



## Office of the Public Defender State of Hawaii



### Testimony of the Office of the Public Defender, State of Hawaii to the Senate Committee on Human Services

March 7, 2019

H.B. No. 218, HD1: RELATING TO MINORS

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

The Office of the Public Defender strongly supports H.B. 218, HD1.

We strongly support providing additional sentencing options for minors who have been waived into the adult court system for offenses that were committed while under the age of 18. The Circuit Court should have the opportunity to review mitigation relating to a minor's age, family and social background, education, and factors affecting that minor's maturity or lack of maturity in determining an appropriate sentence in the adult court system.

We strongly support giving the Circuit Court flexibility in determining whether a mandatory sentence should be adjusted under certain circumstances for waived minors. We firmly believe that minors should not automatically be treated as adults, even when waived, as the research is clear that teenagers and young adults have brains that are still developing and that they are still learning and maturing as they move into adulthood.

Thank you for the opportunity to comment on H.B. 218, HD1.

# HAWAII YOUTH SERVICES NETWORK

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Big Brothers Big Sisters of  
Hawaii

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of  
West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action  
Network

Hawaii Health & Harm  
Reduction Center

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Maui Youth and Family Services

Na Pu'uwai Molokai Native  
Hawaiian Health Care  
Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together  
(PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the

Great Northwest and

Hawaiian Islands

Residential Youth Services  
& Empowerment (RYSE)

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community  
Center

The Catalyst Group

March 8, 2019

Senator Russell Ruderman, Chair  
And members of the Committee on Human Services

## TESTIMONY IN SUPPORT OF HB 218 HD 1 RELATING TO EXEMPTION FROM CIVIL SERVICE

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 218 HD 1 Relating to Minors.

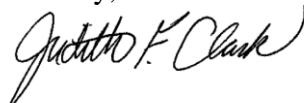
Minors that are adjudicated in Circuit Courts are adolescents whose brain development is incomplete.

Adolescents differ from adults in the way they behave, solve problems, and make decisions. adolescents are more likely to act on impulse; misread or misinterpret social cues and emotions; get into accidents of all kinds; get involved in fights; engage in dangerous or risky behavior. Adolescents are less likely to think before they act or pause to consider the consequences of their actions.

While they may have committed similar crimes to fully mature adults, they are less culpable and more capable of rehabilitation. They do not deserve the same level of punishment as an adult. Placing a youth in an adult prison simply increases the likelihood that they will develop into career criminals by forcing them to associate with hardened criminals.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH  
Executive Director



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**TESTIMONY IN SUPPORT OF HB 218 BEFORE  
THE HAWAII SENATE COMMITTEE ON JUDICIARY**

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*March 11, 2019*

Dear Chairman Rhoads, Vice Chair Wakai, and Members of the Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for HB 218. We are grateful to Representative John Mizuno for his leadership in introducing this bill and appreciate the Hawaii Legislature's willingness to address this important human rights issue concerning the use of mandatory minimum sentencing on Hawaii's children.

Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We work to inform the way the nation understands Adverse Childhood Experiences (ACEs) from a human rights perspective, to better educate the public and policymaker's understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States and around the world. Our work consists of: (1) Protecting children from harm; (2) Reforming justice systems to ensure we focus on rehabilitating children who come into conflict with the law; (3) Protecting immigrant, non-native children from harm and discrimination; (4) Promoting access to quality education for all children; and (5) Promoting healthy communities for children to ensure access to housing and health care.

Human Rights for Kids supports HB 218 because, if it is signed into law, it will scale back the use of mandatory minimum sentences for children and better align Hawaii's policies with juvenile brain and behavioral development science, international human rights law protecting children from extreme punishment, and prioritize rehabilitating children who come into conflict with the law, rather than overly punishing them.

**Children Sentenced as Adults**

In the late 1980's and early 1990's states began passing laws to make it easier to transfer children into the adult criminal justice system which exposed them to harsh mandatory minimum sentences and mandatory sentencing enhancements. By the year 2000, a child as young as 10

years old could be tried as an adult for certain offenses. And by 2010, an estimated 139,000 children were housed in adult prisons and jails across the United States.

Policymakers were driven by the now-debunked “Super-Predator Theory” which stated that a new generation of child predators were coming of age who were more violent and less remorseful than ever before. These children, the authors said, were “Godless, jobless, and fatherless” monsters and urged states to respond by treating them as adults and thereby exposing them to overly punitive mandatory minimum sentences.

An estimated 200,000 children are tried in the adult criminal justice system every year in the United States. These children can face severe punishment that is not age-appropriate and is disproportionate given their young age and lessened culpability relative to that of adults.

### **Adverse Childhood Experiences**

In the vast majority of cases, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or are suicidal, or are formerly incarcerated. Studies have shown that approximately 90% of children in the juvenile justice system have experienced at least 2 ACEs, and 27% of boys and 45% of girls have experienced at least 5 ACEs.

### **Juvenile Brain & Behavioral Development Science**

Studies have shown that children’s brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children’s underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities until they’ve reach adulthood.

### **Racial Disparities**

Black children are disproportionately represented in the adult criminal justice system, comprising 58% of all children confined in adult prisons. In addition, roughly 83% of children prosecuted in the adult criminal justice system are racial minorities. Black children represent 87% of drug cases, 48% of property cases, and 63% of the public order offense cases where children are tried in the adult criminal justice system.

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

The Supreme Court has emphasized through its cases in *Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and *Montgomery v. Louisiana* (2016) that **“the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.”** (Emphasis Added).

The Court has also found that, “only a relatively small proportion of adolescents” who engage in illegal activity “develop entrenched patterns of problem behavior,” and “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,” including “parts of the brain involved in behavior control.”

Nelson Mandela once said, “*There is no keener revelation of a society’s soul than the way in which it treats its children.*” 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. HB 218 does that, by simply giving judges greater discretion when sentencing children. It does not require judges to do anything, aside from consider how children are different from adults at the time of sentencing. And if children are not deserving of mercy when they make mistakes, who among us is?

We strongly urge this committee to vote favorably upon HB 218 to give judges greater flexibility to depart from harsh mandatory minimum sentences for children. Thank you for your consideration.

With hope and love,

A handwritten signature in black ink, appearing to read 'James L. Dold', with a stylized flourish at the end.

James. L. Dold  
President & Founder  
Human Rights for Kids

**HB-218-HD-1**

Submitted on: 3/9/2019 10:33:20 PM

Testimony for HMS on 3/11/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diana Bethel	Individual	Support	No

Comments:

HB218 HD1 recognizes that young people are different from adults and these differences must be taken into consideration in sentencing.

At their stage of brain development, young people are easily influenced by their peers and have more difficulty with impulse control and cannot be held accountable to the same extent as adults.

Also, their potential for rehabilitation is greater.

However, most of all, it has been shown that harsh sentences are not effective.

Given these factors, it is important that judges be given the discretion to determine sentences appropriate to the individual and situation.

HB 218 will improve the administration of justice for those who committed crimes as minors and are being sentenced in adult courts. Please pass HB218 HD1.

Thank you.

**HB-218-HD-1**

Submitted on: 3/10/2019 11:16:10 AM

Testimony for HMS on 3/11/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong Support!