

Honolulu, Hawaii

APR 03 2014

RE: H.B. No. 2116  
H.D. 2  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 2116, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO SENTENCING FOR JUVENILE  
OFFENDERS,"

begs leave to report as follows:

The purpose and intent of this measure is to eliminate  
sentences of life imprisonment without the possibility of parole  
for juvenile offenders. Specifically, this measure:

- (1) Amends section 706-656, Hawaii Revised Statutes,  
relating to imprisonment terms for first and second  
degree murder and attempted first and second degree  
murder, to:
  - (A) Apply a sentence of life imprisonment without the  
possibility of parole to persons eighteen years of  
age or over at the time of the offense who are  
convicted of first degree murder or first degree  
attempted murder; and
  - (B) Require that persons under the age of eighteen  
years at the time of the offense who are convicted  
of first degree murder or first degree attempted  
murder be sentenced to life imprisonment with the  
possibility of parole; and



- (2) Amends section 706-657, Hawaii Revised Statutes, relating to enhanced sentence for second degree murder, to apply the sentencing guidelines under this section to persons eighteen years of age or over at the time of the offense.

Your Committee received testimony in support of this measure from the Office of Hawaiian Affairs, Office of the Public Defender, Office of the Prosecuting Attorney of the County of Kauai, American Civil Liberties Union of Hawaii, The Campaign for the Fair Sentencing of Youth, Community Alliance on Prisons, Richardson Students for the Rights of Children, Hawaii Appleseed Center for Law and Economic Justice, and one individual. Your Committee received comments on this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu.

Your Committee finds that Hawaii is one of the few states that still allow life sentences without the possibility of parole for juvenile offenders. According to The Campaign for the Fair Sentencing of Youth, approximately two thousand five hundred individuals in the United States have been sentenced to life without the possibility of parole for crimes committed as children. While international law prohibits life sentences without parole for juvenile offenders under the age of eighteen at the time the crime is committed, the United States is the only country in the world that sentences its children to a lifetime of incarceration.

Your Committee notes that in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the U.S. Supreme Court held that mandatory life sentences without parole for those under the age of eighteen at the time of their crimes violate the Eighth Amendment's prohibition on cruel and unusual punishments. The Supreme Court reasoned that children are constitutionally different from adults for purposes of sentencing, and because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments. Thus, the Court concluded that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. This measure recognizes the constitutional differences relating to sentencing between juvenile and adult offenders by eliminating the sentences of life imprisonment without the possibility of parole for juvenile offenders.



Your Committee recognizes that mitigating factors may exist for cases involving a juvenile offender. The United States Supreme Court held in *Miller* that subsequent decisions have elaborated on the requirement that defendants have an opportunity to advance, and the judge or jury have a chance to assess, any mitigating factors. Therefore, for cases involving a juvenile offender, the sentencer should have the ability to consider the "mitigating qualities of youth" because "youth is more than a chronological fact", it is a time of immaturity, irresponsibility, impetuosity, and recklessness. The Supreme Court in *Miller* stated that youth is a moment and "condition of life when a person may be most susceptible to influence and to psychological damage." Accordingly, your Committee encourages the sentencing judge to take into account and consider any mitigating factors for cases involving a juvenile offender.

Your Committee further recognizes the language suggested by the advocates for this measure regarding certain factors that the sentencing judge and Hawaii Paroling Authority should consider in determining the appropriate sentence for a juvenile offender. However, your Committee notes that these factors are already included in the considerations that the Court may consider in sentencing and the Hawaii Paroling Authority may consider in determining minimum term of imprisonment. Your Committee also notes the advocates' preference for certain language under H.B. No. 2116, H.D. 1 (Regular Session of 2014).

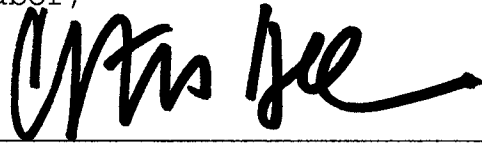
Accordingly, your Committee has amended this measure by:

- (1) Adopting the suggestion made by the Hawaii Appleseed Center for Law and Economic Justice to insert language from H.B. No. 2116, H.D. 1 (Regular Session of 2014) that amends section 706-669, Hawaii Revised Statutes, relating to the determination of minimum terms of imprisonment, to establish a limit on the minimum term of imprisonment before a prisoner who was less than eighteen years of age at the time of the offense becomes eligible for parole;
- (2) Changing the effective date from July 1, 2050, to July 1, 2014; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.



As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2116, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2116, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



