



**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. 2, RELATING TO CRIME.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Friday, March 15, 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 (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 6-11) would be easier to understand—and address a range of circumstances—if it was revised to read as follows (using the bill's current wording as a base, to more easily distinguish suggestions):

"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~~ 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.

Clearly limiting the applicable parking or storage areas to only those connected to a dwelling, would protect the security of one's home, while avoiding the potential

ambiguity of whether a detached structure located at a longer distance away, but not connected is included in the definition.

While we appreciate the prior Committee's efforts to reconcile wording previously offered by the Department and other testifiers, we believe that the inclusion of the phrase, "clearly marked and secured," on page 3, line 8, is overly broad and vague, for purposes of enforcement. That wording could be misconstrued to include areas not intended for the high degree of protection afforded by a felony burglary charge, even if they are appurtenant¹. For example, a clearly marked parking lot or storage area located 100 yards away or further, with "No Trespassing" signs and/or a security camera, would be included in the definition based on the current wording.

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

¹ As defined in the Oxford Dictionary, "appurtenant" means, "Belonging as a property or legal right (to); spec. in Law, constituting a property or right subsidiary to one which is more important." Available online at: <https://www.oed.com/search/dictionary/?scope=Entries&q=appurtenant>; last accessed March 13, 2024. As defined in the Merriam-Webster Dictionary, "appurtenant" means, "Annexed or belonging to a more important property." Available online at: https://www.merriam-webster.com/dictionary/appurtenant?utm_campaign=sd&utm_medium=serp&utm_source=jsonld; last accessed March 13, 2024.

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March 13, 2024

Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair
Conference Room 325
State Capital
Honolulu, HI 96813

Re: Testimony in Opposition of S.B. 2532, SD 2
Hearing: March 15, 2024, 2:00 PM

Dear Chair Tarnas, Vice Chair Takayama and Committee Members:

This letter is in opposition of S.B. 2532, SD 2 which seeks to expand the definition of dwelling, to clarify that secured areas appurtenant to a building and multi-unit buildings are included as dwellings, and to allow non-owners to testify and “act” as owners.

The bill seeks to extend the definition of a dwelling to mean “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, entry to which is clearly restricted to only the building’s residents by means of signage or security apparatus or both.”

The proposed amendments are unconstitutionally overboard and vague. The bill’s language impermissibly encompasses areas, not only buildings, which 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.

Moreover, the designation that the building or multi-unit building is “usually used ... for lodging,” is also unconstitutionally overbroad. This language seemingly encompasses commercial uses and fails to provide adequate notice as to what usual use includes. In the same vein, the statute fails in stating that notice is

provided by signage and/or security apparatus. The lack of sufficient requirements and language specifying the requirements of the signage is fatally defective. This is also true of the general reference to “security apparatus.” A camera or walking security guard is insufficient to provide notice that the grounds are encompassed as part of a dwelling. The proposed amendments are unconstitutionally overbroad and vague.

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.

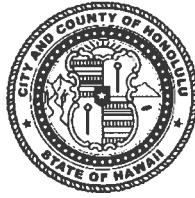
S.B. 2532, SD 2 is constitutionally overbroad and vague. It encompasses vague areas not just buildings. It would be impossible to determine whether an area is part of the dwelling. There are numerous other offenses which can address the concerns of S.B. 2532, SD 2. For example, an individual committing 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, SD 2 should be rejected.

Thank you for taking these comments into consideration.

Sincerely,
/s/ Taryn Tomasa
Deputy Public Defender

POLICE DEPARTMENT
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OUR REFERENCE **HA-NG**

March 15, 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: Senate Bill No. 2532, S.D. 2, Relating to Crime

I am Major Hunter Ah Loo of District 3 (Waipahu/Pearl City/'Aiea) of the Honolulu Police Department (HPD), City and County of Honolulu.


The HPD supports Senate Bill No. 2532, S.D. 2, 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, property manager, or an owner of an individual unit of the building may act as a complainant.


The HPD urges you to support Senate Bill No. 2532, S.D. 2, Relating to Crime.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Hunter Ah Loo, Major
District 3

SB-2532-SD-2

Submitted on: 3/13/2024 9:13:52 AM

Testimony for JHA on 3/15/2024 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 SB2532. We have a secure attached garage and have had burglaries on the premises. The SD2 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

Friday, March 15, 2024

2:00PM Room 325

House 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. Thank you also for seeking re-referral to your committee only.

This measure is the companion measure to HB2311, which your committee heard on February 9, and passed with amendments.

The measure addresses the reluctance of police and prosecutors to investigate and pursue felony burglary charges in the case of clearly unlawful entry into non-public areas of condominiums and apartment buildings if the entry results also in the intent to commit a crime therein. It clarifies existing statutory interpretation and practice. It does not create a new crime or penalty.

Given that the language of SB2532 SD2 is substantially similar to that of HB2311 HD1, and noting that the measure before you now has a “clean date” of “upon approval,” I would be very pleased if your committee passed out this measure unamended, so that it may proceed to a final reading in the House and be transmitted to the Governor for approval.

If, however, the committee is instead inclined to make amendments, I am very comfortable with the language of HB2311 HD1, which is somewhat simpler and properly, in my view, emphasizes the primary importance of notice to would-be burglars. If the committee wishes to insert the HD1 language, I respectfully request that the effective date be changed to “upon approval.” This might encourage the Senate to vote to agree to the House draft of the measure, thus avoiding the complications of conference committee deliberations.

As I related to this committee last month, in two years I have twice been able to convince HPD to work with prosecutors to file burglary charges in these types of cases, even though both incidents were originally charged as theft. As HRS Chapter 708 part II clearly states, burglary is an “offense against intrusion.” It is a crime that recognizes, particularly in the case of a dwelling, that residents have a right to remain free from the dangers and potential loss created by a prohibited entry. That holds true for all residents of a multi-unit building, not just the individual whose car is broken into, whose bike is stolen, or whose storage locker is forced open. In a condominium, for example, every homeowner owns a proportional interest in all common areas and fixtures. Every homeowner in a multi-unit building has a right to feel secure from unlawful intruders within the spaces explicitly reserved for homeowners only. The intruder in my first case apparently was armed with a hacksaw. Other testimony has described encounters with unlawful intruders bearing firearms in secured parking areas.

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 HOA representatives or building owners to serve as complainants also clarifies with whom the police and prosecutors can and should follow up during their investigation. Such persons may also serve as trial witnesses, thereby allowing defendants sufficient right of confrontation.

As we all know, the number of multi-unit buildings statewide 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 multi-unit dwellings should at least presumptively be treated in the same manner as that of individual homes, provided that due notice was given to an intruder that the area in question is reserved to residents only.

Thank you again for hearing this measure and for providing the opportunity to testify. I am happy to answer any questions you may have to the best of my ability.

SB-2532-SD-2

Submitted on: 3/13/2024 9:18:47 AM

Testimony for JHA on 3/15/2024 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 SB2532, SD2. However, I am concerned with language on page 3, lines nine and ten, which says "entry to which is clearly restricted to only the building's residents." We, as other properites, have absentee owners who rent their units. This language implies they are restricted from entering the building. I suggest you amend the language to say "the building's residents and apartment owners."

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.

SB-2532-SD-2

Submitted on: 3/14/2024 9:23:26 AM

Testimony for JHA on 3/15/2024 2:00:00 PM

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

Comments:

As a longtime condo dweller who knows how vulnerable common areas can be despite an association's taking as many security measures as possible, I highly SUPPORT SB2532 SD2.

SB-2532-SD-2

Submitted on: 3/14/2024 9:25:45 AM

Testimony for JHA on 3/15/2024 2:00:00 PM

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

Comments:

I fully SUPPORT SB2532 SD2. Please pass this bill.