



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Judiciary

February 20, 2019

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

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

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

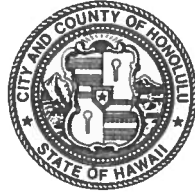
We strongly support providing additional sentencing options for minors who have been waived into the adult court system for offenses that were committed while under the age of 18. The Circuit Court should have the opportunity to review mitigation relating to a minor's age, family and social background,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

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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MK-KK

February 22, 2019

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 218, H.D. 1, Relating to Minors

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 218, H.D. 1, Relating to Minors.

The HPD recognizes the difference between minor and adult perpetrators and that these differences may be taken into account when minor perpetrators are convicted and sentenced. Even though minors are more vulnerable to outside negative influences and do not have the ability to change or control their living environment, minors should be held accountable for his or her crime if he or she is convicted and sentenced.

The HPD believes that the circuit court judges should have discretion when sentencing minors convicted of crimes, but it should not allow judges to deviate from mandatory minimums for each respective case. The HPD supports the prospects of rehabilitation for all minor offenders.

The HPD urges you to oppose House Bill No. 218, H.D. 1, Relating to Minors.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Chris Kalani Lee, Chair

Rep. Joy SanBuenaventura, Vice Chair

Friday, February 22, 2019

2:05 pm

Room 325

SUPPORT for HB 218 HD1 - SENTENCING OF MINORS

Aloha Chair Lee, Vice Chair SanBuenaventura 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 in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 218 HD1 grants a circuit court, when sentencing a minor for a criminal offense, the discretion to: (1) impose a sentence that includes a period of incarceration that is as much as fifty per cent shorter than any mandatory minimum; and (2) in certain cases, decline to impose a mandatory enhanced sentence.

Community Alliance on Prisons supports this measure. The question of what constitutes responsible and legal behavior in children and adolescents is an issue with important philosophical, scientific, social, ethical, and practical considerations. A 2016 article entitled, *Juvenile Justice and the Adolescent Brain*¹ explains development of the frontal cortex – the executive center/decisionmaking center of the brain.

Scientists know that the adolescent brain is still developing, that it is highly subject to reward- and peer-influence, and that its rate of development varies widely across the population. They have developed basic tools that offer data with which to judge the potential for juvenile desistance, recidivism, and rehabilitation.

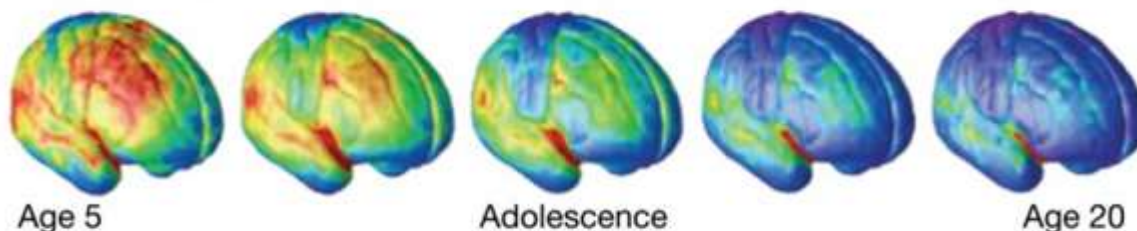
With its ability to examine the workings of the teenage brain, neuroscience is improving our understanding of adolescents, and potentially, juvenile offenders. Through their window into the brain, neuroscientists understand, for example, that adolescents mature at markedly varied rates. The

¹ *Juvenile Justice and the Adolescent Brain*, BRAIN SCIENCE IS REFORMING JUVENILE JUSTICE POLICY AND PRACTICE, 2016.
<http://clbb.mgh.harvard.edu/juvenilejustice/>

presumed trajectory of brain development, demonstrated in existing “bright line” age cut offs for voting, military service, and drinking, however, is not reflective of this variability in brain maturity. Similarly, neuroimaging research by CLBB faculty (Somerville, 2010) clarifies that it is teenagers’ heightened vulnerability to reward that drives risky behavior, contrary to longstanding beliefs that teenagers are unable to gauge risks. They can often recognize risks, but incomplete development of brain mechanisms related to modulation of impulsive behavior reduces their tendency to heed those risks.

Science may also help us understand which juvenile offenders are likely to commit future crimes and which may not. A longitudinal study, “Pathways to Desistance” (Mulvey, 2011), has collected significant data on factors such as substance abuse and instability in daily routine that lead to youth recidivism. The seminal paper, “Rewiring juvenile justice: the intersection of development neuroscience and legal policy” (Cohen and Casey, 2014), elucidates how key new scientific findings about the development of the adolescent brain may inform policy.

Dynamic mapping of human cortical development



Source: “Dynamic mapping of human cortical development during childhood through early adulthood,” Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

An article² published by the American Bar Association discussed the impact on juveniles sentenced in adult criminal court.

...The increase in laws that allow more juveniles to be prosecuted in adult court rather than juvenile court was intended to serve as a deterrent for rising youth violent crime. As such, it is important to evaluate what happens to juveniles who go through the adult court system to determine if they are “deterred” from future crime. A comprehensive literature review was completed by the University of California, Los Angeles (UCLA) School of Law’s Juvenile Justice Project in July 2010 that reviewed the impact of juvenile cases prosecuted in adult court. The report, [The Impact of Prosecuting Youth in the Criminal Justice System: A Review of the Literature](#), ultimately found that there has been little to no deterrent effect on juveniles prosecuted in adult court, and in many states, recidivism rates have actually increased.

Statistics compiled from 15 states revealed that juveniles prosecuted in adult court and released from state prisons were rearrested 82 percent of the time, while their adult counterparts were rearrested 16 percent less. Id. Meanwhile, studies have shown that juveniles prosecuted in juvenile court benefit from the services made available to them through that process, as juvenile institutions provide programs and resources specifically designed for juvenile development. Id. Juveniles in adult court often do not have the opportunity to acquire critical

² **Should Juveniles Be Charged as Adults in the Criminal Justice System?** By Nicole Scialabba, October 03, 2016. <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/should-juveniles-be-charged-as-adults/>

skills, competencies, and experiences that are crucial to their success as adults; rather, they are subject to an environment in which adult criminals become their teachers.

A report on health impacts of charging youth as adults, with recommendations for increased community investment and restorative justice-oriented solutions was released by Human Impact Partners in February 2017.³

The Justice System is Biased Against Youth of Color Youth of color are overrepresented at every stage of the juvenile court system. Rampant racial inequities are evident in the way youth of color are disciplined in school, policed - iii - and arrested, detained, sentenced, and incarcerated. These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than White youth charged with similar offenses. Youth of color are more likely to be tried as adults than White youth, even when being charged with similar crimes. In California in 2015, 88% of juveniles tried as adults were youth of color.

“Tough on Crime” Laws Criminalize Youth and are Ineffective Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment – not based on research or data – across the political spectrum was that treatment approaches and rehabilitation attempts did not work. However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

Children are amenable to rehabilitation. We must understand that children are impulsive and do not always have the capacity to understand the consequences of their actions.

We are happy that in 2011, Hawai`i stopped waiving youth into the adult system and we respectfully ask the committee to pass this measure.

Mahalo for this opportunity to testify.

“As a society ... do we want young people to be left to a specific, certain fate in prison ... or do we want a process of education, a process of healing, a process of insight to support them to understand how they got there, a process of growth? What do we want?”

Malachi, charged as an adult at age 15

³ Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased, and Harmful, February 2017.

<https://humanimpact.org/hipprojects/juvenile-injustice-charging-youth-as-adults-is-ineffective-biased-and-harmful/>

HAWAII YOUTH SERVICES NETWORK

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Rick Collins, President

Judith F. Clark, Executive
Director

Bay Clinic

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

February 21, 2019

Representative Joy San Buenaventura, Chair
And members of the Judiciary

TESTIMONY IN SUPPORT OF HB 218 RELATING TO MINORS

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

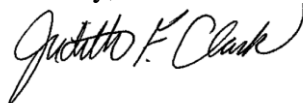
Minors that are adjudicated in Circuit Courts are adolescents whose brain development is incomplete.

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



TESTIMONY IN SUPPORT OF HB 218 BEFORE THE HAWAII HOUSE JUDICIARY COMMITTEE

February 22, 2019

Dear Chairman Lee, Vice Chairwoman San Buenaventura, 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