



THE SEX ABUSE TREATMENT CENTER

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

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DATE: February 13, 2014

TO: The Honorable Mele Carroll, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Human Services

FROM: Alana Peacott-Ricardos, Policy Research Associate
The Sex Abuse Treatment Center

RE: H.B. 2395
Relating to Sentencing

Good morning Chair Carroll, Vice Chair Kobayashi and members of the House Committee on Human Services. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

H.B. 2395 would establish a mandatory minimum sentence of twenty years for the class A felony of first degree sexual assault of a minor who is less than fourteen years of age. While we support efforts to hold perpetrators of the most violent assaults against children accountable, we also understand how terms of incarceration that are too long can have unintended consequences that should be carefully considered. Therefore, SATC offers the following comments.

Mandatory minimum terms of incarceration ensure that a perpetrator, who is often someone known and who has access to the survivor, will not be able to harm the survivor or the public for a definite period of time. However, when faced with the possibility of a mandatory twenty year term, there is the possibility for more defendants to choose to take the case to trial; more prosecutors to refrain from or reduce charges to a lesser crime; or more judges and juries to be less willing to find a defendant guilty. The National Alliance to End Sexual Violence,ⁱ and many state coalitions, including Texas Association Against Sexual Assault,ⁱⁱ and Connecticut Sexual Assault Crisis Services, Inc.,ⁱⁱⁱ have opposed mandatory minimum sentences because of these potential negative outcomes. Further, we have not found any comprehensive studies on the effects of mandatory minimum terms of incarceration for child sex offenders.^{iv} Thus, we have not seen any conclusive evidence tying mandatory terms of imprisonment with deterrence, reduced recidivism, or increased public safety.

Last session, SATC provided testimony in support of S.B. 880 S.D. 1, which would require the court to impose a mandatory minimum term of imprisonment without the possibility of parole or probation for a person convicted of certain acts of sexual assault against a minor under the age of twelve years. However, the harshest mandatory minimum proposed by S.B. 880 S.D. 1, was a six year, eight month sentence of imprisonment. This is not to say that an offender could not be held longer,

but at a minimum the offender would be held for that long. SATC did not feel that the proposed terms would raise the same concerns that longer mandatory terms might. SATC concluded that S.B. 880 S.D. 1 could serve the public interest by holding child sex offenders accountable and by protecting survivors and the public from harm.

Additionally, H.B. 2395 appears to allow for a “mistake of age defense” during the sentencing phase. Under Hawai‘i law, “mistake of age” is not a defense to sexual assault. See *State v. Buch*, 83 Hawai‘i 308, 926 P.2d 599 (1996). Although this exception would apply to the sentencing phase, we have reservations about that being one of the very limited circumstances that is carved out under this potential law. The law allows no exception for an 18 year old senior in high school who has sex with a freshman who is about to turn 14. On the other hand, it does allow an exception for a 50 year old with a history of seeking out underage partners for sex, but who is savvy enough to ask for identification first. Either of these scenarios could easily happen. It is hard to say that the offender in the former example should be subject to a harsher mandatory punishment than the offender in the latter example. And, in fact, this highlights one of the consequences of taking away the court’s and Hawai‘i Paroling Authority’s ability to consider the realities of the situation.

Thank you for this opportunity to testify.

ⁱ See, The National Alliance to End Sexual Violence, *Community Management of Convicted Sex Offenders*, <http://endsexualviolence.org/where-we-stand/community-management-of-sex-offenders>.

ⁱⁱ See, Texas Association Against Sexual Assault, *The Dangerous and Unintended Consequences of Jessica’s Law*, http://www.taasa.org/latest_news/jessicas_law.php.

ⁱⁱⁱ See, Connecticut Sexual Assault Crisis Services, Inc., *Testimony of Connecticut Sexual Assault Crisis Services, Inc. Regarding HB 7086 An Act Concerning Registration of Sexual Offenders*, at 3, <http://www.cga.ct.gov/2007/JUDdata/Tmy/2007HB-07086-R000223-CT%20Sexual%20Assault%20Crisis%20Services%20Nancy%20Kushins-TMY.PDF>.

^{iv} See, e.g., Kevin L. Nunes et al., *Incarceration and Recidivism among Sexual Offenders*, 21 LAW HUM. BEHAV. 305, 316 (2007) (concluding that “incarceration has minimal impact on sexual or violence recidivism among sexual offenders”).

kobayashi1-Joni

From: John Heidel <jheidel808@icloud.com>
Sent: Wednesday, February 12, 2014 3:28 AM
To: HUSstimony
Subject: Fwd: Testimony for HB 2591

Sent from my iPad

Begin forwarded message:

From: John Heidel <jheidel808@icloud.com>
Date: February 12, 2014 8:26:49 AM EST
To: "HUSstimony@capitol.hawaii.gov" <HUSstimony@capitol.hawaii.gov>
Subject: Testimony for HB 2395

I am in strong support of HB 2395 that would address the violence toward the houseless in our communities.

I've been a minister of the United Church of Christ on Oahu for over 50 years (Central Union Church and chaplain at Punahou School), am a founder of Family Promise Hawaii that provides transitional shelter for the houseless in our local congregations and was the former president of The Interfaith Alliance Hawaii.

I believe we should eradicate violence of all forms but especially toward the vulnerable of our community. I also think justice for all citizens and creating a safe, healthy environment in which to live are two of the cornerstones for a civil society.

Thank you for considering this bill and I urge you to pass it out of Committee.

Rev. Dr. John Heidel
1341 Manu Mele Street
Kailua, HI 96734
261-4585

Sent from my iPad

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
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PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE MELE CARROLL, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i**

February 13, 2013

RE: H.B. 2395; RELATING TO SENTENCING.

Chair Carroll, Vice Chair Kobayashi and members of the House Committee on Human Services, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony expressing strong concerns on H.B. 2395.

H.B. 2395 creates a lop-sided law that penalizes statutory sexual assault extremely harsher than cases where the offender commits sexual penetration involving violence or an absence of consent against a child victim. This bill creates a mandatory minimum penalty of 20 years without the possibility of parole for a person who knowingly engages in sexual penetration with another person who is less than 14 years old.

Whenever applicable, the Department charges sexual assault causes under 707-730(1)(a), 707-730(1)(d), or 707-730(1)(e), even if the case involves a child victim. In order to better protect young victims from such heinous sexual assault offenses, and provide increased deterrent and/or punishment to those who would prey up on these young victims, we strongly recommend inserting language in H.B. 232. The language creates mandatory minimum penalties for those persons who subject another person under the age of 12 to an act of sexual penetration through **strong compulsion or compulsion**, or subject sexual penetration to a person under the age of 12 who is **mentally defective, mentally incapacitated, or physically helpless**. It also enacts mandatory minimum penalties for certain persons of authority who knowingly subject sexual penetration on **confined or committed** children under the age of 12.

Specifically, H.B. 232 states:

“(1) Any person who is convicted of an offense under section 707-730(1)(a), 707-730(1)(d), or 707-730(1)(e) against a minor under the age of twelve years, if not sentenced to an extended

term of imprisonment pursuant to 706-662, shall be sentenced to a mandatory minimum term of imprisonment of six years, eight months without the possibility of parole or probation.

(2) Any person who is convicted of an offense under section 707-731(1)(a), 707-731(1)(b), or 707-731(1)(c) against a minor under the age of twelve years, if not sentenced to an extended term of imprisonment pursuant to 706-662, shall be sentenced to a mandatory minimum term of imprisonment of three years, four months without the possibility of parole or probation.

(3) Any person who is convicted of an offense under section 707-732(1)(a) against a minor under the age of twelve years, if not sentenced to an extended term of imprisonment pursuant to 706-662, shall be sentenced to a mandatory minimum term of imprisonment of one year, eight months without the possibility of parole or probation.”

In the 2011 Uniform Crime Reporting Program (UCR) administered by the Federal Bureau of Investigation (FBI), there were 353 forcible rapes reported in the State of Hawaii in 2011, with a rate of 25.7 forcible rapes per 100,000 population. [Pursuant to the UCR, “forcible rape” is defined as: The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force is also included. Statutory rape (without force), any sexual assaults against males, and other sex offenses are not included in this category].

According to “Sexual Assault Victims in Honolulu, A Statistical Profile” that was put together by the Department of the Attorney General of the State of Hawaii in partnership with the Sex Abuse Treatment Center (SATC), in the eleven-year period between 1990 and 2001, the SATC assisted an average of 460 victims per year in Honolulu, ranging from 541 in 1994 to 368 in 1999. We would like to note that 32.5% or almost one-third of the victims getting treatment from SATC were under the age of 12; 18.8% were age 0 to 5 and 13.7% were age 6 to 11.

At least 25 states have enacted mandatory 25 year minimum sentences for various types of first-time child sex crime offenders. Our bill is narrowly focused by creating mandatory minimum imprisonment for offenders who are convicted of certain sexual offenses that involve sexual penetration of a minor under the age of 12. We excluded statutory sexual offenses and sexual offenses solely involving sexual contact.

For all of the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu expresses concerns on H.B. 2395 and recommends inserting the language from H.B. 232. Thank for you the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

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Victim/Witness Program 808-241-1898 or 800-668-5734

LATE

TESTIMONY IN SUPPORT OF
H.B. NO. 2395 – RELATING TO SENTENCING

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Human Services
February 13, 2014

Chair Carroll, Vice Chair Kobayashi and members of the House Committee on Human Services, the Office of the Prosecuting Attorney, County of Kauai, submits the following testimony expressing strong concerns on H.B. 2395.

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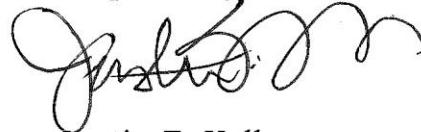
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For all of the reasons noted above, the Office of the Prosecuting Attorney of the County of Kauai expresses concerns on H.B. 2395 and recommends inserting the language from H.B. 232. Thank for you the opportunity to testify on this matter.

Thank you very much for the opportunity to provide testimony on this bill.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", written in a cursive style.

Justin F. Kollar
Prosecuting Attorney