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**Subject:** Submitted testimony for HB461 on Feb 24, 2017 14:00PM  
**Date:** Thursday, February 23, 2017 3:02:41 PM  
**Attachments:** [HB461 \[Public Defender testimony\].pdf](#)

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**HB461**

Submitted on: 2/23/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Tonaki	Public Defender	Oppose	Yes

Comments:

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**Testimony of the Office of the Public Defender,  
State of Hawaii to the House Committee on  
Judiciary**

February 24, 2017

H.B. No. 461: RELATING TO RESISTING ARREST

Chair Nishimoto and Members of the Committee:

This measure would create the offenses of resisting arrest in the first and second degree. If during the course of a lawful arrest, a suspect attempted to remove a law enforcement officer's firearm, he would be charged with resisting arrest in the first degree, a class C felony. The current offense of resisting arrest would be reclassified as resisting arrest in the second degree, a misdemeanor. The Office of the Public Defender opposes H.B. No. 461.

The deterrent effect of enacting a stiffer penalty is often overstated and should be questioned. Persons who resist arrest are often drunk, under the influence of drugs, mentally ill and/or emotionally disturbed. A felony resisting arrest law will not cause them to stop and think twice before deciding to disobey a law enforcement officer.

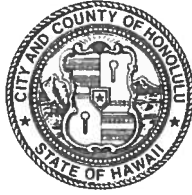
A law enforcement officer's firearm is often holstered to his belt. During a scuffle, his sidearm, which protrudes from his hip, may accidentally be hit, touched or grabbed by the suspect. We are concerned that officers will be quick to say that the suspect reached for their gun, and charge the felony rather than a misdemeanor. In the vast majority of cases, only the officer's allegation will exist that a suspect was attempting to remove the officer's firearm. There will be no scientific or objective evidence of the incident.

Finally, the history of the resisting arrest charge suggests that it is frequently used as a cover-up for police brutality. In these situations, when an officer has used unjustifiable and excessive physical force in apprehending a member of the public, he or she claims that the arrestee resisted arrest thus forming a justification for the conduct. It is suggested that this measure should not be seriously considered unless all police officers are outfitted with evidence preservation devices such as "body cameras" such that firm evidence can be recorded so that courts and juries can sort out these situations.

Thank you for the opportunity to provide testimony in this matter.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

CARY OKIMOTO  
JERRY INOUE  
DEPUTY CHIEFS

OUR REFERENCE RR-LS

February 24, 2017

The Honorable Scott Y. Nishimoto, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

**SUBJECT: House Bill No. 461, Relating to Resisting Arrest**

I am Richard C. Robinson, Assistant Chief of the Investigative Bureau of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 461, Relating to Resisting Arrest, with amendments.

Currently, even in the most egregious cases, the Department of the Prosecuting Attorney has difficulty with successfully prosecuting cases in which a suspect attempts to take a police officer's firearm. This is one of the most dangerous situations a police officer can be in. Sadly, these cases often end with the death of the officer. Between 2006 and 2015, there have been 24 law enforcement officers who had their firearms taken from them and were fatally shot by the suspect. Hawaii is not immune from these tragedies. Since 1976, three law enforcement officers were shot and killed with their own gun.

House Bill No. 461 will allow for the successful prosecution of these cases. We would like to propose an amendment, which clarifies that an attempt to take an officer's firearm (regardless of where it is during an arrest) is an offense. We have also added a requirement that force must be used in the attempt. We suggest the following language be added to page 2, line 14, of the bill:


The Honorable Scott Y. Nishimoto, Chair  
and Members  
Committee on Judiciary  
February 24, 2017  
Page 2

from the person of a law enforcement officer acting under the color of the law enforcement officer's official authority. ~~[from effecting an arrest by removing or attempting to remove a firearm from the person of a law enforcement officer.]~~

The HPD urges you to support House Bill No. 461, Relating to Resisting Arrest, with the proposed amendments.

Thank you for the opportunity to testify.

Sincerely,

  
Richard C. Robinson, Assistant Chief  
Investigative Bureau

APPROVED:



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Cary Okimoto  
Acting Chief of Police

**TESTIMONY OF THE HAWAI`I POLICE DEPARTMENT**

**HOUSE BILL 461**

**RELATING TO RESISTING ARREST**

BEFORE THE COMMITTEE ON JUDICIARY

DATE : Friday, February 24, 2017

TIME : 2:00 P.M.

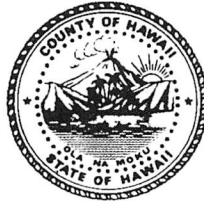
PLACE : Conference Room 325  
State Capitol  
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Paul K. Ferreira  
Hawai`i Police Department  
County of Hawai`i

(Written Testimony Only)

Harry Kim  
Mayor



Paul K. Ferreira  
Police Chief

Kenneth Bugado Jr.  
Deputy Police Chief

## County of Hawai'i

February 23, 2017

**POLICE DEPARTMENT**  
349 Kapi'olani Street • Hilo, Hawai'i 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

Representative Scott Y. Nishimoto  
Chairperson and Committee Members  
Committee On Judiciary  
415 South Beretania Street, Room 325  
Honolulu, Hawai'i 96813

### **Re: House Bill 461 Relating To Resisting Arrest**

Dear Representative Nishimoto:

The Hawai'i Police Department strongly supports the passage of House Bill 461, Relating to Resisting Arrest. The purpose of this Bill is to establish the offense of Resisting Arrest in the First Degree as a felony for anyone who either removes or attempts to remove a firearm from the person of a law enforcement officer who is acting under the color of his authority.

The Hawai'i Police Department is aware that all law enforcement officers receive detailed training in the facts and circumstances that must be present in order to ensure their use of a firearm is appropriate. The necessary facts and circumstances must not only be in accordance with applicable state statutes, but must also take into account the safety of all persons nearby as well. It is our firm belief that anyone who would knowingly attempt to disarm a law enforcement officer who is acting under the color of his/her authority, has already displayed malicious conduct and becomes an immediate threat not only to the officer but to all other persons present. Further, any person based on their own ill-conceived desire to disarm an officer would thereby place their own life at jeopardy as they would then be viewed as an immediate threat to the safety and well-being of not only the officer but to all other persons present.

For these reasons and as a matter of deterrence from such behavior, we urge this committee to approve this legislation. We also note this proposed legislation has been presented before and warrants serious consideration. Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 461.

Sincerely,

PAUL K. FERREIRA  
POLICE CHIEF

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2017 2:05 PM  
**To:** JUDtestimony  
**Cc:** victor.ramos@mpd.net  
**Subject:** \*Submitted testimony for HB461 on Feb 24, 2017 14:00PM\*

**HB461**

Submitted on: 2/22/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Support	No

Comments:

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