



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 691, S.D. 1, RELATING TO FAMILY COURTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Friday, March 14, 2025 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Ian T. Tsuda, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments:

The purpose of this bill is to establish a minimum age of twelve years old before a child may be adjudicated for any alleged or attempted violation of law under the jurisdiction of the family courts of the State under section 571-11(1), Hawaii Revised Statutes (HRS).

To ensure this bill applies solely to those violations of law as provided under section 571-11(1), HRS, and does not affect the family court's ability to exercise jurisdiction over children with issues of school nonattendance or behavioral concerns under section 571-11(2), we recommend that the new subsection (f) being added to section 571-21, HRS, in section 3, on page 7, lines 8-11, be revised to read as follows:

(f) A petition alleging violation or attempted violation of any federal, state, or local law or county ordinance pursuant to section 571-11(1) shall not be filed in a case involving a child under the age of twelve.

The Department respectfully asks the Committee adopt this recommendation. Thank you for the opportunity to provide testimony.

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 PONAHAHAWI 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

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

MAUI 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 House Committee on Judiciary & Hawaiian Affairs**

March 14, 2025

S.B. 691 SD1: RELATING TO FAMILY COURTS.

Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee:

The Office of the Public Defender **supports S.B. 691 SD1:**

The Office of the Public Defender represents indigent juveniles in the criminal justice system. We support the amendments made to the original measure as it addresses our earlier concerns and includes amendments to HRS Section 571-44. We believe this measure in its current form will create a clear bright line for the prosecution of children and sets the minimum age requirement for a law violation at twelve years old.

The Family Court does have the ability to care for and address developmental and behavioral issues for children under the age of twelve without the use of the term "law violation". This measure won't prevent appropriate Family Court intervention and the ability to provide services for children eleven years of age or younger.

Thank you for the opportunity to comment on this measure.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515 • WEBSITE: www.honoluluprosecutor.org

STEVEN S. ALM
PROSECUTING ATTORNEY
LOIO HO'OPI'I



THOMAS J. BRADY
FIRST DEPUTY PROSECUTING ATTORNEY
HOPE MUA LOIO HO'OPI'I

**THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

March 13, 2025

RE: S.B. 691 S.D. 1; RELATING TO FAMILY COURTS.

Chair Tarnas, Vice Chair Poepoe, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong opposition** to S.B. 691 S.D. 1.

This bill prohibits filing a petition to the Family Court in cases where a minor under the age of twelve engages in conduct that—but for their age—would constitute a crime under federal, state, or local law. The petition allows the Family to assume jurisdiction over the minor and provide treatment services.

A petition is not a penalty: it simply authorizes the court to act. Adjudication as a law offender is already substantially restricted under HRS § 571-44, which requires the prior concurrence of a licensed psychologist, psychiatrist, or other medical professional with specific training and experience in the practice of child psychiatry. That exception addresses the very small class of juveniles manifesting early symptoms of psychopathy. In practically all cases with young children, the court simply focuses on a treatment plan.

This bill would deny treatment services for troubled children who can cause serious harm. It prevents early intervention that may steer them from a life of crime. The bill also encourages adult criminals to recruit and exploit young children as accomplices.

The Department opposes this bill and strongly urges this Committee to reconsider.

Thank you for the opportunity to testify.



TESTIMONY IN SUPPORT OF SB 691 BEFORE THE HOUSE JUDICIARY & HAWAIIAN AFFAIRS COMMITTEE

Dear Chairman Tarnas and Members of the Judiciary & Hawaiian Affairs 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.

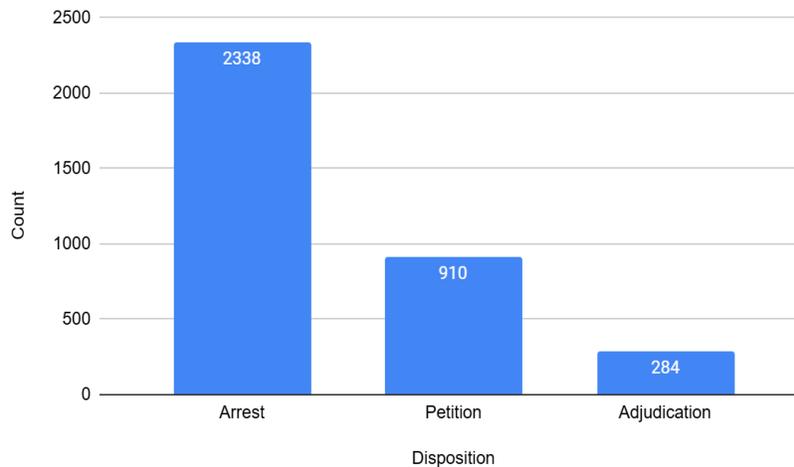
Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & 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.

Dispositions of Children under 12 in Hawaii (2011-2020)



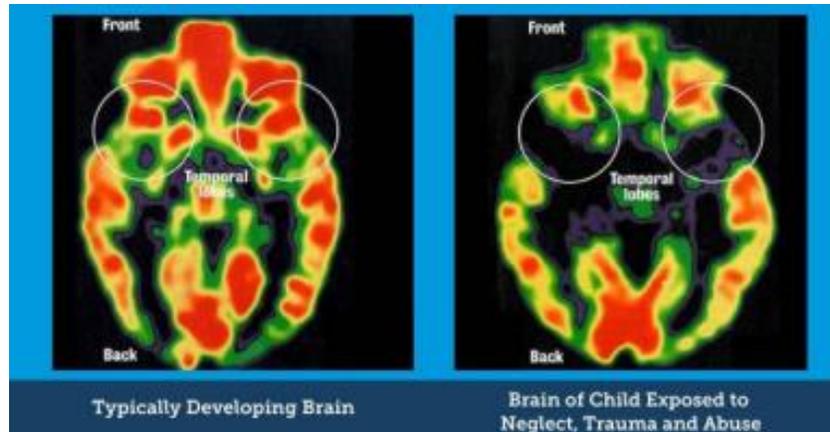
Despite these adjudications, there were no formal terms of probation or commitments made to youth correctional facilities for children in this age group. While this is welcome news, the fact remains that nearly one-thousand elementary-school aged children had petitions filed against them in juvenile 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 at this age.

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. If a child still Santa Clause they are too young to prosecute. 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/)



**Support for Senate Bill 691, SD 1
Relating to Family Courts
Committee on Judiciary and Hawaiian Affairs
March 14, 2025**

Dear Chairman Tarnas, Vice-Chair Poepoe, and Members of the Hawaii Committee on Judiciary and Hawaiian Affairs:

On behalf of the National Youth Justice Network (NYJN), **we urge the committee to support passage of SB 691, SD 1.** 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, SD 1 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

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 Repucci, 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.*



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 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-SD-1

Submitted on: 3/12/2025 6:13:10 PM

Testimony for JHA on 3/14/2025 2:00:00 PM

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

Comments:

I am in strong support of SB691 SD1. We have a responsibility to nurture our children and provide them with healthy alternatives to criminalization.

Mahalo for your consideration.