

LINDA LINGLE
GOVERNOR



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No. _____

TESTIMONY ON SENATE BILL 2085
RELATING TO SERIOUS OFFENSES COMMITTED BY MINORS

by
Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Public Safety
Senator Will Espero, Chair
Senator Clarence K. Nishihara, Vice Chair

Tuesday, February 5, 2008, 2:45 p.m.
State Capitol, Conference Room 225

LATE TESTIMONY

Senator Espero, Senator Nishihara and Members of the Committee:

The Department of Public Safety (PSD) understands the intent of Senate Bill 2085, which amends Hawaii Revised Statutes, Section 571-48, to permit an offender over the age of 16, but under the age of 18, who has been convicted of murder, attempted murder, or sexual assault in the first degree, to be removed from the custody of the Hawaii Youth Correctional Facility and placed in the custody of the Director of Public Safety by order of the court. Further, this bill would allow the child to remain in the custody of the Director of Public Safety until the age of 26 under the jurisdiction of the court. PSD supports the effort to punish criminals for heinous crimes even if they are below the age of 18, but the PSD would like to recommend some amendments to clarify this bill.

In order for HPA to set minimum sentences and hold parole hearings under the provisions of Hawaii Revised Statutes, Sections 706-669 and 706-670, the offender cannot be under the jurisdiction of family court, as these provisions only apply to adult

offenders in the jurisdiction of regular court. The PSD suggests that the jurisdiction of the offender be moved to regular court when he or she is placed in PSD custody.

Further more, there are currently no rules covering how the offender under the age of 18 would be housed with the other offenders if remanded to the custody of PSD. Secluding the younger offender from older convicted offenders for that long of a duration may require additional segregated facilities under PSD's control.

We ask the legislature to take these into consideration in moving this bill forward.

Handwritten notes:
1/23/08
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COMMITTEE ON PUBLIC SAFETY
Sen. Wil Espero, Chair
Sen. Clarence Nishihara
Tuesday, February 5, 2008
Room 225 at 2:45pm

LATE TESTIMONY

OPPOSE: SB 2085 RELATING TO SERIOUS OFFENSES COMMITTED BY MINORS

Aloha Chair Espero, Vice Chair Nishihara and Members of the Committee:

My name is Carrie Ann Shirota, and I am writing in strong opposition to SB 2085. 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 SB 2085 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 SB 2085 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.

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 SB 2302.

Sincerely,

Carrie Ann Shiota, Esq.
Kahului, Hawai'i
cashirota@aol.com

The Honorable Will Espero, Chairman
The Honorable Clarence K. Nishihara, Vice-Chairman
Senate Committee on Public Safety

WRITTEN TESTIMONY ONLY

Jamé K. Schaedel

Tuesday, February 5, 2008 – 2:45pm

SENATE BILL 2085 - RELATING TO SERIOUS OFFENSES COMMITTED BY MINORS

POSITION: SUPPORT INTENT

I support the intent of Senate Bill 2085, Relating to Serious Offenses Committed by Minors, which would permit the Family Court to commit a minor, who commits an act that constitutes sexual assault or murder, to be incarcerated at a youth correctional facility until age 18 then transferred to the custody of the Director of Public Safety until age 26.

This bill, if passed, would essentially fill a loophole in the antiquated, poorly written Chapter 571 of the Hawaii Revised Statutes. Currently, if a Family Court judge does not grant a waiver for a minor accused of committing a murder or a sexual assault to be tried in Criminal Court, proceedings and adjudication occur only in the Family Court. The adjudicated minor would be released on his or her 19th birthday at the latest. With this bill, the Family Court judge would be able to adjudicate/sentence a minor, and said minor could be released as late as their 26th birthday. On the other hand, recent statistics show that no Family Court judge has turned down a waiver request for over ten years. Some may argue that this bill is premature. Rather it is a good policy to have in place as a backup if a Family Court judge should deny a waiver request from a prosecutor in the future.

I strongly encourage the members of the Senate Committee Public Safety to consider the case of Karen Ertell, an Ewa Beach woman who was allegedly sexually assaulted and murdered by a 15 year-old minor in May 2007. It has been over 8 months since Ms. Ertell's death, yet no hearing has been held for the minor accused of the cited crimes above. In cases where a minor is accused of murder and sexual assault, minors should automatically be tried in Criminal Court. I urge the committee to review specifically Senate Bill 3179, and its companion House Bill 3362.

There are some misconceptions among legislators about SB 3179 and HB 3362. Among them:

1. *"Minors should not be sent to adult prison"* – Chapter 352 explicitly states that a minor will not be adjudicated to an adult correctional facility unless the minor violates §352-28.
2. *"What about statutory rape? What if a 15 year old-girl accuses her 16 year-old boyfriend of rape just to get back at him because she's jealous, or for some other reason?"* – Statutory rape is not an included offence in SB 3179 and HB 3362. On the other hand, prosecutors must possess overwhelming evidence to even consider charging an individual for allegedly committing sexual assault, let alone statutory rape.

WRITTEN TESTIMONY ONLY – Page 2

Jamé K. Schaedel

Tuesday, February 5, 2008 – 2:45pm

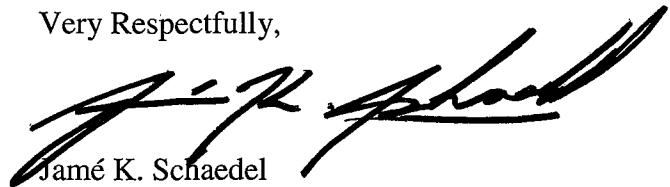
SENATE BILL 2085 - RELATING TO SERIOUS OFFENSES COMMITTED BY MINORS

I have heard arguments that statutory rape is still rape, and unless you have been in that situation or know someone who has, then you wouldn't feel as adamant to convict rapists as those who have been victimized. In response to their argument, I argue that rape is rape and murder is murder regardless of whether or not you're a minor or an adult.

Teenagers are growing up and have had to mature faster than ever due to our ever changing culture, mores, and exposure to violence and sex in the media. Minors, regardless of their age, know that touching someone inappropriately and killing someone is wrong. We are taught this within the first two years of elementary school. Regardless of upbringing, teenagers know the difference between right and wrong. Minors, but more specifically teenagers should be charged as adults as outlined in SB 3179 and HB 3362.

Again, I support the intent of Senate Bill 2085 and I urge the committee consider amending it to add language from SB 3179 and HB 3362.

Very Respectfully,

A handwritten signature in black ink, appearing to read 'Jamé K. Schaedel', written in a cursive style.

Jamé K. Schaedel

I AM LYNNETTE MAU, A CONCERNED ADVOCATE CITIZEN AND MOTHER AND HUMAN BEING

LATE TESTIMONY

STRONGLY OPPOSING SB 2085.

research reports and studies have confirmed that minors

should not be treated as adults.

we cannot go by fear of 'one' such incident in the community that convicting a minor as an adult will reduce violent crimes or even prevent more from happening..this is a myth! in fact there is *more evidence reporting* this is not the case!!!

there is more to behaviors of minors that are being overlooked without proper diagnosis and NOT being treated. but with the maturity of one's physical brain and body and mental chemical balance and also not to ignore the possibilities of mental illness or other disturbing emotional factors in a child's early or later on development mentally and physically.

treatment and rehab IS THE KEY TO ANY unNATURAL CONDITION OF LIFE disability SEVERE OR NOT. CONTINUING PUNISHMENT SHOWS THE LACK OF UNDERSTANDING, IGNORING THE FACTS OF what life is about compassion treatment and healing with the best of intentions and the highest care and nurturing of any individual..

documented evidence will be presented today.

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LynnetteMau
808 285-2500
Clearing the Pathways to Recovery
for Integrative Cognitive Disorder

"The most beautiful people we have known are those who have known defeat, known suffering, known struggle, known loss and have found their way out of the depths. these persons have an appreciation, a sensitivity and an understanding of life that fills them with compassion, gentleness and a deep loving concern.

Beautiful people do not just happen."

Elizabeth Kubler Ross, 1926-2004.
Swiss-born Author and Psychiatrist