

**HB2205**

**HD1**



**Office of the Public Defender  
State of Hawaii  
Timothy Ho, Chief Deputy Public Defender**



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

March 19, 2014, 10:00 a.m.

H.B. No. 2205, HD1: RELATING TO CRIME

Chair Hee and Members of the Committee:

This measure would remove the possibility of probation for a defendant who is convicted of committing a habitual property crime under §708-803, Hawaii Revised Statutes (HRS).

The Office of the Public Defender opposes H.B. 2205, HD1.

A habitual property crime perpetrator is defined in §708-803, HRS as having been convicted of three felony property crimes, three misdemeanor property crimes, or any combination of three felony or misdemeanor property crimes within a five-year period. As written, this measure will primarily impact misdemeanants. A defendant who commits a second felony level property crime within a five-year is considered by the courts to be a repeat offender, and under §706-606.5, HRS, must be sentenced to a five-year term of imprisonment for a class C felony, and a ten-year term of imprisonment for a class B felony, with a mandatory minimum term of imprisonment of one year, eight months and three years, four months, respectively. If the defendant has two prior felony convictions, the mandatory minimum terms are doubled, the three years, four months for a class C felony and six years, eight months for a class B felony. Contrary to testimony by the Honolulu Prosecutor before the House Judiciary Committee, judges cannot sentence a repeat felony offender to probation. It is an untruth, and disrespectful of the judiciary to claim that judges regularly do not follow the law.

Under this measure, as amended, the court would not be able to sentence a person who has committed a fourth misdemeanor property crime to a five-year term of probation with a one-year jail sentence. A five-year prison sentence would be mandated, regardless if the prior property crimes

were all misdemeanors or a combination of one felony with misdemeanor convictions. We believe that a mandatory one-year jail sentence and probation for a fourth misdemeanor property crime is a serious punishment for a defendant who probably would not have been sentenced to much jail time, if any, in the district court for his three previous misdemeanor offenses.

A community suffering from a string of property crimes may get the false impression that perpetrators are “getting off” with a slap on the wrist only to return to their criminal ways. However, a person who is arrested for a felony offense may be released pending investigation and charged at a later date. There have been instances, especially with individuals suffering from substance abuse, where they continue to commit crimes after being released pending investigation. We believe that the focus should be on enforcement and timely prosecution, in order to prevent repeat offenses.

We believe that the habitual property crime offense, in its present form, is sufficient. If the court intends to impose a prison sentence of more than one year, it can and should impose an indeterminate five-year sentence.

Thank you for the opportunity to be heard on this matter.

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**Subject:** Submitted testimony for HB2205 on Mar 19, 2014 10:00AM  
**Date:** Monday, March 17, 2014 4:19:01 PM

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**HB2205**

Submitted on: 3/17/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charles Prentiss	Kailua Neighborhood Board	Support	No

Comments: The Kailua Neighborhood Board recently held a property crime forum, attended by over 200 residents. It included Director Ted Sakai, Prosecutor Keith Kaneshiro, Judge Steven Alm and Captain Tsuchida of HPD. Police Chief Kealoha attended. The strong community interest has resulted from the proliferation of property crime in Kailua which is attributed to repeat offenders. This bill is a strong step in the right direction to provide some consequence for repeat violations. The bill could be improved if a minimum sentence were also specified. Please pass this bill.

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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Wednesday, March 19, 2014

10:00 a.m.

Room 016

## OPPOSE - HB 2205 - Sentencing for Property Crime

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

My name is Kat Brady and I am the Coordinator of 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 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i 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 opposes SB 2205 that removes the probation option for sentencing upon conviction of Habitual Property Crime. We oppose limiting the court's discretion on sentencing.

The **2012 CRIME IN HAWAII**<sup>1</sup> The Attorney General's office reported:

- The burglary and motor vehicle theft rates in 2012 were at record low levels.
- Honolulu's total Index and property crime rates in 2012 were the lowest on record since the start of statewide data collection in 1975.

## Record Crime Rates - State of Hawai'i and Counties, 2012 Hawai'i Crime Report<sup>2</sup>

- **State of Hawaii**
  - Record low total Index Crime rate
  - Record low property crime rate**
  - Record low murder rate
  - Record low forcible rape rate
  - Record low burglary rate**
  - Record low motor vehicle theft rate**
  - Record low arson rate

<sup>1</sup> *CRIME IN HAWAII 2012 (ANNUAL)*, December 20, 2013. [http://ag.hawaii.gov/cpja/?page\\_id=3075&preview=true](http://ag.hawaii.gov/cpja/?page_id=3075&preview=true)

<sup>2</sup> *2012 CRIME IN HAWAII*, Full Report: <http://ag.hawaii.gov/cpja/files/2013/12/Crime-in-Hawaii-2012.pdf>

- **City & County of Honolulu**  
 Record low total Index Crime rate  
 Record low property crime rate  
 Record low murder rate  
 Record low forcible rape rate  
 Record low burglary rate  
 Record low larceny-theft rate  
 Record low motor vehicle theft rate  
 Record low arson rate
- **Hawaii County**  
 Record low arson rate
- **Maui County**  
 Record low property crime rate  
 Record low burglary rate
- **Kauai County**  
 None

Community Alliance on Prisons opposes removing judicial discretion, which is done in an open courtroom. There is much research about strategies that work such as a diverse array of community-based programs such as mental health, substance abuse treatment, vocational training, etc. to address the issues of those who habitually commit crimes.

If we truly want to discourage property crime, we must look at its motivation which, in most cases, is substance abuse...stealing to get money to feed a habit. It is a cycle that appropriate treatment can address. We know that community-based treatment is effective and less costly than incarceration. We know that the lack of available community-based treatment programs is a missed opportunity for persons exiting incarceration and for the community.

We believe that everyone should be held accountable for their actions and that we should use our resources to achieve the very best outcomes possible. Data and research show that sending people to prison is NOT the most effective way of dealing with these crimes.

Lack of programming in facilities leaves way too much dead time where these bad ideas can take root. This is not the outcome that protects communities.

Community Alliance on Prisons respectfully asks the committee to hold this bill and to allow the three branches of government to function as checks and balances.

Mahalo for this opportunity to testify.

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**Subject:** Submitted testimony for HB2205 on Mar 19, 2014 10:00AM  
**Date:** Friday, March 14, 2014 7:51:12 PM

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**HB2205**

Submitted on: 3/14/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tamaki Takada	Individual	Oppose	No

Comments: The concept of this bill, which is to remove probation options, is perfectly incompatible with recommendations that state task force (Hawaii Juvenile Justice Working Group) reported in the Final Report of December 13, 2013. The report says, "The Working Group considered evidence that secure confinement has no effect on the risk to reoffend for many youth, and in some cases, may actually increase the likelihood of reoffending" (p. 11).

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**From:** [Gerald Sumida](#)  
**To:** [JDLTestimony](#)  
**Subject:** H.B. No. 2205, H.D. 1, Relating to Crime - Hearing on 3/19/14, 10:00 a.m.  
**Date:** Saturday, March 15, 2014 11:58:18 PM

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As the Coordinator of the Ala Hapuu Neighborhood Security Watch in Salt Lake, we SUPPORT H.B. No. 2205, H.D. 1. Our group was organized in 1997 in response to the increasing number of burglaries which were being committed in our neighborhood and has been active ever since. We strongly support tougher measures such as this bill to deter repeat offenders of property crimes.



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**Subject:** Submitted testimony for HB2205 on Mar 19, 2014 10:00AM  
**Date:** Sunday, March 16, 2014 4:21:29 AM

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**HB2205**

Submitted on: 3/16/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dennis Egge	Individual	Support	No

Comments: I am grateful for your concern and appreciate your efforts to discourage property crime in our State. Predators are attracted like flies to honey, if we treat them as victims and ignore those who are victimized by their culture of stealing

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**Subject:** Submitted testimony for HB2205 on Mar 19, 2014 10:00AM  
**Date:** Monday, March 17, 2014 9:49:42 PM

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**HB2205**

Submitted on: 3/17/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
L. Ragan	Individual	Support	No

Comments: Aloha. Please realize that without any repercussions criminals have NO reason to be lawful. Please pass this with the following amendment: SECTION 1. Section 708-803, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows: "(4) For a conviction under this section, the sentence shall be [either: (a) An] an indeterminate term of imprisonment of five years with a mandatory minimum period of imprisonment of one year without the possibility of parole[; or Mahalo for doing the right thing, Leslie Ragan

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**From:** [Angie Ray Behnke](#)  
**To:** [JDLTestimony](#)  
**Subject:** HB 2205 HD1 - Support with amendment  
**Date:** Monday, March 17, 2014 10:48:42 PM

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Senate Judiciary Committee,  
I support HB 2205 HDI and propose the following amendment:

SECTION 1. Section 708-803, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) For a conviction under this section, the sentence shall be ~~[either:~~

(a) ~~An~~ an indeterminate term of imprisonment of five years ***with a mandatory minimum period of imprisonment of one year without the possibility of parole*** ~~;~~ ~~or~~

Angie Behnke

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**Subject:** \*Submitted testimony for HB2205 on Mar 19, 2014 10:00AM\*  
**Date:** Tuesday, March 18, 2014 8:29:46 AM

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**HB2205**

Submitted on: 3/18/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Hayes	Individual	Support	Yes

Comments:

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**From:** [cbca808@gmail.com](mailto:cbca808@gmail.com)  
**To:** [JDLTestimony](#)  
**Subject:** HB2205  
**Date:** Tuesday, March 18, 2014 8:53:12 AM

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I support HB2205 for repeat criminals to receive jail time. They must pay with jail time to deter others. Property crimes are so damaging to victims emotionally.

Chu Lan Shubert-Kwock  
808 391- 4350  
Clskwock@gmail.com  
Sent via BlackBerry from T-Mobile

Aloha Honorable Chair Clayton Hee and members of the Senate Committee on Judiciary,

I am writing in support of HB2205 HD1, and respectfully offer amendments.

HPD informed Kailua residents that 6-8% of criminals arrested are committing over 70% of the property crimes. Property crime in Kailua ballooned by 89% from June 2012 to June 2013 (Star-Advertiser, "Crime is up in Kailua" July 17, 2013). The catch and release cycle of property crime perpetrators is frustrating, and many are asking why these repeat offenders, who are being arrested, are not being incarcerated? This problem is not isolated to Kailua. After reaching out to every single neighborhood board across the island, it was determined that other communities are experiencing similar problems. As a result, we have collectively established a network, inclusive of your constituents, and together we are looking to this legislative body to effectively address this trend of habitual property crime plaguing our State.

Many criminals who repeatedly commit property crime offenses know that under current law, if caught, the consequences of their conduct is relatively minor. As such, there is currently no serious deterrent to their repeated criminal behavior. However, a mandatory minimum sentence will send a strong message that repeated criminal behavior will not be tolerated.

**Therefore, I strongly support the following amendment to HB2205 HD1:**

SECTION 1. Section 708-803, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) For a conviction under this section, the sentence shall be ~~[either:~~

~~(a) An] an indeterminate term of imprisonment of five years with a mandatory minimum period of imprisonment of one year without the possibility of parole.~~;~~~~or~~~~

The majority of property crimes are drug related and the continual release of these offenders back into our communities will not help their drug addiction, nor is it fair to those they victimize. In fact, the absence of a mandatory minimum arguably **enables** substance abuse among criminals because a drug driven habitual property crime perpetrator will continue to steal from their own families and neighbors as long as they can get away with it.

Legislators, please amend HB2205 HD1. Mandating a minimum sentence of one year for habitual property crime offenders will initiate recovery and allow drug treatment during incarceration, while ensuring public safety. Additionally, a substantial penalty of incarceration will be an effective deterrent to repeated criminal behavior, something painfully absent in current law.

Mahalo for considering my testimony,

Lisa Lonokapu-Cates

Stay-at-home-Mom/Property Crime Victim turned Community Volunteer

**From:** [Homer Maxey](#)  
**To:** [JDL Testimony](#); [Sen. Laura Thielen](#)  
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**Subject:** HB2205 HD1 (habitual property crime bill)  
**Date:** Tuesday, March 18, 2014 11:28:12 AM

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Greetings: My wife and I are members of the Kailua Neighbor Watch program and have been following progress of HB2205 HD1 which was passed through the House and crossed over to the Senate for hearing on Wednesday, March 19<sup>th</sup> in the Senate Committee of Judiciary.

Greetings:

My wife and I are members of the Neighborhood Security Watch program in Kailua and have been following progress of HB2205, HD1 which was passed through the House and crossed over to the Senate for a hearing on Wednesday, March 19 in the Senate Committee of Judiciary.

We support SECTION 1. Section 708-803, Hawaii Revised Statutes, by subsection (4) to read as follows: “(4) For a conviction under this section, this sentence shall be an indeterminate term of imprisonment of five years **with a mandatory minimum period of imprisonment of one year without the possibility of parole**” .

Aloha, Homer Maxey

Aloha, Homer Maxey

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