

Testimony on behalf of the
Office of the Public Defender, State of Hawai`i
to the House Committee on Judiciary

March 17, 2009

RE: S.B. No. 350 SD1: Relating to Use of Force

Chair Karamatsu and Members of the Committee:

We support passage of S.B. No. 350 SD1 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 SD1 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 SD1 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 out in public and you are attacked and in fear of death or serious injury, you are allowed to use deadly force without an obligation to retreat.

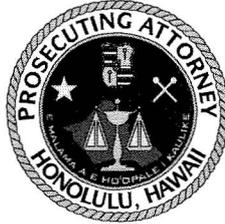
In light of the increasing presence of violence in our society and the availability firearms and other deadly weapons, S.B. No. 350 SD1 would allow the public to become more secure in their homes, places of employment and other areas where they should be able to enjoy life free from dangers caused by the criminal element.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE JON RIKI KARAMATSU, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

March 17, 2009

RE: S.B. 350, S.D. 1; RELATING TO USE OF FORCE.

Chair Karamatsu, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in opposition to S.B. 350, S.D. 1.

The purpose of S.B. 350, S.D. 1 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, S.D. 1 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, S.D. 1 and respectfully request that this bill be held.

Thank you for the opportunity to testify.



NATIONAL RIFLE ASSOCIATION OF AMERICA
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STATE & LOCAL AFFAIRS DIVISION
CAROLYN HERBERTSON, HAWAII STATE LIAISON

**TESTIMONY IN SUPPORT OF S.B. 350
HOUSE COMMITTEE ON JUDICIARY
TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

Tuesday, March 17th
Conference Room 325
2:00 p.m.
State Capitol Building
Testimony read by Mark Plischke on behalf of Carolyn Herbertson

Chair Karamatsu and Members of the Committee:

On behalf of the Hawaii members of the National Rifle Association, I would like to voice our strong support for Senate Bill 350, a measure designed to expand the scope of self-defense on behalf of homeowners and inhabitants against unauthorized entry, as well as law-abiding citizens who find themselves having to use deadly force if in fear of great bodily injury without first having a duty to retreat.

Responsible law-abiding citizens should not be forced to retreat, or to run, from a place they have a right to be in the face of unlawful attack., nor should they be limited to meeting force with force in their homes or vehicles against a criminal who breaks in or unlawfully intrudes -- regardless of whether the victim knows what kind of force the criminal intends to use.

A victim who is in fear of being attacked can't be expected to wait before taking action to protect him or herself and loved ones and ask the criminal, "excuse me, intruder, are you here breaking into my home to rape me, kill me, or are you just here to beat me up and steal my stuff and oh, by the way, what kind of weapon do you have?"

One should not have to worry about being arrested or prosecuted if using force in defense of self or family and should be able to presume that anyone intruding is there to cause harm.

Senate Bill 350 simply says that if a criminal breaks into your home, your occupied vehicle, or your place of business, you may presume he is there to do bodily harm and you may use any force, including deadly force, against him. This bill also removes the “duty to retreat” when you’re outside of your home if you are in a place you have a legal right to be.

Under current law, if you are walking down the street and a rapist or mugger tries to drag you into an alley, you are statutorily required to try to run – which could subject you to increased danger. If you are walking through a parking lot to your car and a kidnapper tries to drag you into his car or van, you are also required to attempt an escape.

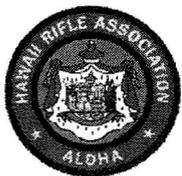
For the sake of example, let’s presume that I am a woman of smaller stature – I am 50 years old, stand 5 foot 3 inches, and weigh 140 pounds. Like a lot of women, I can’t outrun or retreat quickly enough in the face of a man intent on doing me harm. Under the provisions of this legislation, I can choose to meet force with deadly force, but only if I reasonably believe it is necessary to prevent death or great bodily harm.

The decision to fight or flee should be mine to make – not a law enforcement agency, not a prosecuting attorney, and with all due respect, not a legislative body that can’t possibly gauge my level of personal safety at the time of attack.

In today’s pressure-cooker environment where violence rates are increasing and home invasions are ramping up, we must not leave the question of how we can best protect ourselves to remain unanswered.

For this reason, the National Rifle Association respectfully asks that you support Senate Bill 350.

Thank you for the opportunity to present my testimony.



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

March 16, 2009

Testimony on SB 350 SD1, Relating to Use of Force

IN STRONG SUPPORT

Before the Committee on Judiciary

Representative Jon Riki Karamatsu, Chair

Representative Ken Ito, Vice Chair

DATE: Tuesday, March 17, 2009

TIME: 2:00 PM

PLACE: Conference Room 325

JUDTestimony@Capitol.hawaii.gov

Honorable Chair, Vice Chair, and Members,

I would like to provide testimony in **STRONG SUPPORT** of this bill.

The idea of requiring an innocent to retreat prior to the use of deadly force is a bad idea. It is often tactically disadvantageous, and may cause the defendant to put himself in a more precarious situation.

Although retreat should be an option, it should be chosen by the innocent at the time of crisis, not by law trying to be Monday morning quarterbacks.

Do not jeopardize the safety of our citizens by requiring retreat.

Please **SUPPORT** the passage of this bill.

Sincerely,

Mr. Mark Plischke
Legislative Co-Chair
Hawaii Rifle Association
478-9393

IPAC

Injury Prevention Advisory Committee

March 17, 2009

Representative Jon Riki Karamatsu, Chair
Representative, Ken Ito, Vice Chair
State Capitol
Honolulu, Hawaii 96813

Dear Representative Karamatsu and Members of the Judiciary Committee,

Subject: **Opposing SB350, SD1, Relating to Use of Force**

The Injury Prevention Advisory Committee (IPAC) strongly opposes SB 350, SD1. This bill would permit the use of deadly force by the resident of a dwelling against an intruder who uses force against the resident, and it would also extend the right to use deadly force in self-defense to places outside the home.

Established in 1990, the Injury Prevention Advisory Committee (IPAC) is an advocacy group committed to preventing and reducing injury in Hawai'i. IPAC members include public and private agencies, physicians, and professionals working together to address the eight leading areas of injury in Hawai'i that include violence and abuse.

Rather than increasing the safety of individuals in their own homes, work places and in public places, changes to Hawai'i's existing self-defense law would decrease individuals' and the public's health and safety. In the home, work place and public places, the bill would sanction the use of deadly force when it might not be warranted or justified; and in so doing, increase the potential for altercations that could result in serious injuries or death. A law that promotes the use of deadly force as the first line of defense can create any number of unintended consequences. For example, a person in a public place could mistakenly think that someone was threatening him/her and use a dangerous weapon, such as a firearm, to kill or injure that person. Furthermore, he/she could injure or kill innocent bystanders. In other instances, allowing or encouraging individuals to use deadly force to defend themselves could substantially increase their own chance of death or injury.

Measures such as this may make the public feel safer, but could instead create a mentality of fear and defensiveness. There is insufficient evidence to support that this bill is warranted, and IPAC believes that it is not justifiable considering Hawai'i's low crime environment. Hawai'i is one of the safest states in the nation, and Honolulu has one of the lowest crime rates of cities with a population of over 500,000. Why tamper with laws that are already working for the safety of the public? **We urge you to oppose SB350,SD1.** Thank you for allowing us to testify.

Sincerely,



Bruce McEwan
Chair
Injury Prevention Advisory Committee

A safe Hawai'i from the mountains to the sea.

karamatsu3-Leanne

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Sunday, March 15, 2009 6:41 PM
To: JUDtestimony
Subject: SB350 SD1 to be heard Tuesday, March 17th at 2:00pm by the House Judiciary Committee in Room 325

TO: Representative Karamatsu, Chair
Representative Ito, Vice Chair
Members of the Judiciary Committee

FROM: Dara Carlin, M.A.
881 Akiu Place
Kailua, HI 96734
(808) 218-3457

DATE: March 17, 2009

RE: Support for SB350 SD1

No one ever wants to be in the position of being attacked in one's own home by a person unknown to them - or worse - by someone who **is** known to them. Under times of such extreme duress, humans are hard-wired to do one of three things: fight, flight or freeze.

Fleeing a hostile situation is the most desirable action to take but doing so **does not** guarantee freedom from harm - many victims have been hurt in their attempt to flee the situation. Freezing is a particularly painful response for survivors who are not only traumatized by their attack, but by their own inability to move or protect themselves. Those who react by fighting paradoxically may end up with charges and consequences against them for doing so.

As a Domestic Violence Survivor Advocate, I have had to explain the duty to retreat countless times to not only victim-survivors, but to their loved ones as well, who don't understand how their daughters, sisters, etc. are "not allowed to fight back" if they're being attacked in their own homes. What I typically hear is: "So he can break into the house again, do whatever he wants to her and if she leaves so much as a scratch on him defending herself, SHE could be labeled as an abuser too?! Are you kidding me?!"

This measure would primarily protect a victim who may be left with no other choice but to defend herself vs. being given "permission" to use deadly force against an attacker. The women I work with at the Windward Correctional Center have told me that the Kentucky jail they spend time at before coming back to Hawaii is full of women who killed their abusers while attempting to defend themselves from him which only exemplifies what a no-win situation domestic violence truly is. When a situation comes down to "it's either me or him" the victim-survivor should not have to pay a price for using deadly force to save their own lives.

Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

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COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

Testimony in Support of SB 350 SD1

Chair Karamatsu, Vice Chair Ito,

Thank you for hearing this bill to correct the inequities for victims of violent crime. Retreat should be an option and not a requirement, not a duty, especially when that duty is evaluated in the clarity of retrospection. Studies have shown that victims that resist are less likely to be injured.¹

The Prosecuting Attorney, Peter Carlisle, submitted testimony against this bill on concerns that “an unarmed burglar who pushes an occupant of home [sic] in an attempt to flee the dwelling...” could justifiably have deadly force used against him. I would suggest that in such an example it should not be incumbent on the homeowner, awakened in the dead of night to find an intruder in his home, to determine if the burglar running at him is intent on violence or simply trying to get out of the house.

Mr. Carlisle also states that under HRS §703-307 the use of deadly force is already allowed “when the other person is attempting commit felonious property damage, burglary, robbery, or felonious theft...” but fails to mention that this particular statute is titled “Use of force in law enforcement” and does not apply to ordinary citizens unless they are “making or assisting in making an arrest...” Obviously not the most likely scenario in a home invasion. HRS §703-304(2) clearly states that the use of deadly force is limited to protect against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

I would suggest that the wording in section 2(b) be amended from the apparent necessity that the criminal use force before the actor can employ deadly force to wording to the effect that the threat of force be all that is required.

Thank you for the opportunity to submit testimony.

Bill Richter

¹ Wright, Rossi & Daly. *Weapons, Crime and Violence In America: A Literature Review and Research Agenda*. Washington, D.C., Government Printing Office: 1981