



HB218 HD1 SD1
RELATING TO MINORS
Senate Committee on Judiciary

March 28, 2019

9:45 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB218 HD1, which would recognize the differential culpability and needs of young, disproportionately Hawaiian, juvenile offenders by offering judges greater discretion in sentencing minors for criminal offenses.

The cycle of involvement in the criminal justice system frequently starts with first contact in youth, and Native Hawaiian youth are disproportionately represented in the juvenile justice system. In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system.¹ This report found that Native Hawaiian youth are disproportionately represented in the juvenile justice system and are also the most frequently arrested ethnic group in all offense categories.² In 2012, the Native Hawaiian Justice Task Force (NHJTF) was tasked by the Legislature to address the issues raised in OHA's 2010 report; in its report, the Task Force further acknowledged that "an individual's contact with the criminal justice system, regardless of race, often begins at youth."³

Accordingly, OHA supports efforts to ensure that young offenders are treated age appropriately based on their lesser culpability and higher potential for rehabilitation. Adolescents' and young adults' brains and judgment skills are not fully formed, and, therefore, 'ōpio are less able to exercise the same sound, prosocial judgment we expect from law-abiding adults. Research has well established that children under the age of 18 are still developing their physical, mental, and emotional capacity to deal with psychological challenges, external pressures, and circumstances outside of their control; in other words, juveniles are not as capable of socially responsible executive decision-making as adults.⁴ At the

¹ OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

² *Id.* at 68.

³ OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT 21 (2012), available at http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

⁴ AMNESTY INTERNATIONAL & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 45-49 (2005), available at http://www.amnestyusa.org/sites/default/files/pdfs/threstoftheirlives_report.pdf.

same time, youth are more capable of reforming after lapses in judgment: juvenile offenders, because of their greater susceptibility to external influences, also have a much greater capacity and propensity toward rehabilitation than adults do.⁵ OHA believes that acknowledging and taking into account this potential for youth to both offend, as well as reform and refine their decisionmaking approaches, can reduce the impact of the criminal justice system on Native Hawaiians and the lives of our young people, as well as promote the safety and integrity of our communities in the long-term.

Unfortunately, mandatory minimum sentences for juveniles tried as adults fail to take into account the diminished decisionmaking capacity of youth, or their higher potential for rehabilitation and reform. Such mandatory minimum sentences, with youth offenders' imprisonment in adult correctional facilities with older, hardened criminal populations, preclude opportunities to reform the behavior and decisionmaking of young offenders, and may even facilitate or encourage their continued engagement in criminal activity well into adulthood. Accordingly, it has been long considered inappropriate to punish juveniles for transgressions they committed during their formative years in the same ways and for similar lengths of time as adults.

Allowing judges to consider reduced sentences that are lower than the mandatory minimums for adult charges would reaffirm scientifically proven and morally sound policy that juvenile offenders should not be punished as harshly as adults for their less culpable behavior, and that they should instead be offered greater opportunity to reform their behaviors from youthful indiscretions.

Therefore, OHA urges the Committee to **PASS** HB218 HD1 SD1. Mahalo for the opportunity to testify on this measure.

⁵ RollCall, Youth Offenders Deserve a Chance for Rehabilitation (last accessed Mar. 8, 2019), available at <https://www.rollcall.com/news/-40524-1.html>.

POLICE DEPARTMENT
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OUR REFERENCE MK-KK

March 28, 2019

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 218, H.D. 1, S.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, S.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.

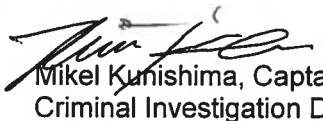
The HPD urges you to oppose House Bill No. 218, H.D. 1, S.D. 1, Relating to Minors.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division



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

March 28, 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 the original House Version of 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.

That being said, we would strongly urge this committee to return HB 218 to its original form, as passed by the House, to better protect the rights of children in the justice system.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and incarceration our treatment of children in the justice system is long overdue for re-examination and reform.

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,



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

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Thursday, March 28, 2019

9:45 am

Room 016

STRONG SUPPORT- HB 336 HD2, SD1 - DEATHS IN CORRECTIONAL FACILITIES

Aloha Chair Rhoads, Vice Chair Wakai 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 5,500 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.

Community Alliance on Prisons is in strong support of this measure. We respectfully request that death notifications be made PUBLIC - not just to the governor and the legislature.

Community Alliance on Prisons is deeply concerned about this because of a suspicious death that occurred last January that the department classified as a suicide. The woman's body was washed before the family could request a rape evidence kit be taken. This bill requires collection of sexual assault evidence if there is an indication of sexual assault, counseling within 24 hours of a sexual assault, and establishes policies and standards of transparency to achieve a zero-tolerance policy.

We know that a correctional officer died at OCCC because no one had a key to enter his station. There have been far too many deaths as well as deaths from suicides at various facilities in Hawai'i or contracted by Hawai'i. We know of several recent deaths at Saguaro and were recently told that a 52-year old man with no health problems man died because there was no defibrillator there. Shortly after this death another one occurred at the same facility. Who is watching out for the people incarcerated by Hawai'i serving their sentences far, far away?

The community needs transparency and accountability, not just the bill for us to pay for this dysfunctional department's misdeeds.

Community Alliance on Prisons urges the committee to pass this important bill. Demanding transparency and accountability from one of Hawai'i's most secretive and unaccountable agencies is long overdue. PLEASE VOTE FOR TRANSPARENCY! Mahalo for this opportunity to testify.

"Power corrupts, and there is nothing more corrupting than power exercised in secret."

Daniel Schorr

LATE

HB-218-SD-1

Submitted on: 3/27/2019 7:53:28 PM

Testimony for JDC on 3/28/2019 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Democrats Committee on Legislative Priorities	Support	No

Comments:

LATE

HB-218-SD-1

Submitted on: 3/27/2019 3:32:57 PM

Testimony for JDC on 3/28/2019 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

HB 218 HD1 SD1 provides for court discretion in sentencing a young person who has committed an offense while under the age of 18 and who ages into the adult criminal justice system.

Because of the stage of adolescent brain development, youth may be easily influenced by peers and motivated by the desire for instant gratification. Knowing this, a crime committed by a minor must be viewed differently from that committed by an adult because a minor may be less able to understand the consequences of their actions.

A young person may be more responsive to rehabilitation than an adult. So every possible opportunity for rehabilitation must be pursued to hopefully turn around the young person's life.

The alternative is to incarcerate a young person in an environment where they may be harmed, may not be able to continue their education, and may be influenced by older and more hardened inmates. When they are released, they may be less able to integrate into society and become productive citizens.

If a "Tough on Crime" approach is taken, especially in a system that lacks meaningful rehabilitation programs, the outcome will ultimately make the community less safe.

Additional sentencing options would allow the court to dispense justice in a more sensible and humane way, while at the same time protect public safety.

Mahalo.