

SB2450, SD1

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Labor**

February 22, 2012

S.B. No. 2450 SD1: RELATING TO SENTENCING

Chair Hee and Members of the Committee:

We oppose the passage of S.B. No. 2450 SD1 which establishes mandatory minimum prison terms for property offenses committed against elderly persons. We believe that the decisions regarding appropriate sentences for these offenders should be left up to the judges who are in the best position to decide the lengths of prison sentences. It is our experience that judges do not presently hesitate to send such offenders to prison, sometimes for lengthy terms.

The possibility of a mandatory sentence may also discourage plea agreements and force many cases to trial. Elderly victims may not be in good physical or mental condition to make extended court appearances to prosecute the case. In addition, many will be hesitant to relive such a painful episode in their lives.

Finally, the most important aspect of a property crime committed against an elderly person is restitution to the victim. A lengthy mandatory prison term will, for all practical purposes, prevent the possibility of any restitution being made.

Thank for the opportunity to comment on this measure.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 2450 SD1 RELATING TO SENTENCING BEFORE THE
COMMITTEE ON JUDICIARY & LABOR

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Wednesday, February 22, 2012
09:45 a.m. Conference Room 016

Testimony by Jean Aoki, LWV Legislative Committee member,

Chair Hee, Vice Chair Shimabukuro, members of JDL Committee,

The League of Women Voters of Hawaii is opposed to mandatory minimum sentences as an intrusion on the responsibility of the courts to treat each defendant fairly, based on all of the facts of the case, the criminal history of the defendant and the circumstances surrounding the case. We do support the right of the legislature to enact sentencing guidelines to encourage uniformity in the sentences on similar crimes.

The League shares the legislators' and society's indignation over lawbreakers' preying on the aged, the handicapped and the very young who are least able to defend themselves, and the general sentencing guidelines should reflect society's concern. And certainly, we would expect that judges would take the victims' vulnerability into consideration in imposing any sentence on defendants.

An example of the negative results of the imposition of mandatory minimum sentencing is the harsh sentencing in drug cases that has resulted in swelling prison populations of young minority men.

In an August 10, 2003 article in the San Francisco Chronicle staff writer Bob Egelko begins with "U.S. Supreme Court Justice Anthony Kennedy , in a striking departure from his court's and the Bush administration's hard line on crime, criticized the nation's



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imprisonment policies Saturday and called for the repeal of mandatory-minimum sentences for federal crimes.

“Our resources are being misspent. Our punishments are too severe. Our sentences are too long,” Kennedy said in a speech at the American Bar Association convention in San Francisco.

According to the article, at that time, 2.1 million people were behind bars in the United States. About 1 in 143 Americans are incarcerated compared with 1 in 1000 in many European countries. “About 10% of African American men are behind bars,” said Justice Kennedy.

“In his speech, Kennedy said he agrees with the need for federal sentencing guidelines – established by federal law in 1984 to make sentences more uniform-- but believes they are too severe and should be shortened.

“In contrast to the guidelines which allow judges some flexibility, mandatory minimums are virtually ironclad. I can accept neither the wisdom, the justice, nor the necessity of mandatory minimums,” Kennedy said. “In all too many cases, they are unjust.”

The League of Women Voters believes in Judicial Independence for the Judiciary and the individual judges and justices. Federal judges are given lifetime tenures so that they can make the decisions they think necessary even when some of those decisions may not be supported by the President of the United States, or the Congress, or even the majority of the people. Congress can change the laws or begin the process of amending the U.S. Constitution, if in their collective wisdom, it feels that any decision is detrimental to the welfare of the people or of the United States.



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We frequently read stories of the attempts by the legislative bodies of different states and cities, and yes, even Congress to strip the courts of some of their jurisdiction and their independence because the courts stand in the way of their desire to enact laws that reflect their ideologies or their own sense of what is right and wrong. In order for our governments at all levels to work properly, each of the co-equal branches of government must respect the jurisdictions of the other two, while exerting the proper checks on them to maintain the proper balance among the three branches.

We say yes to general sentencing guide lines, but no to mandatory minimum sentences. Let the judges be judges, not just clerks doing what the legislative branches decide for them.

Thank you for this opportunity to address SB 2450, SD1.

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Wednesday, February 22, 2012

9:45 a.m.

Room 016

COMMENTS IN OPPOSITION TO MANDATORY MINIMUMS IN SB 2450 SD1

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars, always mindful that almost 1,800 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

Community Alliance on Prisons understands that this bill was introduced with compassion for those who might not be able to defend themselves, and we agree that these crimes are egregious. However, we also contend that Hawai'i has more than enough laws to address these terrible crimes.

The Justice Reinvestment Initiative has recommended ways to enhance public safety and make our justice system more efficient. Proposals to increase mandatory minimum sentencing are counter to the research and findings of the analysts from the Justice Center who have been working here for the past six months.

Mandatory minimum sentencing laws eliminate judicial discretion. These laws are problematic because they tie the courts' hands and mandate longer prison sentences, regardless of whether the Court believes the punishment is appropriate, based on the facts of the case. Repealing mandatory minimum sentences would restore judicial discretion and further the cause of justice. **Prosecutorial discretion is essentially conducted behind closed doors, whereas that of a sentencing judge is conducted in an open courtroom.** Thus, by shifting the locus of the use of discretion, mandatory sentencing not only fails to eliminate the use of discretion, but also subjects it to less public scrutiny.

There are numerous studies, data and research on the subject of mandatory minimum sentencing – here is a sampling of a few, including the recent guidelines passed by the U.S. Sentencing Commission:

FAMILIES AGAINST MANDATORY MINIMUMS Poll¹

- More than three-quarters of Americans feel that the court is the best qualified to determine sentences for crimes (78%).
- Both Democrats and Republicans feel that Courts, not Congress, should decide sentencing (81% vs. 78% respectively).

A Blue-Ribbon Indictment²

New York Times Editorial

“A 645-page report from the United States Sentencing Commission found that federal mandatory minimum sentences are often “excessively severe,” not “narrowly tailored to apply only to those offenders who warrant such punishment,” and not “applied consistently.””

MANDATORY MINIMUM SENTENCES: EXEMPLIFYING THE LAW OF UNINTENDED CONSEQUENCES

CHRISTOPHER MASCHARKA, J.D.

Florida State University College of Law

“There has long been a plethora of experts declaring opposition to mandatory minimums. The Sentencing Commission, the Judicial Conference of the United States, the Federal Courts Study Commission, the Federal Judicial Center, the ABA, and an overwhelming majority of judges oppose mandatory minimums.”⁽³³¹⁾³

Even three current Supreme Court Justices have publicly spoken out against these penalties.⁽³³²⁾⁴

Even among prosecutors, who are currently empowered with wide discretion under mandatory minimums, only half viewed these provisions in a favorable light.⁽³³³⁾⁵

Additionally, some argue that certain areas of governmental policy should not be overly guided by public opinion.⁽³³⁴⁾⁶

Public attitudes on risk can be highly skewed from reality. Justice Breyer has compellingly contended that in certain fields, cognitive errors create a public perception on risk so fundamentally flawed it should not be the basis for public policy.⁽³³⁵⁾⁷

¹ FAMM Poll Fielded July 31 – August 3, 2008, Margin of error = ±3.1% in 95 out of 100 cases

² NY Times Editorial, Published: November 13, 2011, http://www.nytimes.com/2011/11/14/opinion/a-blue-ribbon-indictment.html?_r=1&partner=rssnyt&emc=rss

³ (331) See Beale, supra note 77, at 27; cf. Breyer supra note 40, at 184 (“The Commission, from the beginning, has strongly opposed mandatory minimums.”).

⁴ (332) See Breyer, supra note 40, at 184. Chief Justice Rehnquist, Justice Kennedy, and Justice Breyer have all publicly spoken out against mandatory minimums. See Id.

⁵ (333) See Schulhofer, supra note 63, at 216-17 (noting that not all prosecutors disfavored them solely on the harshness of the sentence).

⁶ (334) For a comprehensive accounting of the public’s opinions regarding crime and punishment, see Francis T. Cullen et al., Public Opinion About Punishment and Corrections, 27 CRIME & JUST. 1 (2000), which summarizes numerous public opinion studies on crime and punishment.

⁷ (335) See STEPHEN BREYER, BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION 59-81 (1993) (arguing primarily in the context of environmental risk); see also Beale, supra note 77, at 65 (paraphrasing Justice Breyer’s sentiments on the issue). But see Beale, supra note 77, at 65 n.157 (stating that some would consider Justice Breyer’s opinions “elitist”).

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: maukalani78@hotmail.com
Subject: Testimony for SB2450 on 2/22/2012 9:45:00 AM
Date: Monday, February 20, 2012 6:46:42 AM

Testimony for JDL 2/22/2012 9:45:00 AM SB2450

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: elaine funakoshi
Organization: Individual
E-mail: maukalani78@hotmail.com
Submitted on: 2/20/2012

Comments:
Chair Hee, Vice Chair Shimabukuro, and Committee Members:

I am opposed to SB2450 SD1.

How long will it take a bill to but to rest and buried for good.

In 1978, I believed this was a good idea and discussed its merits with then Judge Walter Heen who showed me how important it was for a judge to make the decision after hearings the pros and cons of each individual case.

If we want to simplify processes, let's do it with the insurance cases, too, then we won't need attorneys to defend the injured. That sounds irrational, but we're dealing with human lives, and that's why I oppose this bill.

Thank you for the opportunity to submit my testimony in opposition to this bill.