

Honolulu, Hawaii

APR 07 2017

RE: H.B. No. 461
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred H.B. No. 461, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO RESISTING ARREST,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish the offense of resisting arrest in the first degree as a class C felony; and
- (2) Reclassify the existing offense of resisting arrest as the offense of resisting arrest in the second degree, which is a misdemeanor.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney, City and County of Honolulu and Police Department, City and County of Honolulu. Your Committee received testimony in opposition to this measure from the Office of the Public Defender and two individuals. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that existing law does not adequately address situations where an offender takes or attempts to take a law enforcement officer's firearm. Officers sometimes engage in



physical altercation with offenders while trying to make an arrest, placing their firearms in close proximity to the offender's grasp. This can result in a dangerous situation for the law enforcement officer and the offender because a gun in close quarters can discharge and seriously injure or kill the persons involved or bystanders. This measure elevates the offense of resisting arrest to a felony when the offender uses or attempts to use force to remove a law enforcement officer's firearm during the course of an arrest, to provide a greater deterrent as well as create a safer working environment for law enforcement officers.

Your Committee notes the concerns raised in written testimony submitted by the Department of the Attorney General that the language in this measure regarding the offense of resisting arrest in the first degree may pose title concerns because the language only refers to an officer who is acting under color of the law enforcement officer's official authority. Thus, a law enforcement officer could be engaged in any law enforcement activity, not necessarily an arrest.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the language suggested by the Department of the Attorney General that clarifies the language under the offense of resisting arrest in the first degree that the use of force to remove a firearm from a law enforcement officer must be done while the law enforcement officer is effecting an arrest;
- (2) Clarifying that the mens rea required under the offense of resisting arrest in the first degree is only intentionally, rather than intentionally or knowingly;
- (3) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 461, H.D. 1, as amended herein, and recommends that it pass



Second Reading in the form attached hereto as H.B. No. 461,
H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB461, HDI	Committee Referral: JDL	Date: 3/31/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado				✓
THIELEN, Laura H.	✓			
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: Karl Rhoads				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes