

**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. 2342, RELATING TO WEAPONS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, February 22, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark S. Tom, Deputy Attorney General, or
Nicholas M. McLean, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and offers the following comments. We also suggest three clarifying amendments, which are outlined below.

The bill seeks to revise laws governing certain types of weapons and clarify the criminal prohibition on carrying or using a firearm in the commission of a separate criminal offense.

This bill would create a class C felony offense for carrying, using, or threatening the use of a firearm in the commission of a separate misdemeanor offense. This new provision would protect the public from the criminal use of firearms, while also respecting the right of "law-abiding, responsible citizens," *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022), to carry a firearm as set forth in recent decisions interpreting the Second Amendment.

The bill also revises and updates restrictions pertaining to deadly and dangerous weapons. Revisions to section 134-51, Hawaii Revised Statutes (HRS), are warranted to protect the public from risks associated with deadly or dangerous weapons, facilitate enforcement, implement a recent permanent injunction entered by the federal district court, and provide fair notice to the public. To achieve those goals, section 3 of the bill revises section 134-51, HRS, by:

- Removing a reference to a “slug shot” (also sometimes referred to as a “slungshot”), which was a type of weapon that is essentially obsolete today;
- Clarifying that billies do not fall within the scope of section 134-51, HRS, pursuant to a stipulated final judgment and permanent injunction entered by the federal district court for the District of Hawaii in *Yukutake v. Lopez*, 1:22-cv-00323-JAO-WRP (D. Haw. May 23, 2023);
- Clarifying that firearms, switchblade knives, butterfly knives, and electric guns are not covered by section 134-51, HRS, because those weapons are addressed by other statutory provisions;
- Updating section 134-51(a), HRS, to clarify that the focus of the provision is on regulating the concealed carrying of deadly or dangerous weapons outside of the home, as opposed to the simple possession of such weapons; and
- Removing certain obsolete or ambiguous language, to facilitate enforcement and avoid potential legal challenges.

Additionally, the bill amends section 134-51, HRS, to remove pistols and firearms from the ambit of section 134-51, HRS, because firearms are specifically addressed by other provisions in part I of chapter 134, HRS.

Further, the bill amends section 134-52, HRS, regarding switchblade knives, and section 134-53, HRS, regarding butterfly knives, to revise and clarify the scope of those prohibitions. The bill removes prohibitions on “manufactur[ing], sell[ing], transfer[ring], possess[ing], or transport[ing]” switchblade knives and butterfly knives, and creates a more targeted prohibition on the concealed carry of these weapons. This amendment seeks to protect the public, while aligning Hawaii’s laws with the laws of certain other states—such as Oregon and North Carolina—that prohibit the concealed carrying of weapons such as switchblades. See, e.g., Or. Rev. Stat. § 166.240(1) (prohibiting “carr[y]ing concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force”); N.C. Gen. Stat. § 14-269 (similar).

We suggest three clarifying amendments to the bill:

- Replacing "person" on page 2, line 14, in section 3, with "person, or in a bag or other container carried by the person,".
- Amending page 4, lines 7-8, in section 4, to read as follows:
Whoever knowingly [~~manufactures, sells, transfers, possesses, or transports in the State~~] carries concealed on the person, or in a bag or other container carried by the person, any
- Amending page 5, lines 9-11, in section 5, to read as follows:
(a) Whoever knowingly [~~manufactures, sells, transfers, possesses, or transports in the State~~] carries concealed on the person, or in a bag or other container carried by the person, any butterfly knife, being a knife having a blade encased

These suggested revisions would clarify that the prohibition on carrying a concealed weapon, as set forth in sections 134-51, 134-52, and 134-53, also includes carrying a weapon concealed in a bag or other container.

We respectfully ask your committee to pass this bill with the suggested amendments above. Thank you for the opportunity to testify on this bill.

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H.B. No. 2342: RELATING TO WEAPONS

Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

The Supreme Court of the United States has interpreted the Second Amendment to the United States Constitution to confer individuals with the right to bear arms and carry weapons in self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). In 2022, the Court made it clear that this right extends to carrying weapons outside the home. *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1 (2022). The Court also fashioned the test to determine when State action infringes on this right. If the statute covers constitutionally protected conduct like carrying a weapon for self-defense purposes, it falls on the Government to “demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 17.

And while the Hawai‘i Supreme Court has recently rebuked this analysis and held that our State Constitution does not recognize an individual right to bear arms, the National Constitution does, and it cannot be ignored.

Section 2 creates a new felony offense for carrying a firearm “while engaged in the commission of a separate misdemeanor offense[.]” This means that a person who lawfully acquires a firearm for self-defense purposes and later commits a misdemeanor is guilty of a class C felony and loses the right to have firearms for the

rest of their life. It can lead to unintended consequences. Suppose a defendant, while carrying a pistol holstered to their person, punches an intruder in the defendant's home and is charged with assault in the third degree. If the jury rejects their defense and finds the person guilty of the misdemeanor offense, they would also be found guilty of this new felony offense even if the person's carrying of the firearm was lawful and unrelated to the misdemeanor. The section 2 offense would arguably be unconstitutional.

The other sections are also constitutionally suspect. The rights in the Second Amendment are not confined to firearms. *See Caetano v. Massachusetts*, 577 U.S. 44, 411-412 (2016) (per curiam). An outright ban on carrying of knives and other bladed weapons outside the home—even when carried in self-defense and, therefore, protected by the Second Amendment—invites a constitutional challenge.

This bill criminalizes constitutionally protected conduct, and prosecutors will struggle to explain how these offenses and their cases would be justified under the *Bruen* test. It should be deferred.

POLICE DEPARTMENT
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HOPE LUNA NUI MĀKA'I

OUR REFERENCE HA-NG

February 22, 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, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 2342, Relating to Weapons


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

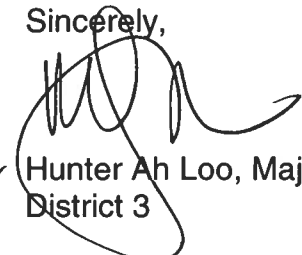
The HPD supports House Bill No. 2342, Relating to Weapons. The HPD supports the purpose of this Act to clarify, update, and revise Hawaii's law relating to weapons. Although the HPD has a law prohibiting the carry or use of a firearm in the commission of a separate felony, a new law to specifically address the carry or use of a firearm in the commission of a separate misdemeanor is necessary, given the increase in recent gun laws. Additionally, as proposed, any crime committed with the use or threat of a firearm shall be in addition to, and not in lieu of, any conviction and sentence for the separate misdemeanor.

The HPD urges you to support House Bill No. 2342, Relating to Weapons.

Thank you for the opportunity to testify.

APPROVED:


Arthur J. Logan
Chief of Police

Sincerely,

Hunter Ah Loo, Major
District 3

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE DAVID A. TARNAS, CHAIR
THE HONORABLE GREGG TAKAYAMA, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai`i**

February 22, 2024

RE: H.B. 2342; RELATING TO WEAPONS.

Chair Tarnas, Vice Chair Takayama, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") **supports** HB 2342.

The purpose of the bill is to clarify, update, and revise Hawaii's laws relating to weapons in order to address hazards to public health, safety, and welfare.

The Department recognizes that, while the use of a firearm in the commission of a felony is already prohibited under Section 134-21, Hawaii Revised Statutes, there is a need to expand the use of firearms in misdemeanor offenses (e.g., Disorderly Conduct, Trespass, etc.). Additionally, the Department supports all of the amendments and clarifications addressed in Chapter 134 to enhance the safety of the public.

Thank you for the opportunity to present testimony on HB 2342.

HB-2342

Submitted on: 2/21/2024 1:27:59 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daniel Reid	National Rifle Association - Institute for Legislative Action	Oppose	Written Testimony Only

Comments:

On behalf of the members of the National Rifle Association in Hawaii, I would like to communicate our opposition to House Bill 2342 (HB 2342) because it is overly broad and needs additional clarifying language.

HB 2342 provides that any person who possess or has immediate control over a firearm and commits a separate misdemeanor offense shall be guilty of a class C felony. The list of misdemeanors is expansive and not limited in any way by this legislation. It is foreseeable that someone may unintentionally commit a misdemeanor, such as a technical game violation, which would result in felony charges and a lifetime ban on firearm ownership. For example, HRS 183D-27 makes is a misdemeanor to pursue game at “night” which is one half hour before sunrise or after sunset. This could present a situation where a person thinks they are in compliance with the law and misses the mark by minutes, but now faces felony charges because they are in possession of a firearm. Further, HB 2342 specifies “misdemeanors”, however it should be made clear in the legislation that this does not include “petty misdemeanors” as well.

For the foregoing reasons we request your opposition to SB 3349.

HB-2342

Submitted on: 2/21/2024 1:04:12 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Todd Yukutake	Individual	Comments	In Person

Comments:

I provide COMMENTS for HB2342

I am neutral on the in "Carrying of a Firearm in the commission of a separate misdemeanor". I feel there are already laws on the books that deal with this such as HRS 134-25 Place to Keep Pistol or Revolver or HRS 134-7 Ownership, Possesion, or Control Prohibited (of firearms) which are felonies. The currently laws just have to be enforced. I am afraid that this section may penalize Licensed Concealed Carry holders who may inadvertantly commit a misdemeanor without knowing it.

I support removing the ban on butterfly knives, switchblade knives, and batons. However these items are or will be found to be protected by the 2nd Amendment's right to keep and bear arms in the Federal courts whether this HB2342 passes or not.

I OPPOSE the ban on the concealed carry of butterfly and switchblade knives in public as there is no reason to do so. These types of knives are no more dangerous than any other type of knife: pocket knives, kitchen knives, etc. Rather it's the perception of danger from the 1980's crime movies that perpetuated the fear in them. I have met many women who carry these types of knives in their purse for self-defense in the past, not knowing they are prohibited in Hawaii.

I cannot see the reason why the Government would want them to be carried openly. Please watch this video which was used as expert witness testimony in the Roa v Lopez lawsuit. It demonstrates the drawing the switchblade knife from a pocket compared to other types of knives with the result being the type of knife doesn't matter.

Expert witness testimony comparing the knife draw from Burton Richardson, a local expert martial artist: https://youtu.be/gdwPQ_IILZM

Todd Yukutake
toddyukutake@gmail.com
808-255-3066

Lawsuit references:

1. Butterfly knives - Ban was found to be unconstitutional in the 9th Circuit Court of Appeals. Teter v Lopez opinion: <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/08/07/20-15948.pdf>
2. Switchblade knives - Lawsuit filed in Federal District Court and is stayed pending Teter v Lopez. <https://dockets.justia.com/docket/hawaii/hidce/1:2023cv00079/163389>
3. Batons - Lawsuit was settled with the State in Federal District Court with an injunction. Yukutake v Lopez: <https://www.courtlistener.com/docket/66787905/todd-yukutake-v-anne-e-lopez/>

HB-2342

Submitted on: 2/20/2024 1:41:01 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marcus Tanaka	Individual	Oppose	Remotely Via Zoom

Comments:

I oppose this bill because carrying openly is very difficult to do for a bladed tool like a switchblade or butterfly knife. The only reason why this bill is changing the law is because there's a lawsuit about it.

Do the right thing and just allow them to be carried in any way a law abiding citizen chooses to. I have a concealed carry firearms permit, but I cannot conceal a switchblade. Does that make any sense?

HB-2342

Submitted on: 2/21/2024 1:11:07 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael I Rice	Individual	Oppose	Remotely Via Zoom

Comments:

I stand in opposition to this bill as it seems redundant. We already have adequate laws regarding firearms and their use in crime, they are either not being enforced or not being prosecuted. How many times do we see that numerous existing gun laws can be leveled against a suspect but usually only catch one charge?

I will use the example of a shooting at Makaha beach that resulted in the death of a 17 year old at the hands of a 16 year old. The 16 year old only received a charge of 'place to keep' in regards to firearms when there are at least 3 other firearms related crimes he could have been charged with and that doesn't include if he was using a stolen weapon, illegal magazines, or illegal firearms parts.

I have a concern that the law can be used to target otherwise law abiding gun owners, where someone with a carry permit can be turned into a felon because they were jaywalking or speeding. Granted it's bad behavior and they shouldn't be doing it but it should not be elevated to the level of felony.

HB-2342

Submitted on: 2/22/2024 10:32:10 AM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alex Akui	Individual	Oppose	Written Testimony Only

Comments:

Opposed

HB-2342

Submitted on: 2/20/2024 2:47:08 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ryan Willis	Individual	Oppose	Written Testimony Only

Comments:

I STRONGLY OPPOSE

HB-2342

Submitted on: 2/20/2024 2:58:32 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kanoë Willis	Individual	Oppose	Written Testimony Only

Comments:

I STRONGLY OPPOSE

HB-2342

Submitted on: 2/20/2024 3:36:34 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cheryl Tanaka	Individual	Oppose	Written Testimony Only

Comments:

I oppose the concealed requirement. I oftenc carry my knife in my purse, and this would prevent me from doing so. Because I'm a mother, I use my knife for certain situations and most of them, I'm one handed due to carrying my daughter. By having a switchblade, it allows me to open my knife easier one handed.

Also, female pockets are much smaller than mens pockets, so I'm unable to open carry it via the clip that the knives have, which is why I would carry it in my purse instead.

So delete the concealed portion of this bill.

HB-2342

Submitted on: 2/20/2024 3:44:25 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joel Berg	Individual	Support	Written Testimony Only

Comments:

I SUPPORT HB2342 (HOWEVER!)

This bill is a good start. I use pocket knives daily as part of my profession. One handed opening knives are vital to my work because they allow me to hold on for dear life while working aloft or to free myself if an article of clothing becomes caught in heavy equipment.

Please eliminate the concealed restriction language in the bill. One handed opening knives are not something we ever needed to fear. Their restriction is an embarrassing reminder of a hysterical over reaction to Hollywood sensationalism.

HB-2342

Submitted on: 2/20/2024 4:34:03 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
DAVE TEJADA	Individual	Oppose	Written Testimony Only

Comments:

Hello,

My name is Dave Tejada. i oppose the section of this house bill that criminalizes the carrying of an automatic or butterfly knife. Knives are tools, used everyday by millions of people around the world. It is the intent of the individual, not the tool, that should be called into question. If this tool is so dangerous, why is it issued to Law enforcement, Military, and first responders, who utilize it to save lives ie cut people out of trapped vehicles. Tha fallacy that a knife coming out faster that normal is more dangerous is laughable. Would a drill or a saw that spins faster be more dangerous? In fact, said law enforcement and Military count on the speed of the deployment of the blade if they themselves become entangled in something. I understand that it is now legal to possess these tools in Hawaii, so now your only recourse is to prevent them from being carried by the average law abiding citizen. I wholeheartedly disagree with that way of thinking and ask you to use logic when voting for this bill.

Thank you for your time.

HB-2342

Submitted on: 2/20/2024 5:45:40 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brent Uemae	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and Committee Members,

I am writing in opposition to HB2342 for the reasons below.

This bill in combination with SB2845 would create felons out of the simple gesture of an adult handing ammunition to a minor during an otherwise legal activity such as target shooting or hunting. As SB2845 is currently written, it would be a misdemeanor for an adult to transfer ammunition to anyone under the age of 21. An adult participating in the same target shooting or hunting activity with the minor could then be charged with a class C felony because there's a strong possibility that the adult could be in the immediate control of a firearm. HB2342 prohibits carrying or being in control of a firearm in the commission of a separate misdemeanor.

HB2342 prohibits the concealed carrying of switchblade or butterfly knives. Is the intent of this bill to have people openly carry these knives instead? If someone decides to openly carry these knives in their hand, others could perceive the act as brandishing.

HB-2342

Submitted on: 2/21/2024 9:02:15 AM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
scott shimoda	Individual	Oppose	Written Testimony Only

Comments:

How is it that you can have it but cannot conceal it? You cannot put it in your pocket/bag and have it but you can walk around with it in your hand? Isnt this brandishing a weapon? Isnt brandishing a weapon illegal? Has this changed?

HB-2342

Submitted on: 2/21/2024 10:45:51 AM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Holcomb	Individual	Oppose	Written Testimony Only

Comments:

I Oppose this measure

This is just another childish claw back of a court decision that someone didn't like. Flippy knives aren't any more stabby than kitchen knives, so what could possibly justify the unique treatment?

As far as the firearms part it's clear the intention is to threaten concealed carriers with trumped up charges if they happen to successfully defend themselves. There's no other reason that could possibly make sense than intimidating people from concealed carrying, because criminals aren't going to do the math on this.

The state is letting violent criminals out while stacking the deck against citizens who arm themselves, presumably because they want us all helpless, afraid, and dependent on increasingly dysfunctional big government. All that this will accomplish is a criminal empire running this state.

HB-2342

Submitted on: 2/21/2024 12:18:53 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ryan Arakawa	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE this bill. The US Supreme Court has ruled that you cannot ban 'arms' (gun, knife, club, spork, etc) from being carried outside the home. This is settled law - get with the program.

HB-2342

Submitted on: 2/21/2024 9:08:05 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chester Holt	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this legislation. It will either intentionally or unintentionally make felons out of many citizens in this state.

The carrying of switchblades (knives opened by one press of a button) and butterfly knives is an obvious human right. They are no more dangerous than kitchen knives or box cutters. The making of concealed carry of these knives a misdemeanor is unconscionable. I am also quite sure that most citizens who would carry these knives do not know the legislative definitions, or that putting them in your pocket would be illegal. Being in possession of one of these or even a firearm while in the commission of a separate misdemeanor, of which there are many, could be then classified a class C felony is unnecessary. An example based on these vague definitions could be carrying a button operated knife in your pocket and legally carrying your firearm unloaded and inoperable would be a felony. It is clear that the author of this bill either hates their constituents or believes they have no right to self preservation, likely both.

Unfortunately it is obvious that the Hanwahi Supreme Court believes that the citizens have no right to protect themselves. This is apparent in their opinion on state of Hawaii vs Wilson. They may also be reaching in their conclusion if they quote tv shows and the "Aloha spirit" as legal justification.

I have read the other testimonials and it is clear that there is strong opposition to this proposed legislation. If this is passed it will be evident that the legislature seeks to disarm and criminalize unsuspecting citizens. Leaving police and criminals the only groups capable of self preservation.

HB-2342

Submitted on: 2/21/2024 9:33:54 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chad Cummings	Individual	Oppose	Written Testimony Only

Comments:

Knives are considered arms and have been declared arms and therefore protected under the 2nd ammendment. The Constitution states the Right to Keep and Bear arms. So why can't these knives be carried concealed? Are we going back to before Bruen to where law abiding citizens can only bear arms in their homes?