

# STATE OF HAWAII BOARD OF EDUCATION

P. O. BOX 2360 HONOLULU, HAWAII 96804

# COMMITTEE ON JUDICIARY

U1/21/2010 14.40 FMA 0000004000

Rep. Jon Riki Karamatsu, Chair Rep. Ken Ito, Vice Chair Friday, January 22, 2010 Room 325, 2:00 PM HB 1752 – RELATING TO REPEAT OFFENDERS STRONG SUPPORT OF INTENT with Amendments

Hawai'i cannot afford to continue pretending that mandatory minimum sentencing of nonviolent lawbreakers is the most effective means of protecting our communities. This fantasy is costing the state too much money and taking limited state resources away from proven crime diversion programs, such as our public education system.

The purpose of a fully funded public education system is not to prevent crime; however, increasing educational opportunities in our society does increase the opportunity for all members of our society to succeed.

As I mentioned to State Budget and Finance Director Georgina Kawamura at the Board of Education Committee on Budget and Fiscal Accountability Meeting on June 22, 2009: The Lingle-Aiona administration is going to have to decide which institution it wants to prioritize: either you send non-violent lawbreakers into more effective treatment programs or you send our students home from school. As you know the Governor chose to direct funding to prisons instead of schools, whereby furloughing our students into the streets instead of furloughing non-violent lawbreakers into more effective treatment programs.

From 2000-2009, the budget for the Department of Public Safety rose 75.5%. In the last decade (2000-2009) the budget for contract prisons has risen 192%. These increases surpass the percentage increase in the Education budget many times over.

Please amend this bill to divert nonviolent lawbreakers into more effective, and less costly programs, such as the HOPE Probation program. And divert the short-term and long-term saving into our state's public education system.

Sincerely, .

Kim Coco Iwamoto, Member of the Hawai'i State Board of Education

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

# DEPARTMENT OF THE PROSECUTING ATTORNEY CITY AND COUNTY OF HONOLULU

ALII PLACE 1060 RICHARDS STREET, HONOLULU, HAWAII 96813 AREA CODE 808 • 527-6494

PETER B. CARLISLE PROSECUTING ATTORNEY



DOUGLAS S. CHIN FIRST DEPUTY PROSECUTING ATTORNEY

# THE HONORABLE JON RIKI KARAMATSU, CHAIR HOUSE JUDICIARY COMMITTEE

Twenty-fifth State Legislature Regular Session of 2010 State of Hawai'i

January 22, 2010

# RE: H.B. 1752; RELATING TO REPEAT OFFENDERS.

Chair Karamatsu and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in strong opposition to H.B. 1752

The purpose of this bill is to amend Hawaii Revised Statutes section 706-606.5 regarding repeat offenders to delete numerous class A, B and C felonies from the list of felonies that are eligible for repeat offender sentencing. The bill description states that the bill excludes non-violent offenders from repeat offender sentencing.

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. It currently permits the judge to sentence the offender to any lesser mandatory minimum when he or she finds strong mitigating circumstances.

We suspect this bill is being proposed in large part by a belief that by eliminating mandatory minimums for repeat non-violent offenders, correctional costs will be reduced thus saving tax-payers money. However, we think this belief is overly simplistic and does not take

into account the economic cost of property offenses to victims and the community when a repeat property offender commits new offenses because he or she was not incapacitated by incarceration or deterred by a possible mandatory minimum. Property offenses do have victims and they suffer economic losses which affect them and the community. These offenses must be investigated by the police and cost time and resources to investigate and prosecute. Insurance rates for vehicles and homes will increase to cover the losses. So any thought of cost savings created by this bill do not take into account the total impact repeat property offenses have on victims and the community.

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.

Furthermore, this bill goes well beyond exempting property offenders from repeat offender sentencing. It exempts Robbery in the First Degree (HRS section 708-840) from repeat offender sentencing but allows Robbery in the Second Degree to be eligible for repeat offender sentencing. Promoting Child Abuse in the Third Degree (HRS section 707-752) is repeat offender eligible but strangely the more serious offenses of Promoting Child Abuse in the First and Second Degree are not (HRS sections 707-750 and 707-751). Other serious offenses against minors such as Continual Sexual Assault of a Minor (HRS section 707-733.6) and Electronic Enticement of a Minor in the First and Second Degree (HRS sections 707-756 and 707-757) are also not made repeat offender eligible. We find these omissions puzzling and nonsensical.

For these reasons, we strongly oppose the passage of House Bill 1752.

Thank you for this opportunity to testify.

#### POLICE DEPARTMENT

# CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813 TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org

MUFI HANNEMANN MAYOR



LOUIS M. KEALOHA

DELBERT T. TATSUYAMA RANDAL K. MACADANGDANG DEPUTY CHIEFS

OUR REFERENCE RR-NTK

January 22, 2010

The Honorable Jon Riki Karamatsu, Chair and Members Committee on Judiciary House of Representatives State Capitol Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 1752, Relating to 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 opposes House Bill No. 1752, Relating to Repeat Offenders.

We strongly support the current law as written. Many of our serious crimes are committed by repeat offenders. Mandatory minimum sentences are an effective tool in helping to reduce the serious crime rate in Hawaii.

The Honolulu Police Department urges you to oppose House Bill No. 1752, Relating to Repeat Offenders.

Thank you for the opportunity to testify.

Sincerely,

APPROVED:

RICHARD C. ROBINSON, Captain Criminal Investigation Division

.....

LOUIS M. KEALOHA Chief of Police

# karamatsu1-Kenji

From: Sent: Tracy A Ryan [tracyar@hawaiiantel.net] Thursday, January 21, 2010 11:49 AM

To:

JUDtestimony

Subject: Attachments:

Testimony for Friday Jan 22

image001.jpg

The Libertarian Party of Honolulu County c/o 1658 Liholiho St #205 Honolulu, HI 96822

#### **TESTIMONY**

RE: HB 1752 to be heard Friday, January 22, 2010 at 2PM in conference room #335

To the Members of the House Committee on Judiciary

The Libertarian Party of Honolulu supports passage of HB #1752. Aside from issues of appropriateness of punishment there are compelling fiscal issues involved in reducing our prison population. Removing discretionary power from our professional judiciary and paroling authorities (as has been the case under the statute this bill is directed at amended) was bad policy. By passing HB #1752 the legislature will allow for more intelligent decision making in controlling overcrowded prisons and limiting expanding corrections budgets.

Sincerely:

Tracy Ryan

Oahu County Chair, The Libertarian Party of Hawaii



#### BY EMAIL: JUDtestimony@capitol.hawaii.gov

Committee:

Committee on Judiciary

Hearing Date/Time:

Friday, January 22, 2010, 2:00 p.m.

Place:

Room 325

Re:

Testimony of the ACLU of Hawaii in Support of H.B. 1752, Relating to

Repeat Offenders

Dear Chair Karamatsu and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support H.B. 1752, which seeks to exclude non-violent offenders from repeat offenders statute requiring mandatory minimum prison terms.

#### 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

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

www.acluhawaii.org

Hon. Rep. Karamatsu, Chair, JUD Committee and Members Thereof January 22, 2009 Page 2 of 3

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, 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:

- **78 percent** of Americans (nearly 8 in10) agree that the courts not Congress should determine an individual's prison sentence.
- 59 percent (6 in 10) oppose mandatory minimum sentences for nonviolent offenders.
- 57 percent of Americans 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 are discriminatory and do not deter crime

Mandatory minimum sentences have <u>not</u> 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, in 2009, 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 H.B. 1752 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

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 www.acluhawaii.org Hon. Rep. Karamatsu, Chair, JUD Committee and Members Thereof January 22, 2009 Page 3 of 3

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 Hawaii

> 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 www.acluhawaii.org

# karamatsu1-Kenji

From:

Marilyn Brown [marilyn@hawaii.edu] Thursday, January 21, 2010 12:22 PM

Sent: To:

JUDtestimony

Subject:

HB-1752

#### **COMMITTEE ON JUDICIARY**

Rep. Jon Riki Karamatsu, Chair Rep. Ken Ito, Vice Chair Friday, January 22, 2010 Room 325 2:00 PM HB 1752 – RELATING TO REPEAT OFFENDERS

#### Dear Representatives Karamatsu and Ito:

Thank you for holding a hearing on this very good amendment. I am a criminologist, holding a Ph.d. in Sociology, and teach at the University of Hawaii at Hilo. I do a great deal of Hawaii-based research in the correctional field and it is my professional opinion that this bill to divert non-violent offenders away from prison and to a successful program like HOPE (or other such program) will be highly beneficial to the State and its people. Incarceration is only responsible for small fractions of crime reduction. Social factors affect the crime rate far more than incarceration does, despite its "popularity." On top of that, the costs are growing daily as our prison population grows. Non-violent offenders are better served in the community, especially now that we have programs like HOPE. This makes sense from both a cost perspective as well as a community perspective. These individuals should be viewed as members of our community; severe sanctions do little to prevent crimes and damage the fabric of our communities. (Especially communities who already experience multiple disadvantage.)

I urge you to strongly support HB-1752. Thank you for your attention.

Marilyn Brown, Ph.D. Associate Professor, Sociology University of Hawaii at Hilo 200 W. Kawili St. Hilo, HI 96720 (808) 933-3184

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817 Phone/E-Mail: (808) 533-3454/kat.caphi@gmail.com



# **COMMITTEE ON JUDICIARY**

Rep. Jon Riki Karamatsu, Chair Rep. Ken Ito, Vice Chair Friday, January 22, 2010 2:00 PM Room 325 STRONG SUPPORT with amendment HB 1752 - Relating to Repeat Offenders JUDTestimony@capitol.hawaii.gov

Aloha Chair Karamatsu, Vice Chair Ito and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety by supporting smart justice policies. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that almost 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 1752 excludes non-violent offenders from repeat offenders' statute requiring mandatory minimum prison terms.

Community Alliance on Prisons stands in strong support of this measure. The amendment that we respectfully request is that individuals convicted of nonviolent offenses be diverted to the HOPE program.

The December 2009 evaluation of this program found that in a one-year, randomized controlled trial, HOPE probationers were

- 55 % less likely to be arrested for a new crime,
- 72 % less likely to use drugs,
- 61 % less likely to skip appointments with their supervisory officer and
- 53 % less likely to have their probation revoked.

As a result, they also served or were sentenced to, on average, 48% fewer days of incarceration than the control group.

"The benefits of mounting a H.O.P.E.-style program on a mass scale would greatly outweigh the costs. H.O.P.E. costs about \$2,500 per probationer, including the costs of treatment, compared with about \$1,000 for routine probation supervision. About half of America's four million probat-

ioners are believed to have illicit drug habits. If a H.O.P.E.-style program were implemented nationally, it would cost about \$3 billion per year on top of current probation costs -- about six percent of the current cost of the "war on drugs."

Most or all of that cost would come back as criminal-justice savings, in the form of reduced incarceration for probationers and reduced drug law enforcement costs due to shrinking drug markets, as many of the dealers' most reliable customers stop buying (probationers account for about a third of the market). That doesn't count the benefits to those spared criminal victimization, to probationers' families, and to the probationers themselves."

Source: April 10, 2007 on The American Prospect at http://www.prospect.org/web/index.ww

The Preliminary Classification Report of PSD's contractors noted that the majority of Hawai`i's incarcerated population are sentenced for nonviolent offenses.

# NON-VIOLENT SENTENCED JAIL INMATES BY CUSTODY AND GENDER

<b>Custody Level</b>	<b>Female</b>		<u>Male</u>	
	Current	Projected	Current	Projected
Maximum	1.5%	1.5%	2.6%	1.3%
Medium	36.1%	24.8%	32.9%	34.8%
Minimum	62.4%	20.3%	64.5%	25.2%
Community	NA	53.4%	NA	38.7%

#### NON-VIOLENT SENTENCED PRISON INMATES BY CUSTODY AND GENDER

<b>Custody Level</b>	<u>Female</u>		<u>Male</u>	
	Current	Projected	Current	Projected
Marian	2.20/	1.00/	7.00/	4 70/
Maximum	3.2%	1.9%	7.9%	4.7%
Medium	30.3%	29.4%	44.7%	29.3%
Minimum	27.6%	18.7%	28.7%	39.3%
Community	38.9%	50.0%	18.8%	26.7%

This information is from the Preliminary Report "Classification – Systematic Approach to Sound Correctional Management" by the Criminal Justice Institute, Inc. - Consultants hired by the Hawai'i Department of Public Safety Presented to the 2008 Hawai'i State Legislature

The January 2010 Report from the National Council on Crime and Delinquency (http://www.nccd-crc.org/nccd/dnld/Home/focus0110%20.pdf) states: "A significant number of offenders do not require secure confinement and isolation. Well run alternatives to incarceration have proven to reduce recidivism. Alternatives for nonserious offenders still assure public safety and are an appropriate sanction for these crimes. They also allow the offender to undergo rehabilitation while maintaining their ties to family, work, professional services, and community."

Incarceration is the most expensive sanction. We need to reserve prison beds for individuals who are violent (i.e. individuals we are afraid of) – they should not be used for individuals we are mad at. In this economic recession, how can we justify spending hundreds of thousands of

taxpayer dollars to incarcerate a nonviolent person for selling \$50 worth of drugs? We know that drugs are available in prison – sometimes more available than treatment programs.

The drug war has caused the dramatic rise in our incarcerated population as more than 80% of incarcerated individuals need some form of substance abuse treatment. Hawai`i is mortgaging our children's future by the over-incarceration of nonviolent drug lawbreakers.

From 2000-2009, the budget for the Department of Public Safety rose 75.5% and the budget for contract prisons has risen 192%. Is this really where we want to put our precious resources?

Community Alliance on Prisons asserts that Hawai`i cannot afford to continue incarcerating nonviolent lawbreakers at the expense of our keiki. We have made world news for our student furloughs. I received a call a few days ago from the wife of an incarcerated person who told me that many people serving time feel awful that our keiki are paying for their mistakes.

It is time for Hawai`i to be SMART ON CRIME. We can no longer afford the macho lock-em-up attitude that has predominated our policymaking.

Community Alliance on Prisons urges passage of HB 1752 as a first step toward being SMART ON CRIME.

Mahalo for this opportunity to testify.



January 22, 2010

To:

Representative Jon Riki Karamatsu, Chair Representative Ken Ito, Vice Chair and

Members of the House Committee on Judiciary

From: Jeanne Ohta, Executive Director

RE:

HB1752 Relating to Repeat Offenders

Hearing: January 22, 2010, 2:00 p.m., Room 325

Position: Strong Support

The Drug Policy Forum of Hawaii strongly supports this measure which excludes non-violent offenders from repeat offenders statute requiring mandatory minimum prison terms.

Mandatory minimum sentences is an extremely expensive policy that does not promote community safety, nor reduce crime. Prison expenses have sky-rocketed since legislatures across the country have instituted mandatory minimum sentence statutes, with no return on that investment in increased public safety.

Alternatives to incarceration such as the HOPE Probation program produce better outcomes than long term incarceration and are less expensive. In ten years, the Department of Public Safety's budget rose 75.5%. We simply should not be spending tax payer money on the most expensive sanction: incarceration when we don't need to. Incarceration should be used for dangerous, violent offenders.

The January 2010 Report from the National Council on Crime and Delinquency (http://www.nccd-crc.org/nccd/dnld/Home/focus0110%20.pdf) states: "A significant number of offenders do not require secure confinement and isolation. Well run alternatives to incarceration have proven to reduce recidivism. Alternatives for nonserious offenders still assure public safety and are an appropriate sanction for these crimes. They also allow the offender to undergo rehabilitation while maintaining their ties to family, work, professional services, and community."

Decreasing our reliance on incarceration and using alternative programs will reduce prison costs; allowing that money to be used in other sectors like health, education, and human services. Passing HB 1752 is sound fiscal policy, we urge you to pass this measure. Thank you for the opportunity to testify.

**Board of Directors** Pamela Lichty, M.P.H. *President* 

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P.O. Box 61233 Honolulu, HI 96839

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

Email: info@dpfhi.org Website: www.dpfhi.org

# karamatsu1-Kenji

From: Sent:

Mary Elizabeth [nugayou@yahoo.com]

Thursday, January 21, 2010 3:32 PM

To:

**JUDtestimony** 

Subject: Attachments: HB 1752 - RÉLATING TO REPEAT OFFENDERS

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January 21, 2009

#### **COMMITTEE ON JUDICIARY**

Rep. Jon Riki Karamatsu, Chair Rep. Ken Ito, Vice Chair Friday, January 22, 2010 Room 325 2:00 PM HB 1752 - RELATING TO REPEAT OFFENDERS STRONG SUPPORT with Amendment

Dear Chair Karaamatsu and Vice Chair Ito and members:

I strongly support this bill because o the cost of incarcerating nonviolent criminals. There are other cheaper means of correction.

Want to meet the deadline for submission so please excuse my brief justification.

Mahalo,

E. Funakoshi