

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

APPELLATE DIVISION
TEL. No. (808) 586-2080

DISTRICT COURT DIVISION
TEL. No. (808) 586-2100

FAMILY COURT DIVISION
TEL. No. (808) 586-2300

FELONY DIVISION
TEL. No. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y.C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAI'I 96720
TEL. No. (808) 974-4571
FAX No. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. No. (808) 327-4650
FAX No. (808) 327-4651

KAUA'I OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAI'I 96766
TEL. No. (808) 241-7128
FAX No. (808) 274-3422

MAU'I OFFICE
81 N. MARKET STREET
WAILUKU, HAWAI'I 96793
TEL. No. (808) 984-5018
FAX No. (808) 984-5022

**Testimony of the Office of the Public Defender,
State of Hawai'i to the Senate Committee on Judiciary**

February 7, 2025

S.B. 691: RELATING TO FAMILY COURTS.

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee:

The Office of the Public Defender submits **comments on S.B. 691**:

The Office of the Public Defender represents indigent juveniles in the criminal justice system. Currently, the Family Court abides by the following:

HRS Section 571-44 reads in part:

.... *“No child **under the age of twelve** shall be adjudged to come within section 571-11(1) without the written recommendation of a licensed psychologist or of a psychiatrist or other physician duly qualified by special training and experience in the practice of child psychiatry.”*

In practice, juvenile petitions for law violations are only filed if the child is at least twelve years of age. In practice, we do not use the term “delinquency” when referring to law violations or adjudications. A petition alleging a law violation may be filed and processed in the juvenile justice system against a juvenile twelve years of age and older with rare exceptions.

We support the intent of this measure, however, we prefer that the term “delinquency” not be used in subsection (f) and the measure is more consistent with Chapter 571 to avoid confusion. In addition, we believe HRS Section 571-44 would also need to be amended if the intent is to create a strict bright line when charging a juvenile with a law violation.

Thank you for the opportunity to comment on this measure.



TESTIMONY IN SUPPORT OF SB 691 BEFORE THE HAWAII SENATE JUDICIARY COMMITTEE

Dear Chairman Rhoads and Members of the Hawaii Senate Judiciary Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our full support for SB 691 and to urge the committee to pass this important measure. We are grateful to Senator Gabbard for his leadership in introducing this bill and appreciate the Hawaii Legislature's willingness to address this important human rights issue concerning Hawaii's children.

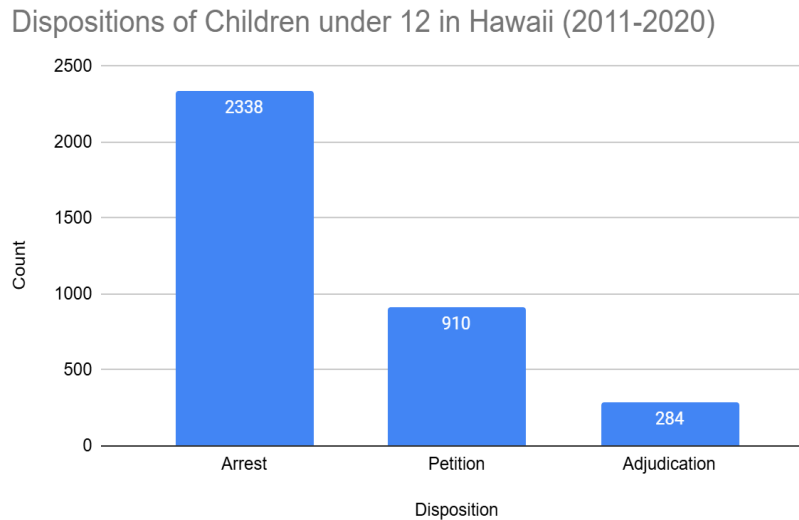
After consultation with the Honolulu Public Defender's Office we are submitting a proposed clean-up amendment for your consideration as well. A copy is included at the end of this testimony.

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 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. A central focus of our work is advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child. We also 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.

Human Rights for Kids supports SB 691 because it will establish a minimum age for children to be adjudicated delinquent in Hawaii. The continuing practice of criminalizing young children in Hawaii is a human rights abuse. Specifically, Article 40 of the UN Convention on the Rights of the Child states that lawmakers must create "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law." The UN Children's Rights Committee has reiterated that the majority of nations have set that age between 12 and 14 years old.

Prosecuting Young Children in Hawaii

According to the Hawaii Attorneys Generals’ Juvenile Delinquency Trends Data Book, between 2011 and 2020 more than 2,300 children aged 11 or younger were arrested in Hawaii. While a breakdown was not provided for each age group we do know that nearly 700 of these children were 9 years old or younger. In grade school terms, the oldest of these youth were third graders. Approximately 900 children aged 11 or younger had formal petitions alleging law violations filed against them and just under 300 were adjudicated delinquent. This includes 170 children who were 9 years old or younger.



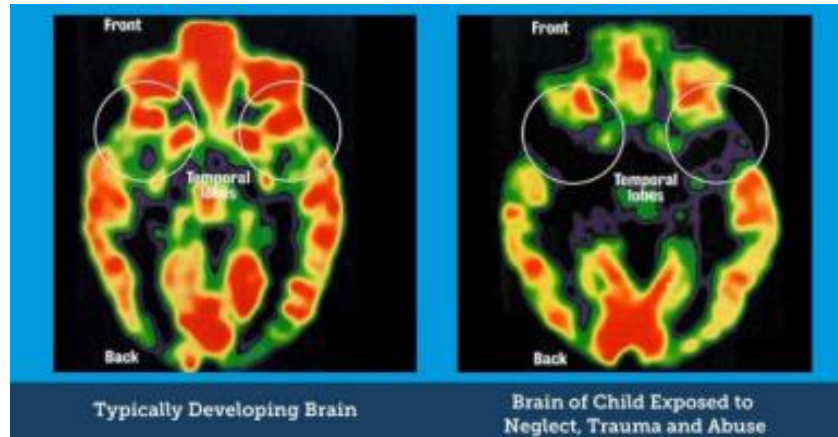
Despite these adjudications, there were no formal terms of probation or commitments made to youth correctional facilities for children in this age group. While this is welcome news, the fact remains that nearly one-thousand elementary-school aged children had petitions filed against them in juvenile court and hundreds of them were adjudicated law violators. This practice is in violation of international human rights standards.

Not Competent to be Prosecuted

Studies have shown that children’s brains are not fully developed. This is especially true for young children under the age of 12. The children protected by SB 691 are very young. Some still have their baby teeth and are just learning how to read a clock or tie their shoes. They are children who struggle to tell the difference between their left and right hands and still believe in Santa Claus and the Tooth Fairy. These are children who are unable to understand criminal legal proceedings and developmentally do not have the capacity to form mens rea or criminal intent. This is why international human rights law requires nations to establish a minimum age and forbids the practice of prosecuting children this young

physical and emotional neglect; physical, emotional, and sexual abuse; parental separation, domestic violence, household substance abuse, mental illness, and incarceration.

Research by OJJDP has shown that 90% of children adjudicated delinquent have experienced at least 2 ACEs and 45% experienced 4 or more. This type of trauma exposure often leads to early-onset PTSD and subsequently impacts children’s brain development, particularly the prefrontal cortex. This means that kids traumatized by violence in their homes and communities have impaired brain development that influences their behavior and decision making.



The image above depicts the impact of trauma on the developing brain of young children.

Conclusion

We have to speak with moral clarity: prosecuting elementary school children is a human rights violation. It does not make communities safer, and it does not reduce recidivism. In fact, the research suggests the opposite. Arresting children and processing them through the juvenile justice system entangles them further into these systems which increases poor outcomes.

Diverting children away from court and providing them with the proper treatment and services offered by other systems that are better equipped to help children benefits the child, their family and the community. Establishing a minimum age for prosecution is an important step in ending the school-to-prison pipeline.

It is for these reasons that we strongly urge this committee to vote favorably upon SB 691 to protect the most vulnerable children in Hawaii. Thank you for your consideration.

With hope and love,



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

Proposed Amendment

SECTION 4. Amend Section §571-44 to read as follows:

§571-44 Physical or mental examination and treatment. The court may order that a child or minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment, by them, of a child or minor who has been adjudicated by the court. For either the examination or treatment, the court may place the child or minor in a hospital or other suitable facility. The court, after hearing, may order examination by a physician, surgeon, psychiatrist, or psychologist, of a parent or guardian whose ability to care for a child before the court is at issue.

~~No child under the age of twelve shall be adjudged to come within section 571-11(1) without the written recommendation of a licensed psychologist or of a psychiatrist or other physician duly qualified by special training and experience in the practice of child psychiatry.~~

 Star  Advertiser

Traumatized Children Need Our Love, Not Mass Incarceration

By: John Mizuno



Every year the United States prosecutes more children as adults than any other country in the world. A [2023 report by Human Rights for Kids](#) (HRFK) found that today there are more than 32,000 people in our prisons for crimes committed as children and more than 80 percent of them are people of color. In nearly every case where a child is tried as an adult, they are contending with adverse childhood experiences (ACEs), which measure ten distinct types of abuse, neglect, and traumatic events in early childhood. A national ACEs survey by HRFK of children tried as adults revealed that more than 70% experienced emotional and physical abuse, and another 40% experienced sexual abuse prior to their system-involvement.

Parental divorce or separation is the most common traumatic event reported and is often accompanied by household substance abuse (75%), domestic violence (53%), mental illness (54%), and incarceration (64%).

Most of these children first come into contact with the system in our juvenile or family courts. Yet, the legal system rarely identifies or effectively responds to these levels of severe childhood trauma which have been causally linked to adverse brain development. Instead, when young children reach adolescence and predictably begin to act out we label them “Super Predators” and lock them away in cages.

Our mass incarceration of children begins as young as elementary school. In Hawaii, for example, we don’t have a minimum age for when a child can be arrested or prosecuted in juvenile court. Most Hawaiians might be shocked to learn that between 2020 and 2023 nearly 600 children age 11 or younger were arrested on the islands. These are kids in grade school who still believe in Santa Claus and the tooth fairy.

Treating children this way is a clear violation of the UN Convention on the Rights of the Child (CRC). While states like Texas, Louisiana, and Massachusetts have passed laws establishing a

minimum age for delinquency, sadly we have not. The CRC also prohibits sentencing children by the same standards we use for adults and placing children in adult jails and prisons. Despite Hawaii passing a resolution urging the U.S. government to ratify the CRC, we have yet to embrace these requirements.

That is why when I was in the Legislature, I worked with former Rep. Karen Awana to end life without parole sentences for children and then worked to pass a law requiring children to consult with legal counsel prior to waiving their Miranda Rights in 2023. These laws were based on human rights norms embraced the world over.

We still have more work to do in Hawaii which is why I am encouraging my former colleagues in the legislature to pass a trio of bills recently introduced by Senator Gabbard. His legislation would require judges to consider the impact of childhood trauma when sentencing youth tried as adults and give judges the flexibility to deviate from mandatory minimums. Another bill would prohibit children from being placed in adult correctional facilities in order to protect them from physical and sexual violence at the hands of adult prisoners. Finally, his reforms would also establish a minimum age of 12 before a child could be arrested and adjudicated delinquent.

Fred Rogers once said that “Love is at the root of everything, all learning, all relationships. Love or the lack of it.” We must embrace this notion and show the most victimized and vulnerable children in our state that we love them despite their mistakes. We can uphold public safety while simultaneously protecting the human rights of our children. Senator Gabbard has provided a blueprint; we should embrace it.

Original Article: [//www.staradvertiser.com/2025/01/30/editorial/island-voices/column-treat-victimized-children-with-care-not-mass-incarceration/](https://www.staradvertiser.com/2025/01/30/editorial/island-voices/column-treat-victimized-children-with-care-not-mass-incarceration/)



LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

EXECUTIVE DIRECTOR

Lieutenant Diane Goldstein, Ret.
Nevada, USA

BOARD OF DIRECTORS

Deputy Chief Wayne Harris, Ret.
Chair, New York, USA

Kristin Daley, CA
Treasurer, Massachusetts, USA

Matthew Simon
Secretary, New Hampshire, USA

Sergeant Terry Blevins, Fmr.
Arizona, USA

Chief Mike Butler, Ret.
Colorado, USA

Chief Brendan Cox, Ret.
New York, USA

Lt. Sarko Gergerian
Massachusetts, USA

Captain Michael Harvey, Ret.
Virginia, USA

Judge Arthur L Hunter, Jr., Fmr.
Louisiana, USA

Ms. Nadine Jones
New Jersey, USA

Investigator Corinne N. Mason
New Jersey, USA

Professor Kendra McSweeney
Ohio, USA

Deputy Supt Cheryl Morris, Ret.
New York, USA

Thomas Schoolcraft
Transitions Coordinator
Minnesota, USA

Chief Thomas N. Thompson
Ohio, USA

Supt. Richard Van Wickler, Ret.
Chair, New Hampshire, USA

Commissioner Trevor Velinor
St. Croix, USVI

Det. Sgt. Neil Woods, Fmr.
Staffordshire Moorlands, England
LEAP UK

Date: February 7, 2025

Re: SB 544 and SB 691

Position: SUPPORT

To: Hawaii Senate Judiciary Committee,

On behalf of the Law Enforcement Action Partnership (LEAP), I write in strong support of SB 544 and SB 691. These bills would allow some variation from mandatory minimum sentences for certain children sentenced in adult court and establish a minimum age of 12 before a child could be formally charged as a delinquent. We believe these essential bills are in the interest of both the children themselves and society at large, since children who are incarcerated experience high rates of rearrest.

LEAP is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience. Our mission is to make communities safer by focusing law enforcement resources on the greatest threats to public safety and working toward healing police-community relations.

As law enforcement, we have seen far too many young people thrown into a justice system that only further destabilizes their lives, making them more likely to engage in criminal activity in the future. Mandatory minimum laws – and the current lack of an age limit for delinquent charges – are a key driver of this counterproductive approach, often subjecting children to lengthy prison sentences and other harsh legal consequences.

Thanks to developments in brain science, we now know that sentencing youth according to adult standards simply does not make sense. Research has shown that human brains are not fully formed until age 25, meaning young people are neurologically less capable of properly considering the long-term consequences of their actions. Punishing children with decades of incarceration for behaviors they may not fully understand or be able to control constitutes a human rights violation, according to [international standards](#).

LawEnforcementActionPartnership.org

Formerly known as Law Enforcement Against Prohibition

The data also makes clear that incarcerating youth is an inappropriate response to crime. Nationally, more than [70% of children](#) within the criminal justice system report experiencing both physical and emotional abuse prior to their offense. Research also shows that [unresolved trauma from abuse](#) is one of the strongest predictors of future violence. When we punish traumatized youth as adults simply for following the examples that were set for them, we risk [perpetuating the cycle of violence](#) and doing longer term harm to public safety.

As law enforcement professionals, we regularly encounter children who have spent much of their short lives in the criminal justice system. In some cases, involvement in the system begins below the age of 12, with adjudications branding young people as “juvenile delinquents” and subjecting them to formal criminal justice processes. Such rulings often end up doing lasting harm, leading to greater instability and further contact with the system. In many states, up to [80% of youth](#) who are incarcerated reoffend within 3 years of release.

Thankfully, Hawaii now has the opportunity to take an important step in the right direction by passing SB 544 and SB 691. SB 544 - Relating to Sentencing of Minor Defendants, would allow courts to deviate from mandatory minimum sentences and require judges to consider adverse childhood experiences prior to sentencing a youth in adult court. This would enable judges to treat children like children, giving them the discretion to ensure that the punishment truly fits the crime and is in the best interest of public safety. Senate Bill 691 - Relating to Family Courts, would establish a minimum age of 12 for filing delinquency petitions. This would institute a more developmentally appropriate response to youth transgressions, focusing on treatment and support rather than punishment for children who are too young to comprehend the consequences of their actions.

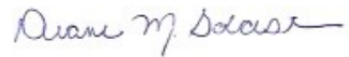
Together, these bills would allow the justice system to account for developmental differences between children and adults and help protect victimized and abused youth, instead of casting them deeper into cycles of violence and abuse.

This legislation would also help rebuild our community’s trust in the justice system. When we punish children—some so young that they still believe in the Easter Bunny—with extreme prison sentences and other collateral legal consequences, we undermine the public’s belief in the legitimacy of the system as a whole. As law enforcement, we know that we are only as strong as our relationships with the public. System wide, the research underscores that having trust from the people we serve [directly impacts public safety](#). We can only prevent, detect, and solve crime if witnesses and victims are willing to come forward to report criminal activity and work with us to address it. If people see lawmakers taking steps to protect children and rectify systemic wrongs, they will be more likely to assist us in our efforts to uphold safety and justice.

By recognizing the intrinsic differences between children and adults and better prioritizing the wellbeing of youth in the legal system, we can improve juvenile justice and public safety across Hawaii. We urge lawmakers to pass these crucial bills.

Thank you for the opportunity to share our support for these measures.

Respectfully,

A handwritten signature in blue ink that reads "Diane M. Goldstein". The signature is written in a cursive style with a horizontal line at the end.

Lt. Diane Goldstein (Ret.)
Redondo Beach Police Department
Executive Director, Law Enforcement Action Partnership (LEAP)



LATE

**Support for Senate Bill 691
Relating to Family Courts**

Chairman Rhoads and Members of the Hawaii Senate Committee on Judiciary:

On behalf of the National Youth Justice Network (NYJN), **we urge the committee to support passage of SB 691.** NYJN is a membership organization comprised of 73 state-based organizational members and nearly 100 Youth Justice Leadership Institute (YJLI) members and alumni in 42 states across the country. NYJN works to create a transformational shift away from policing and prisons toward a world that prioritizes community-based, trauma-informed, and healing-centered responses to youth needs.

SB 691 would establish a minimum age of 12 years old for juvenile court jurisdiction. Hawaii has tried to minimize the prosecution of young children by requiring that there be a written recommendation to do so by a licensed psychologist, psychiatrist, or physician. Nonetheless, 3,233 children under the age of 12 were still arrested in Hawaii between 2011-2020.¹ The lack of a humane and rational minimum age for prosecuting children puts them at risk of experiencing the trauma and collateral consequences associated with arrest and police involvement. Additionally, legal experts and social scientists have voiced significant concerns regarding young children’s competency to understand and exercise their legal rights in any meaningful way.² A 2003 study found that “juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”³ They further found that in terms of capacities relevant to competence, approximately one-third of 11 to 13-year-olds and one-fifth of 14 to 15-year-olds were “as impaired . . . as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts.”⁴

The United States is an outlier throughout the world in the practice of trying young children in court. In 2019, the United Nations Committee on the Rights of the Child issued General Comment No. 24 in which they stated that 14 is the most common minimum age of criminal responsibility internationally, urged nations to set their minimum age of criminal responsibility to at least 14 years old, and urged nations not to allow exceptions to be carved out to this

¹ State of Hawaii, Department of the Attorney General, *Juvenile Delinquency Trends in Hawaii Data Book for 2011-2020* (Juvenile Justice Information System, October 2021): 8, <https://ag.hawaii.gov/cpja/files/2023/04/Data-Book-for-2011-2020-Final.pdf>.

² Commission on Youth Public Safety and Justice, *Final Report of the Governor’s Commission on Youth, Public Safety and Justice*, 37.

³ Thomas Grisso, Laurence Steinberg, Jennifer Woolard Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz, “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants,” *Law and Human Behavior* 27(4) (2003): 333–63, 356, <https://bit.ly/3aTun7A>.

⁴ *Ibid.*



minimum age.⁵ The United Nations Global Study on Children Deprived of Liberty also called on countries to set the minimum age of prosecution in juvenile court at 14 years old.⁶

As the United Nations Global Study stated, “depriving children of liberty is depriving them of their childhood.”⁷ Establishing 12 years old as a minimum age for prosecution would be a wonderful start to establishing a humane and rationale minimum age for prosecuting children in Hawaii. We urge the committee to pass this legislation.

Respectfully Submitted,

Melissa Coretz Goemann
Senior Policy Counsel

⁵ United Nations Convention on the Rights of the Child (CRC), Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children’s Rights in the Child Justice System* (2019): 6, CRC/C/GC/24,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5

⁶ United Nations, General Assembly, “Global Study on Children Deprived of Liberty: report of the Independent Expert,” A/74/136 (11 July 2019): 20, available at <https://undocs.org/en/A/74/136>.

⁷ *Ibid.*, 4.

SB-691

Submitted on: 2/4/2025 3:51:51 PM

Testimony for JDC on 2/7/2025 9:25:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Grandinetti	Individual	Support	Written Testimony Only

Comments:

I am writing you in support of SB 691 which will be heard this Friday in the Senate Judiciary Committee. SB 691 would establish a minimum age of 12 before a child could be adjudicated delinquent. Every year hundreds of children are brought into Hawaii’s criminal justice system. Research by Human Rights for Kids has shown that nearly all of these children are contending with severe childhood trauma which inhibits brain development and leads to behavioral issues in adolescence. Nationally, more than 70% of children in the criminal justice system experienced both physical and emotional abuse prior to their offense. Another 45% experienced sexual abuse. Almost every child, according to HRFK research, comes from a broken home where witnessing domestic violence (53%), substance abuse (75%), mental illness (54%), and incarceration (64%) are normalized.

While this does not excuse delinquent or criminal behavior it is important context for understanding how and why kids end up in the justice system. It should also inform how we hold youth accountable. Sentencing youth by the same standards we use for adults, as well as prosecuting children in elementary school are human rights abuses. Children with baby teeth who still believe in Santa Claus are simply too young to be held criminally responsible for their actions.

These are the human rights abuses that Senator Gabbard’s bill would end.

Lawmakers from states across the country have passed similar policies with bipartisan support. This is not a Republican or Democrat issue, it is an American issue about who we want to be as a country. Please support these critically important reforms so that Hawaii can join other states in protecting the human rights of system-involved children.

Thank you,

Andrew Grandinetti, PhD

SB-691

Submitted on: 2/4/2025 10:42:53 PM

Testimony for JDC on 2/7/2025 9:25:00 AM

Submitted By	Organization	Testifier Position	Testify
Christy MacPherson	Individual	Support	Written Testimony Only

Comments:

I am in strong support of SB691. We have a responsibility to nurture our CHILDREN and provide them with healthy alternatives to criminalization.

Mahalo for your consideration.