

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

February 3, 2011

H.B. No. 64: RELATING TO BURGLARY

Chair Keith-Agaran and Members of the Committee:

We oppose passage of H.B. No. 64. The stated intent of the bill is to create a “strict liability” type of burglary offense if the resident of a dwelling or a resident’s guest is present during the entering of the dwelling by the perpetrator. As written, the bill does not accomplish this goal because the state must still prove that the perpetrator entered or remained unlawfully “with intent to commit therein a crime.” Thus the requirement that the state prove mens rea or “state of mind” remains under this bill.

We oppose any dilution of this “state of mind” because the intent to commit a crime following the illegal entering of a premises is the critical difference between the offenses of burglary and trespassing. Burglary is a higher class of offense because of the danger that exists when there is a criminal intent in entering a building. A more innocent or mistaken entry onto or into a premises constitutes the offense of trespassing. This distinction is long-standing one rooted in the common law.

Moreover, in 2006, an offense was created by this legislature to specifically criminalize the situation which this measure seeks to address -- the entry into a dwelling, with an innocent or criminal intent, when a person is present in the dwelling. This is the offense of Unauthorized entry into a dwelling, H.R.S. § 708-812.6. To commit this offense, one has to merely enter a dwelling without authorization while a person is present in the dwelling. This offense is classified as a Class C felony which is appropriate for the offense, since it does not involve the infliction of any injury to the person in the dwelling.

Thank for the opportunity to comment on this measure.

LORENN WALKER, J.D., M.P.H.

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Honorable Representative Henry Aquino, Chair
Honorable Representative Ty Cullen, Vice Chair

Thursday, February 3, 2011
8:30 AM
Room 309

HB 64

STRONG OPPOSITON TO MANATORY TERM OF IMPRISONMENT FOR BURGLARY

I STRONGLY OPPOSE this measure calling for the failed practice of mandatory sentences, which will only increase problems for our community.

This bill continues bad corrections and justice policy in Hawai'i. There is an abundance of research that shows mandatory minimum sentences for crimes like burglary, which generally are motivated by substance abuse problems, do not work to increase law abiding behavior. Mandatory sentencing laws further criminalize people at significant harm and cost to our community and our state government.

The money, about \$250 million a year, used for the department of public safety that includes the cost of corrections, could well be used for other worthwhile justice interventions instead of continuing the ineffective practice of mandatory minimum sentences.

I am a public health educator who has piloted, evaluated and published numerous articles and book sections, on a variety of justice interventions for increasing law abiding behavior and health for people hurt by crime. Both criminal offenders and victims have benefited from these restorative and solution-focused interventions, which have received praise from some of the world's leading justice innovators including Phil Zimbardo, who conducted the Stanford Prison Experiment and wrote *The Lucifer Effect: How Good People Turn Evil*; Shadd Maruna, of Ireland and author of *Being Good: How Ex-Convicts Reform and Rebuild Their Lives*; and John Braithwaite author of Australia and author of *Crime, Shame and Reintegration*. I am also a formerly practicing attorney who represented the state as a deputy attorney general where my work included civil defense and criminal prosecution. Additionally, I clerked for Judge Marie Milks when she was on the criminal court bench, and I have defended adults and youth in criminal cases.

Finally, I have been both the victim of burglaries and the victim of a violent physical assault. I was almost murdered by an unknown stranger and spent months recovering from the physical wounds, and years overcoming the emotional wounds, which I suffered. Please know that these serious and long lasting damages are not at all comparable to the violations I experienced when my homes were burglarized. I hope that people in our community will be thoughtful and exercise compassion and understanding, and refrain from attempting to compare assault and burglary with similar damages in order to justify an argument to impose harsh and mandatory sentences. The damages from the crimes are totally different, and it disrespects and demeans people further by ignoring the reality of the differences.

Please vote against this measure and instead work to improve our justice and corrections system.

Bowen Hunsaker Hirai

*Certified Public Accountants
A Professional Corporation
January 31, 2011*

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 64 Relating to Burglary
Hearing: Thursday, February 3, 1011, at 2:00 p.m.

Aloha Chairman Keith-Agaran, Vice-Chair Rhoads and members of the Committee:

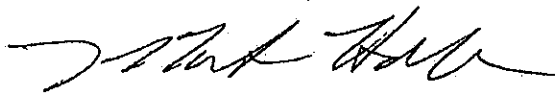
I am Mark Hunsaker, a Certified Public Accountant and President of Bowen Hunsaker Hirai, Certified Public Accountants, P.C., a former Honolulu Police Department Police Commissioner, and a current part time Deputy Sheriff with the Chautauqua County Kansas Sheriff's Department, testifying in **support** of H.B.64, Relating to Burglary, which requires strict liability for burglary of a dwelling if the resident or resident's guest is present during the burglary; and, mandates a sentence of 10 years imprisonment upon conviction.

Based on my experience in law enforcement, I would suggest that the specific language of paragraph (d) to HRS §708-810 in H.B. 64 be amended to read as follows:

- (d) The person knowingly and without authority enters into or remains within a building in which there is a human being.

Mahalo for the opportunity to testify in this matter.

Yours truly,
BOWEN HUNSAKER HIRAI
Certified Public Accountants, P.C.



MARK D. HUNSAKER, CPA, ABV, CFF, CBA



CARRIE ANN SHIROTA
ATTORNEY AT LAW
1839 Wells Street
Wailuku, Hawaii 96793
Phone: 808-269-3858

COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
Thursday, February 3, 2011
2:00 pm in Room 325
<http://www.capitol.hawaii.gov/emailtestimony>

OPPOSITION: HB 64 – Mandatory Minimum for Burglary

Aloha Chair Agaran, Vice Chair Rhoads and Members of the Committee:

My name is Carrie Ann Shiota, and I am writing in strong opposition to HB 64 that imposes a standard of strict liability for burglary of a dwelling if the resident or resident's guest is present during the burglary. In other words, our Judges would be forced to impose a mandatory minimum sentence of 10 years imprisonment regardless of the individual facts of the case.

Nationwide, a growing number of jurisdictions that are implementing criminal justice reforms have repealed mandatory minimum sentences for the following reasons.

Mandatory minimum sentences are costly. In Hawai'i, we spend an average of \$40,000 annually to incarcerate an adult. A person convicted of burglary under this proposed statute would cost taxpayers approximately \$400,000 for a ten year mandatory sentence (and that's assuming the cost of incarceration will not increase over that time period)

Mandatory minimum sentences contribute to prison overcrowding. Simply put, mandatory minimum sentences result in more people being sent to prison for longer periods of time. For example, an 18 year old, who had never been in trouble with the law before would automatically serve 10 years in prison if convicted under this proposed statute.

Mandatory minimum sentences have not proven effective in deterring criminal behavior. On the other hand, we have a plethora of research supporting evidence-based practices that are cost-effective in reducing crime and recidivism rates.

In closing, the enactment of HB 64 would result in poor public policy. Accordingly, please hold HB 64.

Thank you for the opportunity to submit testimony on this matter.

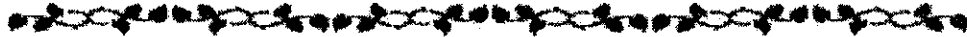
Sincerely,

Carrie Ann Shiota

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Thursday, February 3, 2011

2:00 PM

Room 325

HB 64 – Mandatory Minimum for Burglary

STRONG OPPOSITION

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Aquino, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, improve the quality of justice, and enhance community safety by promoting smart justice policies. We are always mindful that there are 6,000 individuals whose voices have been silenced by incarceration with 1,750 individuals are serving their sentences abroad, thousands of miles from their loved ones and, in many cases, from their ancestral lands.

HB 64 requires strict liability for burglary of a dwelling if the resident or resident's guest is present during the burglary. It mandates a sentence of 10 years imprisonment upon conviction.

Community Alliance on Prisons is in strong opposition to this measure. Burglary is mostly a crime committed by those who have substance abuse problems.

Our biggest objection is that mandatory sentencing does not eliminate sentencing disparities; instead it shifts decision-making authority from judges to prosecutors, who operate without accountability. Mandatory Minimums: More expensive and less effective than we thought. In 1997, the RAND Corporation released findings that "Mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing...drug-related crime."¹ According to the study, discretionary sentencing, conventional enforcement and drug treatment are all more effective, per dollar spent, at reducing both drug consumption and drug-related crime.

¹ Jonathan P. Caulkins et. al., Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money (Santa Monica, CA: The RAND Corporation Drug Policy Research Center, 1997.

There is consensus across the nation that mandatory minimums are of little value in reducing drug crime. A large body of research shows that mandatory minimums are not simply cost-ineffective, but futile at any price.²

On the recommendations of the Justice Kennedy Commission, the American Bar Association has urged a blanket repeal of mandatory minimum at all levels of government.³ Mandatory sentencing does not deter crime. Although mandatory sentences were designed for drug king pins, only 11 percent of federal drug defendants are high-level dealers.

Mandatory sentences have exacerbated the racial and gender inequalities, sending record numbers of women and people of color to prison. While drug use and dealing are spread proportionately among the races, the relative incarceration rates for drug crimes are wildly skewed. As evidenced by OHA's recent report: "In 2009, Native Hawaiians made up the largest portion 32% of people imprisoned for drugs." ⁴

For many offenders, drug treatment and/or supervision is not just cheaper, but more effective for rehabilitation and thus, more likely to prevent recidivism – and the incarceration costs it incurs.

As mandatory minimums drive up the incarceration rate in low-income communities, they also amplify the collateral consequences of widespread incarceration. Longer sentences mean more and greater "ripple effects" for the communities from which prisoners come.

Reduced family income may hurt a child's academic achievement and emotional development. An Urban Institute study found that 31% of children living under stressful family conditions

² The amount of state-level research on this issue is constantly growing. Three reports include: Judith A. Greene, *Crime Trends and Incarceration Rates in Oregon* (Brooklyn, NY: Justice Strategies, 2004); Vincent Schiraldi and Jason Ziedenberg, *Costs and Benefits? The Impact of Drug Imprisonment in New Jersey* (Washington, DC: Justice Policy Institute, 2003), Finding 7; Judith A. Greene, Kevin Pranis and Howard R. Wine, *Arizona Prison Crisis: A Call for Smart on Crime Solutions* (Washington DC: Families Against Mandatory Minimums, 2004).

³ABA Justice Kennedy Commission, "Resolution 121A" (revised), Report of the ABA Justice Kennedy Commission (Adopted by the American Bar Association at its Annual Meeting in Atlanta, August 9 and 10, 2004). Accessed at: <http://www.abanet.org/media/jkcrecs.html> and at: <http://www.abanet.org/leadership/2004/annual/dailyjournal/121A.doc>

⁴*Disparate Treatment of Native Hawaiians in the Criminal Justice System*, 2010, www.oha.org/disparate_treatment/.

had low levels of educational attainment, compared to 17% of other children. Those same children also faced higher levels of both emotional and behavioral problems.⁵

Reserving incarceration and the associated costs for only the highest-level dealers is a better use of the money that we earmark for public safety and drug reduction.⁶ The money saved by doing away with this automated and maladaptive system of spending prison dollars will make money available for services known to be more effective at reducing drug consumption and drug-related crimes—most notably, drug treatment. RI Family Life Center Policy Brief: Reducing Mandatory Minimums for Crimes Involving Controlled Substances)

Mandatory minimum sentencing is costly and unjust.⁷

Please don't pass any more mandatory minimum bills...jurisdictions all around the country are abandoning this costly and ineffective 'tough on crime' strategy. There are many other things that work better, are evidence-based, and save precious resources.

Mahalo for this opportunity to testify.

⁵Kristin Anderson Moore and Sharon Vandivere (Child Trends), "Stressful Family Lives: Child and Parent Well-Being," *New Federalism, National Survey of America's Families* (Washington, DC: The Urban Institute, June, 2000), p. 1, and Moore, Vandivere and Jennifer Ehrle (the Urban Institute), "Turbulence and Child Well Being," *New Federalism*, pp.2-3

⁶Rhode Island Family Life Center Policy Brief: Reducing Mandatory Minimums for Crimes Involving Controlled Substances; *Everyone Pays: A Social Cost Analysis of Incarcerating Parents for Drug Offenses in Hawai'i*, p.64, Lengyel, Thomas E.; Brown, Marilyn; June 2009.

⁷ The High Budgetary Cost of Incarceration, John Schmitt, Kris Warner, and Sarika Gupta, June 2010, Center for Economic and Policy Research. <http://www.cepr.net/documents/publications/incarceration-2010-06.pdf>.

TESTIMONY

The Libertarian Party
c/o 1658 Liholiho St #205
Honolulu, HI 96822

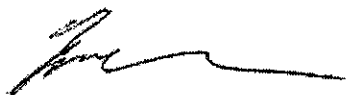
February 1, 2011

RE: HB 64 to be heard Thursday, February 3, 2011, in conference room 325

To the members of the House Committee on Judiciary

We oppose passage of HB 64 due to the inclusion of mandatory minimum sentencing. There are two primary considerations in operating a criminal justice system. The first is to protect lives and property. The second is to control costs borne by the tax payers. The second consideration leads in all cases to the efficient and **limited** use of incarceration as a way to deter and punish crime. Mandatory minimum sentences ignore intelligent utilization in favor of a simple desire to punish. Reduction of recidivism and an open minded look at the way in which our current legal structure creates criminal situations rather than deterring them are the directions we should be moving in.

Sincerely:



Tracy Ryan
Oahu County Chair
The Libertarian Party of Hawaii

(808) 534-1846

tracyar@hawaiiantel.net

Honorable Representatives and Members of the House Judiciary Committee,

Please support HB64 (Relating to Burglary).

I am the volunteer Neighborhood Security Watch Coordinator for the Keahi St., Huelani Dr. area in Manoa Valley. A neighbor who lives in my watch area on Huelani Dr. was the victim of a home invasion burglary last year, in which the suspect, possibly high on drugs, broke into his home in the late evening hours on a weekday night. The homeowner, who had retired for the evening, heard the floor squeak outside his master bedroom door. He opened the door to find a burglar staring him in the face, an argument ensued and the homeowner was forced to defend himself. After a brief but violent scuffle, the intruder fled. HPD responded quickly, identified the suspect and captured him less than a block away, within minutes of the incident. The owner positively identified this suspect. The system worked! Or so we thought!

It would seem to be a sure conviction for, at the very least, burglary. However, due to legal technicalities, the prosecutor was unable to prove intent (as the homeowner, in protecting himself, prevented the burglar from actually taking anything) and the suspect beat the burglary charge and was only convicted of criminal trespass and may be sentenced to time served (less than one year). Needless to say, our neighbor (and the entire neighborhood) is very disappointed and fearful as the suspect has threatened to return. Jail time is the only sure way of protecting our neighborhood and the victim, from violent persons such as this. A person that scaled a locked fence at the perimeter of the property, broke in through the back of the home and crept up upon the sleeping occupants of the home at night, physically assaulting the homeowner, positively identified and immediately captured by the police, gets off on a trespass conviction. Seems like a movie script. It happened in my quiet neighborhood and the outcome should have been different. This truly is a nightmare come true and it could easily have happened in any other neighborhood in the State, and unfortunately, probably already has.

We need additional protection from today's increasing violent type of criminal, who have no regard for victims. Let's not give violent offenders a free pass. Please keep criminals that target people (occupied homes) in prison. Please support HB64--Relating to Burglary.

Thank you very much for your time.

Sincerely,

Peter N. Kobayashi
Keahi/Huelani NSW Coordinator

Robert K. Merce
2467 Aha Aina Place
Honolulu, Hawai'i 96821
January 25, 2011

COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
Thursday February 3, 2011
2:00 p.m.
Room 325
HB 64
STRONGLY OPPOSE

Dear Chair Keith-Agaran and Vice Chair Rhoads:

I oppose HB 64 for the following reasons:

1. Mandatory minimum sentences do not deter drug or property crimes;
2. Mandatory minimum sentences take away discretion from judges which results in injustice;
3. Mandatory minimum sentences contribute toward making the United States the country with the world's highest incarceration rate without concomitant safety for its citizens;
4. Mandatory minimum sentences are a leading factor in the high cost of our corrections system.
5. Research has shown that when an offense carries a mandatory minimum sentence, arrest and indictment rates for the offense decline, the number of plea bargains for the offense decline, convictions rates for the offense decline, but dismissals, diversions, the number of trials, and sentencing delays all increase;

DISCUSSION

Many if not most of the burglaries that occur in residential areas are committed by people seeking money to purchase drugs. In those cases, the societal problem that needs to be addressed is drug addiction, not theft, and virtually every study has shown that mandatory minimum sentences cannot be justified in drug related cases because they are not cost effective:

Mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing cocaine consumption or drug-related crime. Mandatory minimums reduce cocaine consumption less per million taxpayer dollars spent than spending the same amount on enforcement under the

previous sentencing regime. And either enforcement approach reduces drug consumption less, per million dollars spent, than putting heavy users through treatment programs. *Mandatory minimums are also less cost-effective than either alternative at reducing cocaine-related crime.* A principal reason for these findings is the high cost of incarceration.¹

Research has also shown that when an offense carries a mandatory minimum sentence, arrest rates for the offense decline, the number of indictments brought for the offense decline, plea bargains for the offense decline, and convictions rates decline, while early dismissals, early diversions, the number of trials, and sentencing delays all increase.²

Further, mandatory minimum sentences have not been shown to deter crime. The National Institute of Justice reported that studies of mandatory minimum sentences for crimes committed with firearms in Michigan and Florida did not deter criminals in those states from using firearms.³

In 2003, after nearly a year long review, the American Bar Association Justice Kennedy Commission, comprised of some of the country's most distinguished jurists, legal scholars, and lawyers, issued a report that found that: (1) The United States imprisons more people than any other country in the world, and that the rate of incarceration is rising at an alarming rate; (2) The United States has an overreliance on incarceration that is driving up the cost of corrections at an alarming and unsustainable rate; and (3) The overreliance on incarceration disproportionately affects America's minorities. Based on these and other findings, the Commission recommended the repeal of mandatory minimum sentences.⁴

One of the most serious problems with mandatory minimum sentences is that they take away discretions from judges and prevent downward sentences in worth cases. As the Constitution Project has noted, "mandatory minimum sentences are blunt instruments ill-suited to

¹ Caulkins, Jonathan P., C. Peter Rydell, William Schwabe and James Chiesa. *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?* Santa Monica, CA: RAND Corporation, 1997. Quotation from Rand Research Brief RB-6003 summarizing the Caulkins study and is found at http://www.rand.org/pubs/research_briefs/RB6003/index1.html.

² Parent, Dale, Dunworth Terence, McDonald, Douglas, and Rhodes, William, *Mandatory Sentencing*. NIJ Research In Action, U.S. Department of Justice (January 1997). <http://www.ncjrs.gov/pdffiles/161839.pdf>

³ Parent et. al, *Mandatory Sentencing supra*.

⁴ American Bar Association, ABA Justice Kennedy Commission (2003). <http://www.abanet.org/media/jkcrecs.html>

offense types like economic crimes [such as burglary] where the relative severity of particular offenses and relative culpability of individual offenders is hard to gauge.”⁵

The real life consequences of depriving judges of discretion was described last year by United States District Judge John Gleeson in United States v. Vasquez, No. 09-CR-259 (E.D.N.Y. March 30, 2010). The defendant, Roberto Vasquez, was born in Puerto Rico, the youngest of 12 children. He was sexually abused by an older brother from an early age and as a result suffered from chronic depression for his entire life. He dropped out of high school and after coming to the United States started to use cocaine. His depression continued and he eventually attempted suicide and was hospitalized for bi-polar disorder.

Other than the drug trafficking offense that brought Mr. Vasquez before the federal court, his previous criminal history was exclusively related to domestic violence issues arising out of his turbulent relationship with his unfaithful wife with whom he had three children. When that relationship ended, Vasquez met a bank teller. They lived together, had a child, and enjoyed a relatively stable relationship for several years during which time Mr. Vasquez worked as an auto mechanic and construction supervisor until he relapsed and started using cocaine again. To get money to buy cocaine he assisted his older brother in selling 300 grams of heroin. That offense, together with knowledge of the distribution of an additional 350 grams by others resulted in his being subject to the federal drug trafficking mandatory minimum sentence law.

After reviewing Mr. Vasquez history and the all of the facts of the case, Judge Gleeson determined that the appropriate sentence for Vasquez was 24 months in prison followed by a five-year period of supervision with conditions including home detention and community service, and efforts to assist the Mr. Vasquez with the mental health, substance abuse, and anger management problems that had plagued him for most of his life. The prosecutor assigned to the case concurred with Judge Gleeson’s sentence but her supervisor refused to go along and would not waive the mandatory minimum sentence. In his sentencing opinion Judge Gleeson wrote:

When people think about miscarriages of justice, they generally think big, especially in this era of DNA exonerations, in which wholly innocent people have been released from jail in significant numbers after long periods in prison. As disturbing as those case are, the truth is that most of the time miscarriages of justice occur in small doses, in cases involving guilty defendants. This makes them easier to overlook. But when they are multiplied by the thousands of cases in which they occur, they have a greater impact on our criminal justice system than the cases you read about in the newspapers or hear about on 60 minutes. This case is a good example.

⁵ The Constitution Project, *Principles for Design and Reform of Sentencing Systems: A Background Report*, p. 35. <http://www.constitutionproject.org/manage/file/34.pdf> (May 13, 2010).

* * *

When the case was first called for sentencing in December, I pointed out the obvious: the five-year mandatory sentence in this case would be unjust. The prosecutor agreed, and welcomed my direction that she go back to the United States Attorney with a request from the Court that he withdraw the aspect of the charge that required the imposition of the five-year minimum. She asked for a couple of months to make the case that the sentence enhancement should be abandoned.

On March 5, 2010, the prosecutor appeared again, shadowed by a supervisor. She reported that the United States Attorney would not relent. * * * As a result of the decision to insist on the five-year mandatory minimum, there was no judging going on at Vasquez's sentencing. * * * The defendant's difficult childhood and lifelong struggle with mental illness were out of bounds, as were the circumstances giving rise to his minor role in his brother's drug business (i.e., it was to support an addiction, not to become a narcotics entrepreneur with a proprietary stake in the drugs), the fact that he tried to cooperate but was not involved enough in the drug trade to be of assistance, the effect of his incarceration on his three-year-old daughter and the eight-year-old child of Caraballo he is raising as his own, the fact that he has been a good father to them for nearly five years, the fact that his prior convictions all arose out of his ex-wife's refusal to permit him to see their three children.

Sentencing is not a science, and I don't pretend to be better than anyone else at assimilating these and the numerous other factors, both aggravating and mitigating, that legitimately bear on an appropriate sentence. But I try my best to do just that, and by doing so to do justice for the individual before me and for our community.

* * *

The mandatory minimum sentence in this case supplanted any effort to do justice, leaving in its place the heavy wooden club that was explicitly meant only for mid-level managers of drug operations. The absence of fit between the crude method of punishment and the particular set of circumstances before me was conspicuous; when I imposed sentence on the weak and sobbing Vasquez on March 5, everyone present, including the prosecutor, could feel the injustice.

In sum, though I am obligated by law to provide a statement of "reasons" for each sentence I impose, in this case there was but one: I was forced by a law that should not have been invoked to impose a five-year prison term.

I strongly urge the committee to vote no on H.B. 64

Thank you for giving me the opportunity to testify.

CRAIG K. HIRAI, CPA, ABV, CFF
733 BISHOP STREET, SUITE 2020
HONOLULU, HAWAII 96813
TELEPHONE: (808) 526-2020

January 31, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 64 Relating to Burglary
Hearing: Thursday, February 3, 1011, at 2:00 p.m.

Aloha Chairman Keith-Agaran, Vice-Chair Rhoads and members of the Committee:

It is my understanding that aggravated burglary is a higher level felony in many states. I therefore **support** H.B.64, Relating to Burglary, which requires strict liability for burglary of a dwelling if the resident or resident's guest is present during the burglary; and, mandates a sentence of 10 years imprisonment upon conviction.

Mahalo for the opportunity to testify.

Sincerely yours,


CRAIG K. HIRAI, CPA, ABV, CFF

Good Afternoon:

My name is Raleigh Ferdun and I live on Woodlawn Drive in Manoa. My home was burglarized about ten years ago and then a second time a little less than two years ago. My wife was home during this second burglary, asleep in a bedroom. Because of the medications she was taking she was very sound asleep and did not hear the burglars. The burglars surely saw her there (my house is not large) but they proceeded anyway.

My wife has Parkinson's disease and cannot walk or move very well. Because of her disability, she feels extremely vulnerable. When I came home and discovered that we had been burglarized she was very traumatized by what happened. As a result, she is reluctant to go outside unless I am home and is fearful of being home alone. Also, although we have always locked our doors when we leave the house, we now feel that we need to lock them even while we are home. Since this last event I have installed additional locks, security cameras and an alarm system, at significant expense I might add.

It seems that burglars are becoming more bold as there have been a number of recent incidents in Manoa where they have entered a home while the residents were present. My strong feeling is that Hawaii residents should not have to live in fear that others are going to invade their home, take their property and possibly do us bodily harm. This is especially true since Hawaii law is somewhat ambiguous (at least in my mind) as to how vigorously a resident may defend his home. More to the point though is that we shouldn't have to. While the ten year sentence without parole may not deter an individual hyped on drugs, it would certainly keep him off the streets and out of our homes for an extended period of time. However, it might cause a more rational person to think twice about entering someone else's home.

In summary, Hawaii residents should not have to live in fear of home invasion. We should not have to make our home into a fortress to protect ourselves and our property. We should not have to cower in our homes behind locked doors, security cameras and alarms. I ask that this committee act favorably on HB64 to increase the jail time for persons convicted of burglary when the homeowner is present.

Thank you for this opportunity to testify.

Raleigh Ferdun
3558B Woodlawn Dr
988-3714
rferdun@yahoo.com

House Committee on Judiciary
Hearing on Thursday, February 3, 2011
Conference Room 325

Testimony in Support of HB 64

Dear Chairman Gilbert S.C. Keith-Agaran, Vice Chairman Karl Rhoads, and Members of the Committee on Judiciary:

I support HB 64 without amendment. Home invasions are growing in frequency and in violence. The changes incorporated in HB 64 are reasonable and prudent to protect our citizens, especially our senior citizens who are too often preyed upon in their own homes. Accordingly, I urge you to pass HB 64.

Thank you for your consideration.

Respectfully submitted,

John W. Roberts
460 Liholiho Street
Wailuku, Maui, Hawaii 96793

Marilyn M. Niwao, J.D., CPA
Niwao & Roberts, CPAs, a P.C.
2145 Wells Street, Suite 402
Wailuku, Hawaii 96793

Before the Committee on Judiciary

Thursday, February 3, 2011 at 2 p.m.
Conference Room 325

Re: Support for HB 64
Relating to Burglary

Testimony of Marilyn M. Niwao, J.D., CPA

Dear Chair Keith-Agaran, Vice Chair Rhoads and members of the Judiciary Committee:

I am a CPA and attorney in the State of Hawaii, living on Maui. Although I have practiced in public accounting for over 32 years, I did practice in the criminal area for both prosecution and defense as a legal intern prior to practicing as a CPA.

I am strongly in favor of HB64 because I believe it will serve as a deterrent to burglaries where there is a resident or resident's guest present during the burglary. This deterrent to crime is especially needed due to the poor economy.

My parents were victims of a burglary in Hilo. While my late parents, Jitsuo and Masako Niwao slept, two burglars broke into their Hilo home and stole my dad's wallet and car keys that were in the nightstand drawer next to their bed. The burglars also stole my parents' car. My parents were elderly and retired, and were lucky in that they did not wake up and risk getting killed or seriously injured in a confrontation with the burglars.

Too often, burglars prey on the elderly and weak. Too often, criminals are repeat offenders. A home should be a safe haven against burglars who threaten the lives and well-being of the residents of the home.

Please pass HB64. Hawaii needs to take a strong stance against crime.

Thank you for this opportunity to testify.

Respectfully submitted,

Marilyn M. Niwao

Marilyn M. Niwao, J.D., CPA
(a.k.a. Marilyn Niwao Roberts)