



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Human Services and Homelessness

February 12, 2019

H.B. No. 218: RELATING TO MINORS

Chair San Buenaventura, Vice Chair Nakamura, and Members of the
Committee:

The Office of the Public Defender strongly supports H.B. 218.

We strongly support providing 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. The Circuit Court should have the opportunity to review mitigation relating to a minor's age, family and social background, education, and maturity in determining an appropriate sentence. We strongly support giving the Circuit Court flexibility in determining whether or not a mandatory sentence should be adjusted under certain circumstances for minors. We firmly believe that minors should not automatically be treated as adults, even when waived, as the research is clear that teenagers and young adults have brains that are still developing.

Thank you for the opportunity to comment on H.B. 218.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE MK-KK

February 14, 2019

The Honorable Joy A. San Buenaventura, Chair
and Members
Committee on Human Services and
Homelessness
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 312
Honolulu, Hawaii 96813

Dear Chair San Buenaventura and Members:

SUBJECT: House Bill No. 218, 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, 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 his or her crime if he or she is convicted and sentenced.

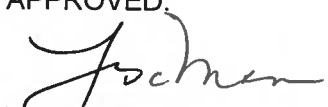
The HPD believes that the circuit court judges should have discretion when sentencing minors convicted of crimes, but it should not allow judges to deviate from mandatory minimums for each respective case. The HPD supports the prospects of rehabilitation for all minor offenders.


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

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


for: Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division

HAWAII YOUTH SERVICES NETWORK

677 Ala Moana Boulevard, Suite 904 Honolulu, Hawaii 96813

Phone: (808) 489-9549

Web site: <http://www.hysn.org> E-mail: info@hysn.org

Rick Collins, President

Judith F. Clark, Executive
Director

Bay Clinic

Big Brothers Big Sisters of
Hawaii

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of
West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action
Network

Hawaii Health & Harm
Reduction Center

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Maui Youth and Family Services

Na Pu'uwai Molokai Native
Hawaiian Health Care
Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together
(PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the

Great Northwest and

Hawaiian Islands

Residential Youth Services

& Empowerment (RYSE)

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community
Center

The Catalyst Group

February 12, 2019

Representative Joy San Buenaventura, Chair

And members of the Committee on Human Services and Homelessness

TESTIMONY IN SUPPORT OF HB 999 RELATING TO EXEMPTION FROM CIVIL SERVICE

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 218 Relating to Minors.

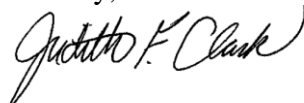
Minors that are adjudicated in Circuit Courts are adolescents whose brain development is incomplete.

Adolescents differ from adults in the way they behave, solve problems, and make decisions. adolescents are more likely to act on impulse; misread or misinterpret social cues and emotions; get into accidents of all kinds; get involved in fights; engage in dangerous or risky behavior. Adolescents are less likely to think before they act or pause to consider the consequences of their actions.

While they may have committed similar crimes to fully mature adults, they are less culpable and more capable of rehabilitation. They do not deserve the same level of punishment as an adult. Placing a youth in an adult prison simply increases the likelihood that they will develop into career criminals by forcing them to associate with hardened criminals.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director

COMMUNITY ALLIANCE ON PRISONS

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

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON HUMAN SERVICES

Rep. Joy SanBuenaventura, Chair

Rep. Nadine Nakamura, Vice Chair

Thursday, February 14, 2019

8:30 am

Room 312

SUPPORT for HB 218 – SENTENCING OF MINORS

Aloha Chair SanBuenaventura, Vice Chair Nakamura 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 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. A 2016 article entitled, *Juvenile Justice and the Adolescent Brain*¹ explains development of the frontal cortex – the executive center/decisionmaking center of the brain.

Scientists know that the adolescent brain is still developing, that it is highly subject to reward- and peer-influence, and that its rate of development varies widely across the population. They have developed basic tools that offer data with which to judge the potential for juvenile desistance, recidivism, and rehabilitation.

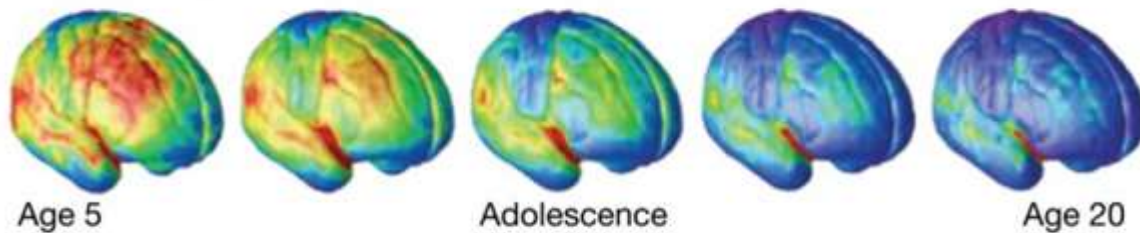
With its ability to examine the workings of the teenage brain, neuroscience is improving our understanding of adolescents, and potentially, juvenile offenders. Through their window into the brain, neuroscientists understand, for example, that adolescents mature at markedly varied rates. The presumed trajectory of brain development, demonstrated in existing "bright line" age cut offs for voting,

¹ *Juvenile Justice and the Adolescent Brain*, BRAIN SCIENCE IS REFORMING JUVENILE JUSTICE POLICY AND PRACTICE, 2016. <http://clbb.mgh.harvard.edu/juvenilejustice/>

military service, and drinking, however, is not reflective of this variability in brain maturity. Similarly, neuroimaging research by CLBB faculty (Somerville, 2010) clarifies that it is teenagers' heightened vulnerability to reward that drives risky behavior, contrary to longstanding beliefs that teenagers are unable to gauge risks. They can often recognize risks, but incomplete development of brain mechanisms related to modulation of impulsive behavior reduces their tendency to heed those risks.

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 article² published by the American Bar Association discussed the impact on juveniles sentenced in adult criminal court.

...The increase in laws that allow more juveniles to be prosecuted in adult court rather than juvenile court was intended to serve as a deterrent for rising youth violent crime. As such, it is important to evaluate what happens to juveniles who go through the adult court system to determine if they are "deterred" from future crime. A comprehensive literature review was completed by the University of California, Los Angeles (UCLA) School of Law's Juvenile Justice Project in July 2010 that reviewed the impact of juvenile cases prosecuted in adult court. The report, [The Impact of Prosecuting Youth in the Criminal Justice System: A Review of the Literature](#), ultimately found that there has been little to no deterrent effect on juveniles prosecuted in adult court, and in many states, recidivism rates have actually increased.

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 **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 2017.³

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 do not always have the capacity to understand the consequences of their actions.

We are happy that in 2011, Hawai`i stopped waiving youth into the adult system and we respectfully ask the committee to pass this measure.

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

³ **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/>