

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor**

Hrg: Weds., March 12, 2008, 9:00 am
1 copy required

H.B. No. 2729 HD1: RELATING TO BURGLARY

Chair Taniguchi and Members of the Committee:

H.B. No. 2729 HD1 seeks to restructure the burglary statute by reclassifying Burglary in the First Degree as a Class A felony when the burglary of a dwelling is committed while the offender is armed with a "dangerous instrument." "Dangerous instrument" is defined as "any weapon, device, instrument, material, or substance ... that in the manner it is used or threatened to be used is capable of producing death or serious bodily injury." Currently, within the burglary law, such an act, while armed with a dangerous instrument, is a Class B felony.

If a person possesses a firearm, the most deadly of objects, in the commission of burglary, this re-classification of burglary is unnecessary because Hawaii law already handles such conduct as a Class A felony. The offense of Carrying or Use of Firearm in the Commission of a Separate Felony, HRS Section 134-21, currently punishes a person who possesses or uses a firearm during the commission of any felony as a Class A offender. 134-21 enumerates certain offenses as excluded under the statute, however Burglary is not one of those enumerated offenses. Moreover, 134-21 becomes a twenty year term in addition to and not in lieu of the current ten year term for Burglary in the First Degree. Therefore, under the current law, a person convicted of Burglary in the First Degree and Carrying or Use of Firearm in the Commission of a Separate Felony is subject to a potential thirty year prison term instead of the twenty year term proposed by this bill.

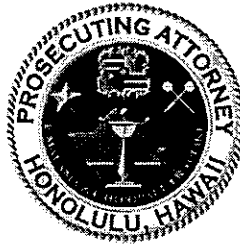
The definition of dangerous instrument contained in this bill is problematic because it is far too broad. Virtually every burglary which involves the possession of a tool such as a screwdriver or crowbar would become a Class A felony because such an object could be construed as a "dangerous instrument." Currently, the vast majority of burglary cases are settled without trials through pleas because probation is a common sentence. Elevation of burglary to a Class A felony would remove probation as a possible sentence and would crowd the courts with a greater number of cases which require trials. The already overcrowded prison system would likewise receive an increased number of long-term inmates convicted of Burglary in the First Degree, a property crime.

We oppose passage of H.B. No. 2729 HD1. Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawai'i

March 12, 2008

RE: H.B. 2729, H.D. 1; RELATING TO BURGLARY.

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following comments in support of H.B. 2729, H.D. 1 with proposed amendments.

The purpose of this bill is to create a class A burglary offense that is committed when a person intentionally enters or remains unlawfully in a dwelling with the intent to commit a crime against a person or against property rights, and the person is armed with a dangerous instrument in the course of committing the offense.

We support the intent of this bill is to strengthen the grade of offense and penalties against persons who are armed and intentionally enter homes to commit crimes. However, we would ask this committee to consider reinstating firearms in the definition of dangerous instruments such that a person armed with a firearm who entered a dwelling to commit a crime, could receive a class A felony for the proposed Burglary 1 offense. We believe this was taken out by the previous committee because it believed that either it was not necessary since a class A offense could be obtained under Hawaii Revised Statutes (HRS) section 134-21 regarding carrying or use of firearm in the commission of a felony and that a possible *thirty year term* could result under the current law for the class B burglary and the violation of HRS 134-21. However, we would like to point out that HRS 134-21(b) provides:

(b) A conviction and sentence under this section shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate felony.

Furthermore, the Hawaii State Supreme Court has ruled in State v. Brantley, 99 Haw. 463, 56 P.2d 1252 (2002) that where the legislature has clearly intended to allow convictions under both HRS 134-21 and the separate felony, a defendant can be convicted and sentenced for both the separate felony and HRS 134-21. Thus, if the legislature wanted to permit a defendant to be convicted of both the class A burglary proposed in Section 1 of the bill *and*

HRS 134-21, such a result is possible. It would expose the defendant to either a *twenty year term of imprisonment* if the judge ran the sentences for the proposed class A burglary and violation of HRS 134-21 concurrently or a *forty year term of imprisonment* if the judge ran the sentences for the proposed class A burglary and the violation of HRS 134-21 consecutively. Given the heightened danger that an armed intruder in a dwelling poses, we think giving the court a sentencing option for either a twenty year term or a forty year term is reasonable.

We would also suggest amending the definition of “dangerous instrument” to delete “that in the manner it is used or threatened to be used” from the definition as we understand this bill to address persons who are armed and enter dwelling but who do not necessarily use or threaten to use the dangerous instrument. If the committee reinstated firearms in the definition of “dangerous instrument” and deleted “that in the manner it is used or threatened to be used” from the dangerous instrument definition, the resulting definition would look like this:

For the purposes of 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 is known to be capable of producing death or serious bodily injury.

We would ask for your favorable consideration of this bill with the proposed amendments.

Thank you for this opportunity to testify.



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

March 11, 2008

Testimony IN SUPPORT

On HB2729,HD1

Before the Senate Committee on Judiciary and Labor,
Senator Brian T. Taniguchi, Chair and
Senator Clayton Hee, Vice Chair

Honorable Chair, Vice Chair, and Members,

HRA supports this bill intent and language. The definition of “dangerous instrument” incorporates dangerous contact weapons such as screwdrivers and crowbars, which, in the hands of a burglar intent on doing bodily harm to a home occupant, represent a lethal threat.

Our members support measures which place the criminal at greater risk from the criminal justice system. This one should help close the loophole that exists for common tools which can be carried by burglars with impunity now but used as deadly weapons to threaten, maim, or kill innocent victims. Since burglary is pre-planned, this bill, with its increased penalty, should have a deterrent effect.

Thank you for the opportunity to testify on behalf of HRA.

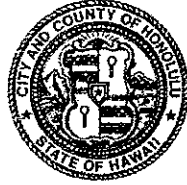
Dr. Maxwell Cooper
Legislative Co-Chair
225-6944

LATE

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE CN-NTK

March 12, 2008

The Honorable Brian T. Taniguchi, Chair
and Members
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: House Bill No. 2729, H.D. 1, Relating to Burglary

I am Carlton S. Nishimura, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 2729, H.D. 1, Relating to Burglary.

The Burglary in the first degree section will strengthen the existing burglary laws by increasing the penalty for a person convicted of entering a dwelling while armed with a dangerous weapon.

We would also suggest amending the definition of "dangerous instrument" on page 1, line 18, and page 2, line 1, to delete "that in the manner it is used or threatened to be used" from the definition. We understand that this bill addresses persons who are armed and enter dwelling but who do not necessarily use or threaten to use the dangerous instrument.

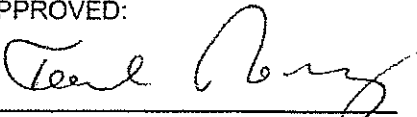
The Honolulu Police Department urges you to support House Bill No. 2729, H.D. 1, Relating to Burglary.

Thank you for the opportunity to testify.

Sincerely,


CARLTON S. NISHIMURA, Major
Criminal Investigation Division

APPROVED:


for BOISSE P. CORREA
Chief of Police

Serving and Protecting With Aloha