



HB2101 HD1

Ke Kōmike Hale o ka Ho‘okolokolo

Pepeluali 25, 2020

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2101 HD1, which would recognize the differential culpability and needs of young – and disproportionately Native Hawaiian – juvenile offenders, by offering judges greater discretion in sentencing minors for criminal offenses.

Native Hawaiian youth are disproportionately represented in the juvenile justice system, which may contribute significantly to Native Hawaiians’ disproportionate representation in the criminal justice system as a whole. In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system. 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. 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 NHJTF further acknowledged that “an individual’s contact with the criminal justice system, regardless of race, often begins at youth.” Accordingly, OHA believes that a close examination of the juvenile justice system may be critical to mitigating the substantial and disproportionate impacts of the criminal justice system on the Native Hawaiian community.

Unfortunately, mandatory minimum sentences for juveniles fail to recognize the extenuating circumstances that often lead youth to offend, and may significantly limit their otherwise high potential for rehabilitation and reform. Other jurisdictions have even found mandatory minimum sentences for minors to violate “standards of decency and fairness,” and have ruled them unconstitutional as applied to youth.¹ By failing to allow for flexible penalties that can take young offenders’ diminished executive decisionmaking capacity and unique circumstances into account, mandatory minimum sentences may contribute directly to Native Hawaiians’ representation in the juvenile justice system, and may only exacerbate their risk of involvement in the criminal justice system later in life.

This measure represents an opportunity to reduce the harmful and unnecessary effects of mandatory minimum sentences on our youth. Under this measure, circuit courts, in their discretion, would be able impose a sentence up to 50 percent shorter than an otherwise mandatory minimum, or decline to impose a mandatory enhanced sentence in certain

¹ See *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017) (holding trial courts are “vested with full discretion to depart from the sentencing guidelines and any otherwise mandatory sentence enhancements.”); *State v. Andre Jerome Lyle Jr.* No. 11-1339 (2014).

circumstances for non-violent youth offenders. Allowing judges greater discretion in sentencing youth will enable them to consider the mitigating circumstances surrounding a charged offense, issue tailored sentences that can take advantage of, rather than foreclose, their high rehabilitation potential, and thereby potentially reduce the unjust and unnecessary impacts of mandatory sentencing on juvenile offenders.

Accordingly, OHA urges the Committee to **PASS** HB2101 HD1. Thank you for the opportunity to testify on this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Judiciary**

February 24, 2020

H.B. No. 2101, HD 1: RELATING TO MINORS

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

The Office of the Public Defender strongly supports H.B. No. 2101, HD 1.

We strongly support providing additional sentencing options for minors who have been waived into the adult court system for offenses. 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. The circuit court should have the flexibility to determine whether a mandatory sentence should be adjusted under certain circumstances for waived minors, as the United States Supreme Court, in *Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 2464, 183 L.Ed.2d 407, 418 (2012), recognized,

[C]hildren are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, they are less deserving of the most severe punishments. . . . First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievable depravity.

(Citations, brackets, and quotation marks omitted).

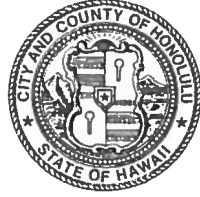
Moreover, studies have shown that children’s brains are not fully developed. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible 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 have reach adulthood.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE GB-KK

February 25, 2020

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

Dear Chair Lee and Members:

SUBJECT: House Bill No. 2101, H.D. 1, Relating to Minors

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

The HPD opposes House Bill No. 2101, 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 their crime if they are 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. 2101, H.D. 1, Relating to Minors.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard
Chief of Police

Sincerely,

Handwritten signature of Gail Beckley in black ink.

Gail Beckley, Captain
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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LATE

**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 25, 2020

RE: H.B. 2101, H.D. 1; RELATING TO MINORS.

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 2101, H.D. 1.

H.B. 2101, H.D. 1, proposes to amend sentencing provisions for juveniles over whom Family Court has waived jurisdiction and are transferred to the adult court system. While the Department appreciates the intent of this bill, we strongly believe it would be inappropriate to establish these types of disparate sentencing provisions, as multiple safeguards are already in place to ensure fairness to these young offenders (and all offenders).

Per section 571-11, Hawaii Revised Statutes ("HRS"), Family Court has exclusive original jurisdiction over "any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any ... law or county ordinance." In rare cases, HRS §571-22 allows the court to waive jurisdiction over a juvenile, transferring that case to the adult court system, "after full investigation and hearing."

In our experience, Family Court does *not* take this waiver decision lightly, nor does the Department or any other stakeholder involved in these proceedings. This process is rarely utilized, and specifically requires the court to make certain specific findings that warrant a waiver of jurisdiction. Most notably, HRS §571-22(c) requires that the Family Court consider numerous factors before reaching its decision, including the juvenile's history, sophistication, maturity-level, home and environmental situation, and likelihood of reasonable rehabilitation.

Family Court judges have a great deal of experience and perspective in dealing with Hawai'i's juvenile offenders—presumably more than any other court judges—and are arguably

more familiar with the “diminished culpability of juveniles” and the “hallmark features of youth” than any other judges as well. Moreover, in our experience, the Family Court is *acutely* aware that once it transfers jurisdiction to the adult court system, it cannot regain jurisdiction over that individual (see HRS §571-22(e)), and is further aware of the adult consequences that the individual potentially faces in the adult court system.

In addition, please note that the adult court system already makes special accommodations for youthful offenders, in terms of sentencing and/or incarceration provisions (see HRS §706-667), and these provisions are equally available to all defendants under the age of 22 who have no prior felony convictions nor felony-equivalent adjudications. Thus, to provide different sentencing considerations for young defendants over whom Family Court has waived jurisdiction—who are potentially of similar age to other young defendants accused of similar offenses—would be vastly unfair to those born just days, weeks or months “too late.” It is even possible that co-defendants, born days or weeks apart, could have the same level of involvement in the exact same crime, yet receive disparate sentencing from the same (adult) court, if one was just over the age of 18 when the offense occurred, and the other was just under the age of 18 but Family Court waived jurisdiction.

The changes proposed in H.B. 2101, H.D. 1, would substantially discount, or even undermine, the Family Court's intensive waiver process and the gravity of their decision to waive jurisdiction (in the few cases that are actually waived). Our adult court system already has numerous procedures and provisions that require the court to take into account the specific history and characteristics of each offender—including young offenders—and the Department strongly believes that every individual should be assessed on the particulars of his or her own offense and circumstances.

If the legislature is inclined to revisit the types of characteristics that should be taken into account for *all* defendants upon sentencing and/or parole, that would be a separate discussion. Nevertheless, the Department believes that the changes proposed in H.B. 2101, H.D. 1, would be inappropriate, and strongly urges the Committee not to pass this measure. Thank you for allowing us this opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Joy San Buenaventura, Vice Chair

Rep. Chris Lee, Chair

Tuesday, February 25, 2020

2:00 pm – Room 325

SUPPORT FOR HB 2101 HD1 - SENTENCING OF MINORS

Aloha Chair Lee, Vice Chair San Buenaventura 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 **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day and we are always mindful that more than 1,200 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 2101 HD1 requires circuit courts to apply special sentencing considerations when sentencing a minor for a non-violent offense by allowing the courts, in their discretion, to impose a sentence up to 50% shorter than the mandatory minimum or to decline to impose a mandatory enhanced sentence in certain circumstances.

Community Alliance on Prisons supports giving the courts the discretion to reduce the sentences of minors, however, we don't know of any mandatory sentences for nonviolent offenses. We know that the population at the Hawai`i Youth Correctional Facility has decreased dramatically since Hawai`i passed a law to end commitment to secure juvenile facilities for low-level or nonviolent offenses.

Hawai`i passed a law in 2011 to avoid Family Court waiving juvenile lawbreakers to the adult system, we have been told that there is still a few youths waived to the adult system. This is of great concern for us. Youth are impulsive and influenced by peer pressure, yet they are amenable to rehabilitation, restorative justice, and other strategies that show promise to help them reach their highest potential.

Although Hawai'i is doing better on youth justice, there are still many reforms¹ that we could explore, such as:

- Developing programs to safely serve people charged with violent offenses in their homes and communities
- Change laws to make certain offenses “non-jailable”
- Issue civil citations in lieu of arrest to divert people away from court intervention
- Cap sentences to reduce time under correctional supervision
- Shift funding to develop and expand community-based alternatives to incarceration
- Recognize and address the impact of trauma on justice-involved populations

Community Alliance on Prisons urges the committee to pass this bill.

Mahalo for this opportunity to share our thoughts and support our youth!

¹ Youth Confinement: The Whole Pie 2019, Prison Policy Institute, By Wendy Sawyer, December 19, 2019.
<https://www.prisonpolicy.org/reports/youth2019.html>



LATE

**TESTIMONY IN SUPPORT OF HB 2101 BEFORE
THE HAWAII HOUSE COMMITTEE ON JUDICIARY**

February 25, 2020

Dear Chairman Lee, Vice Chair 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 2101. 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.

We would, however, encourage this committee to amend the bill so that it restores discretion to judges to depart from mandatory minimums for all children prosecuted as adults in criminal court, including children convicted of violent offenses, to better protect the rights of all 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 2101 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 76,000 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 2101 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 2101 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

HB-2101-HD-1

Submitted on: 2/22/2020 1:01:59 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support HB2101. Please pass. Thank you.

Mike Golojuch, Sr.

Secretary/Board Member, Rainbow Family 808

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Judiciary Committee

SUPPORT FOR: HB2101 HD1 RELATING TO MINORS

Dear Chairman Chris Lee and the members of the Judiciary Committee:

My name is Jenna Saito, and I am a college student at the University of Hawaii at Manoa, majoring in social work. I am also a constituent of the Mililani community.

I am testifying in favor of bill HB2101 HD1, Relating to minors.

This bill should be passed because children do not get to decide the environmental factors in which they are raised. They do not have the choice to determine, their stimulation, educational backgrounds, their diet and nutrition, their community, and the people that surround them.

Children may be subjected to trauma and crime at a young age and should not be punished for aspects of their life that they have no control over.

Minors are not adults, they cannot make certain decisions for themselves without the consent of a parent. These decisions include, not being able to make medical decisions on their own, purchase alcohol and cigarettes, or even vote. Our government gives parents the responsibility to care for their child until the child is 18 years old. By creating limitations in which parents are accountable for their child's well-being and their lifestyles, parents have the power to pick and choose how the child's life unfolds. If children are treated differently than adults and given no power over their life, they should not endure the same punishments that adults face when committing a crime.

Children who commit crimes that are of a nonviolent nature, circuit courts should apply special sentencing considerations and sentence children with leniency. By imposing a sentence

that is 50% shorter than the mandatory minimum, or to decline to impose a mandatory enhanced sentence in certain circumstances, these children will be given the opportunity to learn from their mistakes and grow to their fullest potential. Children will make mistakes because they are vulnerable to negative influences that surround them which may stem from peers, family members, or others in their community. They should be given the opportunity to transform their lives in order to become better, as well as ensuring that they have a positive outlook for the future.