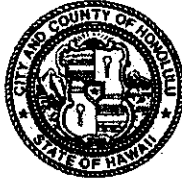


POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE EY-NTK

February 10, 2011

The Honorable John M. Mizuno, Chair  
and Members  
Committee on Human Services  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

Subject: House Bill No. 248, Relating to Sentencing

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

The Honolulu Police Department supports House Bill No. 248, Relating to Sentencing. This bill will ensure that criminals are sentenced to a mandatory minimum term of imprisonment without the possibility of parole should they commit or attempt to commit thefts or identity thefts and know or reasonably should know that the victim is sixty years of age or older.

Most criminals believe that there is very little consequence when they prey on the weak and defenseless. These criminals face fines and probation. Prison time will provide an added deterrent and help to protect those who cannot protect themselves.

The Honolulu Police Department urges you to support House Bill No. 248, Relating to Sentencing.

Thank you for the opportunity to testify.

Sincerely,

*Lester Hite*  
LESTER HITE, Captain  
Criminal Investigation Division

APPROVED:

*DC RL Hyyg*  
\_\_\_\_\_  
FOH LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*

**Testimony of the Office of the Public Defender,  
State of Hawaii to the House Committee on Human Services**

February 10, 2011

**H.B. NO. 248: RELATING TO SENTENCING**

Chair Mizuno and Members of the Committee:

We oppose H.B. No. 248 which seeks to impose mandatory minimum terms of imprisonment on those who commit certain specified property crimes against elderly persons. While we understand the intent of the bill with regard to the protection of vulnerable senior citizens, we disagree that the solution to the problem is the establishment of additional mandatory terms of imprisonment.

The sentencing judge must already take into account the circumstances of each case in imposing an appropriate sentence. Thus if an offender is viewed as a particular danger based upon his/her record or the circumstances of the offense are seen as particularly egregious, the power already exists for a judge to impose a severe sentence with respect to the crimes specified in this bill.

The greatest effect of this bill is to remove judges' discretion in certain specified instances. Given the success of programs such as HOPE (Hawaii's Opportunity for Probation with Enforcement), and the movement to bring our prisoners back from mainland correctional facilities, the courts must be given more discretion in sentencing matters rather than being handcuffed by additional mandatory sentencing provisions. That will assure that valuable prison space is reserved for those who present the most danger to our community.

Thank you for the opportunity to comment on this bill.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON HUMAN SERVICES

Rep. John Mizuno, Chair

Rep. Jo Jordan, Vice Chair

Thursday, February 10, 2011

9:00 AM

Room 329

**HB 248 - Mandatory Minimum for Crimes Against Elders**

**STRONG OPPOSITION**

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

Aloha Chair Mizuno, Vice Chair Jordan 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 with approximately 1,800 individuals serving their sentences abroad, thousands of miles from their loved ones and, in many cases, from their ancestral lands.

HB 248 establishes mandatory minimum terms for certain offenses committed against persons 60 years of age or older.

Community Alliance on Prisons is in strong opposition to this measure. Hawai'i already has plenty of laws on the books to address these crimes.

Mandatory sentencing does not eliminate sentencing disparities; instead it shifts decision-making authority from judges to prosecutors, who operate without accountability.

In 1997, the RAND Corporation released findings that "Mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing...drug-related crime."<sup>1</sup> According to the study, discretionary sentencing, conventional enforcement and drug treatment are all more effective, per dollar spent, at reducing both drug consumption and drug-related crime.

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<sup>1</sup> Jonathan P. Caulkins et. al., *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money* (Santa Monica, CA: The RAND Corporation Drug Policy Research Center, 1997).

In prior sessions, prosecutors have testified that approximately 70% of the cases that cross their desks are drug-related.

There is consensus across the nation that mandatory minimums are of little value in reducing drug crime. A large body of research shows that mandatory minimums are not simply cost-ineffective, but futile at any price.<sup>2</sup>

On the recommendations of the Justice Kennedy Commission, the American Bar Association has urged a blanket repeal of mandatory minimum at all levels of government.<sup>3</sup>

Mandatory sentencing does not deter crime. Although mandatory sentences were designed for drug king pins, only 11 percent of federal drug defendants are high-level dealers.

Mandatory sentences have exacerbated the racial and gender inequalities in the criminal justice system, sending record numbers of women and people of color to prison. While drug use and dealing are spread proportionately among the races, the relative incarceration rates for drug crimes are wildly skewed. As evidenced by OHA's recent report: "In 2009, Native Hawaiians made up the largest portion 32% of people imprisoned for drugs." <sup>4</sup>

For many offenders, drug treatment and/or supervision is not just cheaper, but more effective for rehabilitation and thus, more likely to prevent recidivism—and the incarceration costs it incurs.

As mandatory minimums drive up the incarceration rate in low-income communities, they also amplify the collateral consequences of widespread incarceration. Longer sentences mean more and greater "ripple effects" for the communities from which prisoners come.

Reduced family income may hurt a child's academic achievement and emotional development. An Urban Institute study found that 31% of children living under stressful family conditions

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<sup>2</sup> The amount of state-level research on this issue is constantly growing. Three reports include: Judith A. Greene, *Crime Trends and Incarceration Rates in Oregon* (Brooklyn, NY: Justice Strategies, 2004); Vincent Schiraldi and Jason Ziedenberg, *Costs and Benefits? The Impact of Drug Imprisonment in New Jersey* (Washington, DC: Justice Policy Institute, 2003), Finding 7; Judith A. Greene, Kevin Pranis and Howard R. Wine, *Arizona Prison Crisis: A Call for Smart on Crime Solutions* (Washington DC: Families Against Mandatory Minimums, 2004).

<sup>3</sup>ABA Justice Kennedy Commission, "Resolution 121A" (revised), Report of the ABA Justice Kennedy Commission (Adopted by the American Bar Association at its Annual Meeting in Atlanta, August 9 and 10, 2004). Accessed at: <http://www.abanet.org/media/jkcrecs.html> and at: <http://www.abanet.org/leadership/2004/annual/dailyjournal/121A.doc>

<sup>4</sup>*Disparate Treatment of Native Hawaiians in the Criminal Justice System*, 2010, [www.oha.org/disparate-treatment/](http://www.oha.org/disparate-treatment/).

had low levels of educational attainment, compared to 17% of other children. Those same children also faced higher levels of both emotional and behavioral problems.<sup>5</sup>

Reserving incarceration and the associated costs for only the highest-level dealers is a better use of the money that we earmark for public safety and drug reduction.<sup>6</sup> The money saved by doing away with this automated and maladaptive system of spending prison dollars will make money available for services known to be more effective at reducing drug consumption and drug-related crimes—most notably, drug treatment.

Mandatory minimum sentencing is costly and unjust.<sup>7</sup>

Please don't pass any more mandatory minimum bills. Every crime has a set of circumstances that are known to the court. Removing judicial discretion, which is open to public review and handing it over to the prosecutors, who remain unaccountable, is unjust. Jurisdictions all around the country are abandoning this costly and ineffective 'tough on crime' strategy for smart justice policies that reduce incarceration and enhance community safety for all. These policies are based on strategies that work better, are evidence-based, and save precious resources.

In the interest of transparency and accountability, we urge you to hold this measure.

Mahalo for this opportunity to testify.

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<sup>5</sup>Kristin Anderson Moore and Sharon Vandivere (Child Trends), "Stressful Family Lives: Child and Parent Well-Being," *New Federalism, National Survey of America's Families* (Washington, DC: The Urban Institute, June, 2000), p. 1, and Moore, Vandivere and Jennifer Ehrle (the Urban Institute), "Turbulence and Child Well Being," *New Federalism*, pp.2-3

<sup>6</sup>Rhode Island Family Life Center Policy Brief: Reducing Mandatory Minimums for Crimes Involving Controlled Substances; Everyone Pays: A Social Cost Analysis of Incarcerating Parents for Drug Offenses in Hawai'i, p.64, Lengyel, Thomas E.; Brown, Marilyn; June 2009.

<sup>7</sup> The High Budgetary Cost of Incarceration, John Schmitt, Kris Warner, and Sarika Gupta, June 2010, Center for Economic and Policy Research. <http://www.cepr.net/documents/publications/incarceration-2010-06.pdf>.

Robert K. Merce  
2467 Aha Aina Place  
Honolulu, Hawai'i 96821  
February 9, 2011

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**COMMITTEE ON HUMAN SERVICES**

Rep. John Mizuno, Chair

Rep. Jo Jordan, Vice Chair

Thursday, February 10, 2011

9:00 AM

Room 329 – Mandatory Minimums for Crimes Against the Elderly

HB 248

**STRONGLY OPPOSE**

Mandatory minimum sentences don't work. To my knowledge, there is no empirical evidence that they deter crime, or more specifically, that deter crimes against the elderly.<sup>1</sup> In the absence of data showing that they work, they should not be adopted.

We know that mandatory minimum create injustice by taking away discretion from judges and preventing them from making downward sentencing decisions in worthy cases. A good example of this is described by United States District Judge John Gleeson in *United States v. Vasquez*, No. 09-CR-259 (E.D.N.Y. March 30, 2010).

We also know that mandatory minimum sentences are a major reason the United States has unsustainable corrections costs and the highest incarceration rate in the world.

The Rand Corporation has found that mandatory minimum sentences are not a cost-effective way of dealing with drug crimes<sup>2</sup>, and the American Bar Association Justice Kennedy Commission, comprised of some of the country's most distinguished lawyers, jurists, and legal scholars, recommended the repeal of all mandatory minimum sentences.<sup>3</sup>

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<sup>1</sup> The failure of mandatory minimum sentences to reduce crime has been documented by The National Institute of Justice (NIJ) which reported that studies of mandatory minimum sentences for crimes committed with firearms in Michigan and Florida *did not deter criminals in those states from using firearms*. See Parent, Dale, Dunworth Terence, McDonald, Douglas, and Rhodes, William, *Mandatory Sentencing*. NIJ Research In Action, U.S. Department of Justice (January 1997). <http://www.ncjrs.gov/pdffiles/161839.pdf>

<sup>2</sup> Caulkins, Jonathan P., C. Peter Rydell, William Schwabe and James Chiesa. *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?* Santa Monica, CA: RAND Corporation, 1997. Quotation from Rand Research Brief RB-6003 summarizing the Caulkins study and is found at [http://www.rand.org/pubs/research\\_briefs/RB6003/index1.html](http://www.rand.org/pubs/research_briefs/RB6003/index1.html).

<sup>3</sup> American Bar Association, ABA Justice Kennedy Commission (2003). <http://www.abanet.org/media/jkcrecs.html>

The mandatory minimum sentences proposed in HB 248 are a bad idea and they should not be adopted.

Thank you for allowing me to testify.

**THURSDAY, FEBRUARY 10, 2011**

**COMMITTEE ON HUMAN SERVICES**

Rep. John Mizuno, Chair Rep. Jo Jordan, Vice Chair

Thursday, February 10, 2011 9:00 AM

Room 329

**HB 248 – Mandatory Minimum for Crimes Against Elders STRONG  
OPPOSITION**

**OPPOSE**

**It is not financially responsible to support mandatory minimum sentences.**

**My name is Carmael Kamealoha Stagner. I am writing in opposition of HB 248 because as a former employee of the Department of Public Safety (PSD) from 2006-2010, I have seen Native Hawaiian inmates and their families shredded by the "IN" justice system, specifically with minimum sentencing and the lack of operational consistency between the Hawaii Paroling Authority (HPA), sentences imposed by judges in the Judiciary, case management within the PSD.**

**Minimum sentencing is the current PSD practice used in identifying an inmate's eligibility for transfer to Saguaro Correctional Facility in Eloy Arizona. While no specific mainland transfer criteria was in place by policy during the time I was employed with the PSD from 2006 -2010, this practice in identifying inmates at Halawa Correctional Facility for chattel transport to CCA facilities uses the minimum sentence.**

**In addition, an offender will receive two minimum sentences for one charge. While I appreciate the complexity of the issues considered in assuring the safety of the general public, the ability of the offender to learn new skill sets while incarcerated**



**under the current model of incarceration is hampered by time-driven incompetencies directly linked to minimum sentencing within the justice system.**

**Just as the 2010 Hawaii state auditor's report *Management Audit of the Department of Public Safety's contracting for Prison Beds and Services* exposed, current policies and procedures of the PSD lack congruence and impair the long term solution for prison overcrowding. Further, the PSD and its vendor, the Corrections Corporation of America (CCA) circumvented the state procurement process.**

**Legislating mandatory minimums will drain the Hawaii state budget by continuing to provide a false front used by the PSD to justify the need to merely house inmates, and to maintain its illegal contract with CCA.**