

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

February 12, 2009

H.B. No. 421: RELATING TO SENTENCING

Chair Hanohano and Members of the Committee:

We support H.B. No. 421 seeking the repeal of the state's "three strikes" law, Act 81, Session Laws of Hawaii 2006. Prior to the enactment of Act 81, there existed a variety of laws providing for lengthy prison terms for repeat or persistent offenders. Examples of these statutes are:

1. H.R.S. § 706-606.5 Sentencing of repeat offenders
2. H.R.S. § 706-606.6 Repeat violent and sexual offender
3. H.R.S. § 706-606.1 Sentence of imprisonment for use of firearm
4. H.R.S. § 706-606.2 Sentence of imprisonment for offense against children, elder person or handicapped person
5. H.R.S. § 706-661 Extended terms of imprisonment

All of the aforementioned sections remain on the books. Act 81 imprisons a person for an even lengthier sentence than is provided for under these statutes. If a person qualifies for sentencing under Act 81, he/she receives a life term of imprisonment with at least a thirty year mandatory minimum term.

The particularly disturbing aspect of Act 81 is that three of the offenses which would qualify a defendant for sentencing under that law are offenses which, under many circumstances, do not involve serious violence -- they are: Kidnapping, Robbery 2°, and Burglary°.

Violent offenders were punished with long prison terms prior to the existence of Act 81. If Act 81 is repealed, such offenders can continue to be appropriately sentenced. If the State of Hawaii is not vigilant in monitoring the length of prison terms, it will face the dilemma that the State of California is now facing. California was one of the main proponents of the "three strikes" law and is now in an unprecedented crisis with regard to its prison system. We have attached an article from the San Francisco Chronicle which details the calamity. [See "Exhibit A" attached].

Thank you for the opportunity to comment.

**SFGate.com**

**EXHIBIT A**

## **Judges order state to free thousands of inmates**

Bob Egelko, Chronicle Staff Writer

Monday, February 9, 2009

**(02-09) 16:53 PST SAN FRANCISCO** -- A federal court panel said today it intends to order the release of tens of thousands of California inmates over two to three years to relieve overcrowding that has ravaged prison medical and mental health care.

The three-judge panel said it was confident that the prison population could be reduced without endangering the public.

"The evidence is compelling that there is no relief other than a prisoner release order that will remedy the unconstitutional prison conditions," the panel said in what it labeled a tentative ruling after a trial in San Francisco last fall.

Two federal judges, both panel members, have ruled in separate cases that the quality of medical care and mental health treatment in state prisons violates the constitutional ban on cruel and unusual punishment. In today's decision, the panel agreed with lawyers for the inmates that "crowding is the primary cause" of the constitutional violations.

Because prisons are jammed beyond capacity, they lack medical facilities, doctors and nurses, can't make sure inmates are taking medications or receiving treatment, and are triple-bunking inmates in gyms and other locations, the panel said. Such overcrowding increases the risk of spreading diseases among prisoners and staff, the judges said.

California's 33 prisons hold about 160,000 inmates, nearly twice their designed capacity. The judges said they were prepared to impose a limit of between 120 and 145 percent of capacity, which would require 40,000 to 60,000 prisoners to be released.

That could be done through a combination of increasing sentence reductions for good behavior, turning over low-risk prisoners with little time left to serve to counties for incarceration or treatment, and by changing parole policies that now return large numbers of inmates to prison for minor violations, the judges said.

They said the state would save nearly \$1 billion a year, money that could be used for local prisoner housing and rehabilitation.

Prison overcrowding can be relieved "through reform measures that would not adversely affect public safety, and might well have a positive effect" by encouraging prisoners to earn the increased sentence reductions, the panel said.

The panel consists of U.S. District Judges Thelton Henderson of San Francisco and Lawrence

Karlton of Sacramento and Judge Stephen Reinhardt of the Ninth U.S. Circuit Court of Appeals. When its ruling becomes final, the state can appeal to the U.S. Supreme Court.

Donald Specter of the nonprofit Prison Law Office, a lawyer for the inmates, said the ruling validates the group's position that overcrowding is creating dangerous conditions that can be eased only by reducing the prison population.

"Much of the evidence showed that it's been done in other states without having any impact on public safety," Specter said. "It's safe, it's reasonable, it's necessary. It's too bad that it's taken a court to recognize this."

The panel ordered state officials to consult with the prisoners' lawyers and other parties in the case, including prison guards and county prosecutors, on any steps that might be taken to lower the prison population.

Specter said he was prepared to resume negotiations, but added that "there's no point in talking" if Gov. Arnold Schwarzenegger maintains his refusal to consider any such measures, a view the governor expressed last week.

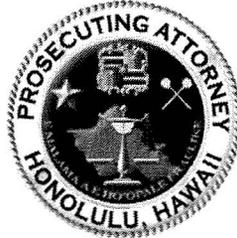
E-mail Bob Egelko at [beigelko@sfchronicle.com](mailto:beigelko@sfchronicle.com).

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/02/09/BAGS15QM8V.DTL>

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE  
PROSECUTING ATTORNEY



Douglas S. Chin  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE FAYE HANOHANO, CHAIR**  
**HOUSE COMMITTEE ON PUBLIC SAFETY**  
**Twenty-fifth State Legislature**  
**Regular Session of 2009**  
**State of Hawai'i**

February 12, 2009

**RE: H.B. 421; RELATING TO SENTENCING.**

Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney submits the following testimony in strong opposition to HB 421.

The purpose of this bill is to repeal special sentencing and conditions for “habitual violent felons”, i.e. persons convicted of murder or any class A or B felony which is defined as a crime of violence and who have two prior and separate felony convictions for murder, or a class A or B felony that is a crime of violence. These special sentencing provisions were passed as Act 81 of 2006. According to the purpose clause of this bill, one of the justifications for this bill is that it is redundant of existing law and that it has not been used since it has been in effect. Furthermore, the purpose clause notes that the law is overly broad because it will lead to long prison terms for non-violent offenders and will contribute to prison overcrowding.

We strongly oppose this bill. First, we note that the purpose clause is incorrect in its statement that the law is overly broad because it will lead to long prison terms for non-violent offenders; a simple reading of the terms of the sentencing provisions of Act 81 would confirm that it is both narrowly tailored to address only the worst of violent offenders and that it does not apply to non-violent offenders. Specifically, by its terms, Act 81 *only* applies to persons convicted three times of murder, manslaughter, assault in the first degree, kidnapping, sexual assault in the first or second degree, continuous sexual assault of a minor, robbery in the first or second degree and burglary (when at least one of the prior offenses is for an enumerated offense other than burglary). Property and drug offenders, who steal cars, shoplift or possess, manufacture or sell drugs *do not* fall under Act 81, unlike the widely criticized “three strikes” laws of other jurisdictions. We observe that in passing Act 81, the legislature stated in Conference Committee Report 49-06:

There is strong support for a mandatory sentence of thirty years to life for habitual violent offenders. However, your Committee on Conference emphasizes that this measure is not the same as the “Three Strikes” law that is currently followed in California.

Second, we note that the special sentencing provisions of Act 81 for “habitual violent” felons are not redundant of existing laws. Hawaii does have a repeat offender sentencing law;

however that law is not specifically aimed at providing enhanced sentencing for repeat violent offenders and unlike Act 81, permits a reduction in the mandatory minimum for “strong mitigating circumstances.”

Third, we find it inconsistent to justify the repeal of Act 81 because it will lead to long prison terms and will contribute to prison overcrowding and then to later justify the repeal on the fact that the law has not been used. Act 81 has been used once since it has been passed and therefore clearly has not contributed to prison overcrowding. Nor should it have a significant impact on prison overcrowding as it was intended to apply only to the worst violent offenders who have repeatedly demonstrated a lack of regard for the well-being and safety of others. The fact that Act 81 has been used only once from its enactment simply emphasizes the narrow scope of the act and that it only applies to worst repeat violent offenders.

We would also like to point out that the facts of the case in which the habitual violent felon law was used. We believe it illustrates that the law has worked as it was intended by providing enhanced sentencing for the worst violent offenders. Alapeti Tunoa Jr. was recently sentenced to a mandatory minimum of thirty years and a mandatory indeterminate term of life imprisonment for the murder of his ex-girlfriend Janel Tupuola pursuant to Act 81. Tunoa rammed his vehicle into Janel Tupuola’s vehicle and then dragged her out into the street where he beat her to death with the butt of a shotgun in front of horrified witnesses. Witnesses stated that he hit Janel Tupuola so hard that the stock of the gun started breaking apart; they told police that Tunoa’s repeated striking of Janel Tupuola looked like someone chopping wood or driving a stake into the ground with a sledgehammer. When a 69 year old man tried to intervene to stop the beating, Tunoa bashed the man on the head causing serious injuries. We believe that this is exactly the type of case that demonstrates the need for the tougher sentencing provided under the habitual violent felon law.

Finally, we note that when the legislature passed Act 81 last year, it included a sunset date of July 1, 2011 along with a requirement that the judiciary and the department of public safety submit reports to the legislature providing sentencing data and prison population data. Given that the legislature does not have the necessary data from these agencies to fully and comprehensively determine the impact and/or value of Act 81, we believe that it is premature to repeal it.

For these reasons, we strongly oppose HB 421 and respectfully request that it be held. Thank you for this opportunity to testify.

CHARMAINE TAVARES  
Mayor



BENJAMIN M. ACOB  
Prosecuting Attorney

PETER A. HANANO  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

February 11, 2009

HONORABLE FAYE P. HANOHANO, CHAIR  
HONORABLE HENRY J.C. AQUINO, VICE CHAIR  
COMMITTEE ON PUBLIC SAFETY

HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009  
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,  
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,  
IN OPPOSITION OF H.B. NO. 421  
RELATING TO SENTENCING

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly opposes H.B. 421 Relating to Sentencing.

On May 8, 2006, the Honorable Governor Linda Lingle signed Act 81 into law. Under Act 81, also known as the "three strikes law", a "habitual violent felon" is required to serve a mandatory indeterminate term of life imprisonment AND a mandatory minimum term of imprisonment of not less than thirty years. In order for a defendant to qualify as a "habitual violent felon", Act 81 requires, among other things that "the current conviction is for murder in the second degree or any class A or class B felony that is a crime of violence". In addition, Act 81 does not apply to offenses that occurred prior to May 8, 2006.

Based upon the following reasons, our Department strongly opposes the current H.B. 421. First, Act 81 is not overly broad. As stated above, the present law requires that the current conviction is either a murder in the second degree or class A or class B crime of violence. Moreover, the defendant must have at least two prior and separate felony convictions for crimes of violence.

Second, Act 81 has not led to actual prison overcrowding. In fact, since the law was passed, only one extremely violent felon was sentenced under Act 81. In any case, the safety of the public outweighs any consideration with regard to prison overcrowding and/or increased medical costs.

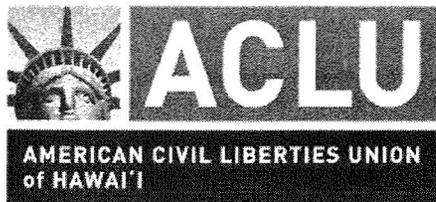
Third, Act 81 is not redundant because prior to the approval of Act 81, there was no similar "three strikes law" in Hawai'i. In passing Act 81, the legislature recognized in Conference Committee Report 49-06, that the special sentencing provision of Act 81 for "habitual violent" felons are not redundant of existing laws.

Finally, the fact that law enforcement officials have not once utilized Act 81 since the Governor approved the bill on May 8, 2006, is not at all indicative of its deterrent effect, or lack thereof. In fact, the opposite may be true. The fact that the law has been used since been used once strongly suggests that the law has deterred street criminals from further engaging in violent criminal offenses.

Accordingly, we strongly oppose the passage of H.B. 421.

Thank you for the opportunity to testify.

(H.B. 421, Relating to Sentencing)



**BY EMAIL: [PBStestimony@capitol.hawaii.gov](mailto:PBStestimony@capitol.hawaii.gov)**

Committee: Committee on Public Safety  
Hearing Date/Time: Thursday, February 12, 2009, 8:30 a.m.  
Place: Room 309  
Re: *Testimony of the ACLU of Hawaii in Support of H.B. 421, Relating to Sentencing*

Dear Chair Hanohano and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 421, which repeals the law requiring habitual violent offenders to be sentenced to prison for 30 years to life.

“Three strikes” laws for violent felons don’t work. The American public is alarmed about crime, and with good reason. Our crime rate is unacceptably high, and many Americans feel like prisoners in their own homes, afraid to venture out for fear of becoming another statistic.

For the past 20 years, state crime control policies have been based on the belief that harsh sentencing laws will deter people from committing crimes. But today, with thousands of Hawaii’s people behind bars and state budgets depleted by the huge costs of prisons, we are no safer than before. New approaches to the crime problem of crime are needed - repealing the “three strikes” law is a step in the right direction.

**“Three strikes” laws won’t deter most violent crimes**

Its supporters claim that “3 Strikes” laws will have a deterrent effect on violent crime, but these laws will probably not stop many criminals from committing violent acts. For one thing, most violent crimes are not premeditated. They are committed in anger, in the heat of passion or under the influence of alcohol. The prospect of a life sentence is not going to stop people who are acting impulsively, without thought to the likely consequences of their actions.

Another reason why repeat offenders do not consider the penalties they face before acting is because they do not anticipate being caught, and they are right. According to the American Bar Association, out of the approximately 34 million serious crimes committed each year in the U.S., only 3 million result in arrests.

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

**“Three strikes” laws could lead to an increase in violence**

Many law enforcement professionals oppose the “3 Strikes” law out of fear such laws would spur a dramatic increase in violence against police, corrections officers and the public. A criminal facing the prospect of a mandatory life sentence will be far more likely to resist arrest, to kill witnesses or to attempt a prison escape. Dave Paul, a corrections officer from Milwaukie, Oregon, wrote in a newspaper article: “Imagine a law enforcement officer trying to arrest a twice-convicted felon who has nothing to lose by using any means necessary to escape. Expect assaults on police and correctional officers to rise precipitously.” (Portland Oregonian, 3/94). Ironically, these laws may cause more, not less, loss of life.

**“Three strikes” laws could clog the courts**

The criminal courts already suffer from serious backlogs. The extraordinarily high arrest rates resulting from the “war on drugs” have placed enormous burdens on prosecutors, defense lawyers and judges, whose caseloads have grown exponentially over the past decade. “Three strikes” laws will make a bad situation even worse. Faced with a mandatory life sentence, repeat offenders will demand costly and time-consuming trials rather than submit to plea bargaining. Normal felonies resolved by a plea bargain cost \$600 to defend, while a full blown criminal trial costs as much as \$50,000. Since most of the defendants will be indigent and require public defenders, the expense of their defense will be borne by taxpayers.

**“Three strikes” laws will take sentencing discretion away from judges**

The “3 Strikes” proposals differ from most habitual offender laws in that they make life sentences without parole mandatory. Thus, they tie the hands of judges who have traditionally been responsible for weighing both mitigating and aggravating circumstances before imposing sentence. Judicial discretion in sentencing, which is admired all over the world for treating people as individuals, is one of the hallmarks of our justice system, but the rigid formula imposed by “3 Strikes” renders the role of sentencing judges almost superfluous. Eliminating the possibility of parole ignores the fact that even the most incorrigible offenders can be transformed while in prison. Countless examples are on record of convicts who have reformed themselves through study, good works, religious conversion or other efforts during years spent behind bars. Such people deserve the second chance that “3 Strikes” laws make impossible.

Hon. Rep. Hanohano, Chair, PBS Committee  
and Members Thereof  
February 12, 2009  
Page 3 of 5

### **The cost of imprisoning three-time offenders for life will be prohibitively high**

The passage of "3 Strikes" laws will lead to a significant increase in the nation's already swollen prison population, at enormous cost to taxpayers. Today, it costs about \$20,000 per year to confine a young, physically fit offender, but "3 Strikes" laws could create a huge, geriatric prison population that would be far more expensive to care for. The estimated cost of maintaining an older prisoner is three times that required for a younger prisoner -- about \$60,000 per year. The cost might be worth it if older prisoners represented a danger to society, but experts tell us that age is the most powerful crime reducer. Most crimes are committed by men between the ages of 15 and 24. Only one percent of all serious crimes are committed by people over age 60.

### **"Three strikes" has a disproportionate impact on minority offenders**

Racial bias in the criminal justice system is rampant. Native Hawaiian men, in particular, are overrepresented in all criminal justice statistics, similar to African American men.

This imbalance is largely the result of the "war on drugs." Although studies show that drug use among blacks and whites is comparable, many more blacks than whites are arrested on drug charges because the police find it easier to concentrate their forces in inner city neighborhoods, where drug dealing tends to take place on the streets, than to mount more costly and demanding investigations in the suburbs, where drug dealing generally occurs behind closed doors. Today, one in four young black men is under some form of criminal sanction, be it incarceration, probation or parole. Because many of these laws include drug offenses as prior "strikes," more black than white offenders will be subject to life sentences under a "3 Strikes" law. Although our situation in Hawaii is somewhat different, an analogy can still be made.

### **"Three strikes" laws will impose life sentences on offenders whose crimes don't warrant such harsh punishment**

Although "3 Strikes" sponsors claim that their purpose is to protect society from only the most dangerous felons, many of the "3 Strikes" proposals encompass a broad range of criminal conduct, from rape to minor assaults. In an open letter to the Washington State voters, more than 20 current and former prosecutors urged the public to vote against the "3 Strikes" proposal. To explain why they opposed the law's passage, they described the following scenario: "An 18-year old high school senior pushes a classmate down to steal his Michael Jordan \$150 sneakers -- Strike One; he gets out of jail and shoplifts a jacket from the Bon Marche, pushing

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

Hon. Rep. Hanohano, Chair, PBS Committee  
and Members Thereof  
February 12, 2009  
Page 4 of 5

aside the clerk as he runs out of the store -- Strike Two; he gets out of jail, straightens out, and nine years later gets in a fight in a bar and intentionally hits someone, breaking his nose -- criminal behavior, to be sure, but hardly the crime of the century, yet it is Strike Three. He is sent to prison for the rest of his life.”

### **Let the punishment fit the crime – a constitutional principle**

Under our system of criminal justice, the punishment must fit the crime. Individuals should not be executed for burglarizing a house nor incarcerated for life for committing relatively minor offenses, even when they commit several of them. This principle, known as “proportionality,” is expressed in the Eighth Amendment to the Bill of Rights:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Many of the “3 Strikes” proposals depart sharply from the proportionality rule by failing to take into consideration the gravity of the offense. Pennsylvania’s proposed law treats prostitution and burglary as “strikes” for purposes of imposing a life sentence without parole. Several California proposals provide that the first two felonies must be “violent,” but that the third offense can be any felony, even a non-violent crime like petty theft. Such laws offend our constitutional traditions.

### **“Three strikes” laws are not a serious response to crime**

The “3 Strikes” proposals are based on the mistaken belief that focusing on an offender after the crime has been committed, which harsh sentencing schemes do, will lead to a reduction in the crime rate. But if 34 million serious crimes are committed each year in the U.S., and only 3 million result in arrest, something must be done to prevent those crimes from happening in the first place.

Today, the U.S. has the dubious distinction of leading the industrialized world in per capita prison population, with more than one million men and women behind bars. The typical inmate in our prisons is minority, male, young and uneducated. More than 40 percent of inmates are illiterate; one-third were unemployed when arrested. This profile should tell us something important about the link between crime and lack of opportunity, between crime and lack of hope.

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

Hon. Rep. Hanohano, Chair, PBS Committee  
and Members Thereof  
February 12, 2009  
Page 5 of 5

Only when we begin to deal with the conditions that cause so many of our young people to turn to crime and violence will we begin to realize a less crime ridden society.

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.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple  
Staff Attorney  
ACLU of Hawai'i

**American Civil Liberties Union of Hawai'i**  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)



the  
**Drug Policy  
Forum**  
of hawaii

To: Representative Faye Hanohano, Chair  
Representative Henry J.C. Aquino, Vice Chair  
And Members of the Committee on Public Safety

From: Jeanne Ohta, Executive Director

RE: HB 421 Relating to Sentencing  
Hearing: February 12, 2009, 8:30 a.m., Room 309

Position: Strong Support

The Drug Policy Forum of Hawaii strongly supports this measure which repeals the Habitual Violent Offender law, requiring habitual violent offenders to be sentenced to prison for 30 years to life.

DPFH is strongly opposed to mandatory minimum sentences. Act 81 is an extremely expensive policy that does not promote community safety, nor reduce crime. Prison expenses have sky-rocketed in states that have established "three-strikes" legislation, with no return on that investment in increased public safety.

Of particular concern is that Act 81 has elevated burglary, usually a property crime to a violent crime for the purposes of this three-strikes policy. Most jurisdictions and other law enforcement entities do not consider burglary a crime of violence.

This is particularly burdensome for the state of Hawaii when considering that many offenders with drug addiction and burglary offenses may be sentenced to 30 years to life. Instead of spending 30 years in prison at a current cost of \$38,000 per year, with drug treatment and other rehabilitative services, those same offenders could reenter the community and become contributing members of society.

The three-strikes law was proposed to reduce violent crime in Hawai'i but according to the Uniform Crime Report released by the Hawai'i Attorney General's office in December 2005, Hawai'i's violent crime rate fell 4.1% in 2004 and 12.8% over the last decade. A RAND study also found that three-strikes laws do not have a significant impact on crime and arrest rates.

"Three-strikes" laws removes judicial discretion, ignores the disparate treatment of different ethnic groups in the criminal justice system, and also ignores the fact that laws already exist for imposing long sentences.

Please pass HB 421 and instead of mandatory three-strikes sentencing, consider alternatives. I am asking that instead of being just tough on crime, you become **smart** on crime and enact sensible, responsible, and effective policies.

**Board of Directors**

Pamela Lichty, M.P.H.  
*President*

Kat Brady  
*Vice President*

Heather Lusk  
*Treasurer*

Katherine Irwin, Ph.D.  
*Secretary*

Michael Kelley, D.Phil.

Richard S. Miller, Prof. of  
Law Emer.

Robert Perkinson, Ph.D.

*Donald Topping, Ph.D.*  
*Founder 1929-2003*

P.O. Box 61233  
Honolulu, HI 96839

Phone: (808)-988-4386  
Fax: (808) 373-7064

Email: [info@dpfhi.org](mailto:info@dpfhi.org)  
Website: [www.dpfhi.org](http://www.dpfhi.org)

February 12, 2009

*Dedicated to safe, responsible, and effective drug policies since 1993*



COMMITTEE ON PUBLIC SAFETY  
Rep. Faye P. Hanohano, Chair  
Rep. Henry J.C. Aquino, Vice Chair  
Thursday, February 12, 2009  
8:30 am Room 309

**STRONG SUPPORT  
HB 421 RELATING TO SENTENCING (REPEAL THREE STRIKES)**

Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Carrie Ann Shirota, and I am writing in strong support of HB 421 Relating to Sentencing. As a former Public Defender, member of Community Alliance on Prisons, and as an individual who has had loved ones incarcerated in Hawai'i, I have witnessed firsthand the generational cycle of incarceration in our community because of the lack of opportunities for true rehabilitation in our prisons. On the other hand, I have also witnessed the transformation and rehabilitation of "hardened criminals" who were previously incarcerated, but received transitional support and life skills training to turn their lives around and become law-abiding citizens that contribute to the well being of our entire community.

HB 421 would repeal the law providing for a mandatory sentence of 30 years to life for habitual violent felons. I support this bill for the following reasons: 1) it reinstates discretion to the Judiciary in sentencing decisions; 2) incarceration is not effective in promoting public safety; 3) the citizens of Hawai'i will shoulder the costs associated with mandatory 30 years to life sentences and 4) it would remove the misclassification of burglary as a violent crime that currently constitutes a strike.

First, this bill should be opposed because it removes discretion from the Judiciary in making sentencing decisions based on the individual facts of a case. Since 2004, the American Bar Association has issued a report calling for the end of mandatory minimum sentencing because they leave little room to consider differences among crimes and criminals. Echoing the ABA's efforts to end mandatory sentencing laws, Chief Justice Anthony Kennedy called these practices immoral and unfair that "lead us into moral blindness." **Significantly, Hawai'i already has sentencing laws regarding repeat offenders and enhanced terms currently in our statutes. Accordingly, HB 421 is unnecessary and a façade for appearing "tough on crime."**

Second, I strongly support this bill because the "Three Strikes" law rests upon the false assumption that locking people up behind bars is the best method for promoting public safety. The recidivism rates in Hawai'i ranging from 51-80% aptly demonstrates that our current system of incarceration is ineffective. The vast majority of men and women that are incarcerated return to prison repeatedly because few receive substance abuse treatment and participate in rehabilitation programs that teach them the life skills and training to become successful, law-abiding citizens.

Third, I support HB 421 because the direct and indirect costs associated with the imposition of 30 year to life mandatory minimum sentences will be borne by the citizens of Hawai'i. Currently, the State of Hawai'i spends an average of \$38,000 a year to incarcerate an individual. In stark contrast, Hawai'i spends approximately \$8,000 a year to educate a child in our public school system. The fact

that we spend almost five times more to incarcerate a person, than to uplift a child through education is cause for concern for the entire community. Rather than spending money on incarceration that is costly and ineffective, Hawai'i should spend our money and our efforts on alternatives to incarceration, and working to rehabilitate people in correctional and community settings through treatment and appropriate programming.

Finally, I support this bill because it would repeal the misclassification of burglary as a "violent" crime that currently consists as a strike. It is a well known fact that Hawai'i has a high rate of property crimes, rather than crimes against persons. The Three Strikes bill has the potential for creating a larger "violent" offender class. In short, the Three Strikes bill posits that redemption is not possible. However, my experiences working with incarcerated and formerly incarcerated persons demonstrates that redemption is possible with comprehensive training, rehabilitation opportunities, substance abuse treatment and reentry support.

Mahalo for this opportunity to submit written testimony in support of this bill. I strongly urge this Committee to enact this measure, mindful of the wise advice from the late Chief Justice Warren Burger:

**We must focus more attention on the conditions of incarcerated persons.  
To put people behind walls and bars and do little or nothing to change them  
is to win a battle but lose a war.  
It is wrong.  
It is expensive.  
It is stupid."**

Respectfully submitted,

Carrie Ann Shirota, Esq.  
Wailuku, Hawai'i 96793  
(808) 269-3858

**Andy Botts**  
**Poi Dog Publishers**  
**1920 Ala Moana Blvd. #1104**  
**Honolulu, Hawaii 96815**  
**(808) 942-4276**  
**[poidogpub@hawaiiantel.net](mailto:poidogpub@hawaiiantel.net)**  
**808-942-4276**  
**February 12, 2009**

COMMITTEE ON PUBLIC SAFETY  
Rep. Faye Hanohano, Chair  
Rep. Henry J.C. Aquino, Vice-chair  
Thursday, February 12, 2009  
8:30 a.m.  
Conference room 309  
HB 421  
RELATING TO SENTENCING  
**SUPPORT**

My name is Andy Botts, author of *Nightmare In Bangkok*, and I strongly support repealing this law. I didn't support the implementation of this "3-strikes bill" initially, because it was redundant, and could be detrimental to our justice system. The recent sentencing on February 6, 2009, is a prime example of its failure to protect the people of Hawaii. Alapeti Tunoa Jr. committed the most heinous crime imaginable when he bludgeoned Janel Tupuola to death in broad daylight with the butt of a shotgun in the quiet town of Kailua, and assaulted an innocent Samaritan in the course of his rage, which went unpunished.

As the first and only person to be sentenced under this law, Tunoa was allowed to plead down to life with the possibility of parole, although he could've, would've, and should've been sentenced to a term of life WITHOUT the possibility of parole. Rubbing salt into the wound, the thirty year mandatory minimum that was imposed isn't a consolation for the 5 children that Tupuola left behind, because most of her children were under ten years of age, and will probably be alive when the mandatory expires. This means that the children, who were victimized by the loss of their mother and forever traumatized, will be in their thirties and in the prime of their lives when Tunoa MUST be reviewed for parole, regardless of the minimum term set by the Paroling Authority. This is because Hawaii state law requires the HPA to review his case after he serves out the 30 year mandatory, and every 10 years after. Even if they don't parole him then, although it is possible, the children will be traumatized every time that they are notified.

Please consider this matter carefully. Thanks the opportunity to be heard.

Aloha,  
Andy Botts,  
Author, *Nightmare In Bangkok*

Franklin Jackson  
950 Luehu St Apt#403  
Pearl City, Hawaii 96782  
Fjpearlcityaol.com  
February 12, 2009

COMMITTEE ON PUBLIC SAFETY  
Rep. Faye Hanohano, Chair  
Rep. Henry J.C. Aquino, Vice-chair  
Thursday, February 12, 2009  
8:30 a.m.  
Conference room 309  
HB 421  
RELATING TO SENTENCING  
SUPPORT

My name is Franklin Jackson and I strongly support this bill. Three-strikes pertains to baseball, not humans, and this bill hasn't accomplished anything. I support repealing this and any other law that is unnecessary.

Thank-you for your time.

Franklin Jackson