

Testimony on behalf of the  
Office of the Public Defender, State of Hawai`i  
to the Senate Committee on Judiciary and  
Government Operations

March 3, 2009

RE: S.B. No. 350: Relating to Use of Force

Chair Taniguchi and Members of the Committee:

We support passage of S.B. No. 350 which would strengthen the ability of a homeowner to defend himself or herself against unauthorized intrusions into the home. Currently, H.R.S. § 703-304, Use of force in self-protection, more commonly referred to as Hawaii's "self-defense" law, only authorizes a person to use deadly force (i.e. firearm, knife, baseball bat) on another person when user of the deadly force is in fear of death, serious bodily injury, kidnapping, rape or forcible sodomy. S.B. No. 350 would expand the self-defense law to allow for the use of deadly force by an occupant of a dwelling against anyone who is not lawfully present in the dwelling and who uses force against the occupant. This change would allow a homeowner to automatically employ deadly force against a midnight intruder, home invader or even a domestic partner who has been restrained from entering the house but persists nonetheless provided that the intruder uses force against the homeowner initially.

S.B. No. 350 also expands on the right of a person to use deadly force without the obligation of retreating. Currently a person is not allowed to use deadly force if the person can avoid the necessity of using such force by retreating in complete safety. This measure would dispense with the obligation to retreat if the person using the deadly force is in a place where he/she lawfully has a right to be. Thus, if you are in your workplace and you are in fear of death or serious injury, you are allowed to use deadly force without an obligation to retreat.

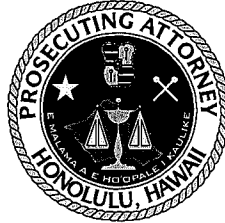
In light of the increasing presence of violence in our society and the availability firearms and other deadly weapons, S.B. No. 350 would allow the public to become more secure in their homes, places of employment and other areas where they should be able to enjoy life free from dangers caused by the criminal element.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**JUDICIARY AND GOVERNMENT OPERATIONS COMMITTEE**  
**Twenty-fifth State Legislature**  
**Regular Session of 2009**  
**State of Hawai'i**

March 3, 2009

**RE: S.B. 350; RELATING TO USE OF FORCE.**

Chair Taniguchi, and members of the Senate Committee on Judiciary and Government Operations, the Department of the Prosecuting Attorney submits the following testimony in opposition to S.B. 350.

The purpose of S.B. 350 is to delete the duty to retreat from state statutory provisions regulating the use of force in self-protection and the use of force for the protection of others. In addition, S.B. 350 amends Hawaii Revised Statutes section 703-304 regarding the use of force in self-protection to provide that a person may use deadly force against a person not lawfully present in the actor's dwelling and who uses force against the actor.

Under current state law regarding the use of force, the underlying policy has always been that in places outside of the home or a workplace, people have a duty to use reasonable means to avoid an attack before they can justifiably use force. This reflects a policy decision that is intended to minimize physical altercations and potential injuries to bystanders. This bill would drastically alter this policy by deleting the statutory to: 1) retreat when retreat can be done safely; 2) surrendering property when another person claims a right to the property; or 3) refraining from an action which the actor has no duty to take. We are concerned about the effect on public safety that this deletion may have; we are concerned that this deletion might actually decrease the public's sense of safety and increase injuries and death as a result of acts of self-defense.

For instance, if a driver cuts off a car containing two large men who pull into the same parking lot as the driver. The two men exit the vehicle and approach the driver yelling at the driver for cutting them off, but the driver can safely drive away from the incident. Under the current law, since the driver can retreat in complete safety, he or she must do so before using force against the two men. If this bill were to pass and the duty to retreat was eliminated, might the driver be more inclined to use deadly force if he or she feared death or serious bodily injury?

We also have concerns that in some instances, particularly where firearms are involved, that since the duty to retreat is eliminated as to public places, will there be an increased risk of injuries to innocent bystanders if an assailant and a victim end up in a gunfight on a sidewalk or a street? We believe that there is the possibility that passage of this bill may actually result in segments of the state's population feeling and being less safe.

We also oppose the provision of the bill which permits a person to use deadly force against another person who uses force against the occupant and is unlawfully in the occupant's dwelling; we believe the use of deadly force is already sufficiently regulated by our statutes. Hawaii law already provides in Hawaii Revised Statutes (HRS) section 703-307(3)(b) that a person may use deadly force against another person when the other person is attempting to commit felonious property damage, burglary, robbery, or felonious theft, and: 1) the other person has employed or threatened deadly force against or in the presence of the actor; or 2) the use of force other than deadly force to prevent the commission of a crime would expose the actor or others to substantial danger of serious bodily injury. In addition, Hawaii law already permits the use of force for self-protection when a person believes such force is immediately necessary for the purpose of protecting the actor against the use of unlawful force by the other person. *In every instance the reasonableness of the actor's belief is determined from the point of view of a reasonable person in the actor's position under the circumstances as the actor believed them to be.* The provisions of this bill would substantially expand the use of deadly force to instances where no threat of deadly force was made against the actor or where the use of deadly force was unnecessary. Under the provisions of this bill, an unarmed burglar who pushes an occupant of home in an attempted to flee the dwelling could be justifiably killed by the homeowner. We note that this result would be in direct contradiction to the underlying policy of preventing deaths behind the current sections on the use of force. The commentary on section HRS 703-304 quotes the Model Penal Code commentary to explain the policy:

It rests, of course, upon the view that protection of life has such a high place in a proper scheme of social values that the law cannot permit conduct which places life in jeopardy, when the necessity for doing so can be avoided by the sacrifice of the much smaller value that inheres in standing up to an aggressor.

For these reasons we oppose the passage of S.B. 350 and respectfully request that this bill be held.

Thank you for the opportunity to testify.



# Hawaii Rifle Association

State Affiliate of the National Rifle Association  
Founded in 1857

March 2, 2009

Testimony IN SUPPORT on SB 350  
In the Senate Committee on Judiciary and Government Operations  
Tuesday, March 3, 2009, 9:30 am, Rm 016

Honorable Chair Taniguchi, Vice Chair Takamine, and Members,

HRA supports the language and intent of this bill to correct an inequity for victims of violent crime. Retreat from deadly force in public should be an option, not a duty. Victims who resist are statistically less likely to be injured or have a completed crime committed against them. (Wright, Rossi & Daly, *Weapons, Crime and Violence In America: A Literature Review and Research Agenda* Washington, D.C., Gov't. Print. Off.: 1981)

Thank you for the opportunity to testify on behalf of the Hawaii Rifle Association.

Dr. Maxwell Cooper,

Director, HRA

225-6944

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 27, 2009 10:50 PM  
**To:** JGO Testimony  
**Cc:** rglivinghi@aol.com  
**Subject:** Testimony for SB350 on 3/3/2009 9:30:00 AM

Testimony for JGO 3/3/2009 9:30:00 AM SB350

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**Comments:**

STRONG SUPPORT for this bill. Some of us are physically impaired and can not flee a threat.