



GOV. MSG. NO. 1343

July 12, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

I am transmitting herewith HB1155 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB1155 HD1 SD1 CD1

RELATING TO REPEAT OFFENDERS.

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2011

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1155

Honorable Members
Twenty-Sixth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1155, entitled "A Bill for an Act Relating to Repeat Offenders."

The purpose of this bill is to amend the repeat offender law to do the following:

- (1) Amend the current law, which includes all class A and B felony offenses, to specify only certain class A and B felony offenses that may be considered in qualifying repeat offenders for mandatory minimum prison terms; and
- (2) Add and delete certain class C felony offenses from the list of class C felony offenses that could qualify repeat offenders for mandatory minimum prison terms.

While the goals of this bill are laudable, several difficulties need to be addressed as it reduces the applicability and effectiveness of the repeat offender law.

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. It was intended 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.

This bill would make the repeat offender law inapplicable to all felony drug offenses. The current law is

particularly important in combating the sale and distribution of dangerous drugs in our community which often destroy families and the lives of those who become addicted to and abuse the drugs.

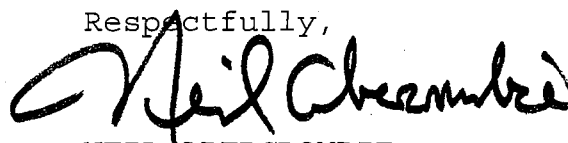
This bill makes the repeat offender law inapplicable to the offense of ownership or possession of firearms or ammunition by persons convicted of certain crimes, in violation of section 134-7, Hawaii Revised Statutes. Section 134-7(b) prohibits a person convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug from owning, possessing, or controlling any firearm or ammunition.

The exclusion of the class C felony offenses of theft in the second degree and unauthorized control of a propelled vehicle is also troubling. These offenses are frequently committed by repeat offenders, who are often professional and career criminals. There are many car thieves who commit the offense as part of organized criminal activity involving motor vehicle "chop shops." The repeat offender law helps to ensure that these professional criminals, when finally caught and convicted, are incarcerated to protect our community and our visitors from their persistent criminal activity.

This bill disregards many concerns that led to the adoption of the repeat offender law and prompted changes in the law. It undermines many of the efforts made to address the problems.

For the foregoing reasons, I am returning House Bill No. 1155 without my approval.

Respectfully,

A handwritten signature in black ink that reads "Neil Abercrombie". The signature is written in a cursive, flowing style.

NEIL ABERCROMBIE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO REPEAT OFFENDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:
3 "(1) Notwithstanding section 706-669 and any other law to
4 the contrary, any person convicted of murder in the second
5 degree, any of the following class A [~~felony, any class B~~
6 ~~felony,~~] felonies: section 707-702 relating to manslaughter;
7 section 707-720(2) relating to kidnapping; section 707-730
8 relating to sexual assault in the first degree; section
9 707-733.6 relating to continuous sexual assault of a minor under
10 the age of fourteen years; section 707-750 relating to promoting
11 child abuse in the first degree; section 708-839.6 relating to
12 identity theft in the first degree; section 708-840 relating to
13 robbery in the first degree; or section 708-8251 relating arson
14 in the first degree; any of the following class B felonies:
15 section 707-702.5 relating to negligent homicide in the first
16 degree; section 707-710 relating to assault in the first degree;
17 section 707-712.7 relating to assault against an emergency
18 worker; section 707-720(3) relating to kidnapping; section



1 707-731 relating to sexual assault in the second degree; section
2 707-751 relating to promoting child abuse in the second degree;
3 section 707-756 relating to electronic enticement of a child in
4 the first degree; section 707-765 relating to extortion in the
5 first degree; section 708-810 relating to burglary in the first
6 degree; section 708-820 relating to criminal property damage in
7 the first degree; section 708-830.5 relating to theft in the
8 first degree; section 708-839.7 relating to identity theft in
9 the second degree; section 708-841 relating to robbery in the
10 second degree; section 708-851 relating to forgery in the first
11 degree; section 708-891 relating to computer fraud in the first
12 degree; section 708-892 relating to computer damage in the first
13 degree; section 708-895.5 relating to unauthorized computer
14 access in the first degree; section 708-8252 relating to arson
15 in the second degree; section 708A-3(5)(b) relating to money
16 laundering; section 710-1031 relating to intimidating a
17 correctional worker; section 710-1040 relating to bribery;
18 section 710-1074 relating to intimidating a juror; or section
19 712-1202 relating to promoting prostitution in the first degree;
20 or any of the following class C felonies: [~~section 188-23~~
21 ~~relating to possession or use of explosives, electrofishing~~
22 ~~devices, and poisonous substances in state waters; section 386-~~



1 ~~98(d)(1) relating to fraud violations and penalties; section~~
2 ~~431:2 403(b)(2) relating to insurance fraud;]~~ section 707-703
3 relating to negligent homicide in the second degree; section
4 707-711 relating to assault in the second degree; section 707-
5 713 relating to reckless endangering in the first degree;
6 section 707-716 relating to terroristic threatening in the first
7 degree; section 707-721 relating to unlawful imprisonment in the
8 first degree; section 707-732 relating to sexual assault [~~r~~
9 ~~rape]~~ in the third degree; section 707-752 relating to promoting
10 child abuse in the third degree; section 707-757 relating to
11 electronic enticement of a child in the second degree; [section
12 ~~707-766 relating to extortion in the second degree;]~~ section
13 708-811 relating to burglary in the second degree; section 708-
14 821 relating to criminal property damage in the second degree;
15 [~~section 708-831 relating to theft in the first degree as~~
16 ~~amended by Act 68, Session Laws of Hawaii 1981; section 708-831~~
17 ~~relating to theft in the second degree; section 708-835.5~~
18 ~~relating to theft of livestock; section 708-836 relating to~~
19 ~~unauthorized control of propelled vehicle;]~~ section 708-839.8
20 relating to identity theft in the third degree; [section 708-
21 ~~839.55 relating to unauthorized possession of confidential~~
22 ~~personal information; section 708-852 relating to forgery in the~~



1 ~~second degree; section 708-854 relating to criminal possession~~
2 ~~of a forgery device;] section 708-875 relating to trademark~~
3 ~~counterfeiting; section 708-893 relating to use of a computer in~~
4 ~~the commission of a separate crime; section 710-1071 relating to~~
5 ~~intimidating a witness; section 711-1103 relating to riot;~~
6 ~~section 712-1203 relating to promoting prostitution in the~~
7 ~~second degree; section 712-1221 relating to promoting gambling~~
8 ~~in the first degree; [section 712-1224 relating to possession of~~
9 ~~gambling records in the first degree; section 712-1243 relating~~
10 ~~to promoting a dangerous drug in the third degree; section 712-~~
11 ~~1247 relating to promoting a detrimental drug in the first~~
12 ~~degree; section 846E-9 relating to failure to comply with~~
13 ~~covered offender registration requirements; section 134-7~~
14 ~~relating to ownership or possession of firearms or ammunition by~~
15 ~~persons convicted of certain crimes; section 134-8 relating to~~
16 ~~ownership, etc., of prohibited weapons; section 134-9 relating~~
17 ~~to permits to carry, or who is convicted of attempting to commit~~
18 ~~murder in the second degree, any class A felony, any class B~~
19 ~~felony, or any of the class C felony offenses enumerated above~~
20 ~~and who has a prior conviction or prior convictions for the~~
21 ~~following felonies, including an attempt to commit the same:~~
22 ~~murder, murder in the first or second degree, a class A felony,~~



1 ~~a class B felony, any of the class C felony offenses enumerated~~
2 ~~above, or any felony conviction of another jurisdiction,] or who~~
3 is convicted of attempting to commit any of the felony offenses
4 enumerated above, and who has a prior conviction for any of the
5 enumerated felonies above, including the attempt to commit the
6 same, or any prior felony conviction from another jurisdiction
7 for offenses substantially similar to any offenses enumerated
8 above shall be sentenced to a mandatory minimum period of
9 imprisonment without possibility of parole during such period as
10 follows:

- 11 (a) One prior felony conviction:
- 12 (i) Where the instant conviction is for murder in the
13 second degree or attempted murder in the second
14 degree--ten years;
- 15 (ii) Where the instant conviction is for a class A
16 felony--six years, eight months;
- 17 (iii) Where the instant conviction is for a class B
18 felony--three years, four months; and
- 19 (iv) Where the instant conviction is for a class C
20 felony offense enumerated above--one year, eight
21 months;
- 22 (b) Two prior felony convictions:



- 1 (i) Where the instant conviction is for murder in the
2 second degree or attempted murder in the second
3 degree--twenty years;
- 4 (ii) Where the instant conviction is for a class A
5 felony--thirteen years, four months;
- 6 (iii) Where the instant conviction is for a class B
7 felony--six years, eight months; and
- 8 (iv) Where the instant conviction is for a class C
9 felony offense enumerated above--three years,
10 four months; and
- 11 (c) Three or more prior felony convictions:
- 12 (i) Where the instant conviction is for murder in the
13 second degree or attempted murder in the second
14 degree--thirty years;
- 15 (ii) Where the instant conviction is for a class A
16 felony--twenty years;
- 17 (iii) Where the instant conviction is for a class B
18 felony--ten years; and
- 19 (iv) Where the instant conviction is for a class C
20 felony offense enumerated above--five years."



