

**HB1155**

**Testimony**

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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April 7, 2011

The Honorable Clayton Hee, Chair  
and Members  
Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: House Bill No. 1155, H.D. 1, Relating to Repeat Offenders

I am Lester Hite, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 1155, H.D. 1, Relating to Repeat Offenders. This bill seeks to eliminate the mandatory sentencing requirements for repeat offenders of nonviolent crimes.

The Honolulu Police Department urges you to oppose House Bill No. 1155, H.D. 1, Relating to Repeat Offenders.

Thank you for the opportunity to testify.

Sincerely,

*Lester Hite*  
LESTER HITE, Captain  
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha", written over a horizontal line.

*for* LOUIS M. KEALOHA  
Chief of Police

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro Vice Chair

Thursday, April 7, 2011

9:30 a.m.

Room 016

**HB 1155 HD1 - Mandatory Minimum Sentencing  
SUPPORT**

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Hee, Vice Chair Shimabukuro 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, improve the quality of justice, and enhance community safety by promoting smart justice policies. We are always mindful that there are 6,000 individuals whose voices have been silenced by incarceration including the 1,800 individuals serving their sentences abroad, thousands of miles from their loved ones and, in many cases, far, far from their ancestral lands.

HB 1155 HD1 specifies class A and B felonies that require mandatory minimum prison terms under the repeat offender statute and reinstates, adds or deletes certain Class C felonies that require mandatory prison terms under the repeat offender statute.

Community Alliance on Prisons supports eliminating mandatory minimum sentences. There is a boatload of research analyzing and criticizing this cookie cutter approach to justice and Hawai'i has the budget to prove the costliness and inefficacy of these laws.

### *Mandatory Minimums Fueled Hawai'i's Prison Crisis*

Mandatory minimum sentences were enacted in 1995. By 2000, our imprisoned women's population had more than doubled with the majority of women serving mandatory sentences for crystal methamphetamine/ice. The men's population rose even more dramatically. So when we say "Where is the money?" It is tied up in our correctional system working to create hardened criminals from low level drug lawbreakers.

Ironically 1995, the year that mandatory minimum sentencing for crystal methamphetamine was enacted, Hawai`i shipped its first 300 prisoners to a private prison in Texas in the middle of the night during the Christmas holiday.

### **Repeat Offenders is an Emotionally Charged Term Inappropriately Applied**

And the term “Repeat Offenders” is such an emotionally charged phrase that immediately one thinks of someone who is violent and scary. But who are Hawai`i’s repeat offenders? They are mostly folks addicted to drugs who have not received the treatment they need to live a productive life. They are people who are stuck in a cycle that many of them would like to get out of, but just don’t know how. The involvement in the criminal justice system just continues the downward spiral they’re on and pretty soon life seems hopeless.

Let me tell you a story of a young woman, the mother of a young daughter, who went through a bitter and nasty divorce. Broke and broken, disheartened and lost she started using drugs. She and her young daughter ended up homeless on the streets of Honolulu. She was arrested, did her time in prison without the programs and treatment needed to get her life back on track. She was released with nothing, no skills, no hope and then she relapsed, as is common in drug disorders. This woman who is now a successful graduate student is a repeat offender. We don’t believe that this is the profile that the legislature was thinking about when this law was enacted. Yet this woman has been branded “repeat offender”.

This is only one story of the thousands of stories of lives that have been destroyed first by drugs and then by the criminal justice system. It really leads one to ask, “What is worse drugs or drug laws?”

Hawai`i does have a repeat offender law and it is destroying the lives of many good people who lost their way and their families who suffer along with them.

### **The Research on Mandatory Minimum Sentencing**

Hawai`i’s correctional system is jammed up with people suffering from treatable drug abuse disorders. We know that community treatment is more effective than in prison treatment. The reality of mandatory minimums is that they empower prosecutors and, in many cases, diminish the quality of justice. A Rand study<sup>1</sup> found

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<sup>1</sup> Caulkins, J., et al., Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money? (Santa Monica, CA: RAND Corporation, 1997), p. 24.  
[http://www.rand.org/pubs/monograph\\_reports/2006/MR827.pdf](http://www.rand.org/pubs/monograph_reports/2006/MR827.pdf)

*"... the authority once possessed by judges to decide on sentences within broad guidelines has, in the case of mandatory minimums, not been narrowed so much as it has been transferred to prosecutors."*

The Pennsylvania Commission on Sentencing<sup>2</sup> issued a report,

"Unintended Consequences of Mandatory Minimum Sentences:

- Significant increases in the costs of corrections due to longer prison terms and an increasing prison population;
- Removal from consideration of other sentencing options that may prove to be less costly and/or more effective than mandatory incarceration;
- Impact on all aspects of the criminal justice system, including pleas or verdicts and offender eligibility for rehabilitation programs and early release;
- Limiting the discretion of the sentencing judge."

A report entitled, "Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences"<sup>3</sup> found, *"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."*

### Sentencing and Recidivism

*"The study by the [Pennsylvania Sentencing] Commission<sup>4</sup> found that neither length of sentence nor the imposition of a mandatory minimum sentence alone was related to recidivism. In the four recidivism studies conducted as part of this project, the recidivism rates (i.e., arrest for a new crime or technical violation resulting in reincarceration) three years after release were as follows: drug delivery offenders (54%), school zone offenders (57%), repeat violent offenders (54%) and firearms offenders (50%). Younger offenders, those with a greater number of prior arrests and/or convictions, and those sentenced to prison were more likely to recidivate; those sentenced for a drug mandatory were more likely to be re-arrested for a drug offense and those sentenced for a repeat violent offense or firearms mandatory were more likely to be re-arrested for an offense against a person. Consistent with finding of other research on deterrence and recidivism, the certainty of incarceration may be more important than the duration of the confinement."*

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<sup>2</sup>Pennsylvania Commission on Sentencing: Report to the House of Representatives, House Resolution 12, Session of 2007, "A Study on the Use and Impact of Mandatory Minimum Sentences," (Harrisburg, PA: October 2009), p. 5. [http://pcs.la.psu.edu/HR\\_12\\_FINAL\\_REPORT\\_WEB.pdf](http://pcs.la.psu.edu/HR_12_FINAL_REPORT_WEB.pdf)

<sup>3</sup>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. <http://aja.ncsc.dni.us/courtrv/cr36-2/CR36-2SmithPol.pdf>

<sup>4</sup>Ibid

### **Mandatory Sentencing is Unjust**

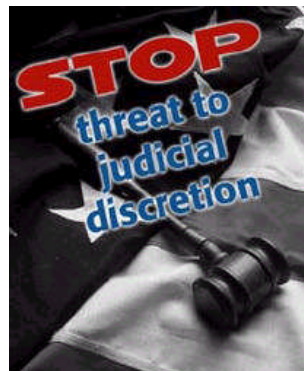
*"Representing 5 million New Yorkers, the top leaders of the state's Catholic Church on Monday demanded reform of the Rockefeller Drug Laws, calling the sentencing mandates 'ineffective and unduly restrictive'. Led by Archbishop John Cardinal O'Connor, the Roman Catholic Bishops of New York criticized the 26-year old laws for taking sentencing decisions out of the hands of trial judges and mandating prison terms without considering offenders' personal circumstances. The bishops also advocated for more treatment options for nonviolent drug offenders, which they said reduces criminal recidivism."*<sup>5</sup>

"Supreme Court Justice Stephen Breyer Sunday became the second justice in recent weeks to attack overly rigid federal criminal sentences<sup>6</sup>. In a speech at the John F Kennedy Library and Museum in Boston, Breyer called mandatory minimum sentences "unfair" and "not helpful." He joins Justice Anthony Kennedy in attacking mandatory minimums; Kennedy told the American Bar Association annual convention last month that such sentences were "unjust."

Calling mandatory minimum sentences a "monkey wrench" thrown into the gears of justice, Breyer called for greater flexibility for judges. "There has to be oil in the gears... There has to be room for the unusual or the exceptional case," he said. Breyer blamed Congress, which he said passed too many mandatory minimum laws where "there is no room for flexibility on the downside. "That is not a helpful thing to do," he said. "It's not going to advance the cause of law enforcement in my opinion and it's going to set back the cause of fairness in sentencing."

Breyer told the audience of more than 500 people that he and Kennedy were not alone among justices unhappy with mandatory minimums. Chief Justice William Rehnquist and "others on the court" shared his views, he said. ..."

Community Alliance on Prisons supports this measure to reduce the punitive penalties that have resulted in more harm than good.



Mahalo for this opportunity to share our research into these laws.

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<sup>5</sup> **Catholic Church Leaders Urge Drug Law Reforms**, timesunion.com, Lara Jakes, Tuesday, June 15, 1999

<sup>6</sup> **Mandatory Minimum Sentences Unfair, Says Supreme Court Justice**, 9/26/03.