

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 11:24 PM
To: JDLTestimony
Cc: susan.l.arnett@hawaii.gov
Subject: *Submitted testimony for SB68 on Feb 5, 2013 10:00AM*

SB68

Submitted on: 2/4/2013

Testimony for JDL on Feb 5, 2013 10:00AM in Conference Room 016

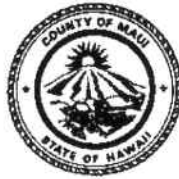
Submitted By	Organization	Testifier Position	Present at Hearing
SUSAN L. ARNETT	State Office of the Public Defender	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TESTIMONY

ON

SB 68 - RELATING TO SENTENCING

February 5, 2013

The Honorable Clayton Hee
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY OPPOSES** SB 68, Relating to Sentencing.

This bill provides for "discretion" for sentencing judges when sentencing drug offenders for class B and C felonies. We believe this function is already served by the Hawaii Paroling Authority when it determines a defendant's minimum term. Furthermore, previous acts already allow for probation sentences for first-time non-violent drug offenders. We believe that shorter sentences for these individuals will not protect our community.

We ask that SB 68 be HELD.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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LOUIS M. KEALOHA
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DEPUTY CHIEFS

OUR REFERENCE: JI-TA

February 5, 2013

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

Dear Chair Hee and Members:

Subject: Senate Bill No. 68, Relating to Sentencing

I am Jerry Inouye, Captain of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 68, Relating to Sentencing.

With its continuing designation as a high-intensity drug-trafficking area, Hawaii remains a target of the international drug trade. The mandatory minimum sentencing guidelines provide consistent penalties that promote public safety by serving as deterrents to drug traffickers and users.

While we agree that effective treatment for substance abusers is an important part of the process, strict sentencing guidelines provide incentive for offenders to comply with such programs. Furthermore, as written, Senate Bill No. 68 would permit reduced sentencing for persons who distribute cocaine, heroin, and other dangerous drugs in violation of section 712-1242, Hawaii Revised Statutes.

The Honolulu Police Department urges you to oppose Senate Bill No. 68, Relating to Sentencing.

Thank you for the opportunity to testify.

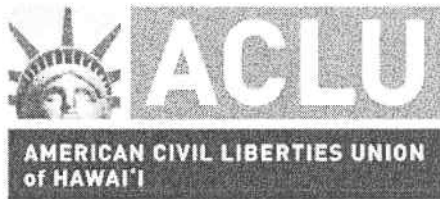
Sincerely,


JERRY INOUYE, Captain
Narcotics/Vice Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

Serving and Protecting With Aloha



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, February 5, 2013, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Support of S.B. 68, Relating to Sentencing

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 68, which grants a sentencing court the discretion to sentence a defendant convicted in a class B or class C felony drug case to a prison sentence of a length appropriate to an offender’s particular offense and underlying circumstances.

We support S.B. 68 because it seeks to abolish mandatory minimum sentences in class B and class C felony drug cases that generate unnecessarily harsh sentences, tie judges’ hands in considering individual circumstances, create racial disparities in sentencing and empower prosecutors to force defendants to bargain away their constitutional rights.

Many in the judicial system have come to see mandatory minimum sentences as antithetical to fair sentencing. Judges across the country and across the ideological spectrum have decried determinate sentencing schemes like mandatory minimum sentences that tie judges’ hands and force them to impose harsher-than-necessary sentences. The United States Supreme Court in *United States v. Booker*¹ and subsequent cases² has emphasized the importance of judicial discretion in sentencing — the very opposite of the approach required under a mandatory minimum. Today, in the wake of *Booker*, mandatory minimum sentences are the chief obstacle to a system in which judges can craft rational, individualized sentences that balance public safety with rehabilitation.

Mandatory minimum sentences create excessive prosecutorial discretion, which is exercised in an arbitrary manner and used to coerce defendants into relinquishing their constitutional rights and punish defendants when they exercise those rights. One other unfortunate by-product of mandatory minimums has become particularly salient in these troubled economic times: by requiring long prison sentences for individuals who would not otherwise receive them, the law

¹ 543 U.S. 220 (2005).

² See, e.g., *Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007).

American Civil Liberties Union of Hawai'i
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Chairman Hee and Committee Members on Judiciary and Labor
February 5, 2013
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commits precious federal and state dollars to paying for years' worth of unnecessary incarceration.³

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

³ See, e.g., Justice Anthony M. Kennedy, Speech at the American Bar Ass'n Annual Meeting, at 2 (Aug. 9, 2003) ("Our resources are misspent, our punishments too severe, our sentences too long."); Statement of Stephen R. Sady, Federal Bureau of Prisons Oversight Hearing: The Bureau of Prisons Should Fully Implement Ameliorative Statutes To Prevent Wasted Resources, Dangerous Overcrowding, and Needless Over-Incarceration I (July 21, 2009), at <http://judiciary.house.gov/hearings/pdf/Sady090721.pdf>.

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