



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1752, RELATING TO REPEAT OFFENDERS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 22, 2010 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Karamatsu and Members of the Committee:

The Department of the Attorney General strongly opposes this bill.

The purpose of the bill is to significantly limit the application of the repeat offender law by specifying only certain applicable violent offenses, and eliminating all other offenses from the law, including some serious crimes against persons, property crimes, firearm and drug offenses, as well as such serious crimes as promoting prostitution and promoting gambling. Although not expressly stated as the intent, the result of this bill would be to get career criminals and repeat offenders out of prison and back into our communities more quickly.

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

occur in Hawaii. These individuals can have a tremendous impact on our communities and the entire criminal justice system.

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

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

Since 1976, the Legislature has refined and enhanced the repeat offender law and, recognizing its value and importance, added more offenses to the list of offenses subject to repeat offender sentencing. This bill would destroy the repeat offender law, disregarding the years of legislation, experience, and practice that have led to the development of this important law.

The following is a list of some of the many serious offenses that would be eliminated from the repeat offender law by this bill:

FELONY	SECTION	OFFENSE
A	707-733.6	Continuous Sexual Assault of Minor Under 14
A	707-750	Promoting Child Abuse 1
B	707-751	Promoting Child Abuse 2
B	707-756	Electronic Enticement of a Child 1
C	707-757	Electronic Enticement of a Child 2
B	707-765	Extortion 1
C	708-811	Burglary 2
C	708-821	Criminal Property Damage 2
B	708-830.5	Theft 1
C	708-831	Theft 2
C	708-836	Unauthorized Control of a Propelled

		Vehicle
A	708-839.6	Identity Theft 1
B	708-839.7	Identity Theft 2
C	708-839.8	Identity Theft 3
A	708-840	Robbery 1
B	708-851	Forgery 1
C	708-875	Trademark Counterfeiting
B	708-891	Computer Fraud 1
B	708-892	Computer Damage 1
—	708-893	Use of a Computer in the Commission of a Separate Crime
B	708-895.5	Unauthorized Computer Access 1
B	708A-3(5)b	Money Laundering
B	710-1040	Bribery
B	712-1202	Promoting Prostitution 1
C	712-1203	Promoting Prostitution 2
C	712-1221	Promoting Gambling 1

The bill would also make the repeat offender law inapplicable to all drug, firearm, and insurance fraud offenses.

It is important to note that the bill would eliminate felony convictions of other jurisdictions from the repeat offender law. This means that a career criminal from California could come to Hawaii with a record of multiple convictions for violent felony crimes, commit a violent felony here, and not be subject to repeat offender sentencing.

Two troubling inconsistencies should be noted. The bill includes Robbery in the Second Degree in the list of offenses subject to repeat offender sentencing, but omits Robbery in the First Degree, the more serious class A felony. It includes Promoting Child Abuse in the Third Degree, but omits the more

serious offenses of Promoting Child Abuse in the First and Second Degree.

Over the years, the Legislature has amended the repeat offender law to address crimes that had become serious problems in our communities. This bill ignores the concerns that prompted the changes in the law and undermines all of the efforts to address the problems. The following are just a few of the numerous examples of these efforts. The Commentary on section 706-606.5, citing legislative committee reports, includes the following excerpts:

Act 87, Session Laws 1996, added the crime of unauthorized control of propelled vehicle to the class C felonies subject to repeat offender sentencing. The legislature found that vehicle thefts and property taken from the vehicles was a serious problem in this State, and that this kind of theft affected a significant number of visitors and residents.

Act 277, Session Laws of 1997, amended this section by including the offense of trademark counterfeiting in the list of offenses for repeat offenders. The legislature found that trademark counterfeiting was a recurring problem in Hawaii for retail boutiques and trademark products of the University of Hawaii, and that tourists are often the target for the scams.

Act 80, Session Laws of 2006, added electronic enticement of a child in the second degree to the list of class C felonies subject to repeat offender sentencing. Act 80 provides a means to ensure the safety of Hawaii's children, enhance enforcement efforts, and impose significant penalties against those who prey on the most vulnerable members of the community.

Act 49, Session Laws 2007, amended this section to deter insurance fraud by including felony insurance fraud relating to worker's compensation, accident and health or sickness, and motor vehicle insurance, and insurance provided by mutual benefit societies and health maintenance organizations, among the offenses subject to repeat offender sentencing. The legislature found that while

insurance [fraud] is often perceived as a nonviolent and victimless crime, the ramifications of insurance fraud affect everyone through higher insurance premiums.

This bill will destroy the repeat offender law. It will reduce the potential punishment for many repeat offenders and career criminals. It will reduce the deterrent impact of the law. And it may allow many of these criminals back into our community more quickly at the expense of residents and visitors, and at great cost to law enforcement, prosecutors, courts and the rest of the criminal justice system when these criminals commit new crimes.

We respectfully urge that this bill be held.

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

January 22, 2010

H.B. No. 1752: RELATING TO REPEAT OFFENDERS

Chair Karamatsu and Members of the Committee:

We support H.B. No. 1752 because we continue to believe that it is long past time to reexamine our severe repeat offender statute. We believe it is appropriate for judges to have the discretion to fashion a sentence that balances protection of the community with the most effective consequence for the individual defendant. We know how expensive it is to incarcerate an individual. It is much less costly to provide services to that person in the community. It is even much less costly to pay for residential drug treatment in the community than in a correctional facility.

We know from the success of such programs as HOPE Probation that intensive supervision programs can protect the community at the same time that effective services are provided. Our current HOPE program has reduced revocations of probation and arrests for new crimes by two-thirds. 2009 statistics showed that positive drug tests among the participants had been reduced 86 percent. All this has been done at a cost to taxpayers significantly less than the costs of incarceration.

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

- 1) We had 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 entered the Sand Island Residential Treatment Program where he did very well. His sentencing in the 2007 case was postponed to allow time to complete 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 MUST be sentenced to a five year prison term. The court had no discretion to consider probation.

- 2) Another client was convicted of possessing a class C amount of drugs in 2001. He was placed on 5 years probation, worked full-time, participated in drug treatment and did so well that his probation was terminated early. In 2006, our client's wife died of cancer and things got very bad financially with \$75,000. in medical bills. Our client tried to use a bad check at Home Depot and was convicted of Forgery in the Second Degree and Attempted Theft in the Second Degree. The Court had no choice but to sentence him to a five year prison term with a mandatory minimum term which the Court reduced. He

spent almost one year in custody. When he came before them, the HPA set their minimum term to "time served" and this defendant, 47 years old, is now on parole. He came out of prison unemployed.

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

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

We would prefer a change in the law that would allow judicial discretion in sentencing for virtually all repeat offenses. H.B. 1752 does not do that but we believe it is a reasonable proposal to reduce unnecessary incarcerations where more appropriate and less costly alternatives are available.

For these reasons, we support this bill. Thank for the opportunity to comment on this measure.

TRANSMITTAL

DATE: 01/22/2010
TO: The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
Committee on Judiciary
FROM: Adriana Ramelli
The Sex Abuse Treatment Center
RE: HB 1752

Hearing: Friday, January 22, 2010
Committee on Judiciary

This transmittal consists of 2 pages including this cover sheet.

Sender: Christine Trecker
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THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: 01/22/2010

TO: The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
Committee on Judiciary

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: Opposition to HB 1752
Relating to Sentencing of Repeat Offenders

Good afternoon Representatives Karamatsu and Ito and members of the Committee on Judiciary. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

The SATC strongly opposes HB 1752 which would amend HRS (sections 206-606.5) to delete various class A, B and C felonies from the list of felonies that are eligible for repeat offender sentencing.

Of particular concern is the fact that certain serious sexual violence offenses involving minors would no longer be repeat offender eligible. These offenses include 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 & 707-757).

Hawaii's laws must protect its citizens, particularly children, from those convicted of serious sexual assault crimes. The crime of Continual Sexual Assault of a Minor, which is the repeated sexual abuse of a child by an adult in their life, exacts a huge toll on the child victim and the trauma often continues into adulthood. This crime must not be exempt from repeat offender sentencing as HB 1752 proposes. Likewise Electronic Enticement of a Minor in the First and Second Degree is an egregious offense that must be subject to repeat offender sentencing. Those sexually motivated to entice minors electronically via the web must be dealt with harshly, particularly now that escalating internet usage worldwide has dramatically increased the demand for and production of child pornography and has provided sexual predators unlimited access to our children. Hawaii's laws must keep pace with these sobering realities.

Tough sentencing of those responsible for these crimes is imperative. We strongly urge you to oppose the passage of HB 1752.

Thank you for this opportunity to testify.