

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

Hrg: Tuesday, February 5, 2008, 2:00 p.m.
5 copies required

H.B. No. 2729: RELATING TO BURGLARY

Chair Waters and Members of the Committee:

H.B. No. 2729 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 firearm. Currently, within the burglary law, such an act, while armed with a dangerous instrument, is a Class B felony.

The re-classification of burglary with a firearm proposed by this bill 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.

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

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