



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
H.B. NO. 2311, RELATING TO CRIME.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Friday, February 9, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General ("the Department") provides the following comments on this bill.

The purpose of this bill is to clarify the term "dwelling," as used in the offense of Burglary in the First Degree, section 708-810(1)(c), Hawaii Revised Statutes (HRS), to expressly include parking and storage areas appurtenant to multi-use dwellings, and further clarify that the building owner or condominium association may act as a complainant therefor.

While the Department takes no position on the expressed purpose of the proposed amendments in this bill, we suggest several changes that may help to better effectuate the bill's intent.

In the amendment of the definition of "dwelling" in section 708-800, HRS, proposed by section 2 of the bill, on page 3, line 6, we suggest removing the word "exclusive" as that could be somewhat confusing and also rather onerous to prove in application. We also suggest that the proposed wording regarding appurtenant areas be applied to all dwellings, if that is the Committee's intent. As currently written, it seems as though appurtenant parking and storage areas would only be covered under the definition of "dwelling" for multi-unit buildings, but not for single-family homes or other types of dwellings. If both of these

suggestions are adopted by the Committee, the revised definition would read as follows:

""Dwelling" means a building, including a multi-unit building, which is used or usually used by a person or persons for lodging, and shall include any clearly marked and secured appurtenant parking or storage area."

In addition to the wording above, we believe the term "secured" requires further definition, as that term potentially refers to a wide variety of situations, such as:

- a fully enclosed and fenced area;
- an area surrounded by a single chain or rope;
- a gated parking lot that is open to the public but requires pulling a ticket to enter; or
- an open area that is simply monitored by a security guard or security cameras.

Without further clarification, the public may not have sufficient notice of what is required, or what they are prohibited from doing, in order to comply with these statutes.

Finally, in the amendment of section 708-810, HRS, proposed by section 3 of the bill, on page 4, line 8, to add a new subsection (3) to specify who may act as a complainant, the Committee may want to consider adding property managers as another possible complainant, and account for the possibility of having multiple owners of the individual units within the multi-use building (or multiple property managers), so that it would read as follows:

(3) In the case of a dwelling that is a multi-unit building, an owner of an individual unit or of the building, a property manager, or an authorized representative of the condominium association may act as a complainant.

Thank you for the opportunity to provide comments on this bill.

HB-2311

Submitted on: 2/7/2024 9:48:05 PM

Testimony for JHA on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Honolulu Tower AOA	Support	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium with almost 500 parking spaces in our secure attached garage. We are located at Beretania and Maunakea Streets on the edge of Chinatown. At our monthly board meeting on February 5, 2024, the board unanimously voted to support HB2311. We have a secure attached garage and have had burglaries on the premises.

We have seen an increase of non residents entering the secured garage resulting in an increase of items being removed from vehicles, or bicycles being stolen from the secured garage. Once one of our employees was confronted by a trespasser with a gun. Fortunately no one was hurt. A police report was filed. The incident never appeared in crime mapping reports.

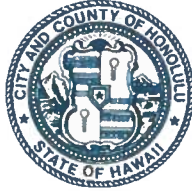
This is an important tool in crime fighting. The board urges you to move this bill forward.

Idor Harris

Resident Manager

POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU
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HOPE LUNA NUI MĀKA'I

OUR REFERENCE DN-NG

February 9, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 2311, Relating to Crime

I am Captain Denise Nakabayashi of District 3 ('Aiea/Pearl City/Waipahu) of the Honolulu Police Department (HPD), City and County of Honolulu.


The HPD supports House Bill No. 2311, Relating to Crime. We agree with the legislature's findings that criminal acts by nonresidents within the secured areas of multiunit dwellings have been a problem. Updating the definition of "dwelling" to include the secured areas of multiunit dwellings allows law enforcement investigators to clearly identify many of these crimes as burglaries, which we feel is appropriate. Additionally, because the secured areas of multiunit dwellings are typically the common areas for the residents, the HPD agrees that the building owner or, in the case of a condominium, the condominium association may act as a complainant.


The HPD urges you to support House Bill No. 2311, Relating to Crime.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Denise Nakabayashi, Captain
District 3

HB2311 – Relating to Crime Testimony in SUPPORT – from James NELSON

February 9, 2024

2:00PM Room 325

Committee on Judiciary and Hawaiian Affairs

Chair Tarnas and Vice-Chair Takayama:

Thank you for scheduling this bill for hearing and for allowing me to testify in support.

This measure addresses the reluctance of police and prosecutors to investigate and pursue felony burglary charges, even in the case of clearly opportunistic and unlawful entry into well-secured areas of condos and apartment buildings.

Routinely these break-in cases to parking or storage areas are initiated by police as isolated misdemeanor theft incidents pertaining only to the personal property of one individual. In two years, however, I have twice been able to convince HPD to work with prosecutors to file burglary charges. In the first of my two cases, the defendant was carrying a hacksaw with him in the 24/7 gated residents-only parking area. The fact that he ended up stealing my used bicycle locked to a bike rack is secondary in terms of public safety. He was convicted, partly due to my efforts and those of a patient HPD detective. The second case is now also pending as a burglary, again only after my reaching out to HPD and convincing them to change the charge from theft.

I also note that a homeowners' association or building owner operates and controls any surveillance footage and other security functions, and has a direct interest on behalf of all residents to pursue burglary charges, perhaps in lieu of an individual resident. Statutorily allowing HOAs or building owners to serve as complainants also clarifies with whom the police and prosecutors can and should follow up during their investigation.

I appreciate the Attorney General's proposed amendments, assuming they are the same as for SB2532, heard recently in the Senate. These proposed revisions seem to facilitate felony charging even further. I understand that Honolulu Police Department is in support.

There may be ongoing discussion as to what type of signage or gates or limited guest access might be required in certain types of buildings for the parking or storage area to be considered "secure," thereby resulting in the police pursuing burglary rather than theft or criminal trespass. I understand that different building configurations may result in different types of charges. Perhaps the new "dwelling" definition could include, instead of the word "secure":

"[parking and storage areas], access to which is clearly restricted to residents by means of signage or security apparatus or both."

I also understand that amending the definition of “dwelling” in Chapter 708 (HRS) would also affect the interpretation of other statutes in that chapter, e.g., relating to criminal trespass, unauthorized entry, and burglary of a dwelling during an emergency period. It seems to me that the clarification is valuable and just in all these other cases, assuming the criteria of the definition are met.

As we all know, the number of high-rise multi-unit buildings in Honolulu is increasing rapidly. I sincerely believe that it would be wise policy for the legislature to clarify for the police and prosecutors that burglary of secured multi-unit dwellings should at least presumptively be treated in the same manner as that of individual homes.

Thank you again for hearing this measure and for providing the opportunity to testify.

HB-2311

Submitted on: 2/7/2024 5:09:32 PM

Testimony for JHA on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Greg Misakian	Individual	Support	Written Testimony Only

Comments:

My name is Greg Misakian and I support HB2311.

HB-2311

Submitted on: 2/7/2024 9:32:33 PM

Testimony for JHA on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I am the owner occupant of a high rise condo in downtown Honolulu. We have seen an increase of non residents entering the secured garage. We have had an increase of items being removed from vehicles, or bicycles being stolen from the secured garage. One one of our employees was confronted by a trespasser with a gun. Fortunately no one was hurt. A police report was filed. The incident never appeared in crime mapping reports.

I strongly support HB2311. This is an important tool in crime fighting. I urge you to move this bill forward

HB-2311

Submitted on: 2/8/2024 7:46:47 PM

Testimony for JHA on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Scott Kidd	Individual	Support	Written Testimony Only

Comments:

I support this measure