



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 2784, RELATING TO THE POWER OF ARREST.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 12, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 016

Deliver to: Committee Clerk, Room 219, 1 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Mark K. Miyahira, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports this measure.

The purpose of this bill is to authorize agents of the United States Marshal Service to make arrests under state law. This bill will also amend section 803-16, Hawaii Revised Statutes, to update references to reflect the current names of agencies within the federal Department of Homeland Security.

Act 201, Sessions Laws of Hawaii 1980, codified as section 803-16, Hawaii Revised Statutes, conferred the power to arrest, under state law, on United States Custom Service and Immigration and Naturalization Service officers. These agents were often in a position to observe suspicious activities but were not authorized, under prior state law, to take action. The intent of this law was to provide additional protection at state airports and harbors by authorizing customs and immigration agents to assist in maintaining law and order.

It is appropriate to extend the power to make arrests under state law to the United States marshal or deputy United States marshal. However, the Department of the Attorney General recommends that the power to arrest be extended to agents of other federal agencies, including the Federal Bureau of Investigation, United States Secret

Service, Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Drug Enforcement Agency. This amendment will provide additional protections for citizens of the State, as well as our many visitors, by authorizing federal agents to assist in maintaining law and order.

Therefore, the Department recommends that section 1 be deleted and that section 2 be amended to have section 803-16, Hawaii Revised Statutes, read as follows:

"~~[+]§803-16[]—Officer of United States Customs Service or Immigration and Naturalization Service;]~~ Federal law enforcement officers; arrest powers. ~~[An officer of the United States Customs Service and the Immigration and Naturalization Service may,]~~ (a) A federal law enforcement officer, without a warrant, may arrest a person if:

- (1) The officer is on duty;
- (2) One or more of the following situations exists:
 - (A) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 707, against the officer or against any other person in the presence of the officer;
 - (B) The person commits an offense against public order, defined and punishable under chapter 711, in the presence of the officer;
 - (C) The officer has probable cause to believe that a crime as defined in subparagraph (A) or (B) has been committed and has probable cause to believe that the person to be arrested has committed the crime;
 - (D) The officer has probable cause to believe that a felony has been committed and probable cause to believe that the person to be arrested has committed the felony; or
 - (E) The officer has received information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a law enforcement officer holds a warrant for the person's arrest; and

(3) The [~~Regional Commissioner of Customs or the Regional Commissioner of Immigration and Naturalization, as the case may be, for the district of Hawaii certifies to the State that the officer has~~] head of the Hawaii district office for each of the federal agencies referred to in subsection (b) provides to the attorney general a list of federal law enforcement officers certified to have received proper training within the agency to enable that officer to enforce or administer the powers granted by this section.

(b) For purposes of this section, "federal law enforcement officer" means:

- (1) A special agent of the Federal Bureau of Investigation;
- (2) A special agent of the United States Secret Service;
- (3) A special agent of the United States Department of Homeland Security, Citizenship and Immigration Service, or Customs and Border Protection;
- (4) A special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives;
- (5) A special agent of the Drug Enforcement Administration; and
- (6) A United States marshal or deputy United States marshal."

The Department respectfully requests that this measure be passed, with the suggested amendment.

TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

February 12, 2008

S.B. No. 278 -RELATING TO THE POWER OF ARREST

2784

Written Testimony Only

Chair Taniguchi, and Members of the Committee:

My name is Jay Bieber and I am submitting written testimony in **SUPPORT** of this bill. I am submitting this testimony as a resident of Hawaii and private individual and do not represent the views of any law enforcement agency.

The purpose of this bill is to permit certain federal law enforcement officers to arrest individuals for violations of certain state laws.

The state of Hawaii has an unused available resource in its federal law enforcement officers. These individuals work in the neighborhoods in our state everyday investigating criminal cases, seeking out wanted individuals and interacting with members of the community. By granting additional powers to federal law enforcement officers you are giving a tool to assist them in conducting their investigations, and you are also making use of the available resource by allowing federal officers to take a more active role when they see criminal acts occurring in their community.

Often federal agents come into contact with state fugitives or witness criminal behavior during the course of their duties that may be violations of state laws. When these situations occur federal officers occasionally act, but quite frequently they choose not to involve themselves because they are concerned about whether they have proper authority to arrest, or the potential criminal charges they face if the situation becomes violent and they acted without authority.

To give a few examples, based upon actual situations, of when this bill may be applied:

FBI agents investigating a bank robbery are traveling to a residence to interview a witness. While approaching the residence they notice an individual climbing out of the window of the home next door. The individual is holding articles that appear to belong inside the residence. Agents arrest and detain the individual, and notify county police of the incident.

Deputy Marshals, while searching for a fugitive, travel to a location that the fugitive is known to frequent. While there they come into contact with several of the fugitives associates. After checking the state computer one of these individuals is identified as a having an outstanding warrant for assault. The deputies arrest the individual and transport him to the appropriate facility for state processing.

While walking in the Federal Building parking lot two secret service agents observe a couple exiting from a bus at a nearby bus stop. The couple appears to be in a loud argument that attracts the attention of several people in the area. The bus driver also exits the bus and informs the agents, who have approached to investigate, that he observed the male strike the female with a closed fist and that he has called the police. The agents separate the couple before the argument escalates, and discover that the male did indeed strike the female. The agents arrest the male and await the arrival of area police.

This statute would affect approximately 150 federal law enforcement officers throughout the state of Hawaii. Its purpose is to in no way diminish the authority or role of the county and state law enforcement organizations, but to increase the law enforcement presence in the neighborhoods and communities of Hawaii.

I ask for your favorable support of this bill. Thank you.