



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
707 Richards Street, Suite 525
Honolulu, Hawaii 96813

January 23, 2014

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: David Hipp, Executive Director

**SUBJECT: H.B. 889 – REATING TO THE MAXIMUM AGE FOR COMMITMENT TO A YOUTH
CORRECTIONAL FACILITY**

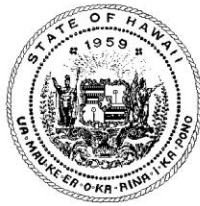
Hearing: Friday, January 24, 2014; 2:00 p.m.
State Capitol, Conference Room 325

The Honorable Will Espero and the Senate Committee on Public Safety, Intergovernmental and Military Affairs tabled the companion bill (S.B. 1120) to H.B. 889 during last year's legislative session. Since that time, much work has been accomplished in the field of juvenile justice.

Based on new legislation being introduced this session related to juvenile justice and our continued collaboration with the courts, I do not think it is necessary to move forward with this legislation.

Therefore, I am respectfully requesting that this Committee withdraw its consideration of this bill.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 889
RELATING TO
THE MAXIMUM AGE FOR COMMITMENT TO A
YOUTH CORRECTIONAL FACILITY

by
Ted Sakai, Director
Department of Public Safety

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

Friday, January 24, 2014, 2:00 p.m.
State Capitol, Conference Room 325

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

The Department of Public Safety is submitting comments concerning House Bill 889, which would establish the upper age limit for youth incarcerated at the Hawaii Youth Correctional Facility (HYCF) at 18. This measure, as written, would require 18-year old juveniles adjudicated by the Family Courts be placed in an adult facility should they violate the conditions of their parole from HYCF.

The Department met with Office of Youth Services Executive Director David Hipp to discuss its concern about committing an adjudicated youth subject to Family Court jurisdiction to an adult facility. As a result of that discussion, an agreement was reached to prevent such an occurrence.

We respectfully request this Committee amend this measure by rescinding Section 352-26(c), the wording that would allow adjudicated youth to be placed in an adult facility. We ask that you delete the language found on page 4, line 11, through page 5, line 14, and replace it with the following:

~~"[(c) In the case of a nineteen-year-old person such a designated employee may:~~

- ~~(1) Take the person into custody and place the person in an appropriate adult correctional facility if the alleged violation constitutes a crime and the director has been notified and subsequently issued a written order to that effect. In the event of retaking for such an alleged violation of parole, the director or the director's agent shall notify the person of the right to legal counsel and to appeal the issuance and execution of such order. The office of juvenile parole shall hold a hearing within thirty days after the person's incarceration in an adult facility to determine whether parole should be revoked. The juvenile parole office staff shall render reasonable aid to the person in preparation for the hearing.~~
- ~~(2) Notify the director of an alleged violation of parole. The director may petition the family court for an ex parte order based on the alleged violation to take the person into custody and place the person in an appropriate adult correctional facility. The person shall be notified of the issuance and execution of such a court order and of the right to legal counsel and appeal. A juvenile parole office hearing shall be held within thirty days after a person's placement in an adult facility to determine whether parole shall be revoked.]~~

~~[(d)] (c) Any person whose legal custody has been vested in the director and who has escaped from the facility may be taken into custody by a police officer or an employee of the department without a warrant or an order issued by the director and returned to the facility.~~

~~[(e)] (d) When called upon by any designated employee of the department, any police officer shall assist in taking a person into custody pursuant to the provisions of this section."~~

Thank you for the opportunity to testify.



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

The Hon. Karl Rhoads, Chair
The Hon. Sharon E. Har, Vice Chair

Friday, January 24, 2014
2:00 p.m.
State Capitol, Conference Room 325

by

R. Mark Browning
Senior Family Court Judge
Family Court of the First Circuit
WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 889, Relating to the Maximum Age for Commitment To a Youth Correctional Facility

Purpose: Eliminates the incarceration of eighteen year olds in a youth correctional facility.

Judiciary's Position:

The Judiciary respectfully offers comments regarding this bill:

1. This bill was originally introduced in 2013. Since then, family court and the Office of Youth Services (OYS)/Hawaii Youth Correctional Facility (HYCF) have collaborated on the problems that arise with placing older teens in HYCF. We believe that improvements have resulted from this collaboration.

2. The current statute already allows the Office of Youth Services (OYS)/Hawaii Youth Correctional Facility (HYCF) to utilize adult correctional facilities if the person is 19 years old and the alleged violation constitutes a crime. However, the current statute also gives much more discretion to HYCF in choosing the most appropriate treatment of furloughed and paroled youth. This bill may widen the "net" of young people to include those 18 to 19 years old, who will be exposed to learning criminal behavior from older incarcerated persons as well as subjecting

youth to possible harm. In 2011, the Legislature agreed with OYS that, in the case of youth, the statute (HRS Section 352-28) that allowed HYCF to detain youth (those persons, age 16 and older, whose behavior was endangering the safety of HYCF) in the adult correctional facility, should be repealed (Act 18 of 2011). In part, the repeal was based upon:

Your Committees find that this measure will ensure that youth committed to the Hawaii Youth Correctional Facility will not be transferred, for disciplinary or other reasons, to adult correctional facilities, where they would be exposed to serious adult offenders and subjected to possible physical, mental, and sexual assault. (Senate Standing Committee Report No. 839, re HB No. 1067, HD 1, March 23, 2011)

3. Increasing the exposure of youth to more experienced criminal behavior would be a disservice to both the youth and the community.

4. Cutting off OYS's role as guardian of committed youth, who are 18 years of age, may be problematic for all concerned. It may make OYS's supervisory efforts more difficult.

The family court is very appreciative and admiring of the efforts of the OYS as they continue their difficult work of ensuring that HYCF is effective, efficient, humane, and focused on rehabilitation of youth. We also understand that there will always be some tension about the appropriateness of the use of HYCF for certain teens. Despite this tension, the family court and OYS have a long history of close collaboration and we are confident this history of collaboration and mutual respect will continue.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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FIRST DEPUTY PROSECUTING ATTORNEY



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

January 24, 2014

**RE: H.B. 889; RELATING TO THE MAXIMUM AGE FOR A YOUTH
CORRECTIONAL FACILITY.**

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 in **strong opposition** to H.B. 889. Limiting Hawaii's youth correctional facilities ("HYCF") to persons under age 18 would not only be a disservice to juvenile offenders, but would also present a serious risk to public safety.

HRS Chapter 571, which controls our Family Courts, is expressly construed in such a way that courts can "formulate a plan adapted to the requirements of the child and the child's family **and the necessary protection of the community.**" (HRS §571-1. Emphasis added) Lowering the maximum age for HYCF to 18 years old would be inapposite to this principle, and remove a necessary tool that our Family Courts need to assist juvenile offenders and guard the safety of our community.

Please keep in mind, if a juvenile commits an offense shortly before he or she turns 18 years old, the juvenile may already be 18 by the time the case is heard, yet the Family Courts still have jurisdiction over that matter. If H.B. 889 were to pass, the courts' only sentencing options for that 18-year-old would be rehabilitative efforts and/or community service ... even if he or she has repeatedly refused to participate in treatment, counseling or other rehabilitative efforts in the past. Even if he or she already had a significant "criminal" record, prior to the newest offense. Even if the newest offense is a felony. And even if this felony victimized someone who will now have to deal with physical injuries, emotional trauma, and/or other difficulties as a result.

Granted, it is possible for Family Courts to waive jurisdiction on a case-by-case basis, but this is rarely done (currently), as the juvenile (or 18-year-old) would then be sent to the adult-court system, which does not emphasize rehabilitation as much as the juvenile system, and could result in an actual criminal conviction and/or imprisonment at an adult correctional facility. While HYCF is certainly a correctional facility—in every sense of the term—the offenders there are at least able to receive services geared specifically for youth, and are kept among other youth. Unfortunately, if 18-year-olds were no longer allowed at HYCF, the courts would be under increased pressure to waive jurisdiction in more cases, to ensure that appropriate punishment and/or services could be imposed if needed.

To our knowledge, there has been no misuse of HYCF by the courts, in terms of sending a juvenile offender to HYCF inappropriately. Indeed, HYCF is generally the Family Courts' consequence of last-resort, used for those who have repeatedly committed serious offenses and/or repeatedly refused the court's and other agencies' efforts toward rehabilitation. The fact that juvenile offenders may be sent to HYCF through age 19 actually gives our courts more time to try various approaches toward rehabilitation; this is crucial, as not all offenders respond to the first (or second or even third) program that they are ordered to attend. If the maximum age for HYCF were changed to 18, the courts would be forced to consider this alternative at an earlier age, because there would be no serious consequences for a juvenile's offense—nor for their refusal to comply with court orders—once he or she turned 18 years old.

While our Family Courts make every effort to assist and rehabilitate juvenile offenders, their mandated policy and purpose include a responsibility to "**render appropriate punishment** to offenders, and **reduce juvenile delinquency.**" (HRS §571-1. Emphasis added) By removing the option to send 18-year-old offenders to HYCF, the legislature would remove the only compelling form of punishment that is currently available to our courts for this age-group, and expose the public to an increased risk of harm.

For the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes H.B. 889. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

January 24, 2014

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: House Bill No. 889, Relating to the Maximum Age for Commitment to a Youth Correctional Facility

I am Richard C. Robinson, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 889, Relating to the Maximum Age for Commitment to a Youth Correctional Facility.

The lowering of the age of incarceration would place an offender who has been sentenced accordingly back into society early based strictly on his or her eighteenth birthday. The actions of the offender have validated his or her incarceration beyond this time period, and we feel that the sentencing should stand. This early release will also give the offender an opportunity to commit more crimes against the citizens of Hawaii.

The Honolulu Police Department urges you to oppose House Bill No. 889, Relating to the Maximum Age for Commitment to a Youth Correctional Facility.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


LOUIS M. KEALOHA
Chief of Police


RICHARD C. ROBINSON, Major
Criminal Investigation Division