



## **TESTIMONY IN SUPPORT OF HB 781 BEFORE THE HAWAII HOUSE COMMITTEE ON HUMAN SERVICES**

*February 2, 2023*

Dear Chairman Mizuno, Vice Chair Amato, and Members of the Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for HB 781. We are grateful to Representative John Mizuno for his leadership in introducing this bill and appreciate the Hawaii Legislature's willingness to address the important issue of protecting children's Constitutional and human rights when they come into contact with the criminal justice system.

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 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. 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 and around the world. Our work consists of: (1) Protecting children from harm; (2) Reforming justice systems to ensure we focus on rehabilitating children who come into conflict with the law; (3) Protecting immigrant, non-native children from harm and discrimination; (4) Promoting access to quality education for all children; and (5) Promoting healthy communities for children to ensure access to housing and health care.

Human Rights for Kids supports HB 781 because, if it is signed into law, it will ensure that children under 16 consult with legal counsel before they are able to waive their Miranda Rights or are interrogated by law enforcement. Protecting these children's rights will reduce incidents of false confessions by youth and better align Hawaii's policies with juvenile brain and behavioral development science.

### **High Rates of False Confessions**

Children are particularly susceptible to giving false confessions because they are not as

sophisticated as adults when interacting with the criminal justice system and being interrogated by law enforcement.

Children under 16 rarely have an understanding of the consequences and implications of law enforcement interrogations on their due process rights and the impact they may have during trial. The chart below, from the National Registry of Exonerations at the University of Michigan, highlights the incredibly high rates of false confessions that children under 16 gave during interrogation.

### **AGE AND MENTAL STATUS OF EXONERATED DEFENDANTS WHO CONFESSED**

**NATIONAL REGISTRY OF EXONERATIONS  
12/31/2017; N = 2,145**

<b>AGE AND MENTAL STATUS OF THE EXONERATED DEFENDANTS</b>	<b>PROPORTION WHO FALSELY CONFESSED</b>
<b>Under 18 Years Old at Time of Crime (71/188)</b>	<b>38%</b>
<i>16 and 17 year olds (42/141)</i>	<i>30%</i>
<i>14 and 15 years old (23/40)</i>	<i>58%</i>
<i>Under 14 years old (6/7)</i>	<i>86%</i>

As you can see, nearly all children under 14 who were later exonerated of having committed a crime had falsely confessed. Similarly, nearly 60 percent of 14 and 15-year-old children in the same situation gave a false confession.

One important aspect of HB 781 is safe-guarding children's rights to ensure that no child in Hawaii falsely confesses to a crime he or she did not commit because they don't fully understand how the justice system works or their Constitutional Rights.

#### **Juvenile Brain & Behavioral Development Science**

Studies have shown that children's brains are not fully developed. The prefrontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, being heavily influenced by their surrounding environment, and being more easily manipulated, brainwashed, or deceived.

Children's underdeveloped brains, proclivity for irrational decision-making, and inability to understand the gravity of their decisions is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities until they've reach adulthood. It is for these same reasons that we also

have policies in place to protect children everywhere – except in the criminal justice system. HB 781 will put in place greater protections for young children at the point of entry, to ensure they speak with legal counsel before they waive their Miranda Rights or are subject to interrogation.

Nelson Mandela once said, “*There is no keener revelation of a society’s soul than the way in which it treats its children.*” It is our responsibility as a society to safeguard and protect the rights of our children. Nowhere is that more evident or needed than in the criminal justice system where the consequences of failing to do so can have a profound, life-altering impact. Children are not as sophisticated as adults when it comes to interacting with the justice system. They can easily be manipulated into confessing to crimes they did not commit. It is for these reasons that HB 781 is critical. Under the bill, children will be required to consult with counsel before being interrogated or waiving their Miranda Rights. Failure on the part of the state to do so becomes a factor in a judge’s determination on whether or not any statement made shall be admissible. The bill provides exceptions in the case of imminent threats to public safety.

This is a common-sense, reasonable bill to protect the rights of our most vulnerable citizens – our children. We strongly urge this committee to vote favorably upon HB 781 to ensure that we do everything we can to protect both the Constitutional and Human Rights of Hawaii’s children. Thank you for your consideration.

Sincerely,

*Emily Virgin*

Director of Advocacy & Government Relations

Human Rights for Kids

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**HB-781**

Submitted on: 2/1/2023 2:51:14 PM

Testimony for HUS on 2/2/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
James Dold	Human Rights for Kids	Support	Remotely Via Zoom

Comments:

Good morning Mr. Chairman and members of the Committee,

I have attached a copy of proposed amendments on behalf of Human Rights for Kids and our partners at the Anti-Recidivism Coalition to ensure that HB 781 reflects current best practices when it comes to protecting the constitutional and human rights of children in Hawai'i's justice system. As CEO of HRFK, I look forward to sharing with you about the work we've done over the years to protect the human rights of Hawai'i's most vulnerable children. Our Director of Advocacy and Government Relations, Emily Virgin, will provide official commentary on behalf of HRFK on HB 781 specifically. We appreciate your time and consideration.

Mahalo,

James Dold



### PROPOSED AMENDMENTS – HB 781

- (1) Page 3, line 4, strike “sixteen” replace with “eighteen”
- (2) Page 3, line 5, after “legal counsel” strike “or a parent or legal guardian in person”
- (3) Page 3, line 9, strike “sixteen” replace with “eighteen”
- (4) Page 3, line 15, strike “sixteen” replace with “eighteen”
- (5) Page 3, after line 13, insert a new subsection “c” to read as follows:

“(c) any law enforcement officer who has arrested a child under eighteen years of age for a violation of law shall notify the child's parent, guardian, or legal custodian that the child has been arrested and shall provide the location of where the minor is being detained.”

- (6) Page 3, line 14, strike “(c)” and replace with “(d)”

New Bill Language Should Read As Follows (deletions appear in ~~strikethrough~~ and additions appear in red underline:

“~571- Contact with counsel; parent or legal guardian; consultation.

(a) Before the waiver of any right against self-incrimination by and before a custodial interrogation of a child under ~~sixteen~~ eighteen years of age, the child shall have contact with legal counsel ~~or a parent or legal guardian in person~~, by telephone, or by video conference. The contact may not be waived.

(b) The court, in determining the admissibility of statements of a child under ~~sixteen~~ eighteen years of age made during or after the waiver of any right against self-incrimination or during or after a custodial interrogation, shall consider the effect of any failure of the officer who had custody of the child to take steps to comply with subsection (a).

(c) any law enforcement officer who has arrested a child under eighteen years of age for a violation of law shall notify the child's parent, guardian, or legal custodian that the child has been arrested and shall provide the location of where the minor is being detained.

(~~e~~) (d) This section shall not apply to the admissibility of statements of a child under ~~sixteen~~ eighteen years of age if: (1) The officer who questioned the child reasonably believed that the information the officer sought was necessary to protect life or property from an imminent threat; and

(2) The officer’s questions were limited to those questions that were reasonably necessary to obtain the information sought in paragraph (1).”

**HB-781**

Submitted on: 2/1/2023 4:10:09 PM

Testimony for HUS on 2/2/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Mendoza	Anti-Recidivism Coalition	Support	Remotely Via Zoom

Comments:

Dear Chairman and Honorable Members of the Committee:

My name is Michael Mendoza and I'm the Director of Advocacy with the Anti-Recidivism Coalition and I thank you for this opportunity to speak in support of legislation introduced to protect children's rights – HB 781. We are grateful to the Chair for his leadership in introducing this bill and the Legislature's willingness to address the important issue of protecting children's constitutional rights.

ARC helps currently and formerly incarcerated people to thrive by providing a supportive network, comprehensive reentry services, and opportunities to advocate for policy change. Our national advocacy efforts work towards providing the best practices we have learned on the state level, and set new national standards founded on healing, hope, and care.

In 2020, California [passed a law](#) requiring youth under 18 to consult with an attorney before waiving their Miranda rights. The legislation was passed with bipartisan support while recognizing that these protections make our communities safer.

Both democrats and republicans in the California legislature took into consideration testimony from San Francisco District Attorney Chesa Boudin who testified in support stating that these protections have not diminished his office's ability to prosecute serious and violent crimes.

This bill is about allowing our youth to understand their constitutional rights, so we can ensure the outcome of interrogations are not only just and lawful, but create greater trust, accountability, and due process for all.

Based on what we are seeing nationally and federally on this issue, I would recommend the following:

- Include children under 18 to have contact with legal counsel prior to waiver
- Only allowing an attorney to consult with children; and
- Include instructions stating that any law enforcement officer who has arrested a child under eighteen years of age for a violation of law shall notify the child's parent, guardian, or legal custodian that the child has been arrested and shall provide the location of where the minor is being detained

While we believe the presence of a parent or other adult who is close to the youth can be important to provide comfort and support, they are typically not well-equipped to assist in the decision about whether to waive rights.

Finally, according to the 2022 State Ratings [report](#) by the Human Rights for Kids, **6 states have now passed laws to protect children's constitutional rights** and many other states including congress are attempting to do the same. These amendments would align the great state of Hawaii in the right direction towards setting the appropriate standards for the rest of the country to follow.

For these reasons, we support HB 781 and respectfully urge this committee to issue a favorable report.