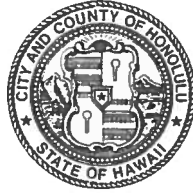


POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org

**LATE**

KIRK CALDWELL  
MAYOR



SUSAN BALLARD  
CHIEF

JOHN D. MCCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

OUR REFERENCE MK-KK

March 14, 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. 217, H.D. 1, Relating to Children

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. 217, H.D. 1, Relating to Children, and submits the following concerns.

The HPD fully supports the constitutional right for all citizens and realizes that juveniles are generally less mature and responsible than adults. Juveniles often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. During the custodial interrogation of juvenile suspects, the HPD affords them protection under the constitution by informing them of their rights. (Refer to the Warning Juveniles Being Interrogated of Their Constitutional Rights, HPD-11 form, attached).

The HPD-11 form documents that the juvenile suspect makes a knowing, intelligent, and voluntary waiver of those rights if chosen before the interrogation proceeds. There are judicial procedures in place to review if the suspect's statement should be allowed in court.

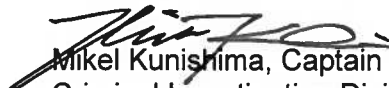
The trial in juvenile cases is called the adjudicatory hearing. The family court judge will review the case and determine whether the facts as stated in the petition or warrant are true. The juvenile at the adjudicatory hearing has the right to be represented by a lawyer, and the family court judge will postpone the hearing to allow the juvenile to obtain a lawyer or for any other reason to ensure a fair trial.

The Honorable Karl Rhoads, Chair  
and Members  
March 14, 2019  
Page 2

In 2018, the HPD arrested over 7,000 juveniles for criminal offenses. We are concerned that mandating officers to allow criminal suspects under the age of sixteen to consult with legal counsel before they waive their rights may delay the investigation. The HPD foresees issues with this bill because it will prolong the detention of the juvenile. In compliance with federal law, the HPD cannot detain a juvenile for longer than six hours.

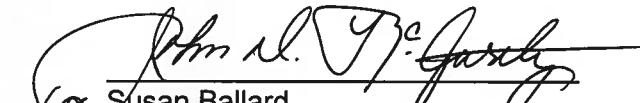
The HPD urges you to oppose House Bill No. 217, H.D. 1, Relating to Minors, and we appreciate the committee's consideration on these concerns. Thank you for the opportunity to testify.

Sincerely,

  
Mikel Kunishima, Captain  
Criminal Investigation Division

Attachment

APPROVED:

  
Susan Ballard  
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

DWIGHT K. NADAMOTO  
ACTING PROSECUTING ATTORNEY



FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirtieth State Legislature**  
**Regular Session of 2019**  
**State of Hawai`i**

**LATE**

March 14, 2019

**RE: H.B. 217, H.D. 1; RELATING TO CHILDREN.**

Chair Rhoads, Vice-Chair Wakai, members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony in opposition of H.B. 217, H.D. 1.

The purpose of H.B. 217, H.D. 1, is to force all minors under the age of sixteen to consult with legal counsel prior to any custodial interrogation. Although the proposed bill has good intentions, implementation of H.B. 217, H.D. 1 would infringe on an individual’s Sixth Amendment right to counsel.

The Sixth Amendment ensures an individual – adult or minor – the right to counsel and is an individual’s personal right, one that can be utilized or waived only by that person. H.B. 217, H.D. 1 attempts to specifically carve out minors as a protective class, but in doing so forcefully takes away their right to the protections granted by the Sixth Amendment.

“(a) Before a custodial interrogation of and before the waiver of any right against self-incrimination by a child under the age of sixteen, the child **shall** consult with legal counsel in person, by telephone, or by video conference. The consultation **may not** be waived.”

By using “shall” and “may not”, this bill unquestionably requires or forces a minor to consult with counsel rather than ensure the right to counsel as envisioned by the Sixth Amendment. The Department does not believe that the intention of this bill was to take away a person’s constitutional right, thus, H.B. 217, H.D. 1 should be deferred at this time to ensure that there is no conflict with the Sixth Amendment.

In addition, the Department is concerned that this bill does not adequately provide guidance on what is a sufficient “consultation”. This issue could arise in a case where an officer attempts to comply with subsection (a), and provides the minor with legal counsel who simply instructs the minor not to speak with anyone regarding the case. Subsequently, if the minor then decides after receiving such advice to speak with the officer, the Department is concerned that the lack of guidance in H.B. 217, H.D. 1 may lead to unnecessary issues regarding whether the consultation was sufficient enough to allow for the admissibility of any possible statements obtained. This deficiency would undoubtedly lead to the possible filing of a Rule 40 Hawaii Rules of Penal Procedure (HRPP) motion – ineffective assistance of counsel – against the initial attorney that was consulted.

For all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu opposes the passage of H.B. 217, H.D. 1. Thank you for the opportunity to testify on this matter.

**HB-217-HD-1**

Submitted on: 3/11/2019 9:53:54 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 217 HD 1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.  
Chair  
LGBT Caucus of the Democratic Party of Hawaii

**HB-217-HD-1**

Submitted on: 3/12/2019 7:55:06 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rainbow	Testifying for Rainbow Family 808	Support	No

Comments:

Rainbow Family 808 believes that minors need to have all the protections possible to ensure their Civil Rights. May HB217 HD1 receive a speedy passage for the sake of the children.

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Thursday, March 14, 2019

9:30 am

Room 016

## STRONG SUPPORT FOR HB 217 HD1 - RIGHT OF A CHILD TO CONSULT WITH COUNSEL

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 5,400 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.

Community Alliance on Prisons is in strong support of HB 217 HD1 requiring that a child in custody has the right to consult with counsel before waiving any constitutional rights and before any custodial interrogation.

One of the most glaring examples is the case of the Central Park 5 and the miscarriage of justice that engulfed Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana and Korey Wise, the black and Latino teenagers from Harlem who were wrongly convicted of the horrific 1989 crime. The brutal beating and rape of a white woman in New York City's Central Park provoked public outrage and sensational headlines. Within days of the attack, McCray, 15; Richardson, 14; Salaam, 15; Santana, 14; and Wise, 16, implicated themselves in Meili's rape and beating **after hours of psychological pressure and aggressive interrogation at the hands of seasoned homicide detectives.**

Less known is the story of the eventual exoneration of the men, who served full prison sentences.

Troubled kids and poor kids will have a better shot of outgrowing their delinquent behavior and becoming productive adults. Thousands of children, particularly in rural areas, plead guilty without an attorney, then they can't get jobs, housing, or higher education. This bill ensures that the child can discuss it with an attorney before waiving his/her constitutional rights before making a decision that has lifelong consequences.

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

Mahalo for the opportunity to testify.



**LATE**

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**TESTIMONY IN SUPPORT OF HB 217 BEFORE  
THE HAWAII SENATE COMMITTEE ON JUDICIARY**

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*March 14, 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 217. We are grateful to Representative John Mizuno for his leadership in introducing this bill and appreciate the Hawaii Legislature’s willingness to address the important issue of protecting children’s Constitutional and human rights when they come into contact with the criminal justice system.

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 217 because, if it is signed into law, it will ensure that children under 16 consult with legal counsel before they are able to waive their Miranda Rights or are interrogated by law enforcement. Protecting these children’s rights will reduce incidents of false confessions by youth and better align Hawaii’s policies with juvenile brain and behavioral development science.

**High Rates of False Confessions**

Children are particularly susceptible to giving false confessions because they are not as sophisticated as adults when interacting with the criminal justice system and being interrogated by law enforcement.



Children under 16 rarely have an understanding of the consequences and implications of law enforcement interrogations on their due process rights and the impact they may have during trial. The chart below, from the National Registry of Exonerations at the University of Michigan, highlights the incredibly high rates of false confessions that children under 16 gave during interrogation.

**AGE AND MENTAL STATUS OF  
EXONERATED DEFENDANTS WHO  
CONFESSED**  
NATIONAL REGISTRY OF EXONERATIONS  
12/31/2017; N = 2,145

<b>AGE AND MENTAL STATUS OF THE EXONERATED DEFENDANTS</b>	<b>PROPORTION WHO FALSELY CONFESSED</b>
<b>Under 18 Years Old at Time of Crime (71/188)</b>	<b>38%</b>
<i>16 and 17 year olds (42/141)</i>	<i>30%</i>
<i>14 and 15 years old (23/40)</i>	<i>58%</i>
<i>Under 14 years old (6/7)</i>	<i>86%</i>

As you can see, nearly all children under 14 who were later exonerated of having committed a crime had falsely confessed. Similarly, nearly 60 percent of 14 and 15-year-old children in the same situation gave a false confession.

One important aspect of HB 217 is safe-guarding children’s rights to ensure that no child in Hawaii falsely confesses to a crime he or she did not commit because they don’t fully understand how the justice system works or their Constitutional Rights.

**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, being heavily influenced by their surrounding environment, and being more easily manipulated, brainwashed, or deceived.

Children’s underdeveloped brains, proclivity for irrational decision-making, and inability to understand the gravity of their decisions 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. It is for these same reasons that we also have policies in place to protect children everywhere – except in the criminal justice system. HB

217 will put in place greater protections for young children at the point of entry, to ensure they speak with legal counsel before they waive their Miranda Rights or are subject to interrogation.

Nelson Mandela once said, *“There is no keener revelation of a society’s soul than the way in which it treats its children.”* It is our responsibility as a society to safeguard and protect the rights of our children. Nowhere is that more evident or needed than in the criminal justice system where the consequences of failing to do so can have a profound, life-altering impact. Children are not as sophisticated as adults when it comes to interacting with the justice system. They can easily be manipulated into confessing to crimes they did not commit. It is for these reasons, that HB 217 is critical. Under the bill, children will be required to consult with counsel before being interrogated or waiving their Miranda Rights. Failure on the part of the state to do so becomes a factor in a judge’s determination on whether or not any statement made shall be admissible. The bill provides exceptions in the case of imminent threats to public safety.

This is a common-sense, reasonable bill to protect the rights of our most vulnerable citizens – our children. We strongly urge this committee to vote favorably upon HB 217 to ensure that we do everything we can to protect both the Constitutional and Human Rights of Hawaii’s children. Thank you for your consideration.

With hope and love,

A handwritten signature in black ink, appearing to read 'James L. Dold', written in a cursive style.

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