

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Linda L. Smith
Senior Policy Advisor to the Governor

WRITTEN ONLY

Before the
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Monday, April 6, 2009, 10:00 a.m.
Room 016, State Capitol

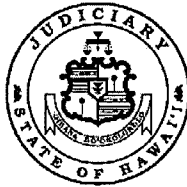
H.B. 819, HD2, SD1 RELATING TO CRIME

Chair Taniguchi, Vice Chair Takamine, and members of the Committee:

The Office of the Governor **supports** H.B. 819, HD2, SD1. This bill seeks to mandate that minors aged 15 to 17 be tried as adults in cases of first and second degree murder, requiring that the family court waive jurisdiction in favor of criminal proceedings in circuit court. This measure would also give discretion to the circuit court to remand the minor back to family court in specified instances.

By providing for an accelerated judicial process for trying accused murderers as adults, this measure would bring closure more quickly for victims' families. Waiver hearings in family court can be long, drawn-out affairs that can take many months, or, as in one recent case, more than a year to complete. Given the heinousness of murder, these defendants should be tried as adults and the presumption should be that the circuit court has jurisdiction over them for criminal proceedings. Victims' families should not need to wait lengthy periods of time for the family court to determine jurisdiction and provide a waiver. The waiver should be mandatory.

The Office of the Governor supports this measure and respectfully requests that the Committee pass H.B. 819, HD2, SD1.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

Senate Committee on Judiciary and Government Operations

The Honorable Brian T. Taniguchi, Chair

The Honorable Dwight Y. Takamine, Vice Chair

Monday, April 6, 2009, 10:00 a.m.
State Capitol, Conference Room 016

by

Thomas R. Keller

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 819, H.D. 2, S.D. 1, Relating to Crime

Purpose: Provides for the mandatory waiver of Family Court jurisdiction over minors, aged 15 and older, who are charged with certain acts.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 819, H.D. 2, S.D. 1, which provides for the mandatory waiver of Family Court jurisdiction over minors, aged 15 and older, who are charged with murder in the 1st or 2nd degree.

It is our understanding that the impetus for this bill comes from the perceived unreasonable delays in a recent waiver of Family Court jurisdiction case which has been reported by the media to have taken over a year to complete.

The length of time in that case does not reflect the normal timetable for waiver cases. Excluding that case, all other closed waiver cases filed during the calendar years 2007 and 2008 were completed between 1-9 months, with 3.67 months being the average length of time from the filing of the petition to completion.



House Bill No. 819, H.D. 2, S.D. 1, Relating to Crime
Senate Committee on Judiciary and Government Operations
April 6, 2009
Page 2

In this context, it becomes clear that the reported waiver case dealt with complexities that required more than the usual time for waivers. In any case involving criminal offenses, there are critical tasks which both the State and the defense must undertake whether the offender is to be treated as a juvenile or an adult. These tasks must be performed at the beginning of the case. If the case is complex, there are more tasks and more time expended. To pass a bill based on the public perception of one very tragic case may have unintended consequences with negative results for the community in the long run.

Nearly all of the petitions for the waiver of Family Court jurisdiction regarding minors charged with the offenses included in this bill have been granted. The existing statutory language has not resulted in inconsistent outcomes or in outcomes which would be to the detriment of public safety. The existing statute allows for judicial discretion without compromising public safety.

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

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Human Services**

April 6, 2009

H.B. No. 819 HD2 SD1: RELATING TO CRIME

Chair Taniguchi and Members of the Committee:

We oppose the passage of H.B. No. 819 HD2 SD1. This bill would remove the requirement of a hearing in the family court on the issue of waiver of family court jurisdiction over a minor who is at least fifteen years of age where the minor has been charged with Murder in the First or Second Degree.

Under the current law, minors in this age category who are alleged to have committed murder are 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. The bill does provide that, upon motion by the defendant, the circuit court can remand the minor back to family court jurisdiction if rehabilitation of the minor would be seriously impaired if the minor is retained in the circuit court. The circuit court could also remand the minor to family court if it finds that the minor is committable to a mental institution. We are deeply concerned that the bill seeks to remove the right to a family court waiver hearing which is an important due process protection for the accused. Law enforcement authorities need simply accuse a child of murder 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 the youth correctional facility. If the child is convicted, he/she would receive a life prison term with virtually no hope of rehabilitation.

The entire concept of juvenile justice centers on the principle that children must be dealt with differently than adults by the court system. Indeed, research now supports what many experts have long advocated – that a child and adolescent's brain is different from the adult brain. The National Institute for Mental Health, using magnetic resonance imaging (MRI), has found that the teen brain is not a finished product. New findings show that the greatest changes to the parts of the brain that are responsible for functions such as self-control, judgment, emotions, and organization occur between puberty and

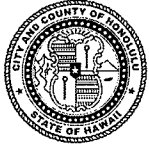
adult-hood. Moreover, brain development can be impaired by exposure to trauma, violence and abuse – factors which are prevalent among youth in the justice system.

A child's brain is not fully developed at fifteen years of age. Many children suffer from developmental disabilities and would not be able to meaningfully participate in their defense. Others are victims of the familial circumstances which surround them and cannot be expected to function as a young adult. One of the assurances of the juvenile justice system is that each child will be treated as an individual and will be given the assistance he or she needs to enter adulthood as a well-adjusted, responsible citizen. This bill simply extends a net around a group of individuals without regard to the factual circumstances of the case and takes power away from the family court to fashion a fair and just solution to the situation.

The fact that the child can move the circuit court to transfer him/her back to family court jurisdiction does not address the concerns raised here. Waiver hearings must be held in the family court. The judges who are appointed to the family court are specially equipped to handle the aforementioned issues concerning children and their development. Circuit court judges do not hear juvenile cases. They do not deal on a day-to-day basis with child development issues.

The family court currently does not hesitate to waive its jurisdiction on a minor when waiver is necessary and justified under the law. That is handled on a case-by-case basis after a full investigation and a thorough consideration of the facts presented to the court. If the concern is the time it takes for waiver proceedings to reach disposition, statistics from family court would demonstrate that the majority of waiver proceedings do not take an unreasonable amount of time to reach decision-making. Most cases are decided within six months of the filing of the petition to waive jurisdiction. 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.



McCULLY-MOILIILI NEIGHBORHOOD BOARD No. 8

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET, ROOM 406 • HONOLULU, HAWAII 96813

TEL (808) 768-3710 • FAX (808) 768-3711 • INTERNET: <http://www.honolulu.gov/nco>

RESOLUTION URGING THE HAWAII STATE LEGISLATURE TO ENACT "KAREN'S LAW" -- HOUSE BILL 819, HD2, SD1 – IN THE REGULAR SESSION OF 2009.

WHEREAS, on May 25, 2007 Karen Ertell was brutally raped and murdered in her own home allegedly by a 15-year-old male neighbor in Ewa Beach, Oahu; and

WHEREAS, under the current Hawaii laws regarding first degree and second degree murder committed by a juvenile, Karen Ertell's family has had to suffer through fifteen months of delays in the processing of this heinous crime, which has unnecessarily delayed justice and aggravated the family's grief; and

WHEREAS, House Bill 819, HD2, SD1 – introduced in the Twenty-Fifth Legislature of the State of Hawaii, Regular Session of 2009, and referred to as "Karen's Law" -- proposes to mandate that minors aged 15 to 17 be tried as adults in cases of first degree and second degree murder, subject to certain limitations based on the findings of the circuit court; and

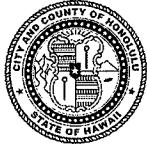
WHEREAS, while the proposed law could not be applied retroactively and aid in the prosecution of Karen Ertell's murderer, the enactment of "Karen's Law" would significantly reduce the delays in the future that are currently associated with the prosecution of cases of first degree and second degree murder committed by minors; now, therefore,

BE IT RESOLVED by the McCully-Moiliili Neighborhood Board No. 8 that it supports the enactment of House Bill 819, HD2, SD1 titled "Relating to Crime" and its amendments to Hawaii Revised Statutes Section 571-22, and urges the Twenty-Fifth Legislature to enact the measure referred to as "Karen's Law" during the Regular Session of 2009; and

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted to all members of the Senate and House of Representatives of the Twenty-Fifth Legislature of the State of Hawaii, the Governor, Lieutenant Governor, and Attorney General of the State of Hawaii, the Prosecuting Attorney of the City and County of Honolulu, and the Chairperson of each Neighborhood Board of the City and County of Honolulu.

ADOPTED by the McCully-Moiliili Neighborhood Board No. 8 at its April 2, 2009 regular meeting by a vote of 10 in favor, 1 opposed, and 0 abstentions (10-1-0).

/s/ Ron Lockwood, Chair



MANOA NEIGHBORHOOD BOARD No. 7

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET, ROOM 406 • HONOLULU, HAWAII 96813

TEL (808) 768-3710 • FAX (808) 768-3711 • INTERNET: <http://www.honolulu.gov/nco>

RESOLUTION URGING THE HAWAII STATE LEGISLATURE TO ENACT "KAREN'S LAW" -- HOUSE BILL 819, HD2, SD1 – IN THE REGULAR SESSION OF 2009.

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WHEREAS, under the current Hawaii laws regarding first degree and second degree murder committed by a juvenile, Karen Ertell's family has had to suffer through fifteen months of delays in the processing of this heinous crime, which has unnecessarily delayed justice and aggravated the family's grief; and

WHEREAS, House Bill 819, HD2, SD1 – introduced in the Twenty-Fifth Legislature of the State of Hawaii, Regular Session of 2009, and referred to as "Karen's Law" -- proposes to mandate that minors aged 15 to 17 be tried as adults in cases of first degree and second degree murder, subject to certain limitations; and

WHEREAS, while the proposed law could not be applied retroactively and aid in the prosecution of Karen Ertell's murderer, the enactment of "Karen's Law" would significantly reduce the delays in the future that are currently associated with the prosecution of serious crimes committed by minors; and

WHEREAS, the Manoa Neighborhood Board No. 7 heard a presentation by Karen Ertell's daughter on April 1, 2009 in support of the proposed law; now, therefore,

BE IT RESOLVED by the Manoa Neighborhood Board No. 7 that it supports the enactment of House Bill 819, HD2, SD1 titled "Relating to Crime" and its amendments to Hawaii Revised Statutes Section 571-22, and urges the Twenty-Fifth Legislature to enact the measure referred to as "Karen's Law" during the Regular Session of 2009; and

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted to all members of the Senate and House of Representatives, the Governor and Lieutenant Governor, the Attorney General, and the Prosecuting Attorney of the City and County of Honolulu.

ADOPTED by the Manoa Neighborhood Board No. 7 at its April 1, 2009 regular meeting by a vote of 12 in favor, 0 opposed, and 1 abstention (12-0-1).

/s/ J. Thomas Heinrich, Chair

From: St.Pierre [stpierree001@hawaii.rr.com]
Sent: Thursday, April 02, 2009 6:13 PM
To: JGO Testimony
Cc: All Senators; Sarah Hunt
Subject: Karen's Law: HB819HD2
Attachments: Blank Bkgrd.gif

Importance: High

We respectfully ask that you please read & pass the above bill; and help make all seniors, as well as, persons of all ages - rest more peacefully knowing that young adults 15-17 would face a much heavier penalty if they knew they would be tried as an ADULT if they murder anyone ---

Young adults as young as 12-13 know much more today than past years, what they do when they commit murder; and they should be tried & sentenced for the crimes they commit --- the above law states only 15-17, but we all know that children today are exposed to a lot more crime on TV; movies; et al than when we were younger --- we were taught to respect our elders, but today they have NO respect for their own family members, and/or others.

Please pass the above law and help us live our lives a little more peaceful as we get older.

Aloha
Edward & Marie St Pierre
Ewa Beach, HI

From: Daniel Paul de Gracia, II, MA [daniel.degracia@gmail.com]
Sent: Sunday, April 05, 2009 12:16 PM
To: JGO Testimony
Subject: Testimony for HB819 (SSCR1039), JGO Hearing Monday April 6 10:00 am Conference Room 016

Testimony of Rev. Daniel P. de Gracia, II

in support of HB 819 HD2 SD1 (SSCR1039) Relating to Crime
before the Senate Committee on Judiciary and Government Operations
Monday, April 6, 10:00 am Conference Room 016

Chair Taniguichi, Vice Chair Takamine,

By now you are all well aware of the measure before your Committee, HB 819 HD2 SD1 Relating to Crime (SSCR1039), the purpose of which is to mandate that minors 15 to 17 years of age be tried as adults in cases of first and second degree murder, and to provide for discretionary remand of the minor in specified cases.

Mr. Chairman, the question that is before us is not whether we believe in locking away someone and throwing away the key, as some have attempted to simply this argument into. The question is whether we sit right with our homes and loved ones being vulnerable to attack by violent persons, and in turn, those violent persons being able to walk free on the streets because of a criminal justice system which believes the very best of humanity but is also presently incapable of dealing with the very worst of humanity.

The fact of the matter, Mr. Chairman, is that the people of Hawaii are easy targets for those who have purposed in their hearts to do wrong. The fact of the matter, Mr. Chairman, is that because of the good graces of our society, violent people can come into our homes, and steal from us that which matters most. We are at war with crime, and for the criminal, the world of civilized and docile people is a lot easier to end than most of us would like to admit. We must keep criminals under our feet, for if we lift our collective foot for just one moment, those individuals use that occasion to destroy our world as we know it.

The Bible tells us in Galatians 5:22-23 that "the fruit of the Spirit is love, joy, peace, patience, kindness, goodness, faithfulness, gentleness and self-control. Against such things there is no law." A nation that refuses to be ruled by conscience and self-control must be ruled by authority, power, and government that does not bear the sword in vain. Mr. Chairman, we must not allow violent criminals - whether they are adults or children - to shear the fabric of our society and go unpunished.

It takes power and authority to protect the innocent and to maintain order in a civilized world. Plato warns us, "Your silence gives consent." Let us purpose in our hearts to win the war on crime and to defend our civilization by passing this measure.

Thank you for the opportunity to testify.

Hawaii State Legislature
Judiciary and Government Operations Committee
Chair, Brian Taniguchi

Date: April, 6 2009
Time: 10:00am
Conference Room 016
Testimony Supporting HB819HD2

My Name is Sheryl Nelson. I am submitting testimony as a private citizen who supports HB819HD2.

I believe that anyone who could commit a crime such as brutal as the crimes committed against Karen Ertell should be tried as an adult. I met Karen several years ago. I knew instantly she was a kind gracious caring person. I became a customer and friend. She was smart, a hard worker, rescued animals, had integrity and believed in giving to the community. She did business caring about each customer with the best service possible. Her business was certainly in the process of growing. Karen had worked hard and loved it here in Hawaii.

I was so incredibly shocked when I heard the news of her murder on the television news. I couldn't believe it. Karen was aware, strong and had changed her locks on her house door to keep herself safe.

Two years ago Vernon Bartley was 15 years of age. Hearing few details on the news gave me the impression he knew exactly what he was doing. After all after the senseless rape and murder I understand he took Karen's car for a joy ride. Vernon Bartley's actions forever changed many lives.

Hearing the news and reading the paper words that have been used to describe the crime and the actions of Vernon Bartley are words like "calculated, brutal, senseless, deliberate, violent, horrific, indescribable, planned, well orchestrated and heinous. The crimes committed by Vernon Bartley on May, 25 2007 were brutal and violent which resulted in the death of a

wonderful person Karen Ertell. The world was a better place with Karen here.

Anyone who can commit a calculated murder like the murder Vernon Bartley committed against Karen Ertell should be tried as an adult. This was no accident it wasn't a situation that had gone "to far" it was a brutal rape and murder of a woman who had given Vernon Bartley kindness. Karen believed in giving people a chance and saw the best in people.

The actions of Vernon Bartley almost two years ago were the actions of someone who knew what he was doing. His actions resulted in the death of a vibrant woman who cared about people and her community.

Thank you for hearing my testimony supporting HB819HD2.

Sheryl Nelson
Friend and Customer of Karen Ertell.
Email: snelson18@hawaii.rr.com

Phone: 545-7560

From: Mike Palcic [bigmouse@hawaii.rr.com]
Sent: Sunday, April 05, 2009 7:38 PM
To: JGO Testimony
Subject: HB 819, HD2, SD1 -- April 6, 2009 -- 10:00AM

Regarding: Testimony in support of HB 819, HD2, SD1 JGO Hearing -- April 6, 2009 -- 10:00AM

Dear Mr. Chairman and Members of the Committee:

Having known Karen Ertell personally (she custom roasted coffee for my wife's boutique coffee company) I was particularly incensed by the callous and cold-blooded crime that took her life. I believe that the perpetrator of such a vicious and cruel act should be punished.

I am also aware of the bragging rights of teenage toughs who commit crimes knowing that they can escape full responsibility for their behavior simply because they have not reached the age of majority.

A line has to be drawn. Certainly, one should not escape the consequences of having committed murder because of such calculation. Certainly, our community deserves to be protected from the ravages of such felons.

I do believe it is vital to secure passage of HB819, HD2, SD1, also known as "Karen's Law," without delay and to inform the malicious elements of our community that any perpetrator of such heinous acts will be severely punished.

If the legislature fails to enact Karen's Law, no valuable protection for wayward juveniles will have been maintained, but rather, aggressive predators will have been licensed to exploit and harm the weakest among us.

Mahalo hou,

Michael G. Palcic
1907 St. Louis Drive
Honolulu, HI 96816
737-1372/H
921-8294/W

Hawaii State Legislature
Judiciary and Government Operations Committee
Chair, Brian Taniguchi

Date: April, 6 2009
Time: 10:00am
Conference Room 016
Testimony Supporting HB819HD2

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