

**HB2116**

**HD2**

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the Senate Committee on Judiciary and Labor**

**March 19, 2014**

**H.B. No. 2116 HD2: Relating to Sentencing for Juvenile Offenders**

Chair Hee and Members of the Committee:

We support H.B. No. 2116 HD2. 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 HD2 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.

Thank you for the opportunity to provide testimony on this bill.



Committee: Committee on Judiciary and Labor  
Hearing Date/Time: Wednesday, March 19, 2014, 10:00 a.m.  
Place: Conference Room 016  
Re: Testimony of the ACLU of Hawaii in Support of H.B. 2116, H.D. 2,  
Relating to Sentencing for Juvenile Offenders

Dear Chair Hee and Members of the Committee on Judiciary and Labor

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 2116, H.D. 2, which would eliminate the sentence of life imprisonment without the possibility of parole for juvenile offenders.

The ACLU of Hawaii supports smart criminal justice, including the potential for rehabilitation (especially when the offender is a juvenile). Sentencing juvenile offenders to life without the possibility of parole subjects youth, whose decision-making skills are not yet fully developed, to a lifetime of incarceration while eliminating any incentive to rehabilitate. We encourage the Committee to vote to eliminate life without parole for juvenile offenders and allow these individuals the opportunity to become productive members of society.

Thank you for this opportunity to testify.

Sincerely,

Lois K. Perrin  
Legal Director  
ACLU of Hawaii

American Civil Liberties Union of Hawaii  
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# the CAMPAIGN for the FAIR SENTENCING of YOUTH



## TESTIMONY IN SUPPORT OF HB 2116 HD 2 WITH AMENDMENTS PRESENTED TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR MARCH 19, 2014

Mr. Chairman and members of the Senate Committee on Judiciary and Labor:

The Campaign for the Fair Sentencing of Youth respectfully submits this testimony for the official record to express our support for HB 2116 HD 2. 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 HD 2 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.

### **Proposed Amendments**

Although we support HB 2116 HD 2 because it is a step in the right direction, we believe the bill also needs to be amended to include provisions that were previously taken out of the bill in the House. Namely, we would support three important amendments (see appendix) that reflect the fact that children are different from adults and that our criminal justice system needs to account for those differences: (1) inclusion of a statutory cap dictating that all children should become eligible for parole, no later than after serving 20 years; (2) requiring judges to consider *Miller* factors, i.e. child status, at sentencing for all children transferred to adult court; and (3) requiring the parole board to consider certain factors relating to a child's status when setting the mandatory minimum and determining whether to grant parole to people convicted as children of serious offenses.

## **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.

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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>

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, Montana, 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. Last week, the West Virginia legislature overwhelmingly passed a bill that eliminated life without parole as a sentencing option for children, ensured parole eligibility after 15 years, and required the parole board to consider the mitigating factors of youth.

In light of the U.S. Supreme Court trends, adolescent development research and growing support from policymakers and opinion leaders, several additional states are considering abolition measures during this legislative cycle as well.

### **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.*

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<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)

<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).

*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 HD 2 will bring Hawaii in line with the spirit of these Supreme Court decisions by eliminating the use of life without parole as a sentencing option for children, however, the bill needs to be amended to ensure that Hawaii passes comprehensive and age-appropriate sentencing reforms. We strongly urge this committee to include amendments that: (1) ensure child eligibility for parole no later than after twenty years, (2) provide guidance that focuses on child status to the Hawaii Paroling Authority when setting mandatory minimums and considering parole for persons who committed their crimes as children, and (3) require judges to consider mitigating factors relating to child status any time they sentence a child in adult court.

HB 2116 HD 2, with these amendments, 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. As amended, 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.

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 adopt the amendments offered and vote favorably upon HB 2116 HD 2 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,



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

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

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Wednesday, March 19, 2014

10:00 a.m.

Room 016

## SUPPORT FOR HB 2116 HD2 - SENTENCING FOR JUVENILE OFFENDERS

Aloha Chair Hee, Vice Chair Shimabukuro 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 HD2 eliminates sentences of life imprisonment without the possibility of parole for juvenile offenders. Effective July 1, 2050.

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.”

The United States Supreme Court has indicated in *Roper*, *Graham*, and *Miller* that juveniles who commit criminal offenses are not as culpable for their acts as adults are and are more amenable to reform.<sup>1</sup>

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>2</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>3</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.

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<sup>1</sup> *Ohio Supreme Court explains how Miller is to be applied in discretionary juvenile LWOP system*  
<http://www.supremecourtofohio.gov/rod/docs/pdf/0/2014/2014-ohio-849.pdf>

<sup>2</sup> For an excellent overview, see Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind*, Oxford University Press (2001).

<sup>3</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/)

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.

To see what some other states are handling the recent decisions, go to:

*Life Without Parole for Juveniles: States and Courts Weigh In*, August 26, 2013:  
<http://www.pewstates.org/research/data-visualizations/life-without-parole-for-juveniles-states-and-courts-weigh-in-85899500114>

To download the infographic from Pew, go to:

[http://public.tableausoftware.com/shared/BDG86YGPT?:display\\_count=no](http://public.tableausoftware.com/shared/BDG86YGPT?:display_count=no)

Please pass HB 2116 HD1.

We appreciate the chance to share our mana`o on this important issue and thank the Chair and committee for this opportunity to testify.

*“Juveniles prosecuted as adults reoffend more quickly and at rates equal to or higher than comparable youths retained in the juvenile system.”*

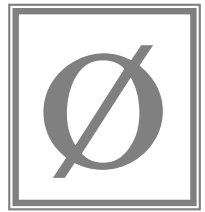
CDC Task Force Report<sup>4</sup>

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<sup>4</sup> Angela McGowan, et al. “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,” *American Journal of Preventive Medicine* (2007), pp. S7-S21, Online. Available:

<http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.

Accessed: July 28, 2008 [hereinafter CDC, Effects on Violence].



**Date:** March 18, 2014

**To:** Senator Clayton Hee, Chair, Senate Judiciary & Labor Committee;  
Senator Maile Shimabukuro, Vice-Chair, Senate Judiciary & Labor Committee  
Members of the Senate Judiciary & Labor Committee

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

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

Aloha Chair Hee, Vice Chair Shimabukuro, and Committee Members,

Richardson Students for the Rights of Children **strongly supports HB 2116**, but believes the bill could be strengthened **by adopting the amendments that would reinstate the minimum sentence caps, and mandatory consideration of mitigating factors present in the first draft of the bill.** HB 2116 would bring an end to 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.

Unfortunately, Hawai'i remains one of a rapidly shrinking number of states in the U.S. that participates in this shameful practice. According to Human Rights Watch, the State of Hawai'i is currently holding four individuals who were sentenced to life without parole for crimes committed when they were juveniles.<sup>2</sup> 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 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.

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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.

<sup>2</sup> See, HUMAN RIGHTS WATCH, STATE DISTRIBUTION OF YOUTH OFFENDERS SERVING JUVENILE LIFE WITHOUT PAROLE (2009), available at, <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole/>.



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, Hawai‘i’s murder law as applied to juveniles is plainly unconstitutional.

It has been suggested that the fact that all LWOP 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 judicial and quasi-judicial process.

### *Suggested Amendments*

Richardson Students for the Rights of Children feels that HB 2116 could provide even greater protection for Hawai‘i’s youth. The bill as currently written (HD2) makes the constitutionally mandated, minimum change of removing the mandatory life without parole sentence for juveniles convicted in adult court for first degree murder. Moreover, it removes the discretionary life without parole sentence for second degree murder for juveniles. These is an important and vitally necessary first steps.

However in the presence of long minimum sentences, the protections of HB 2116 are significantly limited. The Hawai‘i Paroling Authority has testified that a typical minimum sentence for murder is 45 years. That means that a 16-year-old sentenced to life with parole for murder would not be *eligible* for parole until he or she was 61 years old. Given the dramatically reduced life expectancies of prisoners, this amounts to an effective life without parole. A recent study of the Colorado prison population showed the highest mortality rate among incarcerated men in the 45–54 age band, with the next highest in the range from 55–64.<sup>3</sup> These unfortunate facts have the effect of rendering HB 2116 HD2 a largely symbolic step in the right direction that will provide little practical benefit to juvenile defendants. This can be remedied by **adopting language that would limit the minimum amount of time that a defendant must serve before parole eligibility.**

We additionally request **reinstatement of language contained in the original bill requiring the consideration of mitigating factors.** Insofar as the courts are already considering these factors, HB 2116 would do nothing more or less than codify existing practice and ensure that *all* defendants receive the same consideration.

Additionally, we request language that would ensure consideration of these relevant factors during any subsequent parole hearing. While we are sensitive to concerns about reviewing decisions already made by a court, the conditions and circumstances of a parole hearing are sufficiently different

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<sup>3</sup> Stacie Nelson Colling & Adele Cummings, *There is no Meaningful Opportunity in Meaningless Data: Why it is unconstitutional to use life-expectancy tables in post-Graham sentences.*



from those at trial and sentencing to warrant a second look. Therefore, we request **adoption of the parole review language suggested by the Campaign for the Fair Sentencing of Youth.**

Finally, HB 2116 HD2 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.

### *Conclusion*

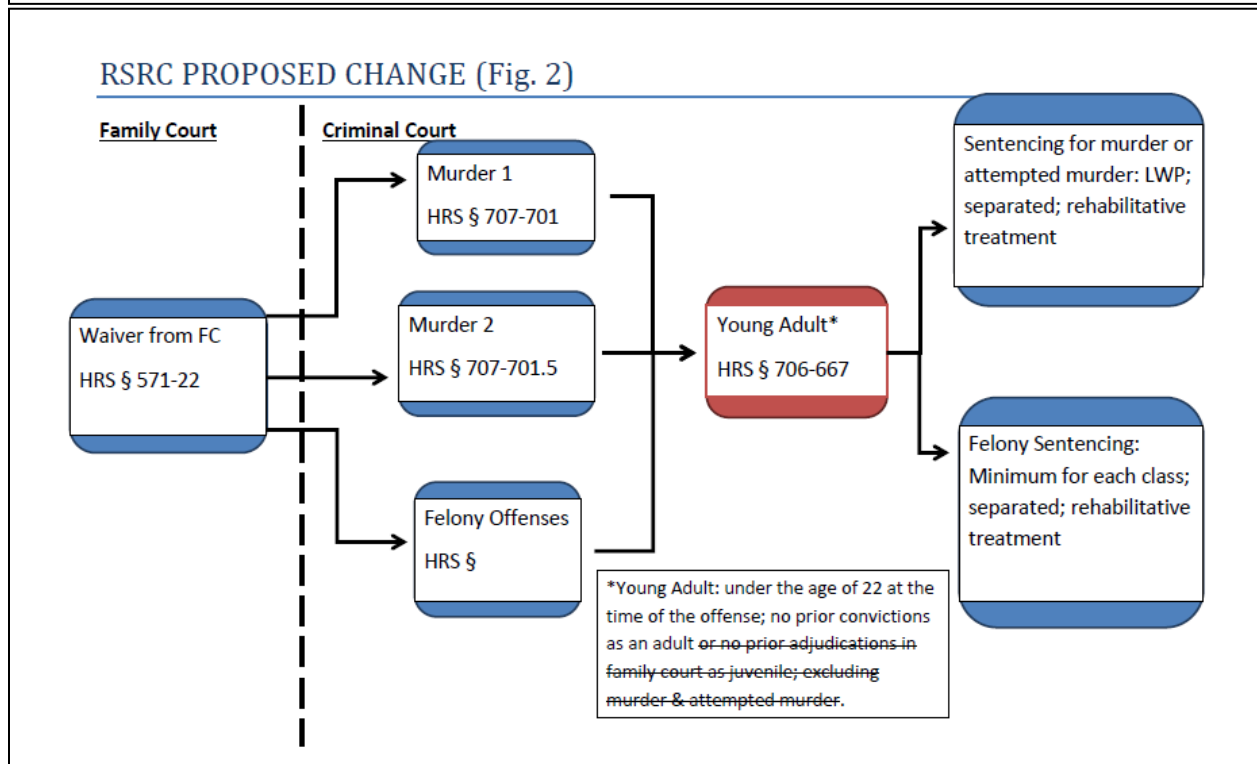
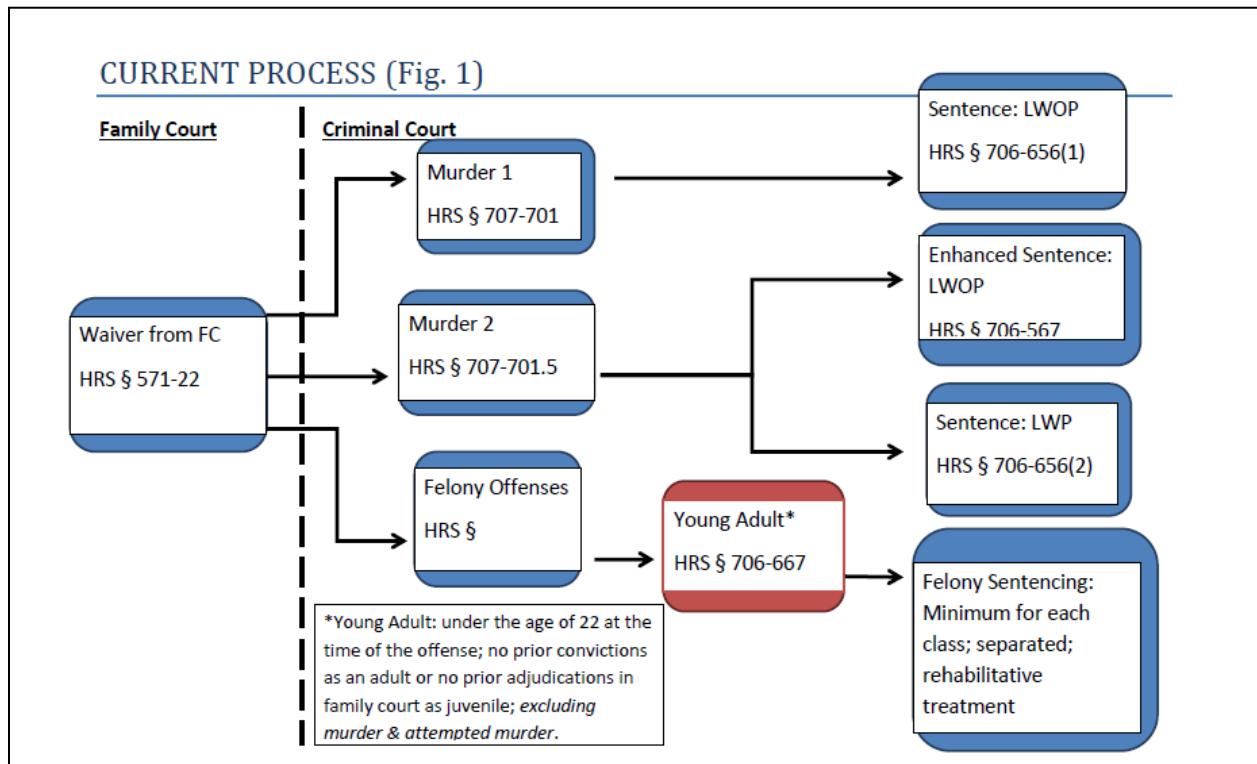
In closing, we say again that sentencing juveniles to life imprisonment without the possibility of parole is a draconian practice unsupported by modern evidence and moral sensibilities, and that stands in direct contravention of internationally accepted norms. The thought that a child permanently be 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)



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Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
Supporting HB 2116 Relating to Sentencing for Juvenile Offenders  
Senate Committee on Judiciary and Labor  
Scheduled for Hearing Wednesday, March 19, 2014, 10:00 AM, Room 016

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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 the intent** of House Bill 2116, but respectfully the committee will **amend** this bill and adopt the provisions in **House Draft 1**.

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 with the language from HD1.