



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

House Committee on Judiciary
The Honorable Tommy Waters, Chair
The Honorable Blake K. Oshiro, Vice Chair

Tuesday, March 25, 2008, 4:05 p.m.
State Capitol, Conference Room 325

by
Karen M. Radius
District Family Judge
Family Court of the First Circuit

Measure No. and Title: House Concurrent Resolution No. 297, Requesting the Judiciary to Convene a Task Force to Review the Family Court's Judicial Waiver Process Involving Juvenile Felony Defendants

Judiciary's Position:

The Judiciary respectfully opposes both the Judiciary's involvement in the task force proposed by House Concurrent Resolution No. 297, and the resolution which requests that the Judiciary convene a task force to review the Family Court's judicial waiver process involving juveniles who are charged with felony offenses. The primary reason for our opposition is that the convening of such a task force could lead to recommended legislation. We respectfully note that this would not be an appropriate role for a court.

Under the existing law, the Prosecutor's office makes the decision whether or not to file a petition requesting that the Family Court waive its exclusive jurisdiction over a juvenile who is charged with the commission of a felony on or after the juvenile's 16th birthday, and orders that the case be transferred to the adult criminal court. If the juvenile is alleged to have committed the offense on or after the juvenile's 14th birthday, there are additional criteria - the act must have resulted in serious bodily injury to the victim, be a class A felony, or the juvenile must have had more than one prior adjudication for felonies. Factors to be considered by the Court include the seriousness of the offense; whether the alleged offense was against persons or property, committed in an aggressive, violent, premeditated, or willful manner; the sophistication and maturity of the juvenile; the juvenile's previous history; the prospects for adequate protection of

000284



the public and the likelihood of reasonable rehabilitation of the juvenile; and other relevant factors. There is no minimum age if the juvenile is charged with murder in the first or second degree, or attempted murder in the first or second degree. The Court must also find that there is no evidence that the juvenile is committable to an institution for the mentally defective or retarded or the mentally ill.

We are mindful of the strong emotions triggered by the case referenced in this resolution. But we caution against proposing legislation, legislative actions, or resolution based solely on strong emotions, because such strong emotions tend to skew perspective.

For example, there are many statements in this resolution that can be interpreted as being positive statements and which would not ordinarily lead to amending the existing statute or other legislation:

“ . . . the Family Court must complete a full investigation and hearing to determine whether certain criteria exist to warrant excluding the juvenile from the juvenile justice system;” This is a good thing. Waiving a juvenile is a grave matter, particularly in light of the growing national research that waived juveniles are at greater risk of recidivism than similarly charged juveniles who are not waived.

“ . . . while there are thousands of juvenile criminal cases annually, there have been only about one hundred judicial waiver requests over the past ten years:” This is a good thing. It suggests (a) that our existing waiver criteria is sufficiently fine-tuned so that the prosecutors are able to bring the appropriate cases; and (b) that our community may be doing something “right” with our youth and assisting them to avoid the kinds of high numbers of heinous crimes occurring in certain metropolitan areas on the Mainland.

A similar resolution, House Concurrent Resolution No. 350, stated that **“ . . . in the past ten years, there have been nine petitions for waiver of a juvenile alleged to have committed an act that would constitute murder if committed by an adult and waiver was granted in all nine of those cases;”** This is a good thing. Again, we must redouble our community efforts, and focus on prevention and rehabilitation as noted above. Also, the fact that all nine were granted should make good sense to the public in terms of public safety.

It appears that the only negative factor noted would be the *apparent* length of time to reach the final outcome for the specific case mentioned involving “a fifteen-year old juvenile.” Due to confidentiality constraints, both the Prosecutor’s office and defense counsel are unable to comment on the specific procedural questions in this case. It should be noted, though, that “postponements” do not indicate delays in court processes. Depending on the complexity of any juvenile delinquency or adult criminal case, it may be that more necessary steps are required to



House Concurrent Resolution No. 297
House Committee on Judiciary
Tuesday, March 25, 2008
Page 3

be taken before the final outcome can be decided. To note that there may already have been four or more judicial proceedings in a nine month period is not necessarily negative since it would indicate very close judicial oversight of the entire process, which generally leads to quicker and more efficient disposition of any case.

Thank you for the opportunity to present testimony on this measure.

000286