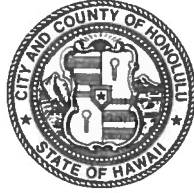


POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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JONATHAN GREMS
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OUR REFERENCE MK-KK

March 11, 2019

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

Dear Chair Ruderman and Members:

SUBJECT: House Bill No. 218, H.D. 1, Relating to Minors

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. 218, H.D. 1, 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 crimes 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.

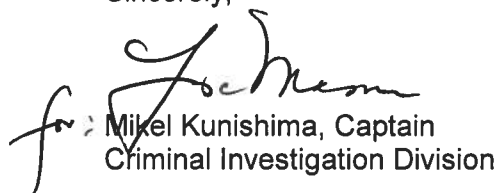
The HPD urges you to oppose House Bill No. 218, H.D. 1, Relating to Minors.

Thank you for the opportunity to testify.

APPROVED:


Susan Ballard
Chief of Police

Sincerely,


for Mikel Kunishima, Captain
Criminal Investigation Division

Serving and Protecting With Aloha

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ALII PLACE
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DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY



ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE RUSSELL E. RUDERMAN, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i

March 11, 2019

RE: H.B. 218, H.D. 1; 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 submits the following testimony in opposition to H.B. 218, H.D. 1.

H.B. 218, H.D. 1, proposes to amend sentencing provisions for juveniles over whom Family Court has waived jurisdiction and are 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 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 a great deal 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.

The changes proposed in H.B. 218, H.D. 1, 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. 218, H.D. 1, would be inappropriate, and strongly urges the Committee not to pass this measure. Thank you for allowing us this opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON HUMAN SERVICES

Senator Russell Ruderman, Chair

Senator Karl Rhoads, Vice Chair

Monday, March 11, 2019

2:45 pm

Room 016

LATE

SUPPORT for HB 218 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 **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.

HB 218 HD2 grants a circuit court, when sentencing a minor for a criminal offense, the discretion to: (1) impose a sentence that includes a period of incarceration that is as much as fifty per cent shorter than any mandatory minimum; and (2) in certain cases, decline to impose a mandatory enhanced sentence.

Community Alliance on Prisons supports this measure. The question of what constitutes responsible and legal behavior in children and adolescents is an issue with important philosophical, scientific, social, ethical, and practical considerations.

Over twenty years ago, academics and lawmakers promoted the idea that some children were "so impulsive, so remorseless" that they would "kill, rape, maim, without giving it a second thought." The theory behind these "[juvenile superpredators](#)" has since been entirely disavowed, but the "tough on crime" laws enacted in response, which led to harsh mandatory sentences imposed on youth, still impact individuals who remain behind bars today.¹

...When sentencing youth, it is important to make individualized determinations of culpability that not only look to the age of a minor, but the "background and mental and emotional development of a youthful defendant."

... 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

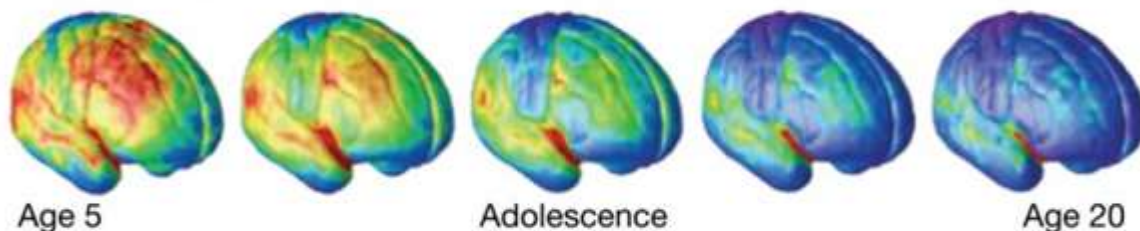
¹ **MANDATORY MINIMUMS, MAXIMUM CONSEQUENCES**, Emily Steiner, Legal Intern, Juvenile Law Center, August 16, 2017. <https://jlc.org/news/mandatory-minimums-maximum-consequences>

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.** ²

A 2016 article entitled, Juvenile Justice and the Adolescent Brain³ explains development of the frontal cortex – the executive center/ decisionmaking center of the brain.

Science may also help us understand which juvenile offenders are likely to commit future crimes and which may not. A longitudinal study, “Pathways to Desistance” (Mulvey, 2011), has collected significant data on factors such as substance abuse and instability in daily routine that lead to youth recidivism. The seminal paper, “Rewiring juvenile justice: the intersection of development neuroscience and legal policy” (Cohen and Casey, 2014), elucidates how key new scientific findings about the development of the adolescent brain may inform policy.

Dynamic mapping of human cortical development



Source: “Dynamic mapping of human cortical development during childhood through early adulthood,” Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

An article⁴ published by the American Bar Association discussed the impact on juveniles sentenced in adult criminal court.

Statistics compiled from 15 states revealed that juveniles prosecuted in adult court and released from state prisons were rearrested 82 percent of the time, while their adult counterparts were rearrested 16 percent less. Id. Meanwhile, studies have shown that juveniles prosecuted in juvenile court benefit from the services made available to them through that process, as juvenile institutions provide programs and resources specifically designed for juvenile development. Id. Juveniles in adult court often do not have the opportunity to acquire critical skills, competencies, and experiences that are crucial to their success as adults; rather, they are subject to an environment in which adult criminals become their teachers.

² **Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court**, Jason Washburn, Ph.D., ABPP, Linda Teplin, Ph.D., Laurie Voss, Ph.D., Clarissa Simon, MPH, Karen Abram, Ph.D., and Gary McClelland, Ph.D., September 1, 2008. <https://ps.psychiatryonline.org/doi/full/10.1176/ps.2008.59.9.965>

³ **Juvenile Justice and the Adolescent Brain**, BRAIN SCIENCE IS REFORMING JUVENILE JUSTICE POLICY AND PRACTICE, 2016. <http://clbb.mgh.harvard.edu/juvenilejustice/>

⁴ **Should Juveniles Be Charged as Adults in the Criminal Justice System?** By Nicole Scialabba, October 03, 2016. <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/should-juveniles-be-charged-as-adults/>

A report on health impacts of charging youth as adults, with recommendations for increased community investment and restorative justice-oriented solutions was released by Human Impact Partners in February 2017.⁵

The Justice System is Biased Against Youth of Color Youth of color are overrepresented at every stage of the juvenile court system. Rampant racial inequities are evident in the way youth of color are disciplined in school, policed - iii - and arrested, detained, sentenced, and incarcerated. These inequities persist even after controlling for variables like offense severity and prior criminal record.

Research shows that youth of color receive harsher sentences than White youth charged with similar offenses. Youth of color are more likely to be tried as adults than White youth, even when being charged with similar crimes. In California in 2015, 88% of juveniles tried as adults were youth of color.

"Tough on Crime" Laws Criminalize Youth and are Ineffective Research shows that "tough on crime" policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile "super-predators" posed a significant threat to public safety. The general sentiment – not based on research or data – across the political spectrum was that treatment approaches and rehabilitation attempts did not work. However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

Children are amenable to rehabilitation. We must understand that children are impulsive and have not developed the capacity to understand the consequences of their actions.

Mahalo for this opportunity to testify.

"As a society ... do we want young people to be left to a specific, certain fate in prison ... or do we want a process of education, a process of healing, a process of insight to support them to understand how they got there, a process of growth? What do we want?"

Malachi, charged as an adult at age 15

⁵ **Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased, and Harmful**, February 2017.

<https://humanimpact.org/hipprojects/juvenile-injustice-charging-youth-as-adults-is-ineffective-biased-and-harmful/>

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Date: March 11, 2019

To: The Honorable Russell E. Ruderman, Chair
The Honorable Karl Rhoads, Vice Chair
Senate Committee on Human Services

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony Providing Comments on H.B. 218 H.D. 1
Relating to Minors

Good afternoon Chair Ruderman, Vice Chair Rhoads, and members of the Senate Committee on Human Services:

The Sex Abuse Treatment Center (SATC) respectfully submits the following comments on H.B. 218 H.D. 1, with a suggested amendment for the Committee's consideration.

While we agree that adolescents can differ from adults in the way they behave, solve problems, and make decisions, we also acknowledge that the process for family courts to waive jurisdiction and send cases to the criminal courts already considers this issue, as described in H.R.S. Section 571-22(c)(5) – (7).

Moreover, Hawaii's existing laws require the court to consider the history and characteristics of an offender, which includes mitigating factors in the criminal behavior such as their age and life circumstances, when determining appropriate sentences following conviction, as described in H.R.S. Section 706-606. The age of an offender is even considered in sentencing for very serious crimes. For example, H.R.S. Section 706-656(1) provides for lighter sentencing in cases of first degree murder and attempted murder where the offender was under 18 years of age.

While favorable consideration of lighter sentencing may be appropriate for certain non-violent offenders who were minors when they committed crimes, H.B. 218 H.D. 1 goes further by requiring the court to consider leniency for those who committed violent felony offenses, and whose crimes resulted in serious injury to others.

The fact that an offender was a minor when they committed a violent crime does not lessen the terrible, long lasting consequences that the crime can have for the victims. It is an enduring source of additional trauma for survivors of violent crime when convicted offenders are not held responsible in a way that reflects the gravity of the

harm done to the victim. Consequently, creating a blanket requirement that the court consider additional leniency for convicted violent felons does not make sense in the way it may for non-violent crimes.

We therefore ask that the Committee include the following language at the end of Section 2 of H.B. 218 H.D. 1, on page 3 at line 21: “This Section shall not apply in the case of a conviction for a felony that is a violent crime, as defined in H.R.S. §351-32, or that otherwise resulted in serious bodily injury to a victim.”

We appreciate the opportunity to testify on H.B. 218 H.D. 1, and respectfully ask that the Committee please adopt this recommended amendment.

Exhibit A
Suggested Amendment

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§706- Sentencing of minors. (1) In a case in which the family court has waived jurisdiction over a minor pursuant to section 571-22 and the minor is convicted of a criminal offense in circuit court, the circuit court shall consider, in addition to any other factor that the court is required to consider, the differences between minor and adult offenders, including the diminished culpability of minors as compared to that of adults, and the typical characteristics of youth.

(2) Notwithstanding any law to the contrary, after considering the factors set forth in subsection (1), the circuit court, in its discretion:

- (a) May impose a sentence that includes a period of incarceration that is shorter than any mandatory minimum otherwise required by law, provided that the period of incarceration shall not be shorter than half of the mandatory minimum otherwise required by law; and
- (b) When imposing any sentence that includes a period of incarceration of five years or more, may decline to impose a mandatory sentencing enhancement otherwise required by law."

(3) This section shall not apply in the case of a conviction for a felony that is a violent crime, as defined in H.R.S.

§351-32, or that otherwise resulted in serious bodily injury to a victim.

LATE

HB-218-HD-1

Submitted on: 3/11/2019 9:46:32 AM

Testimony for HMS on 3/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I support HB218 HD1 to put in place additional sentencing options for minors who have been waived into the adult court system for offenses that were committed while under the age of 18.

Science tells us that adolescent brains are still developing and are highly subject to reward and peer influenc. Because rates of development vay widely across the population, sentencing options are needed. Tough on Crime laws criminalize youth, are ineffective and set up a prision pipeline. Youth are both amenable and responsive to rehabilitation.

Please move this bill forward.