

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-seventh State Legislature
Regular Session of 2013
State of Hawai'i

January 30, 2013

**RE: S.B. 880; RELATING TO SENTENCE OF IMPRISONMENT FOR SEXUAL
ASSAULT OF A MINOR UNDER THE AGE OF TWELVE YEARS.**

Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of S.B. 880, which is part of the 2013 Honolulu Prosecuting Attorney Legislative Package.

In the 2011 Uniform Crime Reporting Program (UCR) that is 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 a population of 100,000. [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 has assisted an average of 460 victims per year in Honolulu, with as many as 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 had been under the age of 12. Specifically 18.8% of the victims were ages 0 to 5 and 13.7% of the victims were ages 6 to 11.

To help curb the amount of sexual assault on minors in Hawaii, the Department of the Honolulu Prosecuting Attorney of the City and County of Honolulu introduced this bill to amend Chapter 706 of the Hawaii Revised Statutes by adding a new section that creates mandatory

minimum terms of imprisonment for any person convicted of sexual assault in the first degree, sexual assault in the second degree, and sexual assault in the third degree where the victim was subjected to sexual penetration.

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 is in support of S.B. 880. Thank for you the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK W CALDWELL
MAYOR

LOUIS M KEALOHA
CHIEF

DAVE M KAJIHIRO
MARIE A McCAULEY
DEPUTY CHIEFS

OUR REFERENCE LM-NTK

January 30, 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. 880, Relating to Sentence of Imprisonment for Sexual Assault of a Minor Under the Age of Twelve Years

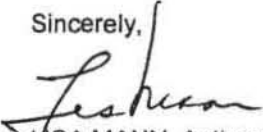
I am Lisa Mann, Acting Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 880, Relating to Sentence of Imprisonment for Sexual Assault of a Minor Under the Age of Twelve Years.

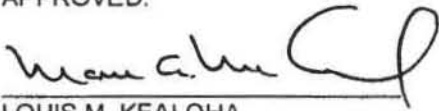
The protection of our children is vital to the well-being of our community. Mandatory sentencing will reduce a sexual offender's ability to re-offend, thus protecting our community.

The Honolulu Police Department urges you to support Senate Bill No. 880, Relating to Sentence of Imprisonment for Sexual Assault of a Minor Under the Age of Twelve Years.

Thank you for the opportunity to testify.

Sincerely,

LISA MANN, Acting Captain
Criminal Investigation Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

Justin F. Kollar
Prosecuting Attorney



Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihue, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

TESTIMONY IN SUPPORT OF
S.B. NO. 880
A BILL FOR AN ACT RELATING TO SENTENCE OF IMPRISONMENT FOR SEXUAL
ASSAULT OF A MINOR UNDER THE AGE OF TWELVE YEARS

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i
Wednesday, January 30, 2013, 9:30 a.m., Room 016
Senate Committee on Judiciary and Labor


Honorable Chair Hee, Vice-Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of Senate Bill No. 880.

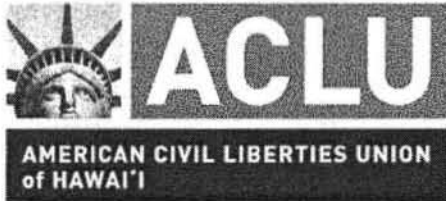
The purpose of Senate Bill No. 880 is to add a section to Chapter 706 of the Hawai'i Revised Statutes designated as "Sentence of imprisonment for sexual assault of a minor under the age of twelve years."

Senate Bill No. 880 would impose a mandatory minimum term of imprisonment for defendants charged with Sex Assault 1, 2, or 3 of a minor under the age of twelve years. This ensures that sex offenders of minors are mandated to serve a minimum jail sentence without possibility of parole or probation as stated, with the hope to minimize the sex offender's ability to re-offend. We are also in support of Senate Bill No. 880 as it will set the precedent for more severe sentencing towards sex offenders of minors.

Thank you for the opportunity to testify on this matter.

Respectfully,


Justin F. Kollar
Prosecuting Attorney
County of Kaua'i



Committee: Committee on Judiciary and Labor
Hearing Date/Time: January 30, 2013 / 9:30 am
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 880, 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 opposition to S.B. 880, which seeks to 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 12 years.

Mandatory minimum sentences should be abolished or reformed because they 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 Hawaii'i
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Chairman Hee and Members Thereof
January 23, 2013
Page 2 of 2

commits precious federal and state dollars to paying for years' worth of unnecessary incarceration.³

There is no simple fix to the devastating problem of sexual assault against minors. Instead of politically popular measures that make no difference or in fact make us less safe, we need to turn our attention and resources to ways of addressing the epidemic of sex abuse that, while perhaps not as politically popular, will actually work so that more potential victims can be spared. Rather than imposing mandatory minimum terms of imprisonment for a person convicted of sexual assault, we should focus resources on programs and policies that will actually reduce the likelihood of sex offenses occurring in the first place.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawai'i

The ACLU of Hawaii 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 1 (July 21, 2009), at <http://judiciary.house.gov/hearings/pdf/Sady090721.pdf>.

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46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

**TESTIMONY FOR SENATE BILL 880, RELATING TO SENTENCE OF
IMPRISONMENT FOR SEXUAL ASSAULT OF A MINOR UNDER THE AGE OF
TWELVE YEARS**

**Senate Committee on Judiciary
Hon. Clayton Hee, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair**

**Wednesday, January 30, 2013, 9:30 PM
State Capitol, Conference Room 016**

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in support of, with amendments for Senate Bill 880, relating to the sentence of imprisonment for sexual assault of a minor under the age of twelve years.

While this bill is not being advertised is not primarily anti-trafficking measure, IMUAlliance has encountered sex-trafficking victims as young as eleven-years-old during our outreach efforts. Sadly, victims this young are not given special consideration by pimps, sex traffickers, promoters of prostitution, and the sometimes pedophilic johns who solicit minors for sexual services. Such victims are, instead, subject to sexually abusive “breaking in” procedures prior to commercial exploitation, after which they are forced to provide sexual services to adult men as much as seven times their age. Accordingly, we view this measure as a strong deterrent and punitive stance against individuals who would take advantage of commercially and sexually exploited children.

That said, we note that this bill was modeled after “Jessica's Law” and similar statutes enacted on the mainland, for which twelve years of age has often been used as a cutoff for enhanced mandatory sentencing. We do not feel, however, that a substantive difference in vulnerability exists between children aged eleven and those aged twelve and thirteen, the latter two of which also fall beneath Hawaii's age threshold for sexual assault in the first degree (penetrative statutory rape) under HRS 707-730(1)(b). Since this bill refers to other subsections of sexual assault in the first degree under HRS 707-730, we **urge the committee to maintain statutory consonance by revising the age targeted by this bill from twelve-years-old to fourteen-years-old to cover more potential victims, with all mentions of “minor under the**

age of twelve years being changed to “minor under the age of fourteen years.” We also note HRS 707-731(1)(c) refers to persons employed at correctional facilities. Minors under the age currently covered by the bill may be considered “persons in need of supervision” (PINS), though, and, thus, in many, if not most, cases may not be subject to incarceration at a state, city, or community operated correctional or detention facility. Thus, we encourage the committee to consider amending subsection 2 of this bill to apply only to HRS 707-731(1)(a) and 707-731(1)(b).

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

Kristin Young

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 11:40 AM
To: JDLTestimony
Cc: richelle.thomson@yahoo.com
Subject: *Submitted testimony for SB880 on Jan 30, 2013 09:30AM*

SB880

Submitted on: 1/28/2013

Testimony for JDL on Jan 30, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Richelle Thomson	Individual	Support	No

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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Kristin Young

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 27, 2013 12:41 PM
To: JDLTestimony
Cc: chinooker@gmail.com
Subject: Submitted testimony for SB880 on Jan 30, 2013 09:30AM

SB880

Submitted on: 1/27/2013

Testimony for JDL on Jan 30, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Alvarez	Individual	Support	No

Comments: I think the minimum sentence should be at least 10 yrs. in some cases.

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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