provided funds intended towards or assisting with the preparation of this brief.

The Electronic Defense Weapons (“EDWs”) at bar are *not* “designed...to kill.” Their specific purpose is to provide *non*-lethal means of self-defense at very close range, usually direct contact. These units use the temporary, localized application of electrical current to cause pain and disrupt muscle control, rendering the assailant incapable of attacking the user.

ACCEPTANCE OF FACTS

Comm2A accepts the facts as articulated by Appellant Caetano, which largely comport with Commonwealth’s version of events. Appellant Caetano possessed a simple stun gun, which she was provided by an acquaintance, to protect her from an abusive ex-partner who had already beaten her so badly she required hospitalization. She subsequently had to use that stun gun, a direct-contact weapon, to protect herself from that same ex-partner when he accosted her outside her workplace and again threatened her with violence, despite his having been previously subject to restraining orders.

Subsequently, Appellant Caetano was alleged to be in association with someone suspected of shoplifting and a consented to search of Appellant Caetano’s property turned up the stun gun. While no connection between Caetano and the alleged shoplifting was ever shown, she was arrested for possession of the stun gun. Appellant Caetano was subsequently convicted for violating M.G.L. c. 140, § 131J, and appeals that conviction.

This case presents this court two Constitutional questions: Are non-lethal weapons, specifically, EDWs, protected under the Second Amendment; and, if so,

does an outright ban on their possession violate the Second Amendment?

SUMMARY OF THE ARGUMENT

This brief seeks to inform the court of the legal and practical context of this case. The commonwealth's arms control scheme has been in place in various forms statutorily since about 1850, but only since 1906 has the modern scheme been in effect, where the state banned various tools useful for self-defense. Prior to 1906, Massachusetts' arms control scheme was quite consistent with the originalist understanding of the Second Amendment.

This brief analyzes 1800s case law and legislative acts to illustrate the changing nature of the Commonwealth's arms control scheme. It then provides an overview of the Commonwealth's arms control scheme at the time of Appellant's arrest to illustrate Appellant Caetano had few viable options for employing effective self-defense. Lastly, this brief reviews the technology of the stun gun and places it in context of the Second Amendment meaning of "arms."

ARGUMENT

III. THE MASSACHUSETTS ARMS CONTROL SCHEME

- **History of Arms
Control in the
Commonwealth**

The Ante-bellum arms control statutes in the Commonwealth of Massachusetts mirrored the British law brought to the then-colonies, as interpreted in Sir John Knight's Case, 87 Eng. Rep. 75 (KB)[1686]. In

that case, the Statute of Northampton was limited “to punish people who go armed to terrify the King’s subjects.” In much of the Commonwealth’s history, going armed while committing other crimes operated effectively as a penalty enhancement, while no specific prohibition on going armed for self-defense purposes existed. See Commonwealth v. Martin, 17 Mass. 359 (1821) illustrating the operation of the Acts of 1818, c. 124, § 1 regarding Armed Robbery; and Tully v. Commonwealth, 45 Mass. 357 (1842), illustrating the Rev. Statutes. c. 126, § 10, regarding larceny of a dwelling in the night and the extent to which Common law principles were applicable to the now statutorily-defined elements of the crime. In Chapter 194 of the Acts of 1850, the legislature passed a general statute which exceeded the common law prohibition against being armed while committing a breach of the peace or upon being arrested for a warrant:

Section 1: Any person arrested upon a warrant of a magistrate, issued against him for any alleged offence against the laws of this Commonwealth, and any person committing any criminal offence against the laws of this Commonwealth, or any breach or disturbance of the public peace, who may, at the time of the commission of such offence, or breach or disturbance of the public peace, be arrested by any sheriff, deputy sheriff, constable or police

² See Also: “MA acts of 1719-20 Ch. 0001. An Act For The Punishing And Preventing Of Dueling”, “MA acts of 1835 Ch. 0140 An Act More Effectually To Suppress Riots.”, et al.

officer, in this State, and who shall, at the time of such arrest, be armed with any dangerous weapon, of the kind usually called slung shot, shall be punished by a fine not exceeding fifty dollars, or imprisonment in the common jail or house of correction for a term not exceeding one year.

Chapter 199 of the Acts of 1859 further expanded the list of weapons declared dangerous *per se* to include “metallic knuckles, billies or any other weapons of a like dangerous character, the malicious use of which would endanger life and limb.” This act retained the qualifier that the statute applied solely to those going armed while committing other crimes or otherwise breaching the public peace; not to simply possessing or carrying those weapons.

Not until Chapter 172 of the Acts of 1906 was enacted was there a prohibition on simply carrying arms, and which applied to all people, regardless of the absence of criminal activity. It prohibited most commonly used arms, with an exemption license issuable to an “applicant [that] has a good reason to fear an injury to his person or property, and that he is a suitable person to be so licensed.” This post-Reconstruction era statute created and imposed the blanket prohibition of carrying of arms, with limited exemption for licensure, Massachusetts has today.

Many changes to the law surrounding the carrying of arms and possession of firearms have occurred since

then.³ The result is that Ch. 194 of the Acts of 1850 has largely morphed into M.G.L. Ch 269 § 10(b); while the firearms related statutes are consolidated in M.G.L. Ch 140, §§ 121-131 *et seq*, with certain criminal prohibitions placed in M.G.L. Ch. 269, § 10.

Relevant to the case at bar, the Colonial approach of punishing the carrying of arms only when committing a breach of peace or otherwise violating the *malum in se* statutes of the Commonwealth has been supplanted by a blanket ban on the possession and carrying of arms in the Commonwealth. There is now only an even smaller number of arms permitted at all, and then only through issuance of limited licensure exemptions to those residents deemed “suitable.”

³ A non exhaustive list: Ch. 548, § 1, Acts of 1911; Ch. 207, § 1, Acts of 1919; Ch. 485, Acts of 1922; Ch. 284 § 4, Acts of 1925; Ch. 284, § 4, Acts of 1926; Ch. 395, § 3; Acts of 1927, c. 326, § 5; Acts of 1957, Ch. 688, § 23; Acts of 1968, Ch. 737, § 7, (now G.L. c. 140, §§ 129B, 129C and 129D); Acts of 1968, § 737. (Now at G.L. c. 269, §§ 10(a), 10(h)); Acts of 1975, c. 113, § 2; Acts of 1982 Ch. 254; Acts of 1983 Ch. 516, §§ 2, 3; Ch. 180, Acts of 1998; The Acts of 2014, Ch. 284.

- **The State of Arms Control in the Commonwealth at the Time of the Arrest of Appellant Caetano**

The possession and carrying⁴ of *per se* dangerous arms is largely prohibited (See G. L. Ch. 269, §10), subject to a limited licensure exemption (See G. L. Ch. 140 § 131). The court below in this case relies in part on the technicality that Appellant Caetano had other options and that “[b]arring any cause for disqualification the defendant could have applied for a license to carry a firearm. See G. L. c. 140, §§ 129B, 131 (c). In addition, again barring any disqualification, possession of mace or pepper spray for self-defense no longer requires a license but did so when Appellant Caetano was charged and convicted. See G. L. c. 140,

§ 122D, inserted by St. 2014, c. 284, § 22.”At the time of Appellant Caetano’s arrest, there were two legal options for Appellant Caetano; carry a gun or carry a defensive spray (mace or pepper spray). At all relevant times, both options required a license; between the arguments in the court below and the decision, the license requirement for sprays was removed.

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⁴ The definition of “carry” as related to arms is possession on one’s person outside the home. See *Seay*, 376 Mass. at 740-42 additionally holding that common areas outside an apartment were not in “the home”. Home means domicile (“...was not the defendant's home”) *Commonwealth v. McCollum*, 79 Mass. App. Ct. 239, 258 (Mass. App. Ct. 2011)

⁵ *Commonwealth v. Caetano*, 470 Mass. 774, 783 (2015)

At the time of Caetano's arrest, defensive sprays were statutorily classified as "ammunition," the possession and carry of was restricted to licensed individuals. A license good only for defensive spray was available to Massachusetts residents through their police department; for non residents, from the colonel of the state police. Issuance of said license would normally take between 30 and 90 days (despite the statutory requirement of 40 days) after the submission of the application.

To obtain a permit to actually carry a handgun, Appellant Caetano would have to receive a "License To Carry Firearms/Class A," without the common restrictions against carrying on her person placed on first time applicants⁶. To be issued that license, Caetano would have had to pass an approved safety course, paid for by herself, and pay a one hundred dollar application fee. Appellant Caetano would have then been subjected to an arbitrary, undefined "suitability" requirement ("applicant is a suitable person to be issued such license") and would have had her license - if actually issued - "subject to such restrictions relative to the possession, use or carrying

⁶ From a civil case challenging a town with such a policy. "With three exceptions, Chief Grimes [of Weymouth, MA] "ordinarily" imposes a "target & hunting" restriction on Class A licenses for first-time applicants. (Id. ¶ 9). The three exceptions are that Chief Grimes will "usually" give unrestricted licenses to first-time applicants who are (1) members of law enforcement, (2) members of the military, or (3) "business owners who substantiate they handle large amounts of cash." Davis v. Grimes, 9 F. Supp. 3d 12, 18 (2014).

of firearms as the licensing authority deems proper.”⁷ At the time of this incident, the licensing process was taking three months or more.

Had Appellant Caetano acquired an LTC, she also would have been required to report all address changes “within 30 days of occurrence” to three authorities:

C. The authority which issued the LTC;

D. The authority for the municipality she moved to; and

E. The state Firearms Records Bureau.

The requirement is found in M.G.L. 140 §131, but that statute does not specify what address she could possibly use, as she had no fixed address at the time of the encounter with her abusive ex-boyfriend. It also does not state whether all changes within the 30 days were required to be reported, or simply any change that lasted more than 30 days⁸.

The absence of a fixed address is itself a bar to licensing, as most police departments demand utility bills, a driver’s license, rental contracts, etc, even though they are not statutorily required, or on the state application.

⁷ See M.G.L. c. 140, § 131.

⁸ Suspensions/revocations of LTCs do occur for the reason of failing to notify the licensing authorities of an address change. See Commonwealth vs. Phillips; MA Appeals Court docket #2014-P-1530 (2014). Mr. Philips was temporarily homeless and had his LTC suspended for failing to report his address change.

The Supreme Judicial Court declared that Caetano had options other than to unlawfully possess for her own defense a stun gun; a device specifically designed to be non-lethal:

Barring any cause for disqualification the defendant could have applied for a license to carry a firearm. See G. L. c. 140, §§ 129B, 131 (c). In addition, again barring any disqualification, possession of mace or pepper spray for self-defense no longer requires a license. See G. L. c. 140, § 122D, inserted by St. 2014, c. 284, § 22. There are two clear errors of law in that assertion. First, the only license to carry a “firearm” under Massachusetts law is *the* License To Carry Firearms, issued under M.G.L. c. 140, § 131. The license issued under M.G.L. c. 140, § 129B is a mere Firearms Identification Card “FID”, which, bizarrely, does not permit even owning “firearms” (which means “handguns” under Massachusetts law⁹

¹⁰), still less carrying them loaded in public. The only guns an FID Card authorizes possession of are non-“large capacity” long arms; hardly a viable means of self-defense outside the home. The court’s inclusion of the FID Card as an means for Caetano to protect herself with a firearm outside her home is erroneous.

The court’s second stated remedy available to Caetano was obtaining a “spray-only” FID Card. At the

⁹ Commonwealth v. Caetano, 470 Mass. 774, 783 (2015)

¹⁰ See M.G.L. c. 140, § 121.

time of her arrest and conviction, that card was required for sprays, and was “shall issue” for a fee of twenty-five dollars. It used the same application form and had the same requirements, but for the safety course, as that used for LTCs and full FID Cards.

To obtain either of the Supreme Judicial Court’s stated available remedies, Caetano, a marginally employed, homeless woman, must:

1. Successfully complete an approved safety course, usually a \$75 to \$125 fee (not required for a Spray Only FID Card);
2. Be deemed to be a resident of MA by her licensing authority;
3. Pay another \$100 to file the license application; then
4. Be deemed suitable to be licensed to carry a gun by her licensing authority, if seeking an LTC, and;
5. Wait from one to four months to actually receive a license.

Moreover, as a first-time licensee, Caetano’s LTC, if actually issued, would likely have been crippled by the “Target & Hunting” restriction commonly placed on first licenses. This would preclude her carrying a loaded firearm, which was the entire object of the exercise.

In general, applicants found unsuitable for a license to carry a firearm must bear the burden of proving they are otherwise suitable, subject to rational basis review and the Supreme Judicial Court has held there is no

Second Amendment right to carry a handgun concealed for the purposes of self-defense. The licensing authority has no duty to prove the “unsuitability” of an applicant the authority has denied. Quite the opposite; Massachusetts residents who wish to keep and carry arms bear the burden of proving “suitability” and a “good reason” to carry said arm. Even after one satisfies all the formalities and meets all the requirements, Federal case law suggests that the even holding a license is no protection against arrest. The First Circuit has upheld that police seizure of one’s firearm, despite holding a facially valid license to carry, is perfectly acceptable if the officer is unable to independently verify the validity of the license. As a result of her conviction for possessing a non-lethal means of defense against a proven threat, Appellant Caetano is prohibited from possessing even a defensive spray for five years;¹¹

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¹⁴ and prohibited for life from possessing any type of firearm for self-defense in

¹¹ See Chief of Police of the City of Worcester v. Holden, 470 Mass. 845 (2015).

¹² See Commonwealth v. Humphries, 465 Mass. 762, 767 (2013); also, Commonwealth v. Farley, 64 Mass. App. Ct. 854, 857 (2005).

¹³ Schubert v. City of Springfield, 589 F.3d 496 (1st Cir. Mass. 2009).

¹⁴ See M.G.L. c.140 § 122D.

- the Commonwealth.¹⁵ The conviction triggers the lifetime Federal prohibition as well. **The court below applied the g standard for Arms in Common use.**

wron

The court below analyzed the constitutionality of M.G.L. c. 140, § 131J by first finding that all EDWs, including Caetano’s stun gun, were dangerous and unusual arms which fell outside the ambit of Second Amendment protection:

The ban on the private possession of stun guns will not burden conduct that falls within the scope of the Second Amendment if a stun gun is a weapon not “in common use at the time” of enactment of the Second Amendment and would be dangerous per se at common law without another, primary use, i.e., as a tool. See *Heller*, 554 U.S. at 624-625, 627, quoting *Miller*, 307

U.S. at 179. For reasons that follow, there can be no doubt that a stun gun was not in common use at the time of enactment, and it is not the type of weapon that is eligible for Second Amendment protection. See *Heller*, supra at 622. It also analyzed constitutionality by looking to the stun guns’ “military adaptability”:

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¹⁵ See M.G.L. c.140 § 131(d).

¹⁶ See 18 U.S.C. 922(g); also, Caron v. United States, 524 U.S. 308 (1998).

¹⁷ Commonwealth v. Caetano, 470 Mass. 774, 780-781 (2015)

Even were we to view stun guns through a contemporary lens for purposes of our analysis, there is nothing in the record to suggest that they are readily adaptable to use in the military. Indeed, the record indicates “they are ineffective for ... hunting or target shooting.” The Heller court noted that handguns were but one class of “weapons,” and acknowledged that knives are also “arms.” Both knives and guns are personal defense weapons; recognized as such by centuries of such use. Under that analysis, EDWs also constitute “arms;” moreover, they are specifically designed for personal defense. Under the same analysis which shows guns and knives are protected “arms,” citizens correctly claim a right to “keep and bear” EDWs.

The Second Amendment has already been acknowledged by the *Heller* court to protect a spectrum or “class” of arms, including knives and handguns. The *Heller* court specifically applied it to modern handguns; repeating arms non-existent at the time of Ratification.

Just as the First Amendment embraces and protects new means of communication, and the Fourth Amendment protects against new technologies for intrusion and surveillance, the Second Amendment applies to new technologies. It necessarily follows that, *in pari materia*, the Second Amendment must be read to protect these new technologies; defensive sprays and Electronic Defense Weapons.

II. THE NATURE AND PURPOSE OF AN ELECTRONIC DEFENSE WEAPON

A. EDWs Are Effective Self-Defense Arms.

An Electronic Defensive Weapon (also known as Conducted Energy Weapon or Electronic Control Weapon) is an electronic device that stuns, incapacitates and/or causes significant sensations of pain to interrupt an impending attack. It uses high voltage, but low amperage, to ensure that the current needed to be effective can bridge the gap between the skin and the device's probes/contacts caused by clothing, but with no burns or likely permanent harm. When activated, the current is discharged from the stun gun in a series of very short pulses, each only milliseconds long; as opposed to a continuous discharge of current.

There are two types of Electronic Defense Weapons ("EDWs") available. The first is the traditional "stun gun," which requires direct contact with an attacker to apply the charge. The second is the "TASER" (the brand name coined by its creator); a projecting weapon using compressed gas to launch two barbed needles connected to the pistol-like launch unit via two separate thin wires. Stun guns are distinct from TASERS; the latter are distance weapons, as acknowledged by a Massachusetts court:

A TASER is "used for a gun that **fires** electrified darts to stun and immobilize a person," Merriam-Webster's Collegiate Dictionary 1279

(11th ed. 2003), **and differs from the weapon at issue here** [a stun gun]. The *Odimegwu* court further noted the temporary nature of the effects:

Not until the defendant opened the door on cross-examination by probing Westhaver's knowledge of the differences between TASERs and stun guns did the judge permit the prosecutor to elicit Westhaver's knowledge of the differences between TASERs and stun guns, and of **the fact that stun guns are designed to incapacitate temporarily**. *Id.* at fn. 4 (**bold added**).

Both types of EDW, when activated, cause significant, but temporary, sensations of pain and localized neuromuscular disruption; i.e. the attacker loses muscle control around the area where the contacts are placed. The significant differences between a stun gun and a TASER is that the former is far more compact and requires contact with the attacker to work. The TASER is larger because it requires a launcher, making it a "stand-off" or distance weapon.¹⁹

²⁰ Appellant Caetano possessed a simple stun gun that required physical contact with her attacker, as indicated by Appellant's lower court brief at page 4.

Electronic Defensive Weapons are categorized as "non-lethal" arms. While a death is possible from a

¹⁹ Com. v. Godwin Odimegwu, 08-P-1911 (2009) at fn. 2 (**bold added**).

²⁰ See People v. Yanna, 297 Mich. App. 137.

stun gun or TASER discharge, that is not the result they are designed for. For that reason, such incidents are uncommon, and usually involve those with pre-existing medical conditions.

TASER International routinely demonstrates the TASER on willing participants at trade shows and other events,²¹ as well as its own employees.²² Police recruits are also shocked as part of their training²³ in order to familiarize them with the effects of EDW use. This training protocol for law enforcement is on par with that employed for pepper spray use,²⁴ and for the same reason: familiarization with the effects.

Alternate non-lethal weapons, such as batons and billies, require impact, which causes more trauma; mace and pepper spray cause significant visual and respiratory distress and for a longer duration, with resulting possible trauma. This places EDWs at the

²¹ For an example, see <https://www.youtube.com/watch?v=zxEuImiNoTc> sec37-40. (last visited Oct. 15, 2014).

²² <http://www.TASER.com/about-TASER> "As a measure of this commitment, TASER employees regularly undergo voluntary exposures with our various TASER CEWs. This includes our founders: Rick Smith, CEO and his brother Tom Smith, former Chairman of the Board." (last visited Oct. 15, 2014)

²³ (<https://www.youtube.com/watch?v=MP9GHluE9ao>, <https://www.youtube.com/watch?v=J4WAsxTRJRw>, <https://www.youtube.com/watch?v=8Ev-jroGy6U>, https://www.youtube.com/watch?v=AUqujQ_OgeE (last visited Oct. 15, 2014)

²⁴ <https://www.youtube.com/watch?v=TQqY-4MYwQc> (last visited Oct. 15, 2014)

very low-harm, low-risk end of the trauma spectrum. Appellant Caetano possessed such a simple stun gun.

The United States Department of Justice publishes guidelines²⁵ on the use of EDWs, the primary guiding principle of which is that they be considered less lethal. Although the guidelines are directed primarily at law enforcement, the document indicates that Electronic Defense Weapons commonly used fall on the Use of Force Continuum between manual holds and deadly force. The use of these devices as pain compliance tools in a law-enforcement manner by the average citizen is unlikely; citizens use them for self-defense. The issues found in police use of EDW's are uncommon and implausible in a self-defense situation. The victims usually flee once the attackers have been neutralized, allowing the victim to escape.

B. EDWs Are Effective Self-Defense Arms.

Citizens who take self-defense seriously want to defend themselves, and those around them whom they care for, from bodily injury safely and effectively. They do not act maliciously, or in any way to intentionally harm others. Self-defense is the fundamental instinct to survive unwanted violent altercations unscathed if they can't be avoided. Their lack of lethality, yet efficacy, makes EDWs desirable as an effective defense tool, just as defensive sprays are. It also puts them in

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²⁵ <http://cops.usdoj.gov/Publications/e021111339-PERF-ECWGb.pdf> (last visited Oct. 15, 2014)

²⁶ Id. at p. 26.

the category of defensive arms that firearms and knives are. As such, stun guns are entitled to the same Second Amendment recognition and protection as those self-defense tools are.

This case presents as its core issue the difference in how sprays are favored under Massachusetts law, yet which criminalizes the electronic equivalent. The use of force principles for self-defense are well known and apply to non-lethal and lethal defensive tools alike; a) a reasonable belief that one is under attack or about to be, b) that the person so believing did what was reasonable to avoid the physical conflict, and c) that force was met with reasonable force.²⁷ Those rules do not change simply because the means of self-defense are electronic, rather than chemical or ballistic.

In her brief, Appellant Caetano described having previously been beaten so badly that she ended up in the hospital.²⁸ Appellant was well aware of her former partner's propensity to violence firsthand, including, as noted in another case, his "...specific violent acts or reputation for violence...[and] had a reasonable apprehension for [her] safety." Appellant's brief also cites multiple restraining orders and refers to incidents when the Appellant's former partner repeatedly violated those orders ("she described how J.A. would continually appear at her workplace to threaten and harass her").

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²⁷ See Model Jury Instruction 9.260, 2009 Ed.

²⁸ Appellant's lower court (Supreme Judicial Court) Brief at pg. 5.

²⁹ Allen v. United States, 150 U.S. 551, 561 (1893).

Caetano's former partner precipitated the incident creating the case at bar. Her restraining order was, again, useless at stopping the abuse. Appellant's threatened use of her stun gun did:

I said, 'I'm not gonna take this anymore. Somebody gave me this and I don't wanna have do it to you, but if you don't leave me alone, I'm gonna have to.' And he ended up leaving. I guess, got scared and left me alone. The paper wall of multiple domestic restraining orders did not stop Caetano's attacker; neither did criminal charges, a phone call to 911, or Caetano's co-workers. Appellant Caetano's stun gun, a tool - an "arm" - specifically designed for non-lethal self-defense did. It allowed Caetano to quickly halt an immediate, violent threat to her. Nothing protects a diminutive woman in the face of a raging attacker more than the evident ability to defend herself. Stun guns, an effective, non-lethal tool legal in most states,³⁰

³¹ but criminalized in Massachusetts, provide that empowerment and protection.

Attackers have tactical superiority; surprise and, usually, a force superior to their unarmed victim. The victims of criminals have no such advantages, and "...detached reflection cannot be demanded in the presence of an uplifted knife."³²

³⁰ Appellant's SJC Brief, pg. 6

³¹ See both Commonwealth's Brief at 26 and Defendant's Brief at 12.

³² Brown v. United States, 256 U.S. 335, 343 (1921).

The law acknowledges exigent circumstances do not permit leisurely reflection, and does not demand a person facing an attacker; “must be regarded as exercising the deliberation of a judge in passing upon the law and of a jury in passing upon the facts, in arriving at a determination as to the existence of the danger and the necessity of using the particular means to avert it. The law requires only that the victim of an attack reasonably react as circumstances permit, and make a reasonable response to the threat as perceived, including the reasonable level of force to end the assault in the circumstances. Caetano’s use of her non-lethal stun gun against a violent attacker whose previous beatings had required her hospitalization, was clearly necessary and eminently reasonable under the circumstances. That no further harm was done, to her, her attacker or society in general, is also in keeping with public policy.

Had she used a defensive spray, there would have been no charges. Because she used an electronic equivalent, she was criminally charged. That speaks volumes about the legitimacy of the statute under which she was charged. It also documents the appropriateness of EDWs as modern “arms” for self- defense, as the Yanna court so found.

CONCLUSION

Amicus Comm2A asserts the Second Amendment's recognition of the "right of the people to keep and bear arms" is not limited to firearms, but encompasses a range of personal defensive weapons. In the case at bar, it is the class of personal defense arms known as "Electronic Defense Weapons" or EDWs.

Such weapons as pistols, knives, swords, etc., were common when the Constitution was written and ratified. The Second Amendment was conceived when these defensive arms were commonly carried, and there is no reason to believe they were not protected by the Constitution. Indeed, the Commonwealth of Massachusetts only began to ban the carrying personal defense weapons in 1906. Until then, criminal charges for the carrying weapons was interpreted per the *Sir John Knight's* case interpretation of the Statute of Northampton.

The Second Amendment has already been acknowledged by the Heller court to protect a spectrum or "class" of arms, including knives and handguns. The Heller court specifically applied it to modern handguns; repeating arms non-existent at the time of Ratification. Applying the same legal analysis by which the First and Fourth Amendments were found to apply to, and protect, new technologies, the Second Amendment also applies to, and protects, them. That means it protects not just repeating firearms, but defensive sprays and Electronic Defense Weapons.

Second Amendment protects the individual right to carry a weapon in case of dangerous confrontation. The statute case at bar, M.G.L. c. 140, § 131J, criminalizes

not just carrying EDWs, but even possessing them in one's home. This infringement of a fundamental right is subject to the same heightened scrutiny as laws restricting or prohibiting firearms are.

The statute criminalizes possessing EDWs, which are in *pari materia* with those "arms" already recognized and permitted to be both owned, and carried outside the home. This statute is subject to the same heightened scrutiny as other laws which prohibit or otherwise restrict the fundamental right to "bear arms" are.

The statute fails under that standard of review. A state which acknowledges the right to use deadly force in self-defense cannot argue that a non-lethal EDW is "dangerous and unusual;" still less that, where pepper spray is now sold over the counter, an EDW is not an "arm" suitable for self-defense. Denying people access to a proven, *non-lethal* means of self-defense serves no rational purpose; rather, it forces a choice between deadly force and defenselessness. The statute also violates the fundamental right to "bear arms."

Based upon the above analysis, *amicus* Comm2A argues that this law, M.G.L. c. 140, § 131J, is unconstitutional, both as written and as applied.

Respectfully submitted,

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Counsel for Amicus

Dated: August 12, 2015

HB-2292

Submitted on: 2/11/2020 9:36:25 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Soon	Individual	Oppose	No

Comments:

This bill seems to make impossible for anyone to purchase this viable self defense option.

This is an ideal non-lethal self-defense option for many elderly people.

We all know that the police can't be everywhere when help is needed.

Help the kupuna help themselves.

HB-2292

Submitted on: 2/11/2020 9:59:21 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Oshima	Individual	Oppose	No

Comments:

LATE

HB-2292

Submitted on: 2/11/2020 10:07:02 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kimo galon	Individual	Oppose	No

Comments:

Aloha,

I oppose HB2292. Regulation of a self defense device such as an electric taser is over kill. Place your self in an elderly male or females shoes. Give her all the P&P on how to get obtain this item and see if they would even attempt to protect herself with all that red tape. Firearms already highly regulated and now the state would make us law abiding citizens to spend more money and time off of work to "legally" obtain an electric taser.... an item that is widely accessible to the rest of the United States without any type of regulation. You will also restrict lower income individuals by making them take time off of work which maybe their second job to go through all of these hoops. This bill will not help the law abiding citizens, it will further restrict us from protecting ourselves.

LATE

HB-2292

Submitted on: 2/11/2020 1:19:14 PM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bronsten Kossow	Individual	Support	No

Comments:

House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

State Capitol, Room 325
HEARING: Wednesday, February 12, 2020, at 10AM
RE: HB2292 Relating to Electric Guns

LATE

Aloha Members of the House Committee,

I OPPOSE HB2292 and REQUEST AMENDMENTS

Although I support the unrestricted ownership and public carry of electric guns, I cannot support this bill due to extreme burdensome restrictions on sellers and restrictions for the buyer.

You can buy an electric gun in almost all states legally through AMAZON.COM and have it shipped to your door without restrictions. This bill treats electric guns like a firearm where stores may not go through the hassle of getting their store licensing because the record keeping, tracking, inspections, and other requirements cost a lot of time and money. Even though legal, stores may not go through the hoops to sell them.

I WAS TASED FOR HPD TRAINING. My entire HPD academy class was voluntarily tased with no adverse effects. It is safe to use in the vast majority of cases. Electric guns can have adverse effects on criminals with health and drug problems, but they have the option to NOT ATTACK INNOCENT VICTIMS.

Please amend this bill:

- Amend to language in Sen Gabbards SB2848 – legalization of electric guns with no restrictions

Mahalo

Todd Yukutake
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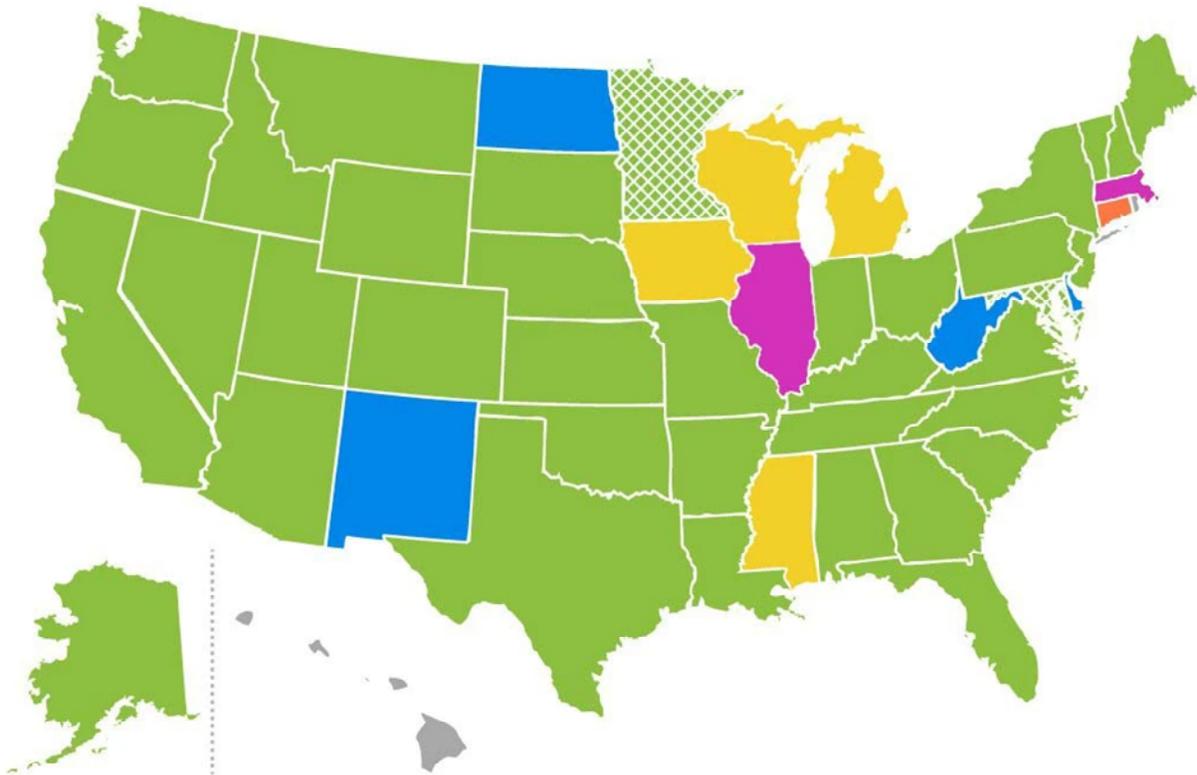
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TASER Device Regulations By State



These laws may vary in certain counties or cities, please check with your local law enforcement agency if you have any additional questions about the right to carry in your city.



My HPD classmate getting tased with probes and drive stun as part of Taser training.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 12, 2020
10:00 A.M.
State Capitol, Room 430



H.B. 2292
RELATING TO ELECTRIC GUNS

House Committee on Public Safety, Veterans, and Military Affairs

House Bill (H.B.) 2292 proposes to repeal section 134-16 of the Hawaii Revised Statutes (HRS) and replace it with a new law restricting the use of electric guns, regulating the sales of electric guns, and requiring training and education on electric guns. The Department of Transportation (DOT) **supports** H.B. 2292.

The United States Supreme Court decision in *Caetano v. Massachusetts*, 577 U.S. ____ (2016), ruled that stun guns are included in the Second Amendment's protections. The Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), ruled that the Second Amendment extends to all bearable arms, including those that were not in existence at the time of the founding.

The DOT understands the intent of H.B. 2292 is to protect the health and safety of the public through restricting and regulating the use and sale of electric guns. The DOT recognizes the aforementioned Supreme Court decisions, and conjunctively supports H.B. 2292.

Thank you for the opportunity to provide testimony.

NATIONAL RIFLE ASSOCIATION OF AMERICA

INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030

LATE



NRA

February 12, 2020

The Honorable Gregg Takayama
Chairman, House Committee on Public Safety, Military and Veteran Affairs
Hawaii State Capitol, Room 323
Honolulu, Hawaii 96813

Dear Chairman Takayama:

On behalf of our members in Hawaii, I would like to communicate our opposition to House Bill 2292 (HB 2292).

The Supreme Court ruled that electric gun bans were unconstitutional in *Jaime Caetano v. Massachusetts*. While it is encouraging that the State is seeking to comply with Supreme Court precedence by repealing Hawaii's gun ban, HB 2292 is far too restrictive a regime.

We encourage the legislature to fully repeal the ban on electric guns without simultaneously creating onerous restrictions on their ownership and use.

Sincerely,

Daniel Reid
Western Regional Director
NRA-ILA

LATE

PVMtestimony

From: Ninja Forms TxnMail <ninja_forms_txnmail@t9n.feedblitz.com> on behalf of Keoni Tamashiro <feedblitz@mail.feedblitz.com>
Sent: Tuesday, February 11, 2020 7:50 PM
To: PVMtestimony
Subject: Testimony in opposition of HB2292

This testimony is submitted in opposition of HB2292 to be heard by

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

on

DATE: Wednesday, February 12, 2020
TIME: 10:00AM
PLACE: Conference Room 430
State Capitol
415 South Beretania Stree

My name is Keoni Tamashiro

The crime is out of control in Hawaii. You folks do nothing but cripple us, we cannot protect what is ours and are at the mercy of criminals. Years ago you folks finally legalized Pepper Spray, why not tasers. The reasoning they could be used in robberies is true but so can firearms and look how that has worked out? We have shootings almost every week, and they are committed by individuals with lengthy criminal records not by the law abiding.

If you have any questions I can be reached at kt96817@gmail.com
The above testinony was written and submitted by Keoni Tamashiro

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LATE

HB-2292

Submitted on: 2/12/2020 9:23:03 AM

Testimony for PVM on 2/12/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Isaacson	Individual	Support	No

Comments:

Good idea, but doesn't go far enough. Citizens should be able to defend themselves with electric guns if they so choose.