



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-THIRD LEGISLATURE, 2006

ON THE FOLLOWING MEASURE:

S.B. NO. 2531, RELATING TO FIREARMS.

BEFORE THE:

SENATE COMMITTEE ON INTERGOVERNMENTAL AFFAIRS

DATE: Tuesday, February 14, 2006 **TIME:** 3:00 PM

LOCATION: Conference Room 225

Deliver to: Committee Clerk Room 215, 35 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lawrence A. Goya, Senior Deputy Attorney General

Chair Ige and Committee Members:

The Department of the Attorney General strongly opposes this measure.

The purpose of this bill is to remove the requirement under current state law that a license to carry a concealed firearm must be based on an "exceptional case" and also removes the requirement that a license is needed to carry an unconcealed firearm on one's person. While it is apparent that some thought has gone into trying to place safeguards into the bill, the bill essentially does is make it easier to carry a firearm, be it concealed or unconcealed, in public. An application for a license to carry a concealed firearm could be granted upon the minimal requirement of an applicant merely indicating some legal reason to carry a concealed firearm for a lawful purpose. We cannot support this measure because, despite whatever safeguards may be tried, there will be more opportunities for mistakes to happen, and there will be more firearms in the public domain with which to potentially seriously injure or kill.

Moreover, our opposition is also based on specific problems we see in the bill. First of all, under the bill, a license to carry a concealed weapon is restricted to United States citizens who have resided in Hawaii for at least six months. The requirement of being

a resident for at least six months may be unconstitutional as an impairment of a United States citizen's right to travel.

Second, the bill prevents a license to carry a concealed firearm from being issued, if the applicant has "chronically and habitually used intoxicating liquor or other substances to the extent that the person's normal faculties are impaired." Aside from that restriction being too broadly worded, the new subsection (b) (6) (B) in section 1 on page 3, lines 14-17, of the bill lists as one of the prohibitions being convicted of any offense relating to "liquor" under part IV of chapter 712. There are no "liquor" offenses that pertain to impairing one's normal faculties" in part IV of chapter 712. The only "liquor" offense under that part is the offense of Promoting Intoxicating Liquor to a Minor.

Third, as noted previously, granting a license to carry a concealed firearm simply upon the applicant's statement that he or she wants to carry a concealed weapon and that it is not against the law is too loose a standard. Unlike current law, which permits the issuance of a license to carry a concealed firearm only upon the showing of an "exceptional case," under the bill, there would seem little room for a chief of police to exercise his discretion to approve or disapprove a license. It would seem that, as long as the reasons given for a license to carry a concealed firearm are not illegal, the license must be granted. Furthermore, there is nothing in the bill that would require checking into the urgency of an applicant's reasons for a license, as there is now.

Fourth, part of the provision under the new subsection (c) in section 1 on page 5 of the bill that denies a license if the applicant has been convicted of one or more misdemeanor crimes of violence, unless three years have passed since completing probation, or if the record is sealed, is contrary to federal law. Under federal law, a person who was represented by legal counsel, and subsequently convicted of a misdemeanor crime of violence where the violence was directed toward a family member, is forever prohibited

from possessing a firearm, unless the conviction is expunged or set aside, or if the person is pardoned.

Fifth, it is not clear that the bill requires that there be a full background check of applicants who are not exempt under the bill from having a background check done. It is assumed that what is meant in the new subsection (f)(1) of section 1 on pages 7 and 8 of the bill by the requirement that fingerprints of an applicant be sent to the Attorney General and the Federal Bureau of Investigation for "processing," is that there will be a check of the state criminal history databases and the National Instant Background Check System (NICS) maintained by the Federal Bureau of Investigation. Even if that was not intended, as a minimum, a NICS background check is required under federal law. However, even if a State criminal history and NICS check is done, certain information, such as certain details of an applicant's mental health history and whether the applicant is now capable of carrying a firearm, would not be in either of those databases.

Sixth, a license to carry a concealed firearm would be renewed under subsection (1) of section 1 on page 11 of the bill upon the applicant submitting a notarized statement stating that he or she is still qualified, and does not seem to require a new background check. If that is the case, aside from failing to comply with the federal requirement to, at a minimum, do a NICS background check, the bill would create too many opportunities for persons who may no longer be qualified to carry a concealed weapon to continue to improperly carry one.

Seventh, the bill does not seem to require a license to carry an unconcealed firearm, as is currently required by chapter 134, Hawaii Revised Statutes. If that is what is intended, the bill opens a potential Pandora's Box. Aside from losing the ability to track individuals who are now required to have such a license due to their occupations, the bill will also seem to permit anyone who legally can possess a firearm to automatically be able to legally

carry that firearm on his or her person, so long as it is exposed. It does not take a great deal of imagination to foresee increased instances of death or serious injury stemming from domestic violence or "road rage," simply because a firearm was near at hand.

Lastly, the bill is not clear whether official representatives of foreign nations would be able to obtain a license to carry a concealed firearm. As written, there is no allowance made for such representatives. Such representatives are allowed to obtain licenses under current state law. If such representatives would be issued licenses to carry concealed firearms, they would first need to go through a NICS check and a check of the Immigration and Customs Enforcement databases to comply with federal law.

For the foregoing reasons, we strongly oppose passage of this measure.