

Late

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

Hrg: Monday, February 2, 2009, 8:15 a.m.

1 copy required

H.B. No. 819: RELATING TO CRIME

Chair Mizuno and Members of the Committee:

We strongly oppose the passage of H.B. No. 819. This bill would remove the requirement of a hearing 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 already 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. We are deeply concerned that the bill seeks to remove the right to a 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 adulthood. 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.

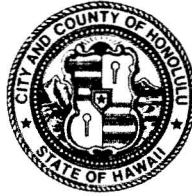
The family court currently does not hesitate to waive its jurisdiction on a minor when waiver is necessary and justified under the law. That is handled on a case-by-case basis after a full investigation and a thorough consideration of the facts presented to the court. There is no justifiable reason for 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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE RR-NTK

February 2, 2009

The Honorable John M. Mizuno, Chair
and Members
Committee on Human Services
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

Subject: House Bill No. 819, Relating to Crime

I am Richard C. Robinson, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 819, Relating to Crime. Passage of this bill would allow for a more expedient judicial process for accused murderers who are age fifteen to seventeen. Currently, juvenile murder suspects have a waiver hearing in Family Court to determine if the juvenile can be prosecuted as an adult.

In 2007, a juvenile murder suspect was arrested, and a petition for waiver was filed. It took five separate Family Court hearings and more than one year before he was waived to be tried as an adult. Until today, the family of the victim has been deprived of the right to see the juvenile stand trial for his crimes. The Honolulu Police Department strongly believes that the victims' families deserve closure and justice, and justice delayed is justice denied.

The Honorable John M. Mizuno, Chair
and Members
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The Honolulu Police Department urges you to support House Bill No. 819,
Relating to Family Court Jurisdiction Over Minors.

Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

for 
BOISSE P. CORREA
Chief of Police