

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2299

Honorable Members  
Twenty-Third Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2299, entitled "A Bill for an Act Relating to Chapter 803."

The purpose of this bill is to specify the exact procedure and the exact words to be stated by police before entering homes to arrest persons suspected of having committed crimes.

On **June 15, 2006**, the United States Supreme Court decided Hudson v. Michigan, a case that has re-written the entire federal jurisprudence of "knock and announce" and has determined that there is no constitutional requirement to suppress evidence based on a "knock and announce" violation. I believe that any bill that addresses "knock and announce" ought to reflect this decision, and thus it would be prudent to wait until the 2007 regular session of the Legislature to revisit this matter.

The original purpose of this bill was to restore the standards required by the United States Constitution, rather than the higher standard imposed by section 803-11, Hawaii Revised Statutes, that dictates police procedure when entering a house to arrest a person suspected of a crime. This bill was proposed in response to a case decided by the Hawaii Supreme Court. In State v. Maldonado, 108 Haw. 436, 121 P.3d 901 (2005), the Court held that section 803-11, Hawaii Revised Statutes, requires strict compliance and that, if a law enforcement officer does not strictly comply with the exact language of section 803-11 when executing a warrant of arrest, all evidence gained during the

execution of the warrant must be suppressed. (As noted above, such suppression is now no longer required by the United States Constitution).

It is well-settled law that both the Fourth Amendment to the United States Constitution and section 7 of article I of the Constitution of the State of Hawaii require only that a search must be reasonable. The United States Court of Appeals for the Ninth Circuit, in United States v. Combs, 379 F.3d 564 (9th Cir. 2004), citing the United States Supreme Court decision in Wilson v. Arkansas, 514 U.S. 927, 934 (1995), stated that "The common-law principle that law enforcement officers should 'knock and announce' their presence and authority before entering a dwelling is part of the reasonableness inquiry under the United States Constitution's Fourth Amendment guarantee against unreasonable searches and seizure" and that "[t]he Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." The Combs decision further stated, "Since Wilson, the Court has reiterated that the knock and announce principle is a part of the reasonableness inquiry rather than a prerequisite for constitutional entry." Thus, in a case where the police shout "Police -- search warrant," the police have substantially complied with the constitutional "knock and announce" requirement.

However, in Hawaii, because of the wording of section 803-11, it is insufficient to shout "police -- search warrant." The Hawaii Supreme Court has held that, even though it would be reasonable to infer that police officers standing at a door shouting "police -- search warrant" are demanding entry to a house, the entry is invalidated by section 803-11 unless the police explicitly demand entry. State v. Harada, 98 Haw. 18, 41 P.3d 174 (2002).

In the Maldonado case, a law enforcement officer received a tip that one of Hawaii's most wanted criminals, Robert Maldonado, was at a given location and that this wanted criminal might be in possession of firearms and drugs. This officer, along with others, donned body armor and went to the location, bearing a valid warrant for the arrest of this "most wanted" fugitive. One can scarcely imagine a more dangerous assignment for a law enforcement officer. The search of the house resulted in the discovery of contraband and the arrest of Jobert Maldonado, the fugitive's brother. Jobert Maldonado was arrested and convicted, but the conviction was reversed because the officers, while conducting a potentially dangerous operation, did not "strictly comply" with section 803-11.

The law enforcement officers in this case had knocked and then shouted "Sheriffs Office -- Police" while simultaneously opening an unlocked screen door. Although the screen door was closed, the wooden door was open when the officers arrived and was not broken by the law enforcement officers. The officers received oral permission to enter the house and entered the house, where they observed what appeared to be evidence of a "clandestine lab" used for the production of methamphetamine. However, the officers did not announce that they were the bearers of an arrest warrant and did not wait a reasonable time after demanding entry before opening the unlocked screen door. While it is true that the officers had not strictly complied with section 803-11, permission to enter was given and not refused, so most citizens, as well as the United States Congress and the United States Supreme Court, would have deemed the entry lawful.

Under the United States Constitution and under the Constitution of the State of Hawaii, the arrest of this "most wanted" fugitive would not have been subject to strict compliance, but rather a more appropriate standard of

reasonableness. But because of section 803-11, the "strict compliance" standard applies, even under very dangerous circumstances, so the conviction was reversed.

The intent of the Legislature was not to change the rule that exigent circumstances can excuse the use of the "knock and announce" procedure. However, the phrase "absent exigent circumstances" was placed in a portion of the bill where it will not have the intended effect and will likely create some serious interpretational problems and unintended consequences. This phrase was placed in the bill very late in the drafting process at the request of the Department of the Attorney General, but unfortunately the phrase was not inserted in the proper place.

In addition, as drafted, House Bill No. 2299 will not resolve the problem demonstrated by the Maldonado case. The first part of the bill specifically requires a knock on the door and specific words to be used. This is not flexible enough, given the varied and unpredictable situations law enforcement officers encounter, and could lead to other unjust outcomes like the one reached in the Maldonado case.

The bill also rewrites the statute and redefines reasonable time. There is a potential problem with this amendment. First, the amendment is apparently based upon 18 U.S.C. § 3109 (the Federal Knock and Announce Rule) and the federal case law interpreting that section. That section reads, with regard to search warrant execution:

The officer may break open any outer or inner door or any window of a house, or any part of the house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

18 U.S.C § 3109.

As noted in the Senate Judiciary and Hawaiian Affairs Committee report, the United States Court of Appeals for the Ninth Circuit in United States v. Chavez-Miranda, 306 F.3d 973 (9th Cir. 2002), spelled out what should be taken into account when deciding a reasonable length of time, and that has been essentially incorporated into this bill. However, by incorporating only part of the federal law, this amendment fails to restore the more reasonable standards created by the United States Constitution and conversely will serve only to further complicate state arrest procedures by mandating strict compliance with additional statutory standards.

For the foregoing reasons, I am returning House Bill No. 2299 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'L. Lingle', written in a cursive style.

LINDA LINGLE  
Governor of Hawaii