



**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, RELATING TO CRIME.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, February 6, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229 and Videoconference

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

Chair Keohokalole 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 do 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, Hawaii Revised Statutes (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; o
- 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.

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

February 6, 2024

9:30AM Room 229

Committee on Commerce and Consumer Protection

Chair Keohokalole and Vice-Chair Fukunaga:

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.

I reside in a very well-secured high-rise with 24-hour surveillance and totally segregated residential parking. Twice in two years, I have succeeded in convincing HPD that the crime in question is not misdemeanor theft, but rather felony burglary. Both times I have had to explain to HPD that what happened is foremost an offense against the security and well-being of all the persons who live in a multi-unit building that has been unlawfully entered, who pay substantial fees to maintain security apparatus, cameras, and staff. Routinely these break-in cases to parking or storage areas are initiated as isolated misdemeanor theft incidents pertaining only to the personal property of one individual. 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 who finally changed the original charge from theft to burglary. 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.

The measure as drafted does not involve revising any statutes relating to apartment buildings or condominiums. I do note that a homeowners' association or building owner operates and controls surveillance footage and other security functions, and has a direct interest on behalf of all residents to pursue burglary charges in lieu of an individual resident. Statutorily allowing HOAs or building owners to serve as complainants clarifies with whom the police and prosecutors should follow up. There may be discussion as to what type of signage or gates or limited guest access might be required in certain types of buildings for the police to pursue burglary first, rather than theft or criminal trespass. I understand that different building configurations may result in different types of charges. The Committee on Judiciary will also, of course, need to weigh in on the language of the proposed revisions to Chapter 708.

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.

SB-2532

Submitted on: 2/3/2024 9:54:55 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale Head	Individual	Support	In Person

Comments:

This is a very good Bill, please pass it.

SB-2532

Submitted on: 2/3/2024 6:48:03 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Support	Written Testimony Only

Comments:

I support this measure.

SB-2532

Submitted on: 2/4/2024 2:48:38 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

I Support SB2532.

Gregory Misakian

Kokua Council, 2nd Vice President

Waikiki Neighborhood Board, Sub-District 2 Vice Chair

SB-2532

Submitted on: 2/5/2024 8:24:49 AM

Testimony for CPN on 2/6/2024 9:30:00 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 non one was hurt. A police report was filed. The incident never appeared in crime mapping reports.

I strongly support SB2532. This is an important tool in crime fighting. I urge you to move this bill forward.