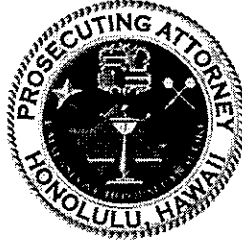


DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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 25, 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.