

ACT 51

H.B. NO. 1455

A Bill for an Act Relating to Robbery in the First Degree.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaii Penal Code does not adequately address potential situations in which offenders will utilize electric guns to facilitate crimes. On January 1, 2022, it became legal for many members of the public to buy and possess electric guns.

Electric guns can cause severe pain and completely incapacitate a person. Criminals will begin to use these devices against others to facilitate crimes as they become more prevalent in the community. While the effect of electric guns can be severe, the incapacitation can also be momentary and may not result in death or serious bodily injury. Once the use of an electric gun against a person stops, it is likely that the residual injuries would be lesser than would occur had a similar level of incapacitation or pain been inflicted on a victim by other means.

The Penal Code frequently utilizes residual injury or incapacitation as a key determining factor for the level of severity and resulting penalty for a crime. Electric guns will allow criminals to achieve unprecedented incapacitation of a person and potentially avoid residual injury to the victim, resulting in lower penalties for the crime.

For these reasons, the legislature further finds that specifying the use or threatened use of an electric gun during the course of committing a robbery under this particular offense is necessary and may have a long-term deterrent effect that creates a safer environment for the community.

Accordingly, the purpose of this Act is to amend the offense of robbery in the first degree to include as part of this offense being armed with or using an electric gun during the course of a theft or non-consensual taking of a motor vehicle.

SECTION 2. Section 708-840, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

“(1) A person commits the offense of robbery in the first degree if, in the course of committing theft or non-consensual taking of a motor vehicle:

- (a) The person attempts to kill another or intentionally or knowingly inflicts or attempts to inflict serious bodily injury upon another;
- (b) The person is armed with a dangerous instrument, an electric gun, or a simulated firearm and:

- (i) The person uses force against the person of anyone present with intent to overcome that person's physical resistance or physical power of resistance; or
- (ii) The person threatens the imminent use of force against the person of anyone present with intent to compel acquiescence to the taking of or escaping with the property;
- (c) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster; or
- (d) The person threatens the imminent use of force against the person of anyone present with intent to compel acquiescence to the taking of or escaping with the property during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster.

(2) As used in this section:

"Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

"Electric gun" shall have the same meaning as in section 134-81.

"Simulated firearm" means any object that:

- (a) Substantially resembles a firearm;
- (b) Can reasonably be perceived to be a firearm; or
- (c) Is used or brandished as a firearm."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 2022.)