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

January 31, 2025

S.B. 778: RELATING TO SENTENCING.

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

The Office of the Public Defender **strongly supports S.B. 778:**

We join in the national movement acknowledging the developmental road and challenges that our youth and “emerging adults” must navigate in the criminal justice system. We fully support this measure as it acknowledges the neuroscience and brain development research which “supports that brain maturation continues through an individual’s mid-twenties.” We submit that an “emerging adult” who may have committed the serious offense of Murder in the First Degree or Attempted Murder in the First Degree should have the opportunity for parole after establishing a clear pattern of rehabilitation as established by positive behaviors while in custody. These behaviors include taking advantage of educational opportunities, work opportunities, substance abuse counseling opportunities, and a clear commitment to living a life embracing change, sincere remorse, and service within the incarcerated communities. An “emerging adult” who has strong family support, who has embraced a life dedicated to positive change, and who embodies the concept of rehabilitation should be able to earn the privilege of parole after the completion of an appropriate minimum term. This measure would give the Hawaii Paroling Authority more opportunities to encourage positive behavior and

rehabilitation for “emerging adults” facing a lengthy sentence. Hope can be the strongest motivator or an incarcerated individual trying to make fundamental changes to their thinking, their behavior, and their ability to embrace positive change.

We submit the following resources on this topic for your consideration from The Gault Center – an organization dedicated to youth defense and advocacy:

www.defendyouthrights.org/document/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/

www.defendyouthrights.org/document/still-cruel-and-unusual-extreme-sentences-for-youth-and-emerging-adults/

www.defendyouthrights.org/document/reforming-juvenile-justice-a-developmental-approach/

Thank you for the opportunity to comment on this measure.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

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The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
Thirty-third State Legislature
Regular session of 2025
State of Hawai'i
January 27, 2025

RE: SB 778 Relating to Sentencing

Dear Chair Rhoads:

SB 778 would change the age for which individuals are eligible for life without parole sentences from eighteen to twenty-one or older. The County of Kauai Office of the Prosecuting Attorney submits the below comments on the bill as proposed.

First, Hawaii Revised Statutes Section 706-662 governs sentencing for persistent offenders. This subsection is rarely applied to situations where the extended term will be life without the possibility of parole. The only time this could apply is when a persistent offender is facing a murder conviction. Far more often, this section is used to extend a 5 year sentence to a 10 year or a 10 year sentence to a 20 year. The bill as proposed would change the definition of persistent offender to mean offenses when a person is 21 or older rather than 18 or older. It is not limited to when a person under 21 is facing a life sentence, as is the stated purpose of the bill.

Second, the bill makes the persistent offender subsection harder to prove. Unless a person has been moved up from family court (which we would see because of the necessary paperwork), a person's prior convictions are always from when they were 18 years or older. Thus, it is straightforward to prove and see when charging that the person was 18 at the time of those prior convictions. If we now must show that the prior convictions were when the person was 21 years or older, we will have to do a deeper dive to determine and find the necessary evidence of age.

Third, this current amendment has the possibility of creating arbitrary sentencing. If a person is under 21 at the time of their sentencing as a persistent offender, they cannot be sentenced to the extended term (whether it is 5 to 10 years or life with to life without parole). If, however, a person is under 21 and one of the other subsections of HRS 706-662 applies (such as multiple offender), they can be sentenced to an extended sentence.

Fourth, in conjunction with the third point above, if a person under 21 commits Murder 2nd and one of the other subsections apply (such as multiple offender or hate crime), they can still be sentenced to life without the possibility of parole.

Thank you for the opportunity to testify.

SB-778

Submitted on: 1/28/2025 4:02:45 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE this bill. "Life without Parole" is not issued lightly by a Judge of a Court of Law. There are few heinous crimes for which this sentence is appropriately applied.

SB-778

Submitted on: 1/30/2025 3:43:11 AM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Mary Healy	Individual	Oppose	Written Testimony Only

Comments:

I will provide testimony via zoom.

LATE

SB-778

Submitted on: 1/31/2025 6:07:09 AM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Veronica Moore	Individual	Oppose	Written Testimony Only

Comments:

To: Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From: Veronica Moore, Individual Citizen

Date: January 31, 2025

RE: Upcoming Hearing for SB778

Measure Title: RELATING TO SENTENCING.

Report Title: Sentencing; Life Without Parole; Minors; Penal Code

To All Concerned,

My name is Veronica Moore and I oppose Senate Bill 778. The information presented in the first paragraph of the bill does not justify why a twenty-one-year-old is appropriate to receive a sentence of life without the possibility of parole. It was reported that “brain maturation continues through an individual’s mid-twenties.” The word ‘continues’ implies that the maturation process has not completed because it is ongoing as evidenced by the words ‘through’ and ‘mid-twenties;’ mid-twenties and twenty-one are not the same age. It remains unclear as to how the age “twenty-one” was settled upon as the most suitable age when sentencing someone to life without parole.

Additionally, the bill lists the criteria for enhancing a second-degree murder sentence as well as the criteria for prolonging the conditions of confinement based on the severity of the crime, the recurrence of crimes committed, whether the person’s primary form of income was generated from criminal activity, if the person is dangerous (as deemed by a psychiatrist/psychologist), if the person left the scene of the crime, or crimes that were committed against a protected class. These factors appear to be considered without questioning why a person committed the crime(s), whether the person was diagnosed with a psychiatric disability or experienced adverse childhood experiences (i.e., childhood trauma). As specified at the beginning of the bill, a person’s brain has not fully developed by age twenty-one. If a person’s brain has not fully developed, it is

highly unlikely that the individual would be capable of making rational decisions especially if their brain has been greatly impacted by trauma, a traumatic brain injury, substance abuse, etc.

Ultimately, the Commonwealth v. Mattis reference made at the beginning of this bill provides justification as to why the conditions that have and continue to influence sentencing should be reconsidered particularly with respect to age. Although I do not support this bill in its current state, I appreciate the opportunity to present testimony regarding it. Thank you.

Sincerely,

Veronica M. Moore