



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2532, S.D. 1, RELATING TO CRIME.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 29, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Tricia M. Nakamatsu,
Deputy Attorney General, at 586-1160)

Chair Rhoads 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 that the parking or storage areas appurtenant to a dwelling, including a multi-unit dwelling, are included in the definition of the term "dwelling," as used in the offense of Burglary in the First Degree, section 708-810(1)(c), Hawaii Revised Statutes (HRS). The bill also clarifies who may act as a complainant for the purpose of investigating and prosecuting a burglary in the first degree in a multi-unit dwelling.

The Department believes that the definition of "dwelling" in section 708-800, HRS, as amended by section 2 of this bill (on page 3, lines 6-15) would be easier to understand—and address a range of circumstances—if it was revised to 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 connected parking or storage area, entry to which is clearly restricted to only the building's residents, by means of signage or security apparatus or both.

We believe this additional clarification regarding applicable parking or storage areas will provide the public with more concrete guidance about what is required, and what they

are prohibited from doing, to comply with this statute. As written, the bill's proposed requirement that the parking or storage area simply be "clearly marked and secured," on page 3, line 8, is overly broad and vague, for purposes of enforcement; we do not believe that issue can be resolved simply by listing examples within the definition.

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

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

APPEALS SECTION
TEL. No. 586-2080

DISTRICT COURT SECTION
TEL. No. 586-2100

FAMILY COURT SECTION
TEL. No. 586-2300

FELONY SECTION
TEL. No. 586-2200

FAX (808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

HAYLEY CHENG
ASSISTANT PUBLIC
DEFENDER

HILO OFFICE
275 PONAHAHAWA STREET
HILO, HAWAII 96720
TEL. No. 974-4571
FAX No. 974-4574

KONA OFFICE
82-6127 MAMALAOHA HIGHWAY
P.O. BOX 1219
CAPTAIN COOK, HAWAII 96704
TEL. No. 323-7562
FAX No. 323-7565

KAUAI OFFICE
3060 EIWA STREET
LIHUE, HAWAII 96766
TEL. No. 274-3418
FAX No. 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. No. 984-5018
FAX No. 984-5022

February 28, 2024

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Conference Room 016
State Capital
Honolulu, HI 96813

Re: Testimony in Opposition of S.B. 2532, SD 1
Hearing: February 29, 2024, 10:00 AM

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

This letter is in opposition of S.B. 2532, SD 1 which seeks to expand the definition of dwelling and to allow non-owners to testify and “act” as owners.

The bill seeks to extend the definition of a dwelling to include areas of “a multi-unit building” specifically, “any clearly marked and secured appurtenant parking or storage area, including:

- (1) A fully enclosed and fenced area;
- (2) An area surrounded by a single chain or rope;
- (3) A gated parking lot that is open to the public but requires the pulling of a ticket to enter; and
- (4) An open area that is monitored by a security guard or security camera.”

The proposed amendments are unconstitutionally overboard and vague. The bill’s language impermissibly encompasses areas, not only buildings, that are: not residential, not exclusively residential, not apparent as a residence or building, not apparently part of a residence or building, not in close physical proximity to a residence or building, includes mixed use (commercial and residential) areas and refers to commercial use portions of the property which is in contradiction to the fundamental essence of burglary. Common law defines burglary as the breaking and entering of a dwelling of another with the intent to commit a crime therein. A significant distinction of burglary in Hawaii is an enhanced penalty if the building is a residence. The expansion of the definition of dwelling clearly contradicts the basis for the enhancement and it also subsumes and overwhelms burglary in the second degree, which constitutes another overbroad constitutional problem.

Similarly, the other proposed amendment which would permit the owner of the apartment building, a random owner of a unit in the building, the property manager or an authorized representative of the condominium association to testify and “act” as the owner and complainant is unconstitutional. A random individual who is not the lawful owner of the property cannot testify as the complainant. The law requires the lawful owner of the property and not someone with a passing non-legal interest to testify. The definition of owner cannot constitutionally be expanded with the aforementioned amendments.

S.B. 2532 is constitutionally overbroad and vague. It encompasses vague areas not just buildings. It would be impossible to determine whether an area is part of the dwelling. There are numerous other offenses which can address the concerns of S.B. 2532. For example, an individual committing theft in a parking or storage area can be charged with criminal trespass, criminal property damage and theft. Depending on the type of building, a burglary charge for commercial property may also be charged. The aforementioned criminal charges individually and collectively carry stiff penalties of fines, jail and prison time. Based on the foregoing, S.B. 2532 should be rejected.

Thank you for taking these comments into consideration.

Sincerely,
/s/ Taryn Tomasa
Deputy Public Defender

SB-2532-SD-1

Submitted on: 2/24/2024 12:20:20 PM

Testimony for JDC on 2/29/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Testifying for 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 SB2532. We have a secure attached garage and have had burglaries on the premises. The SD1 also adds to the list of those who may file complaints and is welcomed.

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

SB-2532-SD-1

Submitted on: 2/24/2024 10:34:44 AM

Testimony for JDC on 2/29/2024 10:00:00 AM

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 SB2532, SD1. This is an important tool in crime fighting and will aid those of us living in or owning these properties. I urge you to move this bill forward.

SB2532 SD1 – Relating to Crime Testimony in SUPPORT – from James NELSON

February 29, 2024

10:00AM Room 016

Committee on Judiciary

Chair Rhoads, Vice-Chair Gabbard and members of the committee:

Thank you for scheduling this bill for decision making and for allowing testimony.

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. Twice in two years in separate cases, I have been able to convince HPD to investigate and pursue felony burglary charges rather than misdemeanor theft charges in cases where a clearly marked and well-secured building area, restricted to resident use only, was unlawfully entered into for criminal purposes.

Both times I worked with HPD detectives, I found myself explaining the common law concept of “curtilage,” applying it for them to the context of a multi-unit building. I was successful in doing so. This measure seeks to explicitly clarify in our burglary statute the expectation of privacy and security in appurtenant spaces for residents of multi-unit dwellings that already exists for persons who live in single-family residences.

I appreciate the efforts of the prior committee and the issues raised by the Attorney General at the previous hearing for this measure. Based on my experience in discussing the matter with HPD detectives, who in turn try to meet prosecutors’ demands for clear prima facie evidence, the primary issue they must address is the perpetrator’s intent and knowledge that he or she is entering a private residential area not open to the public, i.e. prosecutors must prove intentional and knowing criminal trespass as a type of predicate crime to burglary. Therefore, in both of my interactions, HPD insisted that a clear “No Trespassing” sign, or its substantive equivalent, be present at the point of entry opportunistically used. Security apparatus was, to them, a secondary matter. Any parking entrance that allowed mixed public-private use would not suffice in their view, because the perpetrator could theoretically have been on the premises lawfully, e.g. by taking a ticket from a machine at the entrance. Therefore, in the current SD1 draft on p.3, lines 12-13, allowing for mixed public-private areas to be considered curtilage of an otherwise private multi-unit dwelling, without further identification of residents-only areas, could be problematic for enforcement and could provide an unnecessarily easy defense to a burglary charge. I respectfully suggest it be deleted from the measure.

As a practical matter, because clear notice of restricted entry seems to be as important as hard security features to the police and prosecutors, if the committee is open to further revising the measure, I suggest that language similar to the following might be simpler and more appropriate for the revised definition of “dwelling” in HRS 708-800:

““Dwelling” means a building, including a multi-unit building, which is used or usually used by a person or persons for lodging. In the case of a multi-unit building, “dwelling” shall include any appurtenant parking or storage area, entry to which is clearly restricted only to the building’s residents, by means of signage or security fixtures or both.”

This language avoids even an inclusive “laundry list” of concrete examples, and the security apparatus and signage are allowed to work together, or on their own, to make it clear to would-be burglars that entry is clearly not authorized to the public beyond a certain point.

Finally, I note that a homeowners’ association or a building’s owner operates and controls 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 clarifies with whom detectives and prosecutors should follow up. The current language in SD1 on p. 4, lines 14-18, serves this purpose well.

Thank you again for providing the opportunity to submit testimony.

SB-2532-SD-1

Submitted on: 2/28/2024 11:38:35 AM

Testimony for JDC on 2/29/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kim Jorgensen	Individual	Support	Written Testimony Only

Comments:

I support SB2532 SD1. Thank you for your consideration.

SB-2532-SD-1

Submitted on: 2/28/2024 11:47:16 AM

Testimony for JDC on 2/29/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Denise Boisvert	Individual	Support	Written Testimony Only

Comments:

As a longtime condo dweller, believe me when I write that I highly SUPPORT SB2532 SD1.