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CITY AND COUNTY OF HONOLULU

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THE HONORABLE RUSSELL E. RUDERMAN, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

March 9, 2020

RE: H.B. 2101, H.D. 2; RELATING TO MINORS.

Chair Ruderman, Vice Chair Rhoads, and members of the Senate Committee on Human Services, 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. 2.

H.B. 2101, H.D. 2, proposes to amend sentencing provisions for juveniles over whom Family Court has waived jurisdiction and 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 an exceptional amount 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.

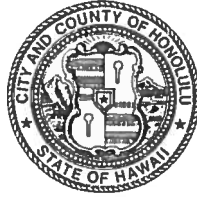
Lastly, H.B. 2101, H.D. 2 specifically adds the requirement that a minor enter into a rehabilitation or diversion program before gaining the benefits of a reduced sentence. The Department would note that this requirement is silent on whether the minor must actually successfully complete the rehabilitation program, and that the requirement of a diversion program would contradict the purpose of this bill. Diversion programs by their very nature are to divert an individual from the traditional court setting. Thus, to require a diversion program would preclude the courts from having the necessary jurisdiction to sentence an individual to reduced mandatory minimums.

In short, the changes proposed in H.B. 2101, H.D. 2, 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. 2, would be inappropriate, and strongly urges the Committee not to pass this measure. Thank you for allowing us this opportunity to testify.

POLICE DEPARTMENT
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OUR REFERENCE

March 9, 2020

The Honorable Russell E. Ruderman, Chair
and Members
Committee on Human Services
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Ruderman and Members:

SUBJECT: House Bill No. 2101, H.D. 2, 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. 2, 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. 2, Relating to Minors.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Susan Ballard in cursive.

1-01A
Susan Ballard
Chief of Police

Handwritten signature of Gail Beckley in cursive.

Gail Beckley, Captain
Criminal Investigation Division



HB2101 HD2
Senate Committee on Human Services

March 9, 2020

3:15 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2101 HD2, 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 own 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 circumstances for non-violent youth offenders. Allowing judges greater discretion

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).

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.

OHA appreciates the amendments made in the HD2 draft of this measure, insofar as they may acknowledge the critical importance and value of community-based diversion and rehabilitative programs. However, OHA does have concerns regarding the HD2 draft's requirement that adjudicated juveniles enter into a diversion or rehabilitation program in order to be considered for a reduced sentence. OHA has little information about the availability and capacity of such programs to accommodate all youth who might otherwise merit a reduced sentence; OHA accordingly has concerns that, should existing programs not have sufficient capacity to accommodate such youth, the proposed programming requirement may foreclose opportunities to capitalize on juvenile offenders' greater capacity for rehabilitation through more flexible and appropriate sentencing options.

Accordingly, OHA urges the Committee to **PASS** HB2101 HD2. Thank you for the opportunity to testify on this measure.



**TESTIMONY IN SUPPORT OF HB 2101 BEFORE
THE HAWAII SENATE COMMITTEE ON HUMAN SERVICES**

March 8, 2020

Dear Chairman Ruderman, Vice Chair Rhoads, 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 ANY FELONY, where a child is prosecuted as an adult in criminal court, to better protect the human 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 support 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

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COMMITTEE ON HUMAN SERVICES

Sen. Russell Ruderman, Chair

Sen. Karl Rhoads, Vice Chair

Monday, March 9, 2020

3:15 pm – Room 016

SUPPORT FOR HB 2101 HD2 – SENTENCING OF MINORS

Aloha Chair Ruderman, Vice Chair Rhoads 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 HD2 requires circuit courts to apply special sentencing considerations when sentencing a minor for a nonviolent offense if the minor enters a rehabilitation or diversion program and allows the circuit courts, in their discretion, to impose a sentence up to fifty per cent shorter than the mandatory minimum or to decline to impose a mandatory enhanced sentence in certain circumstances. Effective 12/31/2059.

Community Alliance on Prisons supports this measure. This bill is especially important since former United States Attorney General Jeff Sessions reversed an Obama administration directive that gave federal prosecutors and judges flexibility to sentence offenders below statutorily mandated minimums. Children and youth should not be considered 'miniature adults'. The United States Supreme Court has explicitly recognized that children have "diminished culpability and greater prospects for reform" and are therefore "less deserving of the most severe punishments."

A blogpost from the Juvenile Law Center entitled **Mandatory Minimums, Maximum Consequences**¹ noted:

The revival of strong mandatory sentencing schemes matches the “tough on crime” approach touted by the Trump administration. While mandatory minimums negatively impact all individuals involved in the criminal justice system, youth particularly face long-term consequences. The imposition of mandatory minimums exacerbates the harms that youth face in the adult criminal justice system and forces children to grow up within a system that lacks age-appropriate education and treatment to address their rehabilitative potential.

(...)

*Subjecting youth to prosecution in the adult system in the first place deprives youth of the rehabilitative nature of the juvenile justice system and its programs, classes and activities specific to the needs of youth. Compared to youth in the juvenile system, **youth in the adult system are five times more likely to be sexually assaulted** during their incarceration, and **two times more likely to be assaulted with a weapon**. These youth are also more likely to be psychologically affected by the conditions of confinement and more likely to commit suicide. Research has shown that youth who have served sentences in the adult system reoffend more quickly and violently after release than those who served their time in the juvenile system. Each of these consequences are further exasperated by mandatory minimums that subject youth to lengthy prison stays that far surpass their culpability.*

The juvenile system was modeled on the belief that children should be rehabilitated rather than punished. This ideology is undermined by the enforcement of mandatory minimum sentences for youth offenders. The juvenile “superpredator” misconception is widely recognized to have caused immeasurable harm to families and communities. So, too, should be the laws that emerged from this fallacy. Mandatory minimum sentences are harmful for youth. We should move away from these schemes rather than revitalizing them into present day law.

Community Alliance on Prisons urges the committee to take the recent court decisions regarding youth (Miller, Roper, Graham, etc.) into account and understand that we can build strong, healthy, and just communities throughout Hawai`i nei that help our youth develop the skills necessary to navigate this complex world. We must understand that youth decision-making doesn't fully develop until the mid-twenties.

We urge the committee to pass this important measure. Mahalo for this opportunity to testify.

¹ MANDATORY MINIMUMS, MAXIMUM CONSEQUENCES
Emily Steiner, Legal Intern, Juvenile Law Center, August 16, 2017
<https://jlc.org/news/mandatory-minimums-maximum-consequences>

HB-2101-HD-2

Submitted on: 3/8/2020 10:39:21 PM

Testimony for HMS on 3/9/2020 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacquelyn Esser	Individual	Support	No

Comments: