H.B. NO. 3132

A BILL FOR AN ACT

RELATING TO AGE OF CONSENT FOR ADOPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. State statutes currently contain a discrepancy regarding the age at which the child must give consent for actions regarding the child's life and legal status. For adoption, the consent of the child is required if the child is more than ten years of age. For the termination of parental rights, the child who has reached the age of fourteen has to consent to the proposed permanent plan that specifies a goal of adoption, legal guardianship, or permanent custody of the child.

This discrepancy in the age of consent for adoption and the age of consent for the permanent plan has been confusing for the children and for the adults working with the children.

Changing the age of consent to fourteen years will not delay adoptions nor will it decrease the child's involvement in the adoption process. Ensuring that every child involved in the adoption understands what the adoption means, to the best of his or her developmental ability, is an important factor to the success of the adoption. Children and youth are always to be involved in the case planning and planning for their own

1 futures, to the fullest extent possible based on their age and
2 development, regardless of the age of consent.
3 Changing the age of consent for a child in the adoption
4 proceedings from ten to fourteen is appropriate because it
5 recognizes the cognitive development and ability of the child,
6 provides for informed consent by the child, and is consistent
7 with existing statutory requirements regarding a child's consent
8 to the termination of parental rights.
9 Nationally, twenty-five states and the District of Columbia
10 set the age of consent at fourteen. Eighteen states require a
11 child's consent at age twelve. Only six states, including
12 Hawaii, require consent at age ten. In eleven states, the
13 requirement can be dispensed with if the child lacks the mental
14 capacity to consent. In sixteen states, the court, in its
15 discretion, may dispense with consent if it is in the best
16 interest of the child. Colorado requires that the child be
17 provided with counseling prior to giving consent.
18 SECTION 2. Section 578-2, Hawaii Revised Statues, is
19 amended by amending subsection (a) to read as follows:
20 "(a) Persons required to consent to adoption. Unless
21 consent is not required or is dispensed with under subsection

(c) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

(1) The mother of the child;

(2) A legal father as to whom the child is a legitimate child;

(3) An adjudicated father whose relationship to the child has been determined by a court;

(4) A presumed father under section 578-2(d);

(5) A concerned natural father who is not the legal, adjudicated, or presumed father but who has demonstrated a reasonable degree of interest, concern or responsibility as to the welfare of a child, either:

(A) During the first thirty days after such child's birth; or

(B) Prior to the execution of a valid consent by the mother of the child; or

(C) Prior to the placement of the child with adoptive parents;

whichever period of time is greater;

(6) Any person or agency having legal custody of the child or legally empowered to consent;

(7) The court having jurisdiction of the custody of the child, if the legal guardian or legal custodian of the person of the child is not empowered to consent to adoption;

(8) The child to be adopted if [~~more than ten years of age,~~] the child has reached the age of fourteen, unless the court, after consulting with the child in camera, finds that it is in the best interest of the child dispenses with the child's consent."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3132

Report Title:
Adoption; Age of consent

Description:
Changes the age of consent by a child for adoption from 10 to 14.

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JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO AGE OF CONSENT FOR ADOPTION.

PURPOSE: To facilitate the adoption of children, under the Department's placement responsibility, between the ages of 10 to 14 years old, by changing the age at which a child needs to consent to an adoption from 10 years old to 14 years old.

MEANS: Amend section 578-2(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 578-2(a)(8), HRS, currently specifies that consent to an adoption must be obtained from a child who has reached the age of 10, unless the Family Court determines that it is in the child's best interest to dispense with the consent.

Currently state statutes contain a discrepancy in the age at which the child must give consent for actions regarding the child's life and legal status. For adoption, section 578-2(a)(8), HRS, consent to the proposed adoption is required from the child if the child is more than 10 years of age, while for the termination of parental rights, section 587-73(a)(4), HRS, the child who has reached the age of 14, currently has to consent to the proposed permanent plan that specifies a goal of adoption, legal guardianship, or permanent custody of the child.

This discrepancy in the age of consent for adoption and the age of consent for the permanent plan has been confusing for the children and for the adults working with the children. Making the age of consent for adoption consistent with the age for consent

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to the permanent plan will eliminate this confusion.

Based on evidence-based research of child developmental stages, at the age of 10, a child is not able to fully understand the concept of adoption or the impact of the action. At this time, the child is beginning to reason logically and organize thoughts coherently. However, the child can only think about actual physical objects and cannot understand abstract reasoning. Requesting a 10-year-old child to consent to being adopted is not consistent with the intent of informed decision-making and consent.

By age 14, a youth is usually able to think abstractly, reason logically, and draw conclusions from available information. During this developmental stage, which begins around age 12, the youth is able to understand such things as love, "shades of gray", logical proofs, and values. These abilities are critical if the child is going to be able to make an informed decision as important and life-changing as consenting to adoption. A 14-year-old child is better able to understand concepts of adoption and consequences of giving consent to the process.

The cognitive development of the child must be considered when looking at what can appropriately be expected from a child at a given age. Although each child develops on an individual basis, commonalities are shared within a developmental stage.

Many of the children in foster care, especially those who become available for adoption, lag behind others in reaching the emotional and cognitive milestones. A child may be 10 years old but function more at the developmental level of an 8 year old. Many national studies have shown that instability in the early years has a negative impact on

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the child's rate of cognitive and emotional development. Often cited is a delay or set-back of approximately 2 years for each move or change in placement. Counting the initial placement into foster care, all children in foster care have had at least one move.

Changing the age of consent to 14 years will not delay adoptions nor will it decrease the child's involvement in the adoption process. Ensuring that every child involved in the adoption understands what the adoption means, to the best of his or her developmental ability, is an important factor to the success of the adoption. Children and youth are always to be involved in the case planning and planning for their own futures, to the fullest extent possible based on their age and development, regardless of the age of consent.

Nationally, 25 states and the District of Columbia set the age of consent at 14. Eighteen states require a child's consent at age 12. Only six states, including Hawaii, require consent at age 10. In 11 states, the requirement can be dispensed with if the child lacks the mental capacity to consent. In 16 states the court, in its discretion, may dispense with consent if it is in the best interest of the child. Colorado requires that the child be provided with counseling prior to giving consent.

The number of children under the Department's placement responsibility who would be impacted by this change is not large. During state fiscal year 2005-2006, there were 48 children adopted between the ages of 10 and 14. In state fiscal year 2006-2007, 28 children in this age group were adopted.

Changing the age of consent for a child in the adoption proceedings from 10 to 14 is appropriate because it recognizes the

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cognitive development and ability of the child, provides for informed consent by the child, and is consistent with existing statutory requirements regarding a child's consent to the termination of parental rights.

Impact on the public: This will lessen public confusion regarding the difference in age for a child to consent for adoption and permanent plan. Adoption proceedings will be facilitated for children resulting in the permanency and stability needed for the child's appropriate development.

Impact on the department and other agencies: This will lessen worker's confusion regarding the difference in age for a child to consent for adoption and permanent plan. This will also recognize that at age 14 a child is more developmentally and cognitively appropriate to make this type of decision than at age 10.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 301

OTHER AFFECTED AGENCIES: The Judiciary; the Department of the Attorney General

EFFECTIVE DATE: Upon approval.