



STATE OF HAWAII
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In reply, please refer to:
File:

House Committee on Judiciary

HCR 297, Requesting the Judiciary to Convene a Task Force to Review the Family Court's Judicial Waiver Process Involving Juvenile Felony Defendants

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

March 25, 2008, 4:05 p.m.

1 **Department's Position:** The Department of Health respectfully opposes HCR 297.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** This resolution requests that the Judiciary convene a task force to review
4 the Family Court's judicial waiver process involving juvenile felony defendants. This review will assess
5 "the application of evidence that a juvenile is committable to an institution for the mentally defective or
6 retarded or the mentally ill used to bar a judicial waiver" and identify any circumstances that may be
7 suitable for an "automatic judicial waiver".

8 The Child & Adolescent Mental Health Division, through its Family Court Liaison Branch,
9 collaborates closely with the judicial system and is responsible for the mental health of youth in the
10 criminal justice system. The Department of Health does not support procedural changes to the current
11 system, and does not support "automatic judicial waivers" of juveniles. The maturation stage of the
12 minor, including behavioral health issues, should be taken into account and is best accomplished by the
13 Family Court judge on a case-by-case basis, rather than automatically. This resolution would set back
14 public policy regarding humane treatment for youth who have violated laws due to their mental illnesses
15 by bypassing their rights to have their cases heard at Family Court. Hawaii is one of five states that

1 follows the American Bar Association standards that give juvenile judges the authority to make decision
2 to transfer youth to adult courts. Research has shown that youth transferred to adult courts often receive
3 unnecessarily harsh sentences. Further, the adult penal system is under equipped to provide adequate
4 treatment services to incarcerated youth.

5 Further, as the state agency responsible for the health of Hawaii' residents, we are concerned
6 with the harmful health effects of youth who are sent to adult prisons. According to The Center for
7 Policy Alternatives (2005), "youths held in adult jails are eight times more likely to commit suicide, five
8 times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more
9 likely to be assaulted with a weapon, than youth in juvenile facilities." See:
10 <http://www.stateaction.org/about/index.cfm> for more information.

11 Should a Task Force be convened, however, the addition of a representative from the Department
12 of Health to the membership of this task force would ensure that the unique perspective relative to the
13 health and welfare of minors with mental health issues would be well-represented, and provide
14 information on mental health alternatives. For example, Hawaii rarely sends mentally ill youth or
15 retarded youth to institutional settings as there is no therapeutic benefit.

16 We thank you for the opportunity to testify.

Juvenile Transfer Reform

More than 200,000 children are prosecuted in adult courts each year.¹

From 1992 to 1995, 40 states passed laws that make it easier to try juveniles as adults.² Eighteen states further expanded their juvenile transfer laws between 1998 and 2002.³ The result is a flood of young people being handled by the adult criminal system and, in many cases, being placed in adult prisons. In fact, Nebraska is the only state not to expand the scope or strength of juvenile transfer laws since 1992.⁴

Many of the young people transferred to adult courts are nonviolent offenders who pose little threat to public safety.

The U.S. Department of Justice reports that nearly 40 percent of juveniles incarcerated in adult prisons committed nonviolent offenses, generally drug or property crimes.⁵ Minor offenses, including status offenses—running away from home or disobeying parents, for example, which are not illegal for adults—as well as petty shoplifting and failure to pay traffic tickets have resulted in juvenile detention in adult prisons.⁶

African American youths are transferred to the adult criminal system in disproportionate numbers.

Every year from 1990 to 1999, more black youths were transferred to adult court than children of any other racial group.⁷ Today, 67 percent of juvenile defendants in adult court are African American, and 77 percent of juveniles sent to adult prison are racial minorities.⁸

Children in the adult judicial system tend to become more serious criminals.

There is convincing evidence that juvenile transfers lead to increased recidivism. For example, a Florida study found that 49 percent of youths transferred to adult courts were arrested for future crimes, compared to 37 percent of those retained in the juvenile justice system. Twice as many youths transferred to the adult system as youths retained in the juvenile system were rearrested for more serious crimes.⁹ Studies in New Jersey and New York generated similar results, and also found that, on average, transferred youths were rearrested sooner after release.¹⁰

Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.

Youths held in adult jails are eight times more likely to commit suicide, five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be assaulted with a weapon than youth in juvenile facilities.¹¹ Subjecting children to these conditions not only jeopardizes their safety, but it makes their rehabilitation almost impossible.

Juveniles transferred to adult courts often receive unnecessarily harsh sentences.

One study found that juveniles in adult courts receive sentences that are 83 percent more severe than adults in similar cases, concluding that “judges may assign greater levels of culpability and dangerousness to transferred juveniles than to young adult offenders.”¹²

Transferring young people to adult courts strains the resources of correctional facilities and courts.

The Office of Juvenile Justice and Delinquency Prevention found that the increased transfer of juveniles to the adult corrections system strained already-overburdened criminal courts and jails. Sending juveniles to adult prisons also creates costly logistical, programming and security concerns for corrections administrators. All of these factors put public safety at risk.

Judges are in the best position to decide when to transfer youths to adult courts.

The American Bar Association (ABA) recommends that a judge make the decision to transfer a youth to adult court—only after finding probable cause to believe the juvenile has committed the offense, and determining that the juvenile court system cannot properly handle him or her. But only five states (HI, KS, ME, MO, NH) follow the ABA standard. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. And three states (CT, NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.¹³

This policy summary relies in large part on information from the National Juvenile Defender Center.

Endnotes

1. Patricia Allard and Malcolm Young, "Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners," Sentencing Project, 2002.
2. Patrick Griffin, Patricia Torbet and Linda Szymanski, "Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions," Office of Juvenile Justice and Delinquency Prevention, 1998.
3. Patrick Griffin, "National Overviews," National Center for Juvenile Justice, 2003.
4. Marilyn Elias, "Is Adult Prison Best for Juveniles?" *USA Today*, September 20, 2006.
5. J. Steven Smith, "Adult Prisons: No Place for Kids," *USA Today Magazine*, July 2002.
6. Building Blocks for Youth, "Children in Adult Jails," 2006.
7. Office of Juvenile Justice and Delinquency Prevention, *Juvenile Court Statistics*, 1999.
8. Bureau of Justice Statistics, "Juvenile Felony Defendants in Criminal Courts," 1998, quoted in Malcolm Young and Jenni Gainsborough, "Prosecuting Juveniles in Adult Court, An Assessment of Trends and Consequences," January 2000.
9. Florida Department of Juvenile Justice, "Trends in Transfer of Juveniles to Adult Criminal Court," Management Report No. 02-03, January 2002.
10. "Children in Adult Jails."
11. Jeffrey Fagan, M. Frost and T.S. Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile and Family Court*, 1989.
12. Megan Kurlychek and Brian Johnson, "The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court," 2004.
13. Patrick Griffin, "Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws," National Center for Juvenile Justice, October 2003.