



The Judiciary, State of Hawaii

Testimony to the Twenty -Fourth State Legislature, 2008 Session

House Committee on Human Services & Housing

The Honorable Maile S.L. Shimabukuro, Chair

The Honorable Karl Rhoads, Vice Chair

Tuesday, February 12, 2008, 8:40 a.m.

State Capitol, Conference Room 329

by

Frances Q.F. Wong

Senior Judge / Deputy Chief Judge

Family Court, First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 3362, Relating to Crime

Purpose: Mandates that minors be tried as adults in cases of murder in the first and second degrees and sexual assault in the first and second degrees.

Judiciary's Position:

The Judiciary takes no position on this measure but we offer the following observations.

The existing law has not been problematic. Human behavior, both by adults and juveniles, can have tragic consequences, but the law itself is sound. Nationally, jurisdictions are reconsidering mandatory laws, which have dramatically increased the numbers of juveniles incarcerated in adult prisons with no, or actually negative, effect on community safety.

Thank you for the opportunity to provide testimony on this matter.

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Human Services
And Housing**

Hrg: Tuesday, February 12, 2008, 8:40 a.m.
3 copies required

H.B. No. 3362: RELATING TO CRIME

Chair Shimabukuro and Members of the Committee:

We oppose the passage of H.B. No. 3362. This bill would remove the requirement of a hearing on the issue of waiver of family court jurisdiction over a minor who is at least fifteen years of age where the minor: 1) is alleged to have committed a previous act which would constitute a violation of any federal, state or local law or municipal ordinance and 2) has been charged with Murder in the First Degree, Murder in the Second Degree, or Sexual Assault in the First or Third Degrees.

Under the current law, minors in this age category who are alleged to have committed the offenses specified in this bill are already subject to waiver of family court jurisdiction ("waiver") pursuant to HRS § 571-22(b). However, such a waiver can only be accomplished following a full investigation and hearing before a family court judge. Waiver of minors in this age group is currently discretionary, not mandatory.

This bill seeks to make waiver mandatory and also to dispense with the need for the family court hearing when the minor is alleged to have committed the specified offenses. We are deeply concerned that the bill seeks to remove the right to a waiver hearing which is an important due process protection for the accused. Law enforcement authorities need simply accuse a child of one of the enumerated offenses to immediately place the child in the adult criminal justice system.

The effects of a waiver of family court jurisdiction on a minor are extreme. The child is immediately placed under bail which would presumably be very high for an offense such as murder. If the child cannot post bail, he/she would be detained until the trial in an adult correctional facility. In such a facility, you would have a minor as young as fifteen locked up side-by-side with adult offenders. Undoubtedly, that child will be subject to physical as well as emotional abuse from other adult inmates. If the child is convicted, he/she would receive prison terms of an adult length to be served in an adult correctional center.

The most disturbing aspect of the bill is that a child could be incarcerated in the adult facility while awaiting a trial which could result in an acquittal or conviction on a lesser offense. In the recent past, our office has tried waiver cases of Attempted Murder which resulted in jury verdicts of Assault in the Third Degree, a misdemeanor. It is also not uncommon for juveniles to be acquitted of sexual assault accusations.

The inclusion of sexual assault for mandatory waiver is very problematic. The juvenile courts annually hear a large number of sexual assault cases, many involving minors being caught by adults in sexual activity with other minors. Unfortunately, oftentimes the

reaction by one of the minors is to declare that he/she was forced into the activity resulting in a sexual assault complaint pushed by the adult guardian. The bill would also automatically waive a fifteen year old alleged to have had consensual sex with a thirteen year old which is a fairly common occurrence. That fifteen year old, if convicted of consensual sex in the adult courts, would receive a twenty year prison term. This bill, with the inclusion of sexual assault, would open the floodgates to minors, by the dozens, being immediately transferred to adult courts and detention facilities.

The family court currently does not hesitate to waive its jurisdiction on a minor when waiver is necessary. That is handled on a case-by-case basis after a full investigation and a thorough consideration of the facts presented to the court. There is no justifiable reason for removing the requirement of a hearing upon the simple accusation of a law enforcement officer. Our constitutional system is premised on checks and balances and the current waiver procedure exists as such a check on governmental power.

Thank you for the opportunity to comment on this bill.

From: Rich Witek [mailto:alohawitek@hawaii.rr.com]
Sent: Saturday, February 09, 2008 8:53 AM
To: HSHtestimony
Cc: Rep. Kymberly Pine
Subject: HB 3362

Dear Committee:

Youthful offenders who commit first and second degree murder and sex offences should be tried as adults. They are committing adult crimes and their punishment should fit the crime regardless of their age. Youthful offenders know exactly what they are doing and will continue to commit such crimes well into adulthood. I don't have the statistics but you have access to them. How many adults who commit serious crimes have juvenile records? I suspect if you investigate you will be astonished at the number! Not just the number of offenders who have committed crimes but the number of crimes each offender commits as juveniles and get their hands slapped. We read about it in the newspapers everyday. You are citizens of the State of Hawaii just as I am and you have the right to feel safe in your own home. So did Karen Ertell! Look what happened to her. I can assure you that if you don't act now and pass this bill for a full vote in the House you will be setting the stage for the perpetrator of this crime to do it again. He will do it again and again until one day society says enough is enough and puts a stop to this behavior. The next time he does, it may be a member of your family. Your vote is a matter of life or death. If you don't think it is ask the family of Karen Ertell.

Today is the day society says "enough is enough"! Therefore, I respectfully urge you move HB 3362 from committee to the State House for full vote with your recommendation of YES in favor of this bill being adopted.

Respectfully,

Rich Witek
91-247 Lukini Pl
Ewa Beach

From: T. Allard [mailto:vanrana@hotmail.com]
Sent: Friday, February 08, 2008 4:41 PM
To: HSHtestimony
Cc: Rep. Kymberly Pine
Subject: HB3362 "Karen's Law"

Because of a false sense juvenile responsibility we, let Karen Ertrell die so horrendously. Because we failed to act protect Hawaii residents from depraved individuals, Karen was wantedly murdered and raped by her assailant. Her alleged assailant apparently has a record of violence and felonies that trail him around the world. Just because he is 15 years old doesn't mean he did not know that what he was doing was more than wrong and illegal.

The time has come for the state to stop letting people get away with heinous crimes just because they are under some arbitrary age. We need to rethink what the age of responsibility should be. If someone is capable of such crimes, he or she should be treated as an adult. During the Revolutionary War, and in other wars, we saw individuals in their mid-teens fight and die for the rights of all citizens to pursue our ideals of Life, Liberty, and the Pursuit of Happiness. These youth voluntarily gave their lives for these principles; Karen's attacker violated her and denied her these rights, why should he receive special consideration?

Further, we have the responsibility to protect our keiki from such predators. Citizens of Hawaii are no longer willing to risk the lives of their children to protect the privacy of miscreants like Karen's accused attacker. We are not talking about an eight-year-old who pulled up the flowers in a neighbor's yard; we are talking about a 15-year-old joy riding. It is time we start holding people...including 15-year-olds...responsible for their actions and stop looking for excuses for their crimes. It is time we insist that our judges uphold the community values and not their own. Please see that HB 3362, not only clears your committee, but is passed by the House and the Senate and is signed into law.

Terry M. Allard
19-179 Makale'a Street
Ewa Beach, HI 96706
685-3430

From: Debbie Poki [mailto:dpokihantas@msn.com]

Sent: Friday, February 08, 2008 12:58 PM

To: Rep. Kymberly Pine; HSHtestimony

Subject: Bill # HB 3362

To Whom Ever this concerns:

As a resident of Ewa Beach and a friend of Karen Ertell. I am totally in support of Bill # HB 3362.

Please pass this bill, hopefully it will help to make our community a safer place to live.

Sincerely,

Deborah F Poki
91-1860 Park Row
Ewa Beach, HI 96706

From: Dennis Young [mailto:dennisomar@hawaii.rr.com]
Sent: Thursday, February 07, 2008 3:42 PM
To: HSHtestimony
Cc: Rep. Kymberly Pine; Rep. Kymberly Pine
Subject: Karen's Law

This is so pathetic that we have progress to this point in our society.

I ask for your support to prosecute violent 'criminals' no matter the age limit. Laws were meant to protect our citizens. But, once a citizen chooses to live outside of the civil laws of our society, they forfeit their rights as a consequence.

The responsibility to protect the 'innocent' requires us to pass this law.

Aloha,
Dennis YOUNG

From: Rob Wetzel [mailto:rlw777@hotmail.com]
Sent: Monday, February 11, 2008 9:53 AM
To: HSHtestimony
Cc: Rep. Maile Shimabukuro
Subject: HB3362

ROB L. WETZEL, Ph.D., Inc.
Clinical & Counseling Psychology
1600 Kapiolani Blvd., Suite 1306, Honolulu, Hawaii 96814
Telephone: 949-7444 • Fax: 949-6262

To: Honorable Representative Maile S.L. Shimabukuro, Chair
Human Services & Housing Committee

Re: **HB3362, Relating To Crime**

I am testifying in opposition to proposed legislation mandating that minors be tried as adults in cases of first degree sexual assault and second degree sexual assault.

Over the past seventeen-plus years I have provided specialized psychological assessment and treatment to well over 460 youth who have sexually offended and thus have become well familiar with the manner in which our state Family Courts--especially Family Court of the First Circuit--manage youth charged with sexual assault. From that perspective I can assure you that the courts typically impose very substantial punishments/consequences for illegal sexual misconduct while also promoting a high degree of community safety and appropriate rehabilitation and treatment interventions appropriate to the developmental needs of our state's children and adolescents.

There is a considerable number of empirical research studies which, with remarkable consistency, show that youth who are transferred to adult courts go on to commit new crimes and reoffend more quickly, more often and more seriously compared to youth retained in the juvenile justice system. Thus, waiving kids to adult court actually has the unintended results of increasing crime and *reducing* community safety. A summary of findings of key research studies assessing the impact of transferring juveniles to adult courts follows:

Bishop, D., Frazier, C., Lanza-Kaduce, L., and White, H. 1999. *Fact Sheet #113: A Study of Juvenile Transfers to Criminal Court in Florida*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency

Prevention. Available from (OJJDP's) Juvenile Justice Clearinghouse at 800-638-8736 or online at: <http://www.ojjdp.ncjrs.org/about/99juvjust/990812b.html>.

Summary: This fact sheet provides a brief overview of the four research components of the Florida transfer study assessing the impact of transfer laws and practices, including the effectiveness of using transfer as a crime control strategy. Florida leads the Nation in juvenile transfers to criminal court.

Bishop, D., Frazier, C., Lanza-Kaduce, L., and White, H. 1996. The transfer of juveniles to criminal court: Does it make a difference? *Crime & Delinquency* 42:171-191.

Available from National Council on Crime and Delinquency at 415-896-6223. Website address: <http://www.nccd-crc.org>.

Summary: This study found that transfer to criminal court increased the likelihood of recidivism. Recidivism of youths who were transferred to criminal court in Florida in 1987 was compared with that of those retained in the juvenile system. The results indicated that transferred youths quickly reoffended at a higher rate than matched nontransferred youths. The seriousness of reoffending was also greater for the transfer group than for the nontransfer group, with transfers more likely to commit a subsequent felony offense. The findings suggest that transfer made little difference in deterring youths from reoffending. Adult processing of youths in criminal court actually increases recidivism and it appears to have little if any incapacitative effects on crime control and community protection.

Fagan, J. 1995. Separating the men from the boys: The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders." In *A Sourcebook: Serious, Violent, and Chronic Juvenile Offenders*, edited by J. Howell, B. Krisberg, J.D. Hawkins, and J. Wilson. Thousand Oaks, CA: Sage Publications, Inc.

Available from National Criminal Justice Reference Service at 800-851-3420. Website address: <http://www.ncjrs.org>.

Summary: This research showed that criminalization of adolescent crimes failed to provide more effective punishment and lower recidivism rates. The deterrent effects of juvenile versus adult court sanctions on recidivism and reincarceration were compared for 15- and 16-year-old adolescents charged with robbery and burglary in juvenile court in New Jersey with identical offenders in matched communities in New York State whose cases were adjudicated in criminal court. The results indicated that recidivism rates were higher for adolescents in criminal court, their rearrests occurred more quickly, and their return to jail was more likely. Sentence lengths were comparable for both the juvenile and criminal court offender groups. The expected outcomes of greater accountability and lengthier sentences were not gained from criminal court punishment. Nor was community protection increased with the likelihood of recidivism with the severity of criminal court sanctions. The policy implications from this study suggest continued special jurisprudence for adolescent crimes and a separate jurisdiction for juvenile offenders.

Grisso, et al. 2003. Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants. John D. and Catherine T. MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice.

Summary: This study shows that a significant portion of children 15 or younger are not competent to stand trial in a criminal proceeding. The findings reveal that approximately a third of children aged 11 to 13 and approximately a fifth of those aged 14 to 15 to be impaired in abilities consistent with that of mentally ill adults who have been found incompetent to stand trial. Also, youth of below-average intelligence are more likely than youth of average intelligence to be impaired in capacities relevant for competence to stand trial. Older adolescents did not perform significantly different from young adults.

Mason, C. and Chang, S. *Re-arrest Rates Among Youth Sentenced in Adult Court: An Evaluation of the Juvenile Sentencing Advocacy Project*. 2001. Juvenile Sentencing Advocacy Project, Miami-Dade County Public Defender's Office. Available online: <http://www.pdmiami.com/JSAP 2001 Impact Evaluation.pdf>

Summary: This study shows that youth tried as adults who are given adult sentences are twice as likely to re-offend as youth who are sentenced to juvenile justice programs. The findings reveal that over a one-year period, almost 90% of the youth sentenced to adult probation or boot camp re-offended or violated the terms of their sentences. In contrast, 40% of youth who received juvenile justice sanctions (mostly year-long juvenile residential programs or probation) re-offended or violated their sentences. When compared with youth given adult sanctions, the youth given juvenile justice sanctions had lower re-offense rates, even when they had similar delinquency histories and charges.

Redding, R. 1999. Examining legal issues: Juvenile offenders in criminal court and adult prison. *Corrections Today*. Available from American Correctional Association at 800-222-5646. Website address: <http://www.corrections.com/aca/cortoday/index.html>.

Summary: This paper reports of key research findings that criminal prosecution and/or imprisonment does not deter juvenile crime; that criminal court adjudication takes longer; that criminal court adjudication generally produces higher recidivism rates for most offenders. In addition, recommendations for needed research, legislative and policy reform are discussed.

Winner, L., Lanza-Kaduce, L., Bishop, D., and Frazier, C. 1997. The transfer of juveniles to criminal court: Reexamining recidivism over the long term. *Crime and Delinquency* 43(4): 548-563. Available from National Council on Crime and Delinquency at 415-896-6223.

Summary: This Florida study in 1987 on matched pairs of juveniles found that transferred youths reoffended more quickly than did their nontransferred counterparts. However, the impact of transfer on cases involving property felonies reduced recidivism. Transfer diminished the rearrest chances for property felons in comparison to rearrest among transfers for other offense categories. Although property felons who were transferred may have been less likely to reoffend, when they did reoffend they reoffended more often and more quickly. Once the effect of

offense type was controlled, the analysis confirmed that over the long run transfer led to more recidivism.

With regard to youth with sexual behavior problems and sexually abusive youth, I have personally reviewed more than fifty recidivism studies regarding juvenile sex offenders and note that the typical rates of reoffending, even when youth are followed into adulthood, is in the range of from 5% to 11%. Virtually all research and clinical practice clearly demonstrates that juvenile sex offenders are importantly and significantly very dissimilar from adult sex offenders and warrant legal interventions in accord with those developmental differences.

The Association for the Treatment of Sexual Abusers, a respected national professional organization, recommends against imposing adult sanctions for the majority of juvenile sex offenders and in favor of retaining prosecution and adjudication of them in juvenile and family courts.

I earnestly request the Senate Human Services and Public Housing Committee reject SB3179 as adverse to the best interests and rehabilitation of Hawaii's sexually offensive youth and inimical to community safety.

Respectfully Submitted,

Rob L. Wetzel, Ph.D.

Hawaii Licensed Psychologist #174;
Certified: National Register of Health Service Providers in Psychology #23363;
Clinical Member: Association for the Treatment of Sexual Abusers;
Member: National Adolescent Perpetration Network, American Professional Society on the Abuse of Children, International Society for the Prevention of Child Abuse and Neglect,
American Psychological Association, Hawaii Psychological Association,
American Association for Correctional and Forensic Psychology

From: Masumi Masamitsu [mailto:mamasamitsu@gmail.com]
Sent: Monday, February 11, 2008 12:05 PM
To: HSHtestimony
Cc: Rep. Kymberly Pine
Subject: Karen's Law-House Bill 3362

To whom it may concern,

I support HB 3362 because:

I heard about Karen Ertell in the news and had the wonderful opportunity to meet her daughter and grandson. I feel for them because of the loss they have endured.

I'd like to see the person who allegedly murdered Karen Ertell tried as an adult because he should be held accountable for his actions.

If this law does not pass, Karen Ertell's family will not feel closure to this nightmare.

If this bill doesn't pass, I would hate to know that there will be countless others that should be tried as an adult in cases of first and second degree murder and first and second degree sexual assaults, that will not.

If this bill doesn't pass, it sends a message to minors that it's o.k. to do terrible things and that they'll just get a slap on the hand by being held in Family Court because they are young.

I look forward to hearing the results of this hearing.

Sincerely,

Masumi Masamitsu

From: Malanie McLellan [mailto:malaniemclellan@yahoo.com]
Sent: Monday, February 11, 2008 11:52 AM
To: HSHtestimony
Subject: Bill 3362, "Karen's Law"

Dear Committee,

Thank you for hearing House Bill 3362, "Karen's Law" on Tuesday, February 12th.

My foster mother, the only mother I ever knew was brutally attacked, beaten, raped, robbed and strangled to death in her 'Ewa Beach home on May 25th of 2007. I was 9 months pregnant with the Grandson she was so eager to meet, when I found her lifeless body lying in her bed (her attacker also spent hours trying to cover up the crime).

Juveniles capable of these crimes must be held accountable. I am asking you to please seriously consider the passing of House Bill 3362, "Karen's Law".

1st and 2nd degree murder, and 1st and 2nd degree sexual assault are not crimes to be taken lightly. We need the community to know that we will keep them safe and I believe this bill communicates that. If my mother's attacker had known that he would automatically be tried as an adult for his crimes, would he still have chosen to carry out the rape and murder that he had planned for her? We will never know, and in the meantime, my son (who I gave birth to 3 weeks after finding my mother dead) will not know the Grandmother who used to feel him kick when he was in my belly, and I will not have the only Mother I have ever known. Karen wanted to adopt more foster children in the future, now it will never be possible. It is a life sentence of pain for us.

We do not want to take away the rights of juveniles to have access to a waiver hearing for less serious crimes. We believe, though, that rape and murder are adult crimes that must be met with adult consequences. Even if a juvenile is tried as an adult, they still have their legal right to prove themselves innocent or guilty in adult court, and sentenced appropriately.

Thank you for considering this bill and for taking the time to read my letter.

Aloha,

Malanie McLellan

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From: Kelsy S. Dunlap [mailto:kelsystar@gmail.com]
Sent: Monday, February 11, 2008 12:45 PM
To: HSHtestimony
Cc: Rep. Kymberly Pine
Subject: Karen's Law - HB 3362

Dear Committee on Human Services and Housing:

I am writing today to express my support for HB 3362, "Karen's Law."

I am Karen Ertell's niece.

When I learned of Karen's murder, I knew exactly who had killed her. I knew it was the same person who had repeatedly broken into her house. I knew it was the person who had stolen money from her. I knew it was the person who had tried to steal her car. I knew it was the person whom she had finally decided to press charges against after she had given him so many chances to repay her. I knew he had raped her. I knew he had planned it.

But I don't know his name.

If he is tried and convicted as a juvenile, no one will ever know his name. No one will know that he is the one who stole Karen Ertell from my family and her community. Who brutally raped and murdered her with his bare hands. He would not be listed on a sex offender registry. No record of his crime would exist and his slate would be wiped clean on his 19th birthday.

If he is tried and convicted as an adult, his name will be known. Everyone will know that he is a rapist and a murderer. He will be listed in Hawai'i's sex offender registry. You will know if he moves into your neighborhood. There will exist a permanent record of his crime and what he is capable of.

Karen was murdered almost 9 months ago. My family still does not know if my aunt's murderer will be tried as a juvenile or as an adult. We fear that we will never know his name. That he may be released on his 19th birthday. That he will kill again. That another family may have to suffer as we have.

Karen's Law would keep other families from having to wonder whether or not their loved one's murderer will go free in a few short years. Karen's Law would ensure that murderers and rapists will be known for what they are regardless of age. Karen's Law protects Hawai'i.

Thank you for your support of Karen's Law.

Sincerely,

Kelsy S. Dunlap

From: joyceilidh@gmail.com [mailto:joyceilidh@gmail.com] **On Behalf Of** Joy Ceilidh
Sent: Monday, February 11, 2008 1:22 PM
To: HSHtestimony
Cc: Rep. Kymberly Pine
Subject: In support of Karen's Law

I am the girlfriend of Karen Ertell's niece. We have suffered for nearly a year now, waiting for a decision to come about whether or not the young man who is accused of raping her, stealing from her, and finally murdering her will be tried as an adult.

I have compassion for this young man. However, I do not see how trying him as a juvenile could possibly be the right course of action for the protection of others in the community. When a juvenile who is tried as a juvenile is found guilty of such serious crimes, the community is not served, and neither is the person found guilty. S/he has those records sealed, and by the time they are 19, those young adults are released, and the community is given no record of the crimes. This is incredibly dangerous. Future spouses, employers, neighbors of the rapist, thief, and murderer would have no access to background checks on the person before welcoming him or her into their lives.

When a person commits such grave crimes, s/he should automatically be tried as an adult. This would allow the evidence to be considered and the case for the prosecution and defense to actually take place right away, thus sparing the family of the victim(s) as well as the accused and his/her family to get on with their lives.

Karen Ertell was brutalized and murdered last May. It is now February, and we still hold our breath and wait for a hearing to determine whether or not the accused (and confessed) murderer will be even tried for his actions in a court which can impose a sentence that would protect the community.

Please vote to pass Karen's Law. Some small good should come from her senseless death.

-Joy