

SB2181

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

February 5, 2010

S.B. No. 2181: RELATING TO DANGEROUS INSTRUMENTS

Chair Taniguchi and Members of the Committee:

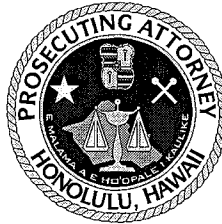
We oppose the passage of S.B. No. 2181. This bill would expand the criminal liability under the offenses of Terroristic Threatening 1° and Robbery 1° for commission of those offenses with the use of "replica firearms." Currently, if a person uses a replica firearm, such offenses are classified as Terroristic Threatening 2°, a misdemeanor, and Robbery 2°, a class B felony.

The reason that Terroristic Threatening and Robbery offenses that are committed with use of an actual firearm are treated more seriously is that the introduction of a firearm into such situations increases the potential for someone suffering death or serious bodily injury. If a person intentionally uses a replica firearm, that person should not be treated in the same class as one who possesses an actual firearm. While the replica firearm might scare people, that person who uses it has made a conscious decision not to employ the use of an actual firearm and should be treated separately under the law from one who uses an actual firearm. Indeed the main danger that the person possessing the replica might present is to himself or herself because the police or other armed persons present might treat the replica as an actual firearm and take action accordingly.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE JUDICIARY AND GOVERNMENT OPERATIONS COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

February 5, 2010

RE: S.B. 2181; RELATING TO DANGEROUS INSTRUMENTS.

Chair Taniguchi and members of the Senate Committee on Judiciary and Government Operations, the Department of the Prosecuting Attorney submits the following testimony in support of S.B. 2181.

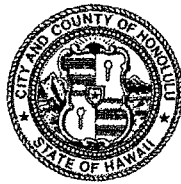
The purpose of this bill is to amend the offenses of terroristic threatening in the first degree and robbery in the first degree to include situations where the victim is robbed or threatened with a replica firearm.

The current state of the law provides in pertinent part that threats or thefts committed with a dangerous instrument are the offenses of robbery in the first degree or terroristic threatening in the first degree, class A and class C felonies respectively. Since dangerous instruments are those objects or materials which in the manner it is used or intended to be used are capable of producing death or serious bodily injury, items which look like firearms but are not, are not dangerous instruments as they cannot produce death; therefore commission of a robbery with one or making a threat with one is not first degree robbery or terroristic threatening. However, the victims and witnesses to the robbery or threat are intended to perceive and do perceive the replica gun as a real firearm and feel the same fear and apprehension that victims of a robbery or threat with a real firearm do. For this reason we think the distinction between the robbery or threat with a real gun or replica gun should be eliminated.

Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE RR-NTK

February 5, 2010

The Honorable Brian T. Taniguchi, Chair
and Members
Committee on Judiciary and
Government Operations
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: Senate Bill No. 2181, Relating to Dangerous Instruments

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

The Honolulu Police Department authored Senate Bill No. 2181, Relating to Dangerous Instruments. We are respectfully requesting your support for this bill. The goal of this legislation is to address a gap in the existing law when a suspect uses a replica gun in the commission of a robbery or a threatening case. Currently, if the weapon is not a real firearm, the suspect cannot be charged with the higher offense of Robbery in the First Degree or Terroristic Threatening in the First Degree.

Replica guns are increasingly more difficult to discern from real firearms and as a result are being used to facilitate serious criminal offenses. The victims in these crimes believe the weapons are real and are justifiably terrorized when threatened with one. We are seeing an increasing trend of replica guns being used in robberies and in terroristic threatening cases. In the last twelve months, there have been at least eight robbery cases and seven threatening cases where a replica gun was utilized.

As written, the current definition of a "Dangerous Instrument" does not include replica guns and therefore, does not allow for the appropriate prosecution of these cases. This denies the victims of these crimes the commensurate justice they deserve. Similar laws have been passed in nine other states.

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The Honorable Brian T. Taniguchi, Chair
and Members
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This bill provides a solution by adding a definition of "Replica Firearm" in chapters 707 and 708 of the Penal Code.

The Honolulu Police Department urges you to support Senate Bill No. 2181, Relating to Dangerous Instruments.

Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

DC Ral Myg

for LOUIS M. KEALOHA
Chief of Police

William P. Kenoi
Mayor



Harry S. Kubojiri
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County of Hawai`i

POLICE DEPARTMENT

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February 3, 2010

The Honorable Brian T. Taniguchi
Chair and Members
Committee on Judiciary and Government Operations
State Capitol
415 South Beretania Street, Conference Room 016
Honolulu, Hawai'i 96813

Re: SENATE BILL 2181, RELATING TO DANGEROUS INSTRUMENTS

Dear Senator Taniguchi and members:

The Hawai'i Police Department supports Senate Bill 2181, Relating to Dangerous Instruments. Authored by the Honolulu Police Department, the intent of this proposed legislation is to add the use of replica guns to the definition of a "Dangerous Instrument" when replica guns are utilized by suspects against victims during the commission of robbery and terrorist threatening crimes. Presently, if the weapon is not a real firearm, the perpetrator cannot be charged with the higher offense of Robbery in the First Degree or Terroristic Threatening in the First Degree, even when victims subjected to these serious crimes perceive the replica gun as real.

Today, replica guns are sophisticated and can easily be perceived as real, even to trained law enforcement personnel. The inability to charge and prosecute at the higher offense only promotes the use of replica guns by criminals knowledgeable on present statutes. Similar legislation has already been passed in nine other states.

This bill remedies current inadequacies in present law by adding a definition of "Replica Firearm" in chapters 707 and 708 of the Penal code. For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai'i Police Department to testify on S.B. No. 2181.

Sincerely,

HARRY S. KUBOJIRI
POLICE CHIEF