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February 8, 2011

COMMITTEE ON HUMAN SERVICES

Sen. Suzanne Chun Oakland, Chair
Sen. Les Ihara, Jr., Vice Chair

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPS & MILITARY AFFAIRS

Sen. Will Espero, Chair
Sen. Michelle Kidani, Vice Chair
Tuesday, February 8, 2011
Room 016 at 1:15 pm

SB 1294- STRONG SUPPORT

HMStestimony@Capitol.Hawaii.gov

*We must focus more attention on the conditions of incarcerated person... To put people behind walls and bars and do little or nothing to change them is to win a battle but lose a war...
It is wrong. It is expensive. It is stupid.*

Chief Justice Warren Burger

Aloha Chair Chun Oakland, Chair Espero and Members of the Committees.

I am writing in support of SB 1294 that seeks to repeal H.R.S. 352-28, which authorizes the executive director of the office of youth services, with the approval of the family court, to transfer a committed youth from the Hawai'i Youth Correctional Facility to an adult correctional facility for disciplinary or other reasons.

I speak from my experience as a former Deputy Public Defender, Director of MEO's Being Empowered and Safe Together (BEST) Reintegration Program, and as a member of Community Alliance on Prisons. During the past ten years, I have advocated for alternatives to mass incarceration policies that have proven effective in reducing crime, and providing men, women and youth involved in the criminal justice system with the education, training, counseling, and treatment necessary to turn their lives around.

I support this bill for the following reasons:

- Numerous studies, including from the U.S. Department of Justice, the U.S. Centers for Disease Control and Prevention, and the Brookings Institution, has found that kids put into the adult system are more likely to reoffend than similar kids kept in the juvenile system.
- Youth placed in adult prisons are also 36 times more likely to commit suicide than youth housed in juvenile facilities.
- Our youth should be held accountable. However, keeping them with adults is putting our kids in danger and is not accomplishing the goal of rehabilitation.

In addition to supporting this measure, I encourage Hawai'i's leaders to focus on reducing the number of youth incarcerated within our criminal justice system. As part of these efforts, I encourage Hawai'i to study and replicate the approach and reforms within Missouri's juvenile justice system. It has adopted smaller regional facilities that focus on rehabilitation and house troubled youths as close to home as possible in order to involve parents and community groups in the therapeutic process. Missouri also has cut recidivism rates by smoothing re-entry and helping young people with drug treatment, education or job placement.

Thank you for the opportunity to submit testimony in support of this bill.

Sincerely,

Carrie Ann Shiota

LATE

Date: 2-7-11

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SB 1294- STRONG SUPPORT

TESTIMONY IN SUPPORT OF S.B 1294, REPEALING THE ALLOWANCE OF TRANSFERRING YOUTHS TO ADULT CORRECTIONAL FACILITIES

Dear Senator Chairs Chun Oakland and Espero and Senate Committee members:

My name is Daphne Barbee-Wooten and I am an attorney who practices law in the State of Hawai'i. I am writing in support of repealing the law allowing transfers of youth (under 18 years old) to Adult prisons. Prisons are no place for young people. Prisons are not rehabilitative. Young people are targets and will be preyed upon by more sophisticated, stronger adults. In adult prisons, rape, assaults and even murders have occurred between inmates and even by guards.

Young people are our future, and transferring a young person to an adult prison is throwing away the keys to a chance of rehabilitation. In U.S. Supreme Court decision, Roper v. Simmons, 543 U.S. 551 (2005) Justice Kennedy wrote and concluded that youthful offenders cannot be given the death penalty because:

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." Johnson, *supra*, at 367; see also *Eddings, supra*, at 115-116 ("Even the normal 16-year-old customarily lacks the maturity of an adult"). It has been noted that "adolescents are overrepresented statistically in virtually every category of reckless behavior." Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Review* 339 (1992). In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent. See Appendixes B-D, *infra*.

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. *Eddings, supra*, at 115 ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage"). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. See Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003) (hereinafter Steinberg & Scott) ("[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting").

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E. Erikson, *Identity: Youth and Crisis* (1968).

These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." *Thompson, supra*, at 835 (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford*, 492 U. S., at 395 (Brennan, J., dissenting). The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." *Johnson, supra*, at 368; see also Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity

becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood").

In *Thompson*, a plurality of the Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age. 487 U. S., at 833-838. We conclude the same reasoning applies to all juvenile offenders under 18.

Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults

See 543 U.S. at pages 569-571.

Please support the repeal of the archaic law allowing transfers of youth to adult prisons. Since the youth can not vote, cannot sit on juries, cannot enjoy other benefits of adults, they should not be penalized like an adult.

Sincerely,

Daphne Barbee-Wooten

Attorney at Law

LATE

ChunOakland2 - Tyrell

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 7:57 PM
To: HMS Testimony
Cc: clampton@hawaii.edu
Subject: Testimony for SB1294 on 2/8/2011 1:15:00 PM

Testimony for HMS/PGM 2/8/2011 1:15:00 PM SB1294

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Catherine Lampton
Organization: Individual
Address: PO Box 1828 HI
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E-mail: clampton@hawaii.edu
Submitted on: 2/7/2011

Comments:
I strongly support this bill. Mahalo