

Kat Brady <kat.caphi@gmail.com>

4:47 PM (15 hours ago)

to Clayton, Maile, senslom, reprhoads, Della, Chris, Cynthia, bcc: me

Aloha Conferees...

I have attached the Civil Beat Op-Ed that ran on April 11, 2013 as well as the Honolulu Star Advertiser Editorial that ran on February 18, 2013.

All this proposed bill would do is allow the sentencing judge the discretion to impose a lesser maximum term in those cases where the judge decided it was appropriate.

It is frustrating that law enforcement, and the attorney general in particular, is so opposed to judges having this discretion. It reveals not only a mistrust of our judicial system to use the discretion wisely but also evidences a desire to cling to the status quo, despite all indications that we need to change and adapt in order to use our limited resources more effectively.

Hawai'i is a "maximum indeterminate sentencing" state, meaning:

- 1) "maximum" because, if imposing prison (whether by the judge's choice or because it is statutorily mandated), the court MUST IMPOSE 5, 10 or 20 years (for C, B and A felonies, respectively), which is the MAXIMUM that could be served for that offense.
- 2) "indeterminate" because the court's sentence does not provide a set MINIMUM term that the defendant will serve (except for the statutorily mandated mandatory minimums which only bind the parole board from going BELOW that number but do not prevent them from going ABOVE it when they set a minimum term). Under our law, the Parole Board (HPA) sets the MINIMUM term AND decides when the defendant will actually be released.

This system will still function under SB 68. All the bill would do is allow a judge to impose a REDUCED MAXIMUM INDETERMINATE TERM. A reduction is not mandated by the bill, rather, the judge would have discretion to do so when the judge deemed it appropriate, IN SELECT DRUG CASES.

We disagree with the AG's assertion that most defendants sentenced to prison usually have another "reason" than just the drug offense. If they mean that there is an additional offense plus the drug offense, we didn't see any stats to back up that assertion. If it is true, then it merely serves to illustrate what a small group of cases this new law might affect - just the sort of narrow application one might want to try out such a new idea as this.

NY, where the Governor was born was the first state to implement mandatory minimums for drug crimes, known as the Rockefeller Drug Laws. They have seen the light and eliminated these draconian laws with great results as the Civil Beat Op Ed illustrates.

29 states have either reduced or eliminated mandatory sentencing as they realize that these sentences have their prison bursting at the seams and this practice is not sustainable.

The US Sentencing Commission found in their 2011 report that mandatory minimums are 'excessively severe' and 'inconsistently applied'.

Mandatory minimum sentencing is a huge topic as right, left, and middle legislators realize that the war on drugs is a failure and that there are more effective ways of dealing with people who abuse drugs. This is why Judge Alm has taken over drug court to address the most chronic drug abusers - the ones who need the intensive supervision that Drug Court provides.

Mandatory sentencing for B & C drug felonies has proven to be an expensive and unsuccessful strategy for Hawai'i.

Please restore judicial discretion and integrity in our justice system.

Mahalo nui...

Kat

# Hawaii Should Return Sentencing Discretion to Judges

*By Kat Brady 04/11/2013*

<http://www.civilbeat.com/voices/2013/04/11/18800-hawaii-should-return-sentencing-discretion-to-judges/>



Chad Blair/Civil Beat

It took the 2008 economic crisis for states to realize that locking up nonviolent drug lawbreakers is costly and unsustainable and that the war on drugs has been an abject failure. Sanity seems to be taking hold in more than half of the U.S. — the world's largest jailer.

When Nixon initiated the war on drugs his champion was Nelson Rockefeller. The "Rockefeller drug laws" passed in 1973 and New York became the first state to experiment with mandatory minimum sentences for comparatively small drug offenses. Nearly four decades later New York repealed them over the strenuous objections of prosecutors who predicted soaring crime rates.

In 2004 and 2005, New York reformed its drug laws, increasing the felony thresholds for many drug offenses, and allowing hundreds of drug offenders to apply for re-sentencing under less strict sentencing laws. In 2009, building on those reforms, New York repealed most mandatory minimums for drug offenses, focusing on treatment instead of incarceration for most drug crimes. While those changes were supported by virtually everyone who had studied the issue for the better part of four decades, not every group was supportive.

During every step of the process some prosecutors worked to block the reforms and their implementation, promising that real reform of the Rockefeller Drug Laws would result in chaos on the streets. One prominent prosecutor, in a letter to legislators, even suggested that the reforms would "pave the road to hell."

In fact, since reforming its mandatory minimum drug laws in 2004, New York's violent and property crime rate has fallen 13 percent. Reform and repeal of New York's mandatory minimum drug laws have not resulted in higher drug activity. Felony drug commitments to New York's prisons dropped 40 percent between 2005 and 2011. The total number of drug offenders in New York's prisons dropped 48 percent between 2005 and 2011. And statewide drug arrests fell nearly 30 percent between 2007 and 2011. Meanwhile, New York's prison population is down 22 percent since 2000, and taxpayers have saved hundreds of millions of dollars.

The only reasonable conclusion one can draw from New York's experiment with mandatory minimum drug laws is that despite prosecutors' promises, reliance on mandatory minimums failed to control crime or drug activity, and despite prosecutors' predictions, repeal of mandatory minimums has not led to increased crime or drug activity.

Last month Sens. Patrick Leahy (“Reliance on mandatory minimum sentences has been a “great mistake.””) and Rand Paul (“Judges will tell you that current federal sentencing laws — known as mandatory minimums — don’t actually do anything to keep us safer.”) co-authored the Justice Safety Valve Act of 2013.

Speaking at a convention on April 4th, U.S. Attorney General Eric Holder said, "Too many people go to too many prisons for far too long for no good law enforcement reason."

In a 2006 Hawaii case study, Lengyel and Brown figure that the net cost to the state for the 197 drug offenders' total prison terms upon their release in 2006 had come to \$15.6 million. "The cost of incarcerating drug offenders greatly exceeds the corresponding social benefit," they concluded.

Law enforcement vehemently promotes mandatory minimums because prosecutorial discretion is essentially conducted behind closed doors, whereas that of a sentencing judge is conducted in an open courtroom.

Hawaii has a chance to get on the right side of history by enacting into law [SB 68 SD1 HD1](#) that passed 3rd reading in the House. Will Hawaii continue dancing in the dark with law enforcement or restore discretion to our courts?

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#### Sources:

- [Why is Anyone Still Listening to Prosecutors on Mandatory Minimums?](#)
- [Eric Holder: Some prison terms too long](#)
- [Leahy Says Immigration Top Priority for Senate Judiciary Committee](#)
- [PAUL: Minimizing authority of judges, Mandatory sentencing pre-empts individual consideration](#)
- [Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures. 5. THE IMPACT OF MANDATORY MINIMUM SENTENCES, 5.4 Mandatory Sentences for Drug Offences](#)

Bart Dame · Top Commenter · Honolulu, Hawaii

Well-reasoned and well-written, Kat. Thanks for all you do. One of my few sources for optimism at the Legislature is that more and more of them appear to be according Kat Brady the respect her insights deserve. They don't always listen, but you sometimes keep them from making some bad mistakes.

Reply · 4 · Like · Follow Post · April 12 at 8:50am

Liana Petranek · Associate Editor at Arab Studies Quarterly

Better to decriminalize drugs and treat drug problems with a universal single payer health plan like they do in more civilized countries.

Reply · 1 · Like · April 12 at 9:08am

Dawn Morais Webster · Following · Top Commenter · University of Hawaii at Manoa

Thanks Kat Brady for all you do on behalf of those who are in prison and for being a voice for much needed reform.

Reply · 3 · Like · Follow Post · April 11 at 9:08am

# Repeal drug mandatory minimums

[www.staradvertiser.com/.../20130218](http://www.staradvertiser.com/.../20130218)

POSTED: 01:30 a.m. HST, Feb 18, 2013

Hawaii is one of the nation's safest states from violent crime but prison walls have been spilling over to Arizona because of another policy: mandatory minimum sentences for drug offenses. A federal sentencing commission determined two years ago that such sentencing rules are "excessively severe" and studies in Hawaii agree. Putting offenders behind bars for a requisite period in drug cases is harsh, futile and expensive, and state legislators should put the mandate aside.

Congress approved mandatory minimum sentences as part of the "war on drugs" in the 1970s. Hawaii passed its mandatory minimum for drug offenders in 1986 and so did most other states. By the 1990s, then-U.S. Chief Justice William Rehnquist acknowledged that those measures were "perhaps a good example of the law of unintended consequences."

Mandatory minimum sentencing laws eliminate judicial discretion, testified Kat Brady of the Community Alliance on Prisons at the Senate Judiciary and Labor Committee, which voted to advance the bill last week. "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 circumstances and facts of the case."

In Hawaii, drug offenders convicted of possessing a certain amount of drugs, a Class B felony, are sentenced to the minimum prison term of five years for possessing a certain amount of "dangerous" drugs, while distributing it to a minor is a Class A, which would automatically end with 10 years imprisonment.

But is that offense such a danger to society? Actually, in a 2006 case study in Hawaii, 97.6 percent of the drug offenses were not violent or personal crimes. The average drug offender spends an average of 39 months in prison, costing taxpayers an average of \$85,000 per drug offender, according to a 2009 study by Thomas E. Lengyel of the American Human Association in Denver and University of Hawaii-Hilo sociology associate professor Marilyn Brown.

Lengyel and Brown figure that the net cost to the state for the 197 drug offenders' total prison terms upon their release in 2006 had come to \$15.6 million. "The cost of incarcerating drug offenders greatly exceeds the corresponding social benefit," they concluded.

Many states now recognize that an expenditure is better focused on substance abuse programs than on lengthy imprisonment. The National Council of State Legislatures has concluded that sentences should reflect "the harm caused, the effects on the victim and the community and the rehabilitative needs of the offender." Mandatory minimum sentences for drug offenses don't do that and should be eliminated, in favor of judicial discretion and refining justice

