

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

February 17, 2009

H.B. No. 1780 RELATING TO SENTENCING OF REPEAT OFFENDERS

Chair Karamatsu and Members of the Committee:

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.

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.

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.

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.

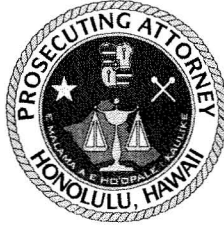
We support H.B. No. 1780 and believe it is long past time to reexamine our severe repeat offender statute

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE JON RIKI KARAMATSU, CHAIR**  
**HOUSE JUDICIARY COMMITTEE**  
**Twenty-fifth State Legislature**  
**Regular Session of 2009**  
**State of Hawai'i**

February 17, 2009

**RE: H.B. 1780; RELATING TO SENTENCING OF 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 HB 1780.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 706-606.5 relating to mandatory minimum sentences for repeat offenders by deleting the mandatory sentence and providing for discretionary sentences.

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

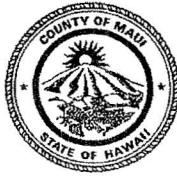
previous convictions that the poll results might be different. Lastly, the question is posed about repealing the mandatory minimums for “some” unspecified non-violent crimes; we suspect the poll results would be different if the question was more specific as to the types of crimes, such as whether persons 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 and respectfully ask that you defer this bill. Thank you for this opportunity to testify.

CHARMAINE TAVARES  
Mayor



BENJAMIN M. ACOB  
Prosecuting Attorney  
  
PETER A. HANANO  
First Deputy Prosecuting Attorney

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February 15, 2009

HONORABLE JON RIKI KARAMATSU, CHAIR  
HONORABLE KEN ITO, VICE CHAIR  
COMMITTEE ON JUDICIARY

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 TO H.B. NO. 1780  
RELATING TO SENTENCING OF REPEAT OFFENDERS

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly opposes the passage of H.B. 1780, Relating to Sentencing of Repeat Offenders for the following reasons.

First, under current law, Hawaii Revised Statutes, § 706-606.5(5), a sentencing court still has the discretion to depart from imposing the mandatory minimum terms. Under that section, "the court may impose a lesser mandatory minimum period of imprisonment . . . where the court finds that strong mitigating circumstances warrant such action".

Second, the Hawaii Supreme Court has recognized that, for offenses occurring after July 1, 2004, a sentencing court has the discretion to sentence a "repeat offender" to probation and drug treatment under HRS 706-622.5, in lieu of imposing a mandatory prison sentence. See State v. Walker, 106 Hawai'i 1 (2004).

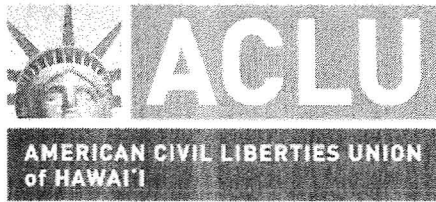
Third, amending the current law in order to relieve overcrowded prisons at the expense of the public's safety is troublesome. In order to successfully rehabilitate these repeat criminals, most require a very structured environment. This environment may included programs such as drug treatment or counseling intended to assist the offender to lead a law abiding

life. Releasing a career criminal on the streets to fend for themselves will not only create more crime victims, it also sets the repeat criminal up for eventual failure.

Finally, allowing the sentencing court to have complete discretion regarding the imposition of mandatory minimum terms sends a wrong message to the criminals. Most if not all repeat offenders are very familiar with the criminal justice system, and in particular, HRS § 706-606.5. By amending the law, the strong deterrent effect that the current law holds will be lost.

Accordingly, our Department strongly opposes the passage of H.B. 1780. Thank you for the opportunity to testify.

(H.B. 1780, Relating to Sentencing of Repeat Offenders)



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

Committee: Committee on Judiciary  
Hearing Date/Time: Tuesday, February 17, 2009, 2:00 p.m.  
Place: Room 325  
Re: *Testimony of the ACLU of Hawaii in Support of H.B. 1780, Relating to Sentencing of 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. 1780, 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

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Hon. Rep. Karamatsu, Chair, JUD Committee  
and Members Thereof  
February 16, 2009  
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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:

- 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-

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and Members Thereof  
February 16, 2009  
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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

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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

Tuesday, February 17, 2009

Room 325

2:00 P.M.

## STRONG SUPPORT

**HB 1780 – Eliminating Mandatory Minimums for Some Repeat Offenders**

[JUDTestimony@capitol.hawaii.gov](mailto: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 Hawai'i's quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 1780 changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary. Community Alliance on Prisons is in strong support of this measure. We believe that the punishment must fit the crime and that mandatory sentencing eliminates the discretion of the court, which have access to the criminal history of the offender and the circumstances surrounding the crime. This is a crucial principle enshrined in American jurisprudence that is undermined by the imposition of mandatory minimums.

Mandatory minimums give extraordinary sentencing powers to prosecutors.

According to philosopher George Santayana, *"Those who cannot remember the past are condemned to repeat it."* Most people are not aware that the mandatory sentences we fight today are not the nation's first experiment with these laws. Federal mandatory minimum prison sentences for drug offenses were repealed in 1970 and signs indicate it's time for them to be repealed again.

### A Brief History of Mandatory Minimum Sentencing

- The first repeal was directed at the "Boggs Acts," named after Rep. Hale Boggs (D-La.) who championed the passage of stiff five- and ten-year federal mandatory sentences for drug offenders in 1951.

- **By 1956, the sentences were increased and the federal Boggs Acts became so popular that they were mimicked by "Little Boggs Acts" in the states, some specifying prison terms as long as 10-to-40 years.**
- **By the 1960s, mandatory minimums were under attack because they:**
  - were unduly severe and inflexible,
  - interfered with the judiciary's role in individualized sentencing,
  - treated low level offenders the same as "hardened criminals," and
  - did not lead to reduction in drug law violations.
  - Treatment of drug addiction as a medical and psychological problem gained acceptance
- **In 1963, the Presidential Commission on Narcotic and Drug Abuse recommended the relaxation of mandatory minimums and support for local treatment centers.**
- **In 1970, 19 years after their passage, Congress repealed virtually all mandatory minimums for drug offenses as part of the 1970 Comprehensive Drug Abuse and Control Act.**
- **Four years later the repeal was made retroactive.** The repeal was supported by Republicans and Democrats. Among those supporting the repeal was Texas freshman Congressman George H.W. Bush who said, *"Contrary to what one might imagine, this bill will result in better justice and more appropriate sentences... Federal judges are almost unanimously opposed to mandatory minimums, because they remove a great deal of the court's discretion.... As a result [of repealing mandatory minimums], we will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences. These penal reforms have been a long time coming."*
- **By the mid 1980s, members of Congress forgot the lessons of the Boggs Acts and re-introduced harsh mandatory minimum prison terms for drug offenders.** The 1986 Anti-Drug Abuse Act was overwhelmingly approved. President Reagan signed the bill into law on October 27, 1986, one week before Election Day.
- **In 1988, the Omnibus Anti-Drug Abuse Act created a mandatory minimum of five years for simple possession of more than five grams of crack cocaine.** It also doubled the existing 10-year mandatory minimum for continuing criminal enterprise (CCE) and added drug conspiracy penalties.
- **2007:**
  - State and federal prisons are bursting with low level drug offenders,
  - sentences are harsh and rigid,
  - the courts have no sentencing discretion under mandatory minimums,
  - low-level drug offenders are sentenced like kingpins, and
  - drugs are as available and cheaper than they've ever been

The sentencing reform message is conservative. Federal judges appointed by both Republican and Democratic presidents have already spoken out against mandatory minimum sentencing laws. So have the U.S. Sentencing Commission, Federal Judicial Center, U.S. Courts Study Committee, and American Psychological Association, among others.

(Source: FAMM Gram, Spring 2007 <http://www.famm.org/Repository/Files/FGspring5%5B1%5D.pdf>)

### **What Judges and the Research Say:**

Judges at every level in our nation have deplored their use.

- **A U.S. District Judge in Washington, D.C. said, "As a consequence of mandatory sentences, we [judges] know that justice is not always done...[Y]ou cannot dispense equal justice by playing a numbers game. Judgment and discretion and common sense are essential."**

- As Supreme Court Justice Anthony Kennedy eloquently noted, "I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases mandatory minimum sentences are unwise and unjust. . .The legislative branch has the obligation to determine whether a policy is wise. It is a grave mistake to retain a policy just because a court finds it constitutional. Courts may conclude the legislature is permitted to choose long sentences, but that does not mean long sentences are wise or just."

- Former U.S. Supreme Court Chief Justice William H. Rehnquist, who rarely addressed substantive legal questions outside of court, weighed in on this issue saying that mandatory minimums are "a good example of the law of unintended consequences."

*"[M]andatory minimums... frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the Sentencing Guidelines were intended to accomplish."*

(Source: William H. Rehnquist, Luncheon Address (June 18, 1993), United States Sentencing Commission, Proceedings of the Inaugural Symposium on Crime and Punishment in the United States 286 (1993)).

- The Bureau of Justice Statistics July 2007 report, Felony Sentences in State Courts, 2004, found that between 1994 and 2004, the number of felony convictions in State Courts increased 24%.

Among their other findings:

- 94% of felony convictions occurred in State courts, the remaining 6% in Federal courts
- 95% of convicted felons pleaded guilty, the remaining 5% were found guilty by a jury or judge
- The average sentence length for convicted felons to State prison was almost 5 years
- Females accounted for a quarter of felony property offenders

(Source: <http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc04.pdf>)

### Research on Mandatory Minimums

- **Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?**

[http://www.rand.org/pubs/monograph\\_reports/2006/MR827.pdf](http://www.rand.org/pubs/monograph_reports/2006/MR827.pdf)

*"Prosecutors, not judges, have the discretion to decide whether to reduce a charge, whether to accept or deny a plea bargain, whether to reward or deny a defendant's "substantial assistance" or cooperation in the prosecution of someone else, and ultimately, to determine what the final sentence will be."*

*"Mandatory minimums have not actually reduced sentencing discretion. Control has merely been transferred from judges to prosecutors."*

(Source: Caulkins, J. et al., Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money? (Santa Monica, CA: RAND Corporation, 1997), pages 16-18, 24.)

The authors found that a million dollars spent extending sentences to mandatory minimum lengths would reduce cocaine consumption less than would a million dollars spent on the pre-mandatory-minimum mix of arrests, prosecution, and sentencing. Neither would reduce cocaine consumption or cocaine-related crime as much as spending a million dollars treating heavy users.

- **Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences**

<http://aja.ncsc.dni.us/courtrv/cr36-2/CR36-2SmithPol.pdf>

*"After eleven years, it should be obvious that the system has failed and that it cannot be fixed -- even by the Supreme Court -- because the criminal justice system has been distorted: the enhanced power of the prosecutor in sentencing has diminished the traditional role of the judge. The result has been even less fairness, and a huge rise in the prison population."*

(Source: Smith, Alexander, and Polack, Harriet, "Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences", Court Review (Williamsburg, VA: American Judges Association, Summer 1999), p. 6-7.)

### The Impact of Mandatory Minimums in Hawai'i

Since the 1995 enactment of mandatory minimums for ice, Hawai'i's prisons and jails have been bursting at the seams forcing the state to contract with private prisons thousands of miles from home. This banishment of more than half of Hawai'i prison population has made us one of Corrections Corporation of America's (CCA) largest customers. The majority of Hawai'i's incarcerated individuals are nonviolent offenders sentenced for drugs or drug-related crimes, such as burglary, which is now considered a violent crime under Hawai'i's Three Strikes law.

The enactment of mandatory minimums for nonviolent crimes, especially drug crimes, has fueled Hawai'i's fast-rising female prison population. In 2000 the Department of Public Safety reported that 56.5% of the women incarcerated at that time were serving mandatory minimum sentences of 5 years and 60% of the female population were mothers of at least one child.

The devastating and unintended consequence of mandatory minimum sentencing is that many incarcerated women of Hawaiian ancestry are being threatened with termination of parental rights because of the 1997 federal law called the Adoption and Safe Families Act, which mandates that children must be permanently placed within 15-22 months. Women who are mothers and sentenced under the mandatory minimum law serve much longer than 22 months resulting in children of Hawaiian ancestry being adopted outside of Hawai'i with no knowledge or connection to their culture.

### Some Hawai'i Statistics & Cost Calculations

Drug convictions as the most serious offenses from January 1, 2003 - June 16, 2003....825 people (687 men and 138 women).

- From 1/1/03 - 6/16/03 328 people were sentenced under ice mandatory minimum for class A and B felonies
- The Department of Public Safety reported that at that time prison costs were between \$76 and \$91/day
- The average time served is 39 - 40 months (longer than the draconian NY Rockefeller Drug Laws)
- Multiply 39 months by 30 days is 1,170 inmate days
- Multiplied by 328 individuals = 383,760 inmate days
- Multiply 383,760 inmate days by \$76/day = \$29,165,760

\$29,165,760 in 2003 dollars. Wow. In 2003 dollars, taxpayers were spending more than \$88,000 to incarcerate, in many cases, low level drug offenders. In today's dollars that figure jumps to well over \$160,000 per individual sentenced under Hawai'i's mandatory minimum statutes.

### In Summary

Mandatory minimum sentencing has been a costly investment for Hawai'i. They

- Have contributed to the crisis in Hawai'i prisons by fueling the dramatic increase in population
- Have resulted in more than half of Hawai'i's prison population serving their sentences in private prisons abroad
- Have helped rank Hawai'i as having the fastest rising female population in the nation
- Have targeted small-time drug offenders rather than the "kingpins" for whom they were designed
- Have disproportionately impacted women and people of color
- Have dramatically increased costs of the criminal justice system
- Have been shown to be the least effective means of reducing drug use and sales
- Have devalued the quality of justice in Hawai'i

Mandatory minimum sentencing have not accomplished their intended purpose. They

- Have not decreased the flow of drugs into communities
- Have not increased community safety
- Have not demonstrated that they deter crime
- Have not improved the quality of justice in Hawai'i
- Have not been applied fairly and equally, as evidenced by the disproportionate representation of Hawaiians in the criminal justice system

The only way a judge can sentence below a mandatory minimum is if the defendant provides "substantial assistance" or cooperation in the prosecution of someone else. This means that if the defendant implicates someone else (rightly or wrongly) in his crime or some other crime, he stands a chance of escaping the mandatory sentence. (Women generally have no information to trade.)

Even then, prosecutors, not judges, get to determine whether this "assistance" is valuable enough to warrant a reduction in sentence. Mandatory sentences require offenders to serve their entire sentence without parole. Many are doomed to years in prison, not because they are hardened, recidivist criminals or because they have committed malicious crimes. They are there because of laws that were designed to win a drug war that can never be won.

### Recommendations for Improving the Quality of Justice

Community Alliance on Prisons agrees with the conclusion arrived at by the FAMM report, Correcting Course: Lessons from the 1970 Repeal of Mandatory Minimums report and asserts that the number of Hawai'i's nonviolent repeat offenders, as well as the availability of drugs, prove mandatory minimums to be ineffective, expensive, and unfair. Mandatory minimums are being increasingly abandoned by states that enacted them. Now is the time for Hawai'i to do as the 1970 Congress did and reform mandatory minimum drug sentences. Reform could be accomplished in several ways:

- **Eliminate mandatory minimums from the criminal code.** Hawai'i could eliminate all mandatory minimums for nonviolent drug offenses while retaining the existing statutory maximums and sentencing statutes for those offenses and give the courts flexibility to impose appropriate sentences in all cases.
- **Expand the existing statutory safety valve.** Hawai'i could maintain the current mandatory minimum sentences, but provide courts an opportunity to opt out of them in cases involving nonviolent drug offenses. Hawai'i could expand the safety valve by permitting courts to invoke it when, after looking at all the relevant facts and circumstances of the case and considering the purposes of punishment, imposing the mandatory minimum sentence would be unduly harsh. This would direct the court to impose a sentence that is sufficient, but not greater than necessary.

Community Alliance on Prisons urges you to restore judicial discretion by eliminating mandatory minimum sentences for low level nonviolent crimes. The research is clear - treatment works, prisons don't! In this austere fiscal climate, it's time to be smart on crime, a strategy that will save money and lives.

Mahalo for this opportunity to testify in strong support of HB 1780.



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

February 17, 2009

To: Rep. Jon Riki Karamatsu, Chair  
Rep. Ken Ito, Vice Chair and  
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Executive Director

Re: HB 1780 Relating to Sentencing of Repeat Offenders  
(Hearing: February 17, 2009, 2:00 p.m., Room 325)

Position: STRONG SUPPORT

Good afternoon, my name is Jeanne Ohta, I am testifying today in strong support of HB 1780 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. Mandatory sentencing has exacerbated racial and gender disparities of the criminal justice system. The Sentencing Project in their report released in 2008, "Reducing Racial Disparity in the Criminal Justice System" said:

"The end result of three-strikes laws around the nation has been the costly and excessive imprisonment of many offenders who are near or at the end of their criminal careers anyway; these consequences have fallen disproportionately on minorities. What is more, the legislation appears to have had no effect on lowering crime."

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

**Board of Directors**

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**TESTIMONY IN SUPPORT OF HB 1780**

From

REPRESENTATIVE JOE BERTRAM III

February 17, 2009

Aloha Representative on Jon Riki Karamatsu, Chair, of the House Judiciary Committee and members of the Committee on Judiciary.

I write in strong support of HB 1780 RELATING TO SENTENCING OF REPEAT OFFENDERS.

Thank you for your support of this measure.



**karamatsu3-Leanne**

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**From:** DDMaria121212@aol.com  
**Sent:** Sunday, February 15, 2009 10:38 AM  
**To:** JUDtestimony  
**Subject:** TESTIMONY HB 1780

TUESDAY, FEBRUARY 17, 2009

**COMMITTEE ON JUDICIARY**

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

Tuesday, February 17, 2009

2:00 PM

Room 325

**STRONG SUPPORT**

**HB 1780 – CHANGING MANDATORY MINIMUMS FROM MANDATORY TO DISCRETIONA**

JURIES SHOULD DETERMINE SENTENCES. HILO'S FORMER JUDGE AMANO KNEW MY SON'S SERIOUS MEDICAL CONDITIONS. SHE KNEW HE WAS NOT THE PERPETRATOR OF THE CRIMES AND THAT THE MEN WHOM SHE AND THE HILO DA GAVE DEALS TO OF PROBATION, AND 15 YRS, TO TESTIFY AGAINST MY INNOCENT SON.

THE PAROLE BOARD WAS TOLD BY HILO THAT MY SON HAD NO MEDICAL CONDITIONS THAT WOULD MAKE HIS SENTENCE A HARDSHIP ON HIM OR HIS FAMILY! I READ THIS YEARS AFTERWARDS.

MY INNOCENT SON, DAMIAN SERRANO, FRAMED BY THE CORRUPT HILO DA'S AND HILO PD, RECEIVED 120 YRS. FOR CRIMES HE DID NOT COMMIT. THEY USED EVERY DIRTY TRICK IN THE BOOK TO HANG MY INNOCENT SON.

MY SON WAS KNOWN BY ALL TO HAVE SERIOUS MEDICAL ISSUES THAT HAVE COST, AND WILL CONTINUE TO COST THE PEOPLE OF HAWAII HUNDREDS OF THOUSANDS OF DOLLARS YEARLY. MY SON WAS MEDICALLY NEGLECTED WHILE AT HALAWA. HE ALMOST DIED IN 2002 BECAUSE HIS LABS WERE NOT MONITORED AS THE SPECIALIST ORDERED, AND WE BEGGED DR. PADERAS TO DO. MY SON HAD TO BE TRANSFUSED WITH 6 PINTS OF BLOOD WHEN HE WAS FINALLY TAKENTO THE PALIMOMI EMERGENCY ROOM BY VAN( AFTER I CALLED FROM CALIFORNIA AND THREATENED TO SUE IF THEY DID NOT). THE DOCTORS TOLD MY SON THAT HE WAS IN AN HOUR OF HEART FAILURE. MY SON WAS 32 YRS OLD AT THE TIME. MY SON HAD BEEN EXHIBITING SYMPTOMS FOR WEEKS AND WAS IGNORED BY GUARDS AND MED. STAFF.

THEN HE WAS SHIPPED TO MISSISSIPPI BECAUSE I WAS ASKING FOR AN INVESTIGATION INTO HARRASSMENT AND BREACHES OF MEDICAL CONFIDENTIALITY, AND RETALIATION AT HALAWA. AT MISSISSIPPI, THERE WAS NO ACCESS TO ANY SPECIALISTS THAT DEAL WITH HIS CONDITIONS. I WROTE LETTERS AND MADE CALLS TO PSD. AND CCA. I FLEW TO MISSISSIPPI. THE DAY I ARRIVED CCA TOLD MY SON HE WAS GOING TO ARIZONA. WHILE IN ARIZONA, HE WAS GIVEN AN UNAUTHORIZED LIVER BIOPSY, WAS TAKEN BAK TO THE PRISON ON A BUMPY ROAD IMMEDIATELY AFTER THE PROCEDURE. HE BECAME VERY ILL WHEN HE GOT BACKTO CCA. DESPITE THE EXTREME PAIN HE WAS EXPERIENCING, WE HAD TO THREATEN TO SUE TO GET CCA TO TAKE MY SON BACK TO THE TUCSON HOSPITAL WHERE MY SON STAYED FOR 5 DAYS DUE TO A RUPTURED BILE DUCT. HE SHOULD HAVE BEEN LEFT TO REST FOR 3 HOURS ON HIS SIDE, AT THE HOSPITAL AFTER THE LIVER BIOPSY. IT GOES ON AND ON. VAN INJURIES GONE UNTREATED OR REPORTED, A SLIP AND FALL ARM INURY WITH BROKEN BONE UNTREATED, BONE FUSED ON IT'S OWN BEFORE HE WAS TAKEN TO AN ORTHAPEDIC SURGEON, AN ANTI-SEIZURE MEDICATION GIVEN TO MY SON FOR 7 DAYS AT 8 TIMES THE USUAL DOSAGE. THIS I SUSPECT THEY DID ON PURPOSE TO KEEP HIM FROM WRITING REQUESTS AND GRIEVANCES. I HAVE BANKER BOXES FULL OF DOCUMENTATION.

MY POINT IS THAT THE MANDATORY MINIMUMS ARE SUCKING HAWAII'S TREASURY DRY. AS ARE UNFETTERED JUDGES AND DAs WHO LIE TO THE PEOPLE AND THE PAROLE BOARD ABOUT WHO REALLY DID THE CRIME, AND THEY LIE ABOUT THINGS SUCH AS SERIOUS CHRONIC MEDICAL CONDITIONS AND TREATMENTS THAT WILL DRAIN THE STATE. THEY MADE DIRTY DEALS WITH THE REAL CULPRITS AND JAILHOUSE SNITCHES JUST TO COVER UP THEIR CORRUPT PRACTICES, AND GET THE BLACK GUY WHO "WILL BE DEAD IN A FEW YEARS ANYWAY". MY SON IS A MIRACLE. HE HAS SURVIVED LONG ENOUGH TO EXPOSE HIS TORMENTORS.

THANK YOU FOR YOUR ATTENTION JUDICIARY COMMITTEE,

I WILL CONTINUE TO STAY IN TOUCH REGARDING INITIATING AN ETHICS INVESTIGATION IN THE NEAR FUTURE.

**COMMITTEE ON JUDICIARY**

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

Tuesday, February 17, 2009

2:00 PM

Room 325

**STRONG SUPPORT**

**HB 1780 – CHANGING MANDATORY MINIMUMS FROM MANDATORY TO DISCRETIONARY**

[JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)

Aloha Chair Karamatsu, Vice-Chair Ito, and Committee Members:

I am writing to express my strong support for HB 1780 which would change the mandatory minimum sentencing law from mandatory to discretionary.

Mandatory minimum sentencing has been shown to be costly, unfair, unpopular with the public, and likely to create more hardened criminals. It takes the authority for sentencing away from the courts, where judges have access to the details and circumstances of the offense, and puts it in the hands of often unaccountable prosecutors who cater to the public's fear of violent criminals.

What has the mandatory minimum sentencing law done for Hawaii? Hawaii now has the dubious distinction of having the most rapidly rising female incarceration rate of any other state in the nation. And the overwhelming majority of women (84%) now incarcerated in Hawaii are nonviolent offenders – and many of these have been incarcerated for low-level drug offenses.

In the case of nonviolent offenders, discretionary sentencing would be more cost effective, would take into consideration the toll on children and families of incarcerating a breadwinner, and most importantly, would make sure that the sentence is commensurate with the offense.

I strongly urge you to pass HB 1780 so that the sentencing of Hawaii's offenders can be more fair, cost-effective, and focused on rehabilitation rather than retaliation.

Thank you for this opportunity to submit testimony on this important issue.

Sincerely,

Diana Bethel  
1441 Victoria St.  
Honolulu, Hawaii



**COMMITTEE ON JUDICIARY**

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

Tuesday, February 17, 2009

Room 325

2:00 P.M.

JUDTestimony.doc

**STRONG SUPPORT  
HB 1780 – RELATING TO SENTENCING OF REPEAT OFFENDERS**

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

My name is Carrie Ann Shirota, and I am writing in strong support of HB 1780. My experiences as a former Public Defender and staff member of a reentry program on Maui, as well as a member of Community Alliance on Prisons have shaped my advocacy efforts to promote rehabilitation, accountability and transparency within our correctional system, and alternatives to incarceration.

HB 1780 changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary. In other words, this bill would return discretion to the Judiciary in determining appropriate sentences based on the individual's criminal record and circumstances involved in the offense.

I support HB 1780 for the following reasons:

- Like other members of our community, I am interested in safe neighborhoods, and the reduction of crime and recidivism. However, contrary to the myth, tough on crime policies, such as mandatory minimum sentences, do NOT contribute to safer communities.
- The prison population growth in Hawai'i is linked to changes in our sentencing laws, not due to an increase in crime. The current law on sentencing of repeat offenders (HRS 706-606.5), known as mandatory minimum sentencing, originally enacted in 1976, contributed to this growth.
- The Sentencing Project's Report *Incarceration and Crime: A Complex Relationship* (2006) highlights the marginal connection between mass imprisonment and reduced crime. The Report concludes that "the persistent removal of persons from the community to prison and their eventual return has a destabilizing effect that has been demonstrated to fray family and community bonds, and contribute to an increase in recidivism and future criminality." Moreover, the Report concludes that alternatives approaches to reduce crime, such as treatment and intervention, are more cost effective and protect families.
- Mandatory minimum sentencing exerts a disproportionate impact on Native Hawaiians.

Since the enactment of the current law on sentencing of repeat offenders is costly and has not proven to reduce crime, it is time for our policy makers to amend this law.

Please continue to support policies, such as HB 1780, that link public safety goals with a reduced use of incarceration. Mahalo for this opportunity to submit testimony in strong support of HB 1780.

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

Testimony for HB 1780; relating to sentencing of repeat offenders  
Committee on Judiciary; 2/17/09, 2pm, Rm. 325

Hello Rep. Jon Riki Karamatsu, Rep. Ken Ito,  
all members of the Judiciary Committee,

My name is Dina Brooks and I am writing to **strongly support** HB 1780, relating to sentencing of repeat offenders, i.e. changing mandatory minimums to discretionary. As a graduate student at UH Manoa in the school of Social Work, the notion of mandatory minimums concerns me in various ways. It seems as though when a crime is committed, a sentence should be determined according to the nature and magnitude of the crime. Upholding mandatory minimums deters from the actuality of the crime and will in the end lump numerous crimes together that in fact may not be related to one another. Each case, each crime should be handled separately in order to determine the level of intensity pertaining to the crime as well as ensure that there will not be overpopulation in our jails and prisons. In this time of severe economic crisis, overcrowding prisons is not to anyone's advantage. When budgets are being cut for social services for those in need of the basics to survive and educational resources to maintain a decent level of public education, housing extra prisoners does not seem to fit the model of progressiveness. According to a November 2008 Honolulu Advertiser article, "approximately 60% of nonviolent inmates on the Mainland are minimum or community custody". Isn't it time to look on the side of progress and growth by implementing finances toward programs that support and encourage reentry rather than mandatory housing for any variety of potential low-level crimes? Please consider this bill and these thoughts. Thank you for your time.

Sincerely,

Dina Brooks

UH Manoa MSW student

## karamatsu3-Leanne

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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Tuesday, February 17, 2009 8:36 AM  
**To:** JUDtestimony  
**Subject:** HB1780 to be heard Tuesday, February 17th at 2:00pm in Room 325 by the House Judiciary Committee

**Importance:** High

TO: Representative Karamatsu, Chair  
Representative Ito, Vice Chair  
Members of the Judiciary Committee

FROM: Dara Carlin, M.A.  
881 Akiu Place  
Kailua, HI 96734  
(808) 218-3457

DATE: February 17, 2009

RE: Opposition to HB1780

Good afternoon. While I recognize the intent of this bill is an effort to reduce overcrowding in the prison system and allow for a more community and family-based approach to addressing crime, I have to say that this measure is seeking this benefit for the wrong population. It would make more sense for this proposal to be targeted for FIRST TIME offenders, but it's specifically asking for discretion for REPEAT OFFENDERS; in either case the discretionary aspect being proposed will erase the "mandatory" in mandatory minimum sentencing. How does that show that Hawaii's tough on crime?

Such a measure MAY deter a first-time offender from repeating an offense, but if the individual didn't learn his/her lesson the first time around, why would you let them know they'll be given a break for their criminal behavior the 2nd, 3rd or 4th time around? It doesn't make any sense and is the wrong message to convey to "unrepentant" criminals AND the community. The clear, stern message that "crime does not pay" and offenders being prosecuted to the furthest extent of the law should serve as a deterrent for those who would repeat a criminal act; we want people to think twice before they choose a criminal action to get what they want and decide against it NOT compare, contrast and choose to take the gamble of succeeding at a crime vs. the potential discretionary minimum sentence for committing it.

Thank you for your time and consideration.

Respectfully,

**Dara Carlin, M.A.**  
Independent Domestic Violence Survivor Advocate

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