

**COMMITTEE ON HUMAN SERVICES & HOUSING**  
**Rep. Maile S. L. Shimabukuro, Chair**  
**Rep. Karl Rhoads, Vice Chair**  
**Tuesday, February 12, 2008**  
**Room 329 at 8:40am**

LATE TESTIMONY

**OPPOSE: HB 3362 RELATING TO CRIME**

Aloha Chair Shimabukuro, Vice Chair Rhoads and Members of the Committee:

My name is Carrie Ann Shirota, and I am writing in strong opposition to HB 3362. My experiences as a former Public Defender, Civil Rights Enforcement Attorney, and reentry staff member have shaped my advocacy efforts to improve our criminal justice system. I firmly believe that we must enact policies that better prepare our youth and adults for their successful reintegration into the community as law-abiding, contributing citizens.

While I understand that HB 3362 was introduced as a result of a tragic death in our community, horribly misguided violence and dangerous behavior by youth must be met with early intervention and correction. As a community, we must not respond to this tragedy by passing irresponsible and uninformed "get tough" legislation that has proven ineffective in deterring crime and reducing recidivism. I strongly oppose HB 3362 for the following reasons:

- **Simply putting young offenders in the adult justice system does not reduce crime. Studies suggest that juveniles tried as adults are even more likely to commit new crimes than those whose cases are judged in juvenile courts.** The Urban Institute. A November 2007 report from the Center for Disease Control and Prevention finds that teens sent to adult facilities commit more crimes on average than those sent to juvenile facilities. A study in New Jersey found that juveniles transferred to adult facilities are 39 percent more likely to be rearrested for a violent offense than are teens in juvenile detention.
- **In general, our law treats young adolescents different from adults because their brains are anatomically undeveloped in parts of the cerebrum associated with impulse control, regulation of emotions, risk assessment and moral reasons.** (i.e. unable to obtain a driver's license until a certain age, can't get married until a certain age, etc.) SB 2085 fails to recognize that there are developmental and legal distinctions between adolescents and older teens and adults. We must allow for a child's capacity for growth, change and redemption!
- **Children in Adult prisons become targets for sexual and physical assault.** Juveniles placed in adult prisons are at heightened risk of physical and sexual assault by older prisoners. According to the National Institute of Justice, NIJ's Response to the Prison Rape Elimination Act 60, *Corrections Today* (Feb. 2006), children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities. In some cases, youth incarcerated in adult prisons are forced to prostitute themselves in exchange for protection from physical beatings and sexual assault by other inmates.
- **The vast majority of children in our youth juvenile prisons and sentenced as adults share childhoods of neglect, physical and sexual abuse and suffer from family histories of drug and alcohol dependence.** Research has shown that juveniles subjected to trauma, abuse and neglect suffer from cognitive underdevelopment, lack of maturity, decreased ability to restrain impulses and more susceptibility to outside influences. See Nancy Kaser=Boyd,

Ph.D., Post-Traumatic Stress Disorders in Children and Adults: The Legal Relevance, 20 W. St. U. L. Reve. 319 (1993).

- **Native Hawaiian children will be disproportionately sentenced under this bill and tried as adults regardless of the circumstances surrounding the criminal behavior** The reality is that Kanaka Maoli are disproportionately locked up in juvenile and adult prisons. This sentencing bill will exacerbate the underlying racism embedded in our criminal justice system.

As the Urban Institute has pointed out, there are alternatives for developing effective approaches to crime reduction that both enhance community safety and deliver age-appropriate penalties for young offenders. These approaches depend on a broad mix of programs and graduated punishments tailored to offenders' ages and unique circumstances.

- In Kentucky, state officials place many young offenders in small, family-like settings instead of putting every youth, regardless of age or crime, in large correctional institutions.
- Treatment alternatives developed in South Carolina have reduced long-term rates of re-arrest among serious offenders.
- In Portland, Ore., when officials boosted community supervision programs, pre-trial juvenile detention dropped 80 percent without any increase in crime by youth awaiting trial.
- Juvenile Justice Performance Standards  
In September 2004, the Missouri Standards for Administration of Juvenile Justice Committee released the Revised Missouri Court Performance Standards for the Administration of Juvenile Justice in order to promote best practices and to provide an empirical basis for planning, assessing, and improving juvenile justice in Missouri. These performance standards were developed based on the notion that court performance should be driven by core values of equality, integrity, fairness, and justice. Graduated Sanctions Demonstration Site Buchanan County Juvenile Court, Fifth Judicial Circuit, is participating in a national graduated sanctions project that the Office of Juvenile Justice and Delinquency Prevention awarded to the Juvenile Sanctions Division of the National Council of Juvenile and Family Court Judges. **As a result of a coordinated graduated sanctions effort, Buchanan County reduced its detention rate and detention population by half;** developed a complete psycho-social, health, and dental assessment for delinquent youth; redesigned its combined short- and long-term detention and placement facility from a boot camp to treatment model; established a strengths- and resiliency-based assessment and supervision strategy; and participated in an evaluation of its empowerment program for delinquent youth from a dependency background. For more information, contact Chad Campbell, Chief Juvenile Officer, Buchanan County Juvenile Office, at (816) 271-1421 or [Chad.Campbell@courts.mo.gov](mailto:Chad.Campbell@courts.mo.gov).

Please step back and analyze this bill on its own merit. It fast tracks our youth to adult prisons that are essentially criminal colleges that provide less rehabilitation, while introducing youths to older inmates' beliefs and habits. A critical analysis must lead to the conclusion that it creates bad public policy and will not make our community a safer place to live.

Instead, let's invest our resources in policies that have proven effective in helping our troubled youth rebuild their lives and become contributing members of our community. Please hold HB 3362.

Sincerely,

Carrie Ann Shirota, Esq.  
Kahului, Hawai'i  
[cashiota@aol.com](mailto:cashiota@aol.com)

LATE TESTIMONY

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**From:** Michael L Bennett [mailto:bennettmichaell@yahoo.com]  
**Sent:** Monday, February 11, 2008 10:03 PM  
**To:** HSHtestimony  
**Cc:** Rep. Kymberly Pine  
**Subject:** VOTE NO! HB3362

Dear committee,

**I am forwarding the e-mail that I sent to Representative Pine. I have not heard back from my representative regarding my feelings towards thi Bill for an Act and Ms. Pine allegedly represents me in the 43rd District. I am extremely disapointed that she did not respond. I am very close to the case of Karen Ertell and have been an active supporter of Rep. Pine.**

**My grief stricken freind Malanie McClellan and her family are being manipulated by a "tough on crime" sleazy politician. I believe tha Ms. Pine is using the tragic murder of Karen Ertell to gain noterieaty and bolster her carear. I am so disapointed in her actions. My freind Malanie is so hurt and at a point in her grieving process where all she wants is vengance. I love Malanie and her family so much and can't imagine the amount of pain that she is in. However, HB3362 will not releive that pain nor does it have any likelihood of stopping violent crimes perpetrated by juvenile offenders.**

**This bill does not address the concerns of Hawaii's children. If this State would open its eyes to the problems of our youth and invest time and money into providing a way to rehabilitate juvenile offenders Karen Ertell may still be alive today. The boy who murdered and raped Ms. Ertell should have never been walking around. He sent bright flashing neon sings telling the community that he was a danger and should not be walking around freely. If the state developed programs to step in at the first offense commited by a juvenile especially a violent offense and mandated him either to a reform school, psychiatric hospital or the very least a home arrest. We need to beef up our school systems with psychologists and psychiatrist and we need to beef up our juvenile courts with the same. As a society if we start giving up on rehabilitating juvenile offenders then what does that say about how we are going deal with our adult offenders.**

**HB 3362 saddens me and I believe it would sadden Karen Ertell. Karen Ertell tried to lend a helping hand to many who fell astray. I beleve that if she were alive today she would not support a bill that would not allow Hawaii's juvenile offenders a chance. Ms. Ertell's murder is big sign for a state that sweeps it troubles under the rug with an "aloha". We have serious problems here that are not being addressed.**

**HB 3362 does even try to address the serious problems that we have:**

- 1. HB 3362 only deals with a juvenile when it has gotten to the point where he has been accused of Murder and/or Rape  
(so for this bill to "help" deal with juvenile offenders the community we must have another victim)**
- 2. HB 3362 strips away a vital step in justice system: Due Process  
(how is taking away the right to a waiver hearing going to help anyone)**
- 3. HB 3362 does not address any other violent crime (e.g. robbery, assault and battery, terroristic threatening)  
(is the community supposed to wait until someone is brutally murdered and raped before we do anything)**

**HB 3362 does nothing to help promote a safer Hawaii. HB 3362 will not help us reduce juvenile crime.**

**I am willing to assist in any real legislation that would help make this community a safer place and help rehabilitate our juvenile offenders. However I am disappointed that Ms. Pine believes that scratching out a few sentences from HRS §571-22 is going to help anyone she is very much mistaken.**

**I strongly object to this bill and if does not get rejected tomorrow I implore you to put it to a referendum because I do not believe that my Representative, Ms. Pine, cares how her constituents feel about this and is clearly wasting a lot of people's time and money with this bill. Time and money that can be used to strengthen our juvenile courts, strengthen the services that we offer to victims and most importantly begin early intervention with juvenile offenders.**

**Very Truly Yours,**

**Michael Bennett, CLA  
w) 808-533-4444  
c) 808-371-7485  
h) 808-689-3121**

**Below please find the e-mail I sent to Ms. Pine several weeks ago I also forwarded it to Neil Abercrombie you shared some enlightening ideas with me. Ms. Pine, however did not care to respond to an e-mail from a concerned constituent.**

**Dear Rep Pine,**

**I am a one of your constituents and a very good friend of Malanie McClellan (the foster daughter of the victim). I am also on my way to law school and have a degree in political science. I have a very high respect for politics and a loyalty to my friends both of these traits is traits that run deep. I must and will continue to help my friend grieve however, I cannot in good conscience allow her grief to undermine both constitutional due process and open a door for legislation that presumes to change**

of the age of majority. The murder of Karen Ertell is a tragedy, an unnecessary one at that. The State of Hawaii refuses to confront the ever-growing problems of its children. Given all the information that we know of the accused the state should have stepped in a long time before the death of Karen Ertell. This states needs to invest in programs geared towards rehabilitating at-risk and juvenile offenders who are racking up more charges then the average adult career criminal.

I have supported your campaign and voted for you not because of the party that you belong to. I am very much a liberal and generally do not vote for Republicans. I voted for you because I saw a candidate who was willing to "upset the apple cart" and bring about positive change for the 43rd district.

I believe that your heart is in the right place with HB 3362; however this is not dealing with the problem and will not bring Karen back. Malanie is grieving and wants vengeance. I hope that you are not using her vulnerable state to push an agenda that strips away the minor right to a waiver (i.e. Due Process) and begins to raise the issue of lowering the age of majority in a society where people are "growing-up" later and later in life. The accused if convicted should be held accountable for his actions especially for a crime of such a heinous nature. We have a system for discerning the way in which a minor is held accountable for his alleged crimes. The waiver hearing works. It is also constitutionally sound. The decision is made by the Trier of fact NOT THE LEGISLATIVE BRANCH.

This crime needs to be a lesson for 43rd district. We need to be less concerned with building obnoxious upper-middle class subdivisions and more concerned with our children. It is time that we deal with Juvenile Offenders from the first offense on. Get them into counseling; possibly remove them from their homes if the homes do not create an environment conducive to raising productive members of society. More money needs to be spent on Social Services, Education and improving juvenile detentions centers help our youth not drive them deeper into a life of a criminal.

HB 3362 does assist in making a safer Hawaii it just strips rights away from our youth. I hope that the politicians have not forgotten that any person whether juvenile or adult is innocent until proven guilty. Referring to the bill as Karen's Law is introducing unnecessary prejudice against the defendant. Hopefully you will abandon this "Bill" and HB 3362 will never become and Act. But if this legislation does pass and we as a state have to live with the Act. It will have absolutely nothing to do with Karen Urtell or her murderer it will affect another case with circumstances entirely different from the case at hand and my friend Malanie.

I am a supporter of reform when it comes to Juvenile law and I would like to suggest a bill that expedites the waiver hearing when more serious charges are being alleged (i.e. Murder I, II, Rape, etc). HRS §571-22 is written the way it is for a reason and it does not let juvenile off the hook. What we must do is expedite these hearings and take into consideration the age of the alleged offender. Taking away the rights of juvenile is the easy way out to a much more complex problem.

**Please Ms. Pine, consider what this means for the State of Hawaii and not what it you think it might mean for Karen Ertell. My friend Malanie is traumatized for life and Karen has been taken away from us forever and there is nothing that we can do to change that. HB 3362 will not take Malanie's grief and trauma away and it will not prevent another person from having to experience the pain she feels now and the loss she carries with her forever. Making progress in the juvenile system can help us to lower the crime rate and help steer adolescence away from crime and toward a being a productive member of our society.**

**Please go back to the drawing board Ms. Pine and I commit to you that I will support you in any efforts you make to help reform our juvenile detention centers. I work 12 hours a day and I will freely make time to help you help our district but HB 3362 is not the way.**

**Very Truly Yours,**

**Michael Bennett, CLA  
w) 808-533-4444  
c) 808-371-7485  
h) 808-689-3121**

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## FAMILY COURT WAIVER DECISIONS

Prosecutors around the state seek Family Court waivers in only a small fraction of juvenile criminal cases. For example, the city prosecutor's office handles 3,000 to 4,000 juvenile criminal cases a year, but in the past 10 years, prosecutors asked for waivers in only about 100 cases. For murder cases, no judge has turned down a waiver request in cases on O'ahu in the past 10 years:

<b>Year</b>	<b>Waivers granted</b>	<b>Waivers denied</b>
1997	1	0
1998	3	0
1999	1	0
2000	2	0
2001	2	0
2002	0	0
2003	0	0
2004	0	0
2005	0	0
2006	0	0
2007	0	0

The only juvenile murder case involving a waiver request on the Neighbor Islands during the past 10 years is a 2005 Kaua'i case in which the Family Court waived its jurisdiction.

Sources: State judiciary, city prosecutor's office