



**Date:** February 13, 2014

**To:** Representative Mele Carroll, Chair, House Committee on Human Services;  
Representative Bertrand Kobayashi, Vice-Chair, House Committee on Human Services

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

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

Aloha Chair Carroll, Vice Chair Kobayashi, 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 violated the U.S. Constitution's ban on cruel and unusual punishment. Following this, in 2012 the Court

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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.



found in *Miller v. Alabama* that mandatory life sentences without parole—even for murder—violated the 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.

### *Suggested Amendments*

While HB 2116 addresses these concerns and provides mechanisms for those subjected to juvenile life without parole to seek sentence modification, Richardson Students for the Rights of Children feels that the bill could provide even greater protection for Hawai‘i’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 people under the age of twenty-five are simply not fully neurologically developed. This neurological underdevelopment causes individuals under the age of twenty-five to be unable fully to appreciate the scope of the consequences of their actions.

In light of this research, and Hawai‘i’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.** 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 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  
Richardson Students for the Rights of Children  
[Richardson4ChildrensRights@gmail.com](mailto:Richardson4ChildrensRights@gmail.com)

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

**TESTIMONY IN SUPPORT OF HB 2116  
PRESENTED TO THE HOUSE COMMITTEE ON HUMAN SERVICES  
FEBRUARY 13, 2014**

Madam Chairwoman and members of the House Committee on Human Services:

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

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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).

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', is written over a light gray rectangular background.

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





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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 Human Services  
Scheduled for Hearing Thursday, February 13, 2014, 9:30 AM, Room 329

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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.



**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 11, 2014 10:50 AM  
**To:** HUS testimony  
**Cc:** daylinrose.gibson@gmail.com  
**Subject:** \*Submitted testimony for HB2116 on Feb 13, 2014 09:30AM\*

**HB2116**

Submitted on: 2/11/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daylin-Rose Gibson	Individual	Support	No

Comments:

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**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 11, 2014 3:24 PM  
**To:** HUS testimony  
**Cc:** eebrowni@hawaii.edu  
**Subject:** Submitted testimony for HB2116 on Feb 13, 2014 09:30AM

**HB2116**

Submitted on: 2/11/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eliza Browning	Individual	Support	Yes

Comments: Aloha Members of the Committee, Thank you for this opportunity to testify. My name is Eliza Browning, and I am a third year law student at the William S. Richardson School of Law. I am in strong support of this bill and urge the committee to pass the bill, and end the archaic practice of sentencing juveniles to life in prison without parole, which is essentially a death sentence. Thank you again for the opportunity to testify. Sincerely, Eliza Browning

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**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 12, 2014 12:53 PM  
**To:** HUS testimony  
**Cc:** shaelene@hawaii.edu  
**Subject:** \*Submitted testimony for HB2116 on Feb 13, 2014 09:30AM\*

**HB2116**

Submitted on: 2/12/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shaelene Kamakaala	Individual	Support	No

Comments:

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**LATE**

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**THE HONORABLE MELE CARROLL, CHAIR  
HOUSE COMMITTEE ON HUMAN SERVICES  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawai'i**

February 13, 2014

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

Chair Carroll, Vice-Chair Kobayashi and members of the House Committee on Human Services, 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 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 be involved in the exact same crime, and 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 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 would be inappropriate, and strongly urges the Committee not to pass this measure. Thank you for allowing us this opportunity to testify.