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JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

**TESTIMONY ON HOUSE BILL NO. 1780, H.D. 1
A BILL FOR AN ACT RELATING TO SENTENCING OF REPEAT
OFFENDERS**

**Lieutenant Governor James R. Aiona, Jr.
Office of the Lieutenant Governor**

**HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair**

**Friday, February 27, 2009
4:00 P.M., Conference Room 308**

Good Afternoon Chair Oshiro, Vice Chair Lee, and Members of the Committee:

The Office of the Lieutenant Governor strongly opposes passage of H.B. No. 1780, H.D. 1.

As a former state court judge, I appreciate the importance of allowing judges to exercise discretion in rendering criminal sentences. However, we oppose H.B. 1780, H.D. 1 because it does not limit a judge's discretion to cases involving non-violent crimes such as property or drug-related offenses. Instead, this bill, if passed, would allow judges to grant probation to repeat violent offenders as well as repeal mandatory minimums for repeat violent offenders.

If there is a need to overhaul the repeat offender statute to provide greater judicial discretion, it should not take the form of a "quick fix" that treats all offenders the same, whether they are violent or non-violent.

Instead, I would advocate for comprehensive and thoughtful reform that offered probation to only those repeat offenders who do not pose a danger to the community, and who have demonstrated to the court that they may be treated effectively in a community-based setting.

For the foregoing reasons, I oppose passage of H.B. No. 1780, H.D 1.

Thank you for the opportunity to testify.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 1780, H.D. 1, RELATING TO SENTENCING OF REPEAT OFFENDERS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 27, 2009 **TIME:** 4:00 PM

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Lance M. Goto, Deputy Attorney General

Dear Chair Oshiro and Members of the Committee:

The Department of the Attorney General strongly opposes this bill.

The purpose of the bill is to change the mandatory minimum sentencing provisions of the repeat offender law from mandatory to discretionary.

The repeat offender law set out in section 706-606.5, Hawaii Revised Statutes, was enacted in 1976 and has been in place for almost thirty-three years to address the serious problem of repeat and habitual offenders and career criminals who have no regard for the law or the legal system. It helps protect Hawaii's people and communities from the relatively small group of criminals who commit so many of the crimes that occur in Hawaii.

The Commentary on section 706-606.5, citing the 1976 House Conference Committee Report No. 32 and Senate Conference Committee Report No. 33, states:

Finding a clear danger to the people of Hawaii in the high incidence of offenses being committed by repeat offenders, the legislature felt it necessary to provide for mandatory terms of imprisonment without the possibility of parole in cases of repeated offenses by prior offenders.

Since 1976, the Legislature has refined and enhanced the repeat offender law and, recognizing its value and importance, added more offenses to the list of offenses subject to repeat offender sentencing.

This bill would destroy the repeat offender law, disregarding the years of legislation, experience, and practice that have led to the development of this important law.

This bill cites a 2008 poll released by a group calling itself Families Against Mandatory Minimums. The poll indicates that it was a telephonic survey of only 1,000 people across the nation. The poll and the assertions made about its results are extremely misleading. The questions are ambiguous or framed to elicit a particular response. In fact, the poll is not about repeat offender sentencing. The following is the poll question about mandatory sentencing:

Over the last twenty years, some states and the federal government have required that certain crimes, including non-violent crimes, carry a mandatory or automatic prison sentence, regardless of the circumstances of the crime.
Do you support or oppose the idea of mandatory prison sentences for some non-violent crimes?

This is a vague and ambiguous question about mandatory sentencing for some non-violent crimes. The question has nothing to do with repeat, habitual or career criminal offenders, yet this bill cites the poll as a reason to gut repeat offender law. Moreover, this bill impacts violent crimes, not just "non-violent" crimes.

It should also be noted that the proposed amendment to subsection (4) of 706-606.5, on page 9, lines 18-19, renders that subsection meaningless. The amendment provides that a misdemeanor repeat offender under that subsection "may be sentenced to a term of imprisonment that shall be no less than nine months." The provision attempts to create a mandatory minimum term in a discretionary provision. And regardless of this proposed subsection, any misdemeanor offender may be sentenced to a term of imprisonment of up to one year.

We respectfully urge that this bill be held.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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CHIEF

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KARL A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 27, 2009

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 1780, H.D. 1, Relating to Sentencing of Repeat Offenders

I am Richard C. Robinson, captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department urges you to oppose House Bill No. 1780, H.D. 1, Relating to Sentencing of Repeat Offenders. The majority of serious crimes in Honolulu are committed by a small number of career criminals whose only means of support is their criminal actions. These repeat offenders complete their prison sentences and shortly after their release, resume their criminal activity.

This revolving door of the criminal justice system is evident and is supported by the following statistics. In December 2008, there were 108 adults arrested for non-drug felony offenses in Honolulu. Of that number, 56 were previously convicted felons, and half of the 56 had more than three felony convictions. The decrease in the crime rate is attributed to the fact that more of these career criminals are in custody and are not on the streets preying on the citizens and visitors.

The Honorable Marcus R. Oshiro, Chair
and Members
Page 2
February 27, 2009

The Honolulu Police Department urges you to oppose House Bill No. 1780,
H.D. 1, Relating to Sentencing of Repeat Offenders.

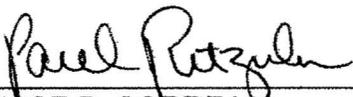
Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

for: 
BOISSE P. CORREA
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE MARCUS OSHIRO, CHAIR
HOUSE FINANCE COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

February 27, 2009

RE: H.B. 1780, H.D. 1; RELATING TO SENTENCING OF REPEAT OFFENDERS.

Chair Oshiro and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony in strong opposition to HB 1780, H.D. 1.

The intent of this bill is to amend Hawaii Revised Statutes (HRS) section 706-606.5 relating to mandatory minimum sentences for repeat offenders by making the imposition of a mandatory minimum sentence discretionary and by permitting the court to sentence repeat offenders to probation.

Hawaii's repeat offender sentencing law which provides for mandatory minimum sentences has been in effect since 1976. It was passed due to the legislative recognition that repeated offenses by previously convicted persons presents a clear danger to citizens. This is a common sense reflection of the fact that a small percentage of persons commit a disproportionately large percentage of crimes. Our repeat offender statute covers offenses such as murder, sexual assault, robbery, burglary and auto theft and already permits the judge to sentence the offender to a lesser mandatory minimum when he or she finds strong mitigating circumstances.

We understand that the impetus of this bill is based in part upon a poll released by Families Against Mandatory Minimums which purports to show that a majority of 1,000 people polled nationwide favored doing away with mandatory minimums. But the questions that appear to have been posed to the relatively small sample was: Do you support or oppose the idea of mandatory prison sentences for some non-violent crime?

The flaws in applying the poll results to this bill are numerous. First, the question is about non-violent offenses and this bill proposes to go farther by repealing the mandatory minimums for violent offenders. Second, the question says nothing about mandatory minimums

for repeat offenders; we suspect that if the people polled were told that the offender had several previous convictions that the poll results might be different. Lastly, the question is posed about repealing the mandatory minimums for "some" unspecified non-violent crimes; we suspect the poll results would be different if the question was more specific as to the types of crimes, such as whether persons charged with electronic enticement of a child or burglary should be able to avoid mandatory minimums.

We also note that this bill implies that the bill will reduce costs and result in cost savings for correctional facilities and resources and the defendants' families, but yet there is no cost analysis for the costs that repeat offenders impose on the community and crime victims when new offenses are committed. Victims suffer economic costs in lost property, insurance, work hours and medical costs in the case of violent crime; in addition there are costs incurred for police investigation and state and county resources to investigate and prosecute any new crimes committed by offender. Clearly the cost-savings suggested by this bill are one sided and should not be taken at face value without actual statistics and looking at the total impact on victims and the whole community before doing away with mandatory minimums for repeat offenders.

We cannot stress how often we have heard dismay from crime victims who have been burglarized or had a car broken into or stolen, when informed that the offender is repeat offender who has multiple offenses and convictions on his or her record. They are often appalled that the repeat offender isn't incarcerated and is free to victimize the community. We believe that if this bill is passed, it will erode both the ability of the criminal justice system to keep the community safe and the confidence the public has in the system.

For these reasons, we strongly oppose the passage of HB 1780, H.D. 1 and respectfully ask that you defer this bill. Thank you for this opportunity to testify.



the
**Drug Policy
Forum**
of hawai'i

February 27, 2009

To: Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair and
Members of the Committee on Finance

From: Jeanne Y. Ohta, Executive Director

Re: HB 1780 HD1 Relating to Sentencing of Repeat Offenders
(Hearing: February 27, 2009, 4:00 p.m., Room 308)

Position: STRONG SUPPORT

Good afternoon, my name is Jeanne Ohta, I am testifying today in strong support of HB 1780 HD1 Relating to Sentencing of Repeat Offenders. This bill changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary.

The sentencing of offenders should be in the hands of judges; instead, mandatory sentencing shifts the responsibility to prosecutors who can decide what charges to bring against a defendant and thus, what sentence he will receive.

Mandatory minimums are costly and have skyrocketed prison budgets across the nation and have not increased public safety. Allowing judges to sentence offenders allows them to set appropriate sentences for that particular offense and circumstances. Additionally, mandatory sentencing has exacerbated racial and gender disparities of the criminal justice system.

Mandatory minimums were originally meant to sentence those higher up in the drug trade to longer sentences. In actuality, they have made those at the very top and those at the bottom equally culpable. Many low-level drug users are sentenced to mandatory sentences. Mandatory minimums obstruct public health and drug treatment goals by criminalizing a common and critical component of recovery: relapse. Relapse is part of recovery; it should not become a reason for long incarceration.

We need to be smarter on how we address crime and drugs in Hawai'i. Over-reliance on long terms of incarceration is a costly and ineffective policy. I urge the committee to pass HB 1780 HD1 and return sentencing decisions to judges.

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**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Finance**

February 27, 2009

H.B. No. 1780, H.D. 1: RELATING TO SENTENCING OF REPEAT OFFENDERS

Chair Oshiro and Members of the Committee:

We support H.B. No. 1780, H.D. 1 and believe it is long past time to reexamine our severe repeat offender statute. We believe it is appropriate for judges to have the discretion to fashion a sentence that balances protection of the community with the most effective consequence for the individual defendant. We know how expensive it is to incarcerate an individual. It is much less costly to provide services to that person in the community. It is even much less costly to pay for residential drug treatment in the community than in a correctional facility.

We know from the success of such programs as HOPE Probation that intensive supervision programs can protect the community at the same time that effective services are provided. Our current HOPE program has reduced revocations of probation and arrests for new crimes by two-thirds. Positive drug tests among the participants have been reduced 86 percent. All this has been done at a cost to taxpayers that is significantly less than the costs of incarceration.

To illustrate the costs of incarceration versus the costs of supervision of the defendant in the community, we have three examples from our current caseload:

1) We have a 54 year old client who has mental health problems but functions well. He was convicted of class C drug charges in 2006. He was placed on probation and participated in the Queen's Hospital Day Treatment Program which treats dual diagnosis individuals (mental health and drug involvement). He did very well, kept all his appointments and earned a clinical discharge from the program. He subsequently accompanied a friend to Chinatown where he was caught smoking a crack pipe in 2007. We attempted to get him into Drug Court: they were not accepting repeat offenders. We attempted to get him into Mental Health Court: he was rejected as being too functional. He is currently in the Sand Island Residential Treatment Program where he is doing very well. His sentencing in the 2007 case is now set for June, 2009 when he, hopefully, will have completed the Sand Island Program. While completing that program may help him secure an earlier release date from the Hawaii Paroling Authority (HPA), it won't change the fact that he will be sentenced to a five year prison term. The court will have no discretion to consider probation.

2) Another client was convicted of possessing a class C amount of drugs in 2001. He was placed on 5 years probation, worked full-time, participated in drug treatment and did so well that his probation was terminated early. In 2006, our client's wife died of cancer and things got very bad financially with \$75,000. in medical bills. Our client tried to use a bad check at Home Depot and was convicted of Forgery in the Second

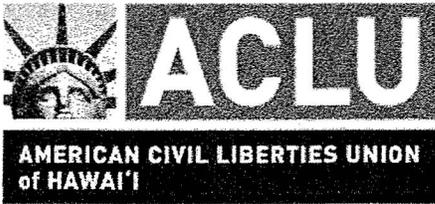
Degree and Attempted Theft in the Second Degree. The Court had no choice but to sentence him to a five year prison term with a mandatory minimum term which the Court reduced. He spent almost one year in custody. When he came before them, the HPA set their minimum term to "time served" and this defendant, 47 years old, is now on parole. He came out of prison unemployed.

3) Another defendant has drug convictions in 2006 and 2008. He had been honorably discharged from the U.S. Army and had a history of schizophrenia. In the second case, the Court had no choice but to sentence him to a five year prison term with a mandatory minimum term which the Court reduced.

These examples illustrate the myriad cases in our office where defendants have received prison sentences but who would otherwise have been likely candidates for probation if not for HRS § 706-606.5, our current repeat offender statute. This current law mandates the simplistic penal approach of locking up persons who break the law again with no consideration of the factors surrounding the criminal offense and no consideration of programming that would be less expensive to taxpayers and more effective in reducing recidivism. Our current law has often had the affect of causing the felony imprisonment of many homeless and mentally ill persons. It has resulted in overcrowding of our prisons to the point that we now house thousands of inmates on the mainland, away from their culture and family support systems which are the positive influences which could improve their chance to have future law-abiding lives.

For these reasons, we support H.B. 1780, H.D.1.

Thank for the opportunity to comment on this measure.



VIA WEB

Committee: Committee on Finance
Hearing Date/Time: Friday, February 27, 2009, 4:00 p.m.
Place: Room 308
Re: Testimony of the ACLU of Hawaii in Support of H.B. 1780, HD1, Relating to Sentencing of Repeat Offenders

Dear Chair Oshiro and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support H.B. 1780, HD1, which seeks to change the mandatory minimum sentencing of repeat offenders from mandatory to discretionary.

Judges need sentencing discretion to determine appropriate punishment.

The ACLU of Hawaii applauds this Committee for considering this bill and recognizing that justice is better served when judges have some level of discretion to account for mitigating circumstances when determining an offender's punishment. Although individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, and inappropriate sentences inevitably result. Mandatory minimum sentencing deprives the public of the best judgment of its experts in responding to crime.

Respected members of the judiciary have also expressed concerns about limiting the sentencing discretion of federal judges. On March 17, 2004, Supreme Court Justice Anthony Kennedy testified before the House Appropriations, Commerce, Justice, State and Judiciary Subcommittee that "the mandatory minimum sentences enacted by Congress are, in my view unfair, unjust, and unwise." In an August, 2003 speech to the American Bar Association Justice Kennedy stated he "can accept neither the necessity nor the wisdom of federal mandatory minimum sentences." Justice Kennedy is appropriately concerned about the path we are going down in the context of sentencing discretion in courts.

Mandatory minimum sentencing effectively transfers the authority for sentencing from neutral judges to adversarial prosecutors. With the authority to charge a defendant with a crime carrying the possibility of a severe mandatory minimum sentence, prosecutors are able to induce defendants to plead guilty to a lesser offense. Out of fear of a lengthy prison sentence,

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Hon. Rep. Oshiro, Chair, FIN Committee
and Members Thereof
February 27, 2009
Page 2 of 3

innocent persons may agree to serve a lesser sentence.

Public opinion is against mandatory minimum sentences.

A September 2008 FAMM poll shows bipartisan support for repealing mandatory sentencing:

- Fully **78 percent** of Americans (nearly eight in 10) agree that courts – not Congress – should determine an individual's prison sentence.
- Six in 10 (**59 percent**) oppose mandatory minimum sentences for nonviolent offenders.
- A majority of Americans (**57 percent**) polled said they would likely vote for a candidate for Congress who would eliminate all mandatory minimums for nonviolent crimes.

The poll reflects a strong dissatisfaction with the criminal justice system and a growing confidence in rehabilitation and alternative punishments for nonviolent offenders.

Mandatory minimum sentences have not been proven to be effective in deterring crime. However, they have been shown to disproportionately impact minority and low-income communities and will certainly direct more money and individuals into prison beds. Another consequence of mandatory minimum sentencing is overcrowding of our prisons and having to choose between building more prisons, sending more prisoners to private prisons, or releasing persons prior to the completion of their sentences. None of these outcomes is desirable. Indeed, last week, a three-judge federal judicial panel in California ruled that overcrowding was so severe and pervasive in California's prisons that the release of prisoners was the only way to resolve the innumerable constitutional violations. *Plata v. Schwarzenegger*, Civ. Nos. S-90-0520, C01-1351 (E.D. Cal. & N.D. Cal., Feb. 9, 2009). The Legislature should take proactive steps to manage its prison population; time and resources would certainly be better spent in developing and funding crime prevention programs, and passing HB 1780 is a substantial step in the right direction.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

American Civil Liberties Union of Hawai'i
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Hon. Rep. Oshiro, Chair, FIN Committee
and Members Thereof
February 27, 2009
Page 3 of 3

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
Committee on Finance

HEARING Friday, February 27, 2009
 4:00 pm
 Agenda #7
 Conference Room 308
 State Capitol, Honolulu, Hawaii 96813

RE: HB1780, HD1, Relating to Sentencing of Repeat Offenders

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH strongly opposes HB1780, HD1, which changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary. There is no compelling reason for this change.

The National Retail Federation estimates that the value of merchandise lost to theft is .9% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24 billion in 2007), the loss is over \$21 million. If these stolen goods had been actual sales, the result would be revenue for the business and for the state (at least \$200,000 in GET).

Our Loss Prevention professionals confirm that there are chronic shoplifters that go from store to store, from shopping mall to shopping mall, and most of the time escape capture and prosecution. When we compare surveillance photographs from different stores, we find the same criminals attempting the same crimes again and again. The losses are huge; the retailer is never compensated and has absolutely no hope of recovery.

Of greater concern for the citizens of the state of Hawaii is that this bill will impact the more serious and heinous crimes against people. Section 706-606.5, Hawaii Revised Statutes, provides our residents with some assurance that these career criminals eventually will be held accountable for their crimes.

The members of the Retail Merchants of Hawaii respectfully urge you to **hold HB1780, HD1**. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
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Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202

FINTestimony

From: abraggs@aol.com
Sent: Wednesday, February 25, 2009 10:49 PM
To: FINTestimony
Subject: HB1780 HD1 NAACP Testimony

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Friday, February 27, 2009
4:00 PM
Room 308

Bill - HB 1780 HD1 – SENTENCING OF REPEAT OFFENDERS - RELATING TO SENTENCING OF REPEAT OFFENDERS. Sentencing; Mandatory Minimum Terms Changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary. (H) 1/30/2009

NAACP POSITION: STRONG SUPPORT

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FINTestimony

From: Daphne Barbee [daphnebarbee@clearwire.net]
Sent: Thursday, February 26, 2009 3:12 PM
To: FINTestimony
Subject: Testimony in Support of HB 1780 HD1

TO: COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn Lee, Vice Chair

Friday, February 27, 2009

4:00 PM

Room 308, Hawaii State Capitol

RE: Testimony in Support of HB 1780 HD1 Relating to Sentencing Repeat Offenders
Repeal

FROM: Atty Daphne Barbee-Wooten

1188 Bishop Street, Suite 1909, Honolulu, Hawaii 96813, (808) 533-0275

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

My name is Attorney Daphne Barbee-Wooten. I practice law in the State of Hawaii. I testify in support of HB 1780 HD1 which repeals and changes mandatory minimum sentencing of repeat offenders and leaves mandatory sentencing in the discretion of the court. Our prisons are overcrowded. Taxpayer money is being spent to house inmates who are sentenced to mandatory minimum terms. Some of the individuals sentenced have suffered from drug addiction. Instead of spending money and locking people up, there should be treatment facilities to assist with nonviolent drug offenders. Judges and the probation officer are in a better position to determine whether a three time offender drug user can benefit more from a drug abuse program than from mandatory incarceration. Therefore, I request that you pass this bill which repeals mandatory sentencing for repeat offenders.

Dated: Honolulu, Hawaii

Daphne Barbee-Wooten

Attorney at Law