

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the House Committee on Judiciary**

**February 25, 2014**

**H.B. No. 2116 HD1: Relating to Sentencing for Juvenile Offenders**

Chair Rhoads and Members of the Committee:

We support the goal of H.B. No. 2116 HD1. We believe that the preamble of the bill states principles that are generally accepted in the scientific and psychological community. Juveniles are psychologically and scientifically different from adults and these differences should be recognized by the legal system. Children should not be equated with adults in our criminal justice system. Children are extremely vulnerable to negative environments and are easily influenced by crime-producing influences such as physical, sexual and psychological abuse by family members. Children are less capable than adults to consider the long-term impact of their actions, control their emotions and impulses, or evaluate risks and reward.

Through the formation of a family court, Hawaii has recognized that children must be treated differently from adults in our justice system. Nevertheless, juveniles, through the waiver of jurisdiction process, are still able to be tried by the adult criminal justice system and receive the harshest penalties under our state laws. H.B. No. 2116 HD1 seeks to reform this situation and make our laws compliant under United States Supreme Court decisions which have outlawed the imposition of such penalties on juvenile offenders.

We believe that the bill requires some amendments to make its provisions more consistent with Hawaii's statutory scheme but support the general principles that are set forth in it. Thank you for the opportunity to provide testimony on this bill.



STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**

1177 Alakea Street, First Floor  
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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 2116, HD1  
RELATED TO SENTENCING FOR JUVENILE OFFENDERS

By

Bert Y. Matsuoka, Chairman  
Hawaii Paroling Authority

House Committee on Judiciary  
Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair

Tuesday, February 25, 2014; 2:00 p.m.  
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

We agree with the premise of not sentencing juvenile offenders to life without parole, however, because of other provisions within this bill, the Hawaii Paroling Authority (HPA) does not support HB 2116, HD1, which in part, seeks to add 3 criteria for which the HPA must give additional consideration when determining minimum sentences for offenders whose crime(s) were committed prior to reaching eighteen (18) year of age. The Family Court is required to conduct a full investigation and hearing prior to waiving any juvenile offender to the adult criminal justice system. As written, HB 2116, HD1 appears to require the HPA to re-evaluate the decision and judgment already exercised by the Family Court in granting the waiver. Furthermore, HB 2116, HD 1 appears to establish that "diminished culpability," "hallmark features of youth," and "capacity for rehabilitation" apply to any and all prisoners who have been waived by the Family Court.

In addition, page 10, lines 14 -18 appear to conflict with page 19, lines 11 -14. The proposed language on page 10 states that those who are waived and convicted of first degree murder shall be sentenced to life imprisonment with the possibility of parole at the end of twenty years imprisonment. However, the proposed language on page 19 provides that the minimum term the HPA can set for those who are waived and convicted before they are eligible for parole shall be no longer than twenty years, or such shorter period as may be applicable.

The HPA respectfully requests this measure be held.

Thank you for the opportunity to provide testimony on HB 2116, HD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE KARL RHOADS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2014**  
**State of Hawai'i**

February 25, 2014

**RE: H.B. 2116, H.D. 1; RELATING TO SENTENCING FOR JUVENILE OFFENDERS.**

Chair Rhoads, Vice-Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, expressing grave concerns, regarding House Bill 2116.

H.B. 2116, H.D. 1 proposes to amend sentencing provisions for juveniles over whom Family Court has waived jurisdiction and are transferred to the adult court system. While the Department understands the intent of this bill, we strongly believe it would be inappropriate to establish these types of disparate sentencing provisions, as multiple safeguards are already in place to ensure fairness to these young offenders (and all offenders).

Per section 571-11, Hawaii Revised Statutes ("HRS"), Family Court has exclusive original jurisdiction over "any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any ... law or county ordinance." In rare cases, HRS §571-22 allows the court to waive jurisdiction over a juvenile, transferring that case to the adult court system, "after full investigation and hearing."

In our experience, Family Court does *not* take this decision lightly, nor does the Department or any other stakeholder involved these proceedings. This process is rarely utilized, and specifically requires the court to make certain specific findings that warrant a waiver of jurisdiction. Most notably, HRS §571-22(c) requires that the Family Court consider numerous factors before reaching its decision, including the juvenile's history, sophistication, maturity-level, home and environmental situation, and likelihood of reasonable rehabilitation.

Family Court judges have a great deal of experience and perspective in dealing with Hawai'i's juvenile offenders—presumably more than any other court judges—and are arguably more familiar with the “diminished culpability of juveniles” and the “hallmark features of youth”

than others as well. In our experience, the Family Court is *acutely* aware that once it transfers jurisdiction to the adult court system, it cannot regain jurisdiction over that individual (see HRS §571-22(e)), and is further aware of the adult consequences that the individual potentially faces in the adult court system.

Please be aware that the adult court system already makes special accommodations for youthful offenders, in terms of sentencing and/or incarceration provisions (see HRS §706-667), and these provisions are equally available to all defendants under the age of 22 who have no prior felony convictions nor felony-equivalent adjudications. However, to provide different sentencing considerations for young defendants over whom Family Court has waived jurisdiction—who are potentially of similar age to other young defendants accused of similar offenses—would be vastly unfair to those born just days, weeks or months “too late.” It is even possible that co-defendants, born days or weeks apart, could have the same level involvement in the exact same crime, yet receive disparate sentencing from the adult court system, if one was just over the age of 18 when the offense occurred, and the other was just under the age of 18 but Family Court waived jurisdiction.

The changes proposed in H.B. 2116, H.D. 1, would substantially discount, or even undermine, the gravity of the Family Court's intensive waiver process and their decision to waive jurisdiction (in the few cases that are actually waived). Moreover, the Department does not believe that any court or the Hawai'i Paroling Authority (“HPA”) should be required to apply blanket generalizations about juveniles, simply because of their age. Our adult court system already has numerous procedures and provisions that require the court and the HPA to take into account the specific history and characteristics of each (young) offender, and the Department strongly believes that every individual should be assessed on the particulars of his or her own offense and circumstances.

If the legislature is inclined to revisit the types of characteristics that should be taken into account for *all* defendants upon sentencing and/or parole, that would be a separate discussion. Nevertheless, the Department believes that the changes proposed in H.B. 2116, H.D. 1, would be inappropriate, and strongly urges the Committee not to pass this measure. Thank you for allowing us this opportunity to testify.



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Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
Supporting HB 2116 Relating to Sentencing for Juvenile Offenders  
House Committee on Judiciary  
Scheduled for Hearing Tuesday, February 25, 2014, 2:00 PM, Room 325

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*Hawai'i Appleseed Center for Law and Economic Justice is a nonprofit, 501(c)(3) law firm created to advocate on behalf of low income individuals and families in Hawai'i on civil legal issues of statewide importance. Our core mission is to help our clients gain access to the resources, services, and fair treatment that they need to realize their opportunities for self-achievement and economic security.*

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Thank you for an opportunity to testify in **strong support of** House Bill 2116, but respectfully request amendments to strengthen young adult rehabilitation, cover young adults up to age 22, and require young adult offenders to remain in Hawai'i.

The U.S. is the only country in the world, and Hawai'i is one of a rapidly dwindling number of states, that still sentences juveniles to life imprisonment without the possibility for parole. The reasons for eliminating the sentence are compelling.

**Advances in brain development research have clearly demonstrated that 18 year-olds have undeveloped decision-making capacity and are more prone to rehabilitation than adults.** Based on this research, the U.S. Supreme Court has issued a series of decisions recognizing that it is cruel and unusual punishment to sentence juveniles like adults. Given a juvenile's reduced culpability and increased propensity for rehabilitation, it simply does not make sense to lock up a juvenile and throw away the key.

**It costs approximately \$2.5 million to incarcerate a child for life in the United States.** We should use our money wisely to support a criminal justice system that reduces violence and helps victims. Sentencing a juvenile to life with a commitment to *never revisit the decision again* regardless of what the person has become wastes money that could be used better elsewhere.

HB 2116 is a thoughtful approach to sentencing youth. The bill would:

- Follow the lead of brain development research by investing resources on rehabilitation instead of blindly continuing to pay for the incarceration of a person who may be far different from the youth who committed the crime years ago.
- Increase potential for rehabilitation by keeping young adults in state where they will be able to maintain contact with local support groups.
- Allow rehabilitated people who committed crimes in their youth an opportunity to eventually leave prison and contribute to their communities instead of unnecessarily being a life-long drain on them.

Thank you again for this opportunity to testify. We respectfully urge the Committee on Human Services to pass this bill.



**Date:** February 25, 2014

**To:** Representative Karl Rhoads, Chair, House Judiciary Committee;  
Representative Sharon Har, Vice-Chair, House Judiciary Committee  
Members of the House Judiciary Committee

**From:** Christiaan Mitchell, Richardson Students for the Rights of Children<sup>1</sup>

**Re:** Strong Support for HB 2116, additional comments

Aloha Chair Rhoads, Vice Chair Har, and Committee Members,

Richardson Students for the Rights of Children **strongly supports HB 2116**, but believes the bill could be strengthened **with a few simple amendments**. The principle effect of HB 2116 would be to end Hawaii's practice of sentencing juveniles to life in prison without possibility of parole. Such permanent condemnation without any chance of subsequent review is an irrational and cruel punishment unsupported by science, and unjustified by morality.

The United States of America is the only nation in the world that sentences juvenile offenders to life imprisonment without possibility of parole. Juvenile life without parole has been roundly rejected throughout the international community, and is specifically rejected in the International Convention on the Rights of the Child—an international convention ratified by more nations than the Convention for the Prevention and Punishment of the Crime of Genocide. According to the United States' state party report submitted to the United Nations' Human Right Committee, there are approximately 2,500 individuals serving sentences of life without parole for crimes committed as a juvenile within the U.S.

Unfortunately, Hawai'i remains one of a rapidly shrinking number of states in the U.S. that participates in this shameful practice. The State of Hawai'i is currently holding four individuals who were sentenced to life without parole for crimes committed when they were juveniles. Texas, Wyoming, Kentucky, Kansas, Colorado, and Alaska have all abolished the practice; and California, Delaware, and Nebraska have recently enacted measures that allow children convicted of serious crimes to seek a parole or re-sentencing hearings. It is time for Hawai'i to listen to our own moral sense, and the sense of the rest of the human community, and finally remove this draconian punishment from our books.

The United States Supreme Court has taken notice of the manifest injustice of sentencing juveniles to life in prison without parole. In its 2010 decision in *Graham v. Florida*, the Court held that sentencing juveniles to life without parole for any crime other than murder violates the U.S. Constitution's ban on cruel and unusual punishment. Following this, in 2012 the Court found in *Miller v. Alabama* that mandatory life sentences without parole—even for murder—also violates the

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<sup>1</sup> Richardson Students for the Rights of Children (RSRC) is an informal, ad hoc group of students at the William S. Richardson School of Law interested in promoting the human rights of children in Hawai'i and the United States. RSRC is not formally affiliated with, nor does it represent the William S. Richardson School of Law. Any material associated with RSRC represents only the opinions of the author and RSRC.



Constitution. Hawai‘i has not adapted its laws to reflect these recent rulings, and still maintains a mandatory life without parole sentence possibility for juveniles.

Currently, Hawai‘i law provides for a mandatory life without parole sentence for murder and attempted murder in the first degree. Additionally, Hawai‘i law allows the Family Court to waive jurisdiction over a juvenile offender accused of murder or attempted murder without any explicit requirement that the court consider the factors deemed relevant to juvenile life without parole by the Supreme Court (Fig. 1). As such, Hawaii’s murder law as applied to juveniles is plainly unconstitutional. Insofar as the courts are already considering the factors required by *Miller v. Alabama* in practice, HB 2116 does nothing more or less than codify existing practice and ensure that *all* defendants receive the same consideration.

It has been suggested that the fact that all life without parole convicts receive a mandatory clemency petition after twenty years obviates the need for a mandatory parole process. However, *any* defendant *at any time* can file a clemency petition to the executive. Under this rationale, a juvenile could constitutionally be subjected to the death penalty because they have the opportunity to plead for clemency. Moreover, predicating a defendant’s access to constitutionally protected rights upon the unilateral will of the executive subjects justice to the vagaries of the political process, and is incompatible with the fundamental structures of our justice system. Clearly a clemency petition is no substitute for the judicial and quasi-judicial processes required by HB 2116.

### *Suggested Amendments*

Richardson Students for the Rights of Children feels that HB 2116 could provide even greater protection for Hawaii’s youth. First, HB 2116 exempts anyone under the age of 18 from being sentenced to life without parole. However, this age does not align with the growing body of psychological evidence that human beings are simply not fully neurologically developed until their early- to mid-twenties. This neurological underdevelopment causes young individuals to be physiologically incapable of fully appreciating the scope of the consequences of their actions, and therefore lacking in the hallmark features associated with full criminal culpability.

In light of this research, and Hawaii’s already standing policy of treating defendants under twenty-two differently, we request that the bill be **amended to extend its protection to any “young adult defendant” in Hawai‘i** (Fig. 2). Young adult defendants are defined at HRS § 706-667(1) as anyone convicted of a crime committed when under the age of twenty-two, who has not been previously convicted of a felony as an adult, or adjudicated as a juvenile for an offense that would have been a felony had that person been an adult. Section 706-667 further provides special sentencing and correctional treatment for young adult defendants. This special category of defendants was carved out in recognition of the special status of young offenders.

Additionally, while HB 2116 does much to ensure that juveniles will have opportunity for parole or other sentence modification, we feel it does little good to give these prisoners a chance at parole if we have not done our best to prepare them to re-enter the community. In order to ensure that young adult defendants have the best chance of being rehabilitated, we request that HB 2116 be





**amended to further supplement the special rehabilitative measures already in place for young adult defendants.** We request the creation a special fund and an advisory task force to investigate, evaluate, and suggest amendments to our rehabilitation practices. This takes notice of the increased potential for youthful offenders to rehabilitate, and will further help to give our wayward youth the best chance possible to rejoin society as productive citizens.

Finally, recognizing that contact with family and closeness to home is an important tool in helping to rehabilitate prisoners, we request that HB 2116 be **amended to alter the procedures for transporting prisoners out of state** to serve their prison term for offenses committed in Hawai'i. Richardson Students for the Rights of Children questions the wisdom of private prisons, and of ever sending one of our own to a distant place to pay their debt to *our* society. However, we recognize the relevant penological interests that can be served by this practice—such as prisoner safety, the provision of special services unavailable in Hawai'i, or prisoner requests to be closer to family on the mainland. We recommend the adoption of an opt-in procedure that would only allow the exportation of our young adult defendants if they (1) specifically opt-in for consideration, or (2) are subject to a determination of diminished capacity. This would demonstrate a strong commitment to keeping our young adult defendants here in Hawai'i, while ensuring that other relevant interests can be served as well.

### *Conclusion*

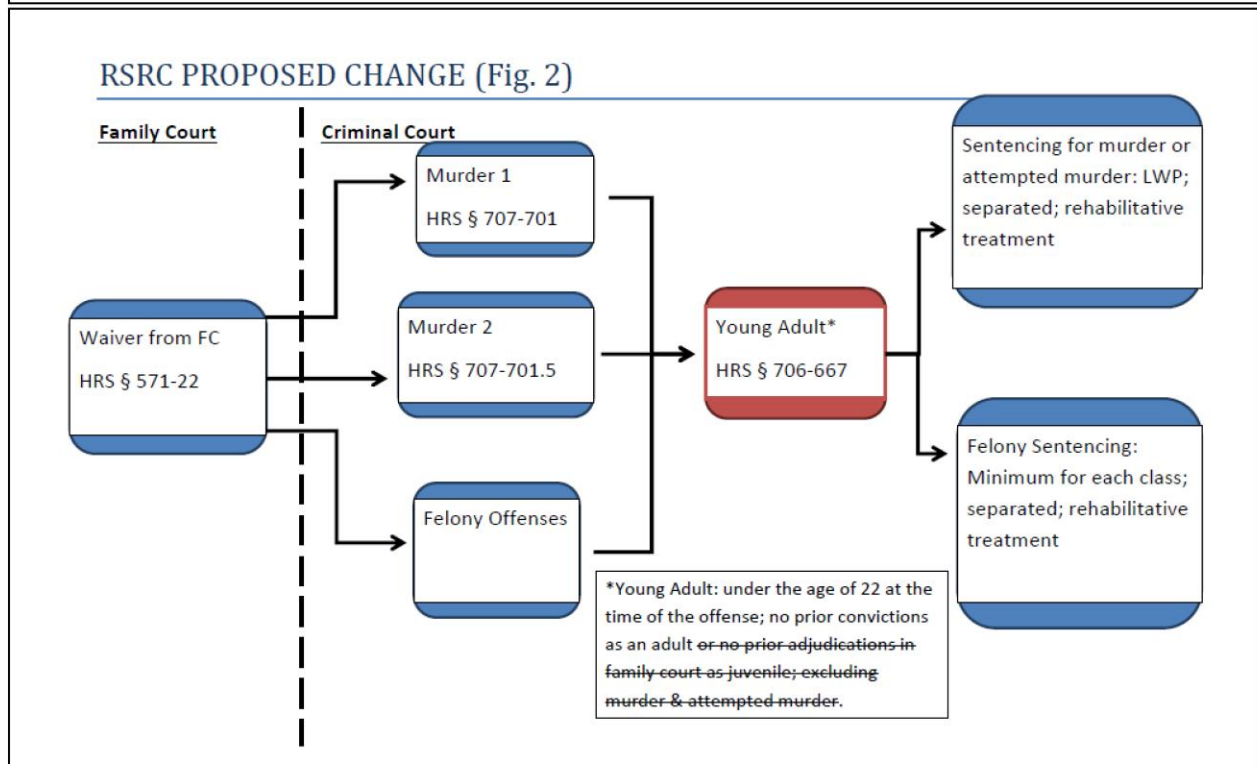
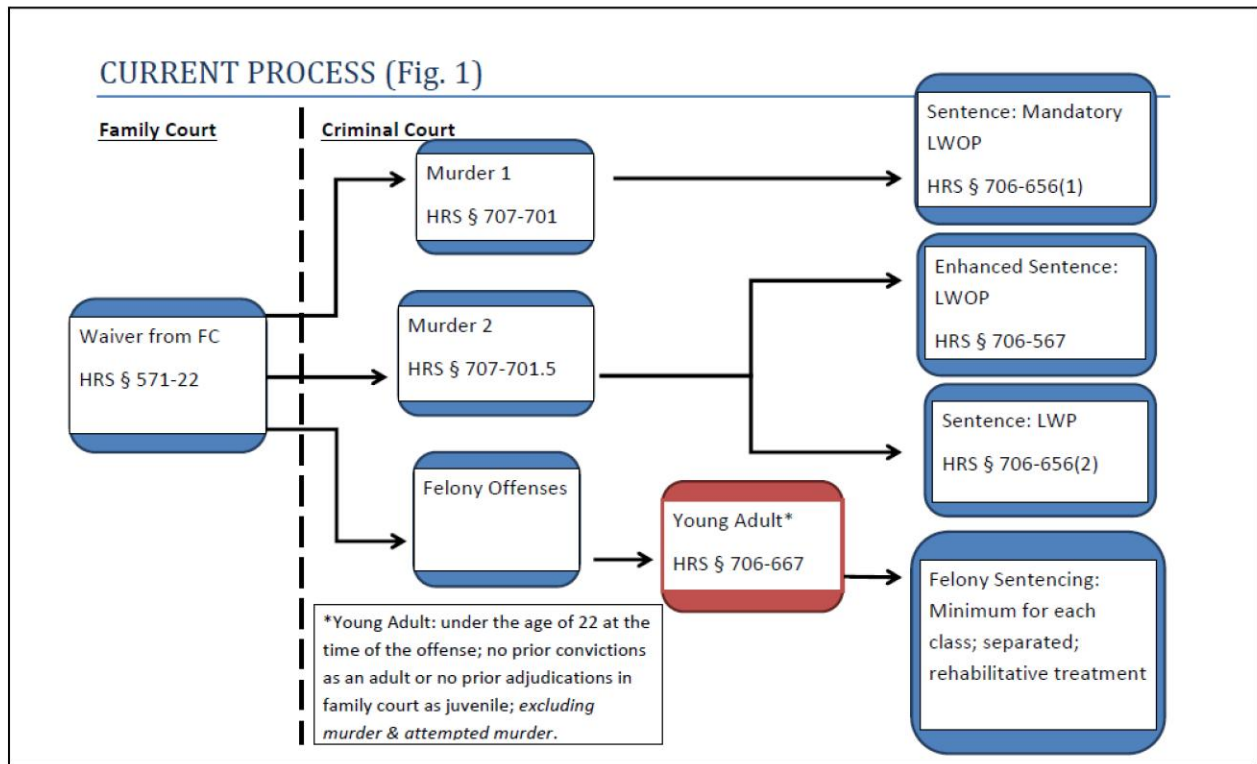
In closing, we say again that sentencing juveniles to life imprisonment without the possibility of parole is a draconian practice unsupported by modern evidence and moral sensibilities, and that stands in direct contravention of internationally accepted norms. The thought that a child who is not yet shaving could permanently be condemned to live in prison is not an appropriate practice for a state with such a strong historical commitment to our children.

Hawai'i should not be one of the last places on the planet with these cruel and irrational laws. One nation in the world is too many. One state in our nation is too many. One of our young citizens condemned forever for something he or she did as a minor is too many.

We strongly urge you to **pass HB 2116, with amendments.**

Mahalo for your consideration,

Christiaan Mitchell  
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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon Har, Vice Chair

Tuesday, February 25, 2014

2:00 p.m.

Room 325

## SUPPORT FOR HB 2116 HD1 – SENTENCING FOR JUVENILE OFFENDERS

Aloha Chair Rhoads, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 2116 HD1 establishes new factors to be considered in sentencing those convicted of an offense committed while under the age of 18, and a sentencing modification process for the same. The bill eliminates sentences of life without parole for juvenile offenders and requires the Hawai'i Paroling Authority to establish guidelines for minimum term served before parole eligibility.

Community Alliance on Prisons supports this measure.

International law prohibits the use of life without parole for those not yet 18 years of age at the time of their crime. We find it shameful that the United States is the only country in the world that sentences juveniles to life without parole. And sadly, Hawai'i is among the rapidly decreasing number of states with this law still on the books.

In June 2012, the U.S. Supreme Court decision *Miller v. Alabama*, 567 U.S. (2012) was authored by Justice Elena Kagan. The Court held that **mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders.** *"We therefore hold that mandatory life without parole for those under age of 18 at the time of their crime violates the 8<sup>th</sup> Amendment's prohibition on cruel and unusual punishments,"* Justice Kagan wrote. Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Stephen G. Breyer and Sonia Sotomayor agreed.

Justice Elena Kagan, writing for the majority, said the decision was consistent with the court's past findings that children lack maturity and have an underdeveloped sense of responsibility; that they are more vulnerable to outside pressure and that their character is less formed and more open to rehabilitation.

"Our decisions rested not only on common sense – on what 'any parent knows' – but on science and social science as well," Kagan wrote, adding "the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations."

Scientists are now utilizing advances in magnetic resonance imaging (MRI) to create and study three-dimensional images of the brain without the use of radiation (as in an x-ray). This breakthrough allows scientists to safely scan children over many years, tracking the development of their brains.<sup>1</sup>

Researchers at Harvard Medical School, the National Institute of Mental Health, UCLA, and others, are collaborating to “map” the development of the brain from childhood to adulthood and examine its implications.

Jay Giedd, a researcher at the National Institute of Mental Health, explains that during adolescence the “part of the brain that is helping organization, planning and strategizing is not done being built yet.... It’s sort of unfair to expect [adolescents] to have adult levels of organizational skills or decision making before their brain is finished being built.”<sup>2</sup>

Ruben Gur, MD, PhD, Director, University of Pennsylvania Medical Center said: “The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.... Indeed, age 21 or 22 would be closer to the ‘biological’ age of maturity.”

Deborah Yurgelun-Todd, PhD of the Brain Imaging Laboratory of McClean Hospital at Harvard University Medical School said, “Just because they're physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So, [although] somebody looks physically mature, their brain may in fact not be mature.”

New discoveries provide scientific confirmation that the teen years are a time of significant transition. They shed light on the mysteries of adolescence and demonstrate that adolescents have significant neurological deficiencies that result in stark limitations of judgment. Research suggests that when compounded with risk factors (neglect, abuse, poverty, etc.), these limitations can set the psychological stage for violence.

These discoveries support the assertion that adolescents are less morally culpable for their actions than competent adults and are more capable of change and rehabilitation. The ultimate punishment for minors is contrary to the idea of fairness in our justice system, which accords the greatest punishments to the most blameworthy.

This fresh understanding of adolescence does not excuse juvenile offenders from punishment for violent crime, but it clearly lessens their culpability. This concept is not new; it is why we refer to those under 18 as “minors” and “juveniles” – because, in so many respects, they are less than adult.

Please pass HB 2116 HD1 and let’s get this unconstitutional law off the books. Mahalo for this opportunity to testify.

*Children are our most valuable natural resource.*

*Herbert Hoover*

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<sup>1</sup> For an excellent overview, see Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind*, Oxford University Press (2001).

<sup>2</sup> PBS Frontline, *Inside the Teen Brain*. See Interview with Jay Giedd, online at [www.pbs.org/wgbh/pages/frontline/shows/teenbrain/](http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/)

**HB2116**

Submitted on: 2/22/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james crowe	Individual	Comments Only	No

Comments: Please support HB2116. Youth's minds are in the early stages of formation. Your positive efforts can have a life-long, permanently good effect on that formation.

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**HB2116**

Submitted on: 2/21/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Francesca May Feria	Individual	Support	No

Comments: I support the elimination of the sentencing of life without parole for juvenile offenders because they need to be given a chance to change.

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**HB2116**

Submitted on: 2/23/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sue haglund	Individual	Support	No

Comments: In June 2012 the US Supreme Court ruled that juvenile life without parole was unconstitutional.

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**HB2116**

Submitted on: 2/24/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments: COMMITTEE ON JUDICIARY Karl Rhoads, Chair Sharon Har, Vice Chair SUPPORT HB2116, HD1, Relating to Sentencing for Juvenile Offenders Hearing 2/25/14, 2pm Dear Chair Rhoads, Vice Chair Har, and Committee Members: I'm E. Ileina Funakoshi, resident of Hawai'i, concerned about our youth. I support this measure primarily because teenagers do not have the physical development of making decisions based on judgment, planning for the future, foresight of consequences, etc. They make impulsive judgments influenced by others, audio/visual influences; and even when incarcerated, they cannot comprehend why they were incarcerated. They blame the "system" or situations that caused them to be incarcerated. Of course, they need programs, but to incarcerate them to a lifetime of hating the "system" without understanding is throwing away a life that could be turned around to serve mankind, instead of wasting in a cell block. So many of our parents,, today, work day and night to pay their bills and don't have time to help in the development of their children. It is not the child's fault that he/she was born into a family without supervision. Sad, to say, we have to pay the cost of helping each juvenile find their way after so many years of neglect. It's not easy and there will be failures, but we have to develop a win-win situation instead of locking them up for life. I trust that the Hawai'i Paroling Authority, in establishing guidelines for minimum term served will incorporate the necessary safeguards separating the incorrigibles from the misguided ones. Thank you for your consideration to find a way for our juveniles. Also, for being able to submit my testimony for your consideration. Aloha, e. ileina funakoshi

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**HB2116**

Submitted on: 2/23/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sue haglund	Individual	Support	No

Comments: In June 2012 the US Supreme Court ruled that juvenile life without parole was unconstitutional.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Tuesday – February 25, 2014 – 2pm  
Conference Room 325

The House Judiciary Committee  
To: Representative Karl Rhoads, Chair  
Representative Sharon Har, Vice-Chair

Testimony in support :  
HB2116 – Relating to Sentencing for Juvenile Offenders

Research has shown that the brain does not develop entirely in adolescents until their 25<sup>th</sup> birthday. Considering this, it is unfair to treat juveniles as adults, no matter how heinous their crimes.

To sentence them to life with out the possibility of parole is to deny them the chance of rehabilitation, a concept that should be a part of our criminal justice system, along with penalties and restitution.

Thank you for allowing me to testify.

Jane Huntington  
Jlh96750@yahoo.com

**LATE**



**HB2116 HD1**  
**RELATING TO SENTENCING FOR JUVENILE OFFENDERS**  
House Committee on Judiciary

February 25, 2014

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2116 HD1, which establishes new sentencing factors to be considered and a sentencing modification process to be used for juvenile offenders, eliminates life without parole as a sentencing option for such offenders, and requires the Hawai'i Paroling Authority to establish guidelines for minimum terms to be served. **This bill would ensure that youth offenders have a greater chance of rehabilitating their lives after committing crimes early in their lives, reducing the long-term costs of criminal behavior both for our juvenile offenders and for our communities at large.**

In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system. This report found that Native Hawaiian youth are disproportionately represented in the juvenile justice system, and are also most frequently arrested in all offense categories.<sup>1</sup> Accordingly, addressing the prevalence of Native Hawaiian youth offenders in the criminal justice system, and providing them with adequate and effective rehabilitation opportunities, are key concerns within the Native Hawaiian community.

**Research has shown that life without parole is usually an ill-suited punishment for juvenile offenders.** It is well-established that juvenile offenders are not as capable of socially responsible executive decision-making as adults, bringing into question the appropriateness of subjecting them to penalties as severe as life imprisonment.<sup>2</sup> Mounting research also indicates that young offenders—even those who commit violent crimes—have a much greater capacity for rehabilitation and development of more positive, prosocial behavior later in life than adults do.<sup>3</sup> When measured against the mental culpability of a child, a life-without-parole sentence will virtually always be more severe than necessary, discouraging

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<sup>1</sup> THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 68 (2010), [http://www.oha.org/sites/default/files/ir\\_final\\_web\\_rev.pdf](http://www.oha.org/sites/default/files/ir_final_web_rev.pdf).

<sup>2</sup> AMNESTY INTERNATIONAL & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 45-49 (2005), available at [http://www.amnestyusa.org/sites/default/files/pdfs/threstoftheirlives\\_report.pdf](http://www.amnestyusa.org/sites/default/files/pdfs/threstoftheirlives_report.pdf).

<sup>3</sup> Juvenile Law Center, Juvenile Life Without Parole, (Nov. 26, 2013), <http://www.jlc.org/current-initiatives/promoting-fairness-courts/juvenile-life-without-parole-jlwop>.

offenders from reforming their behavior and effectively barring any meaningful opportunity for rehabilitation. Notably, the United States remains the only country in the world that still sentences juveniles to life without the possibility of parole.<sup>4</sup> Accordingly, by eliminating life without parole sentences for juvenile offenders, this measure will do away with a largely inappropriate and ineffective criminal penalty approach for our juvenile offenders.

**The sentencing flexibility provided in this measure may also facilitate greater rates of success in the rehabilitation and reentry of juvenile offenders.**

The essential aim of all penal systems should be to allow and encourage rehabilitation of dangerous or negative behavior; this is crucial to promoting community safety and the efficient use of scarce public resources. However, in many juvenile cases, long mandatory minimum sentences that do not allow for the consideration of youth offenders' circumstances or mental or emotional capacities fail to effectively serve such a goal. Allowing judges to consider the factors that may mitigate a youth offender's culpability, as this measure proposes to do, will more likely lead to the rehabilitation and successful reentry of youth offenders into their communities. Accordingly, the sentencing provisions of this measure may facilitate the more effective functioning of our penal system, and avoid the costs of juvenile offenders' potentially recidivist behavior later in life.

Therefore, OHA urges the committee to **PASS** HB2116 HD1. Mahalo for the opportunity to testify on this important measure.

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<sup>4</sup> Juvenile Law Center, Juvenile Life Without Parole, (Nov. 26, 2013), <http://www.jlc.org/current-initiatives/promoting-fairness-courts/juvenile-life-without-parole-jlwop>.



**LATE**

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Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
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TESTIMONY IN SUPPORT OF  
H.B. NO. 2116, HD 1  
A BILL FOR AN ACT RELATING TO SENTENCING FOR JUVENILE  
OFFENDERS

Justin F. Kollar, Prosecuting Attorney  
County of Kauai

House Committee on Judiciary

Tuesday, February 25, 2014  
2:00 p.m., Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Committee Members:

The Office of the Prosecuting Attorney, County of Kauai submits the following testimony expressing concerns regarding H.B. 2116, HD1, Relating to Sentencing for Juvenile Offenders.

While this Office supports the intent of this bill (to eliminate the possibility of life sentences without parole for juvenile offenders), the means of achieving this goal, as described in this bill, are cause for concern. This bill goes far beyond merely eliminating life sentences without parole for juvenile offenders; it imposes an entirely new and perhaps overly restrictive sentencing regime upon Family Court judges, and requires them to consider a multitude of factors that may not apply to the situation or offender at hand.

The Family Court only rarely waives its jurisdiction over juvenile offenders, and then only after a detailed and thorough process that takes into account a wide variety of factors. This painstaking process ensures that the only cases waived to adult court are those that truly deserve it; i.e. crimes that by their nature and/or conduct exhibit the characteristics of adult crimes. Family Court judges have the experience and skill at making these determinations, and this

bill could have the effect of tying their hands and forcing them to rely on statutory generalizations instead of their own instincts, reasoning, and experience. The Family Court system builds in sufficient protections to ensure that only in rare, and appropriate, circumstances, are juvenile offenders tried as adults. Moreover, our Office is not aware of any juvenile offender in this judicial circuit that has ever been sentenced to life in prison with or without the possibility of parole.

For these reasons, we submit these comments pertaining to H.B. 2116, HD1. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", written in a cursive style.

Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i

**LATE**

*the* CAMPAIGN *for the* FAIR  
SENTENCING *of* YOUTH



**TESTIMONY IN SUPPORT OF HB 2116  
PRESENTED TO THE HOUSE COMMITTEE ON THE JUDICIARY  
FEBRUARY 25, 2014**

Mr. Chairman and members of the House Committee on the Judiciary:

The Campaign for the Fair Sentencing of Youth respectfully submits this testimony for the official record to express our support for HB 2116 by Representative Karen Awana. We are grateful to Representative Awana for her leadership in introducing this bill and appreciate the Hawaii Legislature's willingness to address this important constitutional and human rights issue concerning the extreme sentencing of Hawaii's children.

The Campaign is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement age-appropriate alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. We work closely with formerly incarcerated youth, family members of victims, and family members of incarcerated youth to help develop sentencing alternatives for children that focus on their rehabilitation and capacity for reintegration into society. We work with policymakers across the political spectrum as well as a variety of national organizations to develop policy solutions that will keep our communities safe, hold children accountable when they are convicted of serious crimes, and save tax payer money.

The Campaign supports HB 2116 because, if signed into law, it will ensure that Hawaii fulfills the spirit of recent U.S. Supreme Court rulings that children, because they are constitutionally different from adults, should not be subject to our nation's harshest punishments. This bill would abolish life without parole as a sentencing option for children, replacing it with life with the possibility of parole after twenty years. This bill also acknowledges that youth possess a unique capacity for change, and would give those persons who were convicted of serious crimes as children the ability to petition the court for a sentencing modification hearing.

**Life Sentences Without the Possibility of Parole**

Today, approximately 2,500 individuals have been sentenced to life without parole for crimes committed as children. The U.S. is the only country in the world that sentences its children to die in prison.

This sentence is a final judgment that disregards children's unique capacity to grow and change as they mature into adulthood. Studies have shown that children's brains are not fully developed. As a result, children are less capable than adults to consider the long-term impact of their actions, control their emotions and impulses, or evaluate risks and reward. They also are more vulnerable and susceptible to peer pressure.



We also know from experience and from behavioral and brain development experts that children possess a unique capacity for change. The vast majority of children who commit crimes age out of criminal behavior and no longer pose a threat to society in adulthood. This highlights the need for sentencing policies that reflect the scientific and developmental realities of children, and creates an all-out ban on life without parole sentences for children.

Our country's recognition that children are still developing and have lessened culpability is reflected in the limitations we place on them. We don't allow children to enter into contracts, purchase or consume tobacco and alcohol, vote, or engage in other adult activities. We should also look at children who commit crimes through this same lens.

The practice of sentencing children to die in prison stands in direct contradiction to what we know about children. These sentences also are most frequently imposed upon the most vulnerable members of our society. Nearly 80 percent of juvenile lifers reported witnessing violence in their homes; more than half (54.1%) witnessed weekly violence in their neighborhoods. In addition, 50 percent of all children sentenced to life in prison without the possibility of parole have been physically abused and 20 percent have been sexually abused during their life. For girls serving life without parole sentences, more than 80 percent have been sexually assaulted.<sup>1</sup>

### **International Human Rights and the U.N. Convention on the Rights of the Child**

Article 37 of the U.N. Convention on the Rights of the Child prohibits the use of "capital punishment and life without the possibility of release" as sentencing options for people younger than 18.<sup>2</sup> The United States and Somalia are the only countries that have not ratified this Convention, which prohibits this cruel and unusual punishment. One of the chief reasons the U.S. has refused to ratify the CRC has been our country's sanction of life without parole sentences for children.

The United States is the ONLY country in the world that uses life without parole as a sentencing option for children.<sup>3</sup> We are better than that as a country. Hawaii has an opportunity to join the other nations in the world and an increasing number of states in the U.S. that are taking steps to bring us into compliance with Article 37. Texas, Wyoming, Kentucky, Kansas, Colorado, and Alaska have all abolished or kept life without parole for juveniles off the books as a sentencing option. A number of other states, including California, Delaware and Nebraska, have created measures to ensure that youth who are convicted of serious crimes have opportunities for review and resentencing later in life. In light of the U.S. Supreme Court trends, adolescent development research and growing support from policymakers and opinion leaders, several states are considering abolition measures during this legislative cycle as well.

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<sup>1</sup> *The Lives of Juvenile Lifers*, The Sentencing Project, March 2012, [http://sentencingproject.org/doc/publications/jj\\_The\\_Lives\\_of\\_Juvenile\\_Lifers.pdf](http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf)

<sup>2</sup> U.N. Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>3</sup> *Here Are All the Countries Where Children Are Sentenced to Die in Prison*, Huffington Post, Saki Knafo, September 20, 2013, [http://www.huffingtonpost.com/2013/09/20/juvenile-life-without-parole\\_n\\_3962983.html](http://www.huffingtonpost.com/2013/09/20/juvenile-life-without-parole_n_3962983.html)

## **Fiscal Burden**

Aside from the human rights and constitutional reasons for Hawaii to enact HB 2116, there is also a strong fiscal argument to be made in support of this legislation. In the U.S. it costs approximately \$2.5 million to incarcerate a child for the duration of his or her life. Collectively the 2,500 individuals sentenced to life without parole will cost taxpayers an estimated \$6.2 billion over their lifetimes.<sup>4</sup> In contrast, a child with a high school education who is paroled after serving 10 years could potentially contribute \$218,560 in tax revenue.<sup>5</sup> A formerly incarcerated child who obtains a college degree can potentially contribute \$706,560 in tax revenue over their lifetime.<sup>6</sup> These figures do not include their contributions to the local economy, job productivity, or the intangible impact of being positive role models for other at-risk youth.

## **The U.S. Supreme Court**

The United States Supreme Court, in a series of decisions during the last decade, has said that children are constitutionally different from adults and should not be subject to the nation's harshest punishments. In *Roper v. Simmons* (2005) the Court struck down the death penalty for children, finding it to be a violation of the 8<sup>th</sup> Amendment's prohibition on cruel and unusual punishment.<sup>7</sup> In that opinion, the Court emphasized the brain and behavioral development science showing that children are fundamentally different than adults in their development and that they have a unique capacity to grow and change as they mature.<sup>8</sup> In *Graham v. Florida* (2010) the Court struck down life without parole sentences for non-homicide offenses, holding that states must give children a "realistic opportunity to obtain release."<sup>9</sup> Finally, in *Miller v. Alabama* (2012) the Court struck down mandatory life without parole sentences for homicide offenses, finding that sentencing courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."<sup>10</sup>

HB 2116 will bring Hawaii in line with the spirit of these Supreme Court decisions by (1) eliminating the use of life without parole as a sentencing option for children, (2) replacing it with life with eligibility for parole after they have served up to twenty years, (3) providing guidance to the Hawaii Paroling Authority when considering parole for persons who committed their crimes as children, and (4) allowing those who committed serious crimes as children to petition the court for a sentencing modification hearing so they can present evidence to show that they have been rehabilitated, are remorseful for their actions, and if released would lead a productive, law-abiding life.

HB 2116 is the right policy to ensure public safety, fiscal responsibility, and the fair, age-appropriate sentencing standards for Hawaii's children. This bill is a step in the right direction. It will bring the state into compliance with the UN Convention on the Rights of the Child and will

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<sup>4</sup> *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at: [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf)

<sup>5</sup> *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf>

<sup>6</sup> *Id.*

<sup>7</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>8</sup> *Id.*

<sup>9</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>10</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).



be an example of common sense, practical solutions for holding children accountable when they come into conflict with the law.

Dr. Martin Luther King Jr. once said, "Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that." Children can and do commit serious crimes. While they must be held responsible, our response must not be focused on retribution. Instead, it must be measured and assure age-appropriate accountability that focuses on the unique capacity of children to grow, change and be rehabilitated. This bill does that, while promoting public safety and saving tax payer money. Therefore, we strongly urge this committee to vote favorably upon HB 2116 and give the children of Hawaii the chance to show that they can in fact change and be rehabilitated. Thank you for your consideration.

Mahalo,

A handwritten signature in black ink, appearing to read "James L. Dold", written over a light gray rectangular background.

James L. Dold, J.D.  
Advocacy Director  
The Campaign for the Fair Sentencing of Youth

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 25, 2014 11:07 AM  
**To:** JUDtestimony  
**Cc:** pamelalichy@gmail.com  
**Subject:** Submitted testimony for HB2116 on Feb 25, 2014 14:00PM

# LATE TESTIMONY

**HB2116**

Submitted on: 2/25/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Pamela Lichy	Drug Policy Action Group	Support	No

Comments: The Drug Policy Action Group strongly supports this measure. It is critically important for Hawaii to reconsider its sentencing guidelines for youth, especially in light of the 2012 US Supreme Court decision ruling that juvenile life without parole is unconstitutional. A growing body of evidence demonstrates that the brains of those in their teens are not yet fully developed, especially in the areas that include anticipating the consequences of their actions. It is frankly appalling that Hawaii still has a statute permitting this practice on its books and that the US is virtually the only nation permitting lifetime incarceration for juveniles. We thank the Finance Committee for hearing this critically important measure and urge you to move it out today. Mahalo for the opportunity to testify.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Subject:** \*Submitted testimony for HB2116 on Feb 25, 2014 14:00PM\*

**LATE TESTIMONY**

**HB2116**

Submitted on: 2/25/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Henri-Lee STALK	Individual	Support	No

Comments:

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