



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Human Services
The Honorable John M. Mizuno, Chair
The Honorable Tom Brower, Vice Chair

Monday, February 2, 2009, 8:15 a.m.
State Capitol, Conference Room 329

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 819, Relating to Crime.

Purpose: Provides for the mandatory waiver of minors, ages 15-17, who are charged with murder in the first or second degree.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 819, which provides for the mandatory waiver of Family Court jurisdiction over minors, between the ages of 15-17, who are charged with murder in the first or second degree.

However, nearly all of the petitions for the waiver of Family Court jurisdiction regarding minors charged with these offenses have been granted as in the recent case involving a 15 year-old minor. The existing statutory language has not resulted in inconsistent outcomes nor in outcomes which would be to the detriment of public safety. Also, perceived delays in court proceedings relate to important procedural tasks which need to be completed by either the State or the defense, regardless of whether the case is in Family Court or Circuit Court. The existing statute allows for judicial discretion without compromising public safety.

Last, if such waiver is mandated, we strongly suggest deletion of the following language in subsection (e) on page 5, lines 1-2, which reads, "... and order the minor held for criminal



House Bill No. 819, Relating to Crime
House Committee on Human Services
February 2, 2009
Page 2

proceedings in a youth correctional facility," because it is inadvisable to require the Office of Youth Services/Hawaii Youth Correctional Facility to house both waived and non-waived juveniles.

Thank you for the opportunity to submit testimony on this matter.



BY FAX: 586-8524

Committee: Committee on Human Services
Hearing Date/Time: Monday, February 2, 2009, 8:15 a.m.
Place: Room 329
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 819, Relating to Crime

Dear Chair Mizuno and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 819, which seeks to mandate that minors aged 15-17 be tried as adults in cases of first and second degree murder.

The ACLU opposes prosecuting children in adult court in most cases. Our current system already strikes the appropriate balance: Every time the prosecution wants to try a child as an adult, no matter how serious the offense, there is a transfer hearing. The transfer hearing requires a full hearing – which affords all due process rights to the child – after which the presiding judge determines whether the child should be tried as an adult. The prosecution, not the child, bears the burden of establishing the need for a transfer by "clear and convincing" evidence.

Trying Minors as Adults Neither Deters Crime Nor Reduces Recidivism

Although minors who commit murder deserve severe punishment, trying them as adults does not make anyone safer. In fact, putting young offenders in adult prisons has been found to have no deterrence value, and may lead to more crime, higher prison costs and increased violence because young people will learn criminal behaviors from the adults they are placed with.

Children Are Not Adults and Should Not Be Treated As Adults in the Justice System

Because the adult correctional system does not have the resources or the facilities to address the needs of youth under the age of 18, the jurisdiction of the court for youth should remain with family court and juvenile justice systems, which were specifically created to address the needs of and provide services to young people. Incarcerating youth offenders in adult prisons places juveniles in real physical, mental, and psychological danger.

American Civil Liberties Union of Hawaii
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Hon. Rep. Mizuno, Chair, HUS Committee
and Members Thereof
February 2, 2009
Page 2 of 2

Our current system provides an appropriate response to violent crimes by young people and should be maintained, and the ACLU of Hawaii supports the existing, reasonable middle ground.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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Testimony for HUS 2/2/2009 8:15:00 AM HB819

Conference room: 329

Testifier position: oppose

Testifier will be present: No

Submitted by: Arvid T. Youngquist

Organization: The Mestizo Association

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Submitted on: 1/30/2009

Comments:

Chair John M. Mizuno

Vice Chair Tom Brower

The House HUS Committee

I oppose House Bill 819. It is basically a sound measure and gathered a bi-partisan support including Rep. Pine and Rep. Ward (your colleague on this Committee).

But trying juveniles as adults for murder in the 1st and 2nd degree means sentencing upon conviction in adult facilities. Already housing adult offenders is a financial problem, not to mention the current recession and the State's overwhelming straits to balance the budget. Farming out our keiki criminals to the Mainland institutions at their sentencing will compound the already inequitable situation which we have encountered where our residents are sent to prisons on the Mainland. The "lock 'em up and throw away the key", the "law and order" of "an eye for an eye" will promote more career criminals getting pointers in the adult prisons.

Finally, adults with mental disorders in prisons are not getting the proper rehabilitations and therapy. How much less can our juveniles expect? If you are bound and determined to pass this bill to the next committee, I recommend the effective date be amended to a future date, i.e., June 1, 2011.

We have all been juveniles at one time or another. Sometimes, I say to myself, there but for the Grace of God. I encourage the stakeholders from the Keiki Caucus be included in this discussion.

Thank you for this opportunity to provide testimony in opposition to House Bill 819.

brower2-Jenna

From: Kevin Callahan [m]
Sent: Sunday, February 01, 2009 6:35 AM
To: HUS testimony
Cc: Rep. Kymberly Pine
Subject: Karen'a Law Testimony
Attachments: SoftBlue.jpg

To: Human Services Committee
Fm: Kevin P. Callahan
Subj: Karen's Law

I am the longtime boyfriend of Karen Ertell who was brutally Raped and Murdered by her then 15 year old neighbor who lived across the street. Her daughter and I found her body in her home that morning when she did not show up for work.

Like I said at the Press Conference; I cannot describe to you the daily pain and anguish that Karen's family and loved ones have endured since her murder. This anguish turned into weeks, then months and now almost two years; yet there has been no trial.

In the Family Court we endured eight delays and postponements as the Legal wheels turned painfully slow before the Judge finally made a decision to waive jurisdiction and move the case to Adult Court. This took nearly eighteen months!

This not only put Karen's Family through hell; it cost an incredible amount of Taxpayer Money and manpower.

Some will say the system works since they claim that every murder committed by a Juvenile in Hawaii in the last 10 years has been waived. That is not exactly the case. It also cost a huge amount of money and manpower to do so; when these cases could have gone straight to adult court.

There has been many cases in Hawaii where the Juvenile system came into play. The girl beat to death in the middle of the street in Kailua was killed by a man who was reported by the media to have 67 Juvenile arrest....some of these were undoubtedly violent crimes. The young man who killed Ned Nakoa on the streets of Waikiki was released from Juvenile detention by the very Judge who over saw Karen's killer's case, only to kill, after having an attempted murder rap on his record.

The vast majority of states in our country send these cases of violent crime to adult court, most specifically Murder and Rape.

Hawaii does not have "Pre-Meditated Murder" or 1st Degree Murder UNLESS a Judge, Police Officer or Witness is murdered. Hawaii only has 2nd degree Murder on the books for almost all cases and 1st degree Murder charges are extremely rare. The difference being the sentence: 1st Degree carries a sentence of 'Life without Parole while 2nd degree Murder carries a sentence of 'Life with Parole'. The average time a murder conviction spends in jail is only 15 years in Hawaii. Recently a convicted Murderer was released after 15 years and in less then one year killed again.

We cannot confine Karen's law to 1st degree Murder only as this would eliminate all but the rarest cases. It should include Rape, 2nd degree Murder and "3 Strikes and your out" for violent crimes as a Juvenile.

Last year one of Honolulu's TV stations conducted a Poll asking the public if they thought this and other cases should be moved immediately to Adult Court. The response was an overwhelming 80% in favor of

doing so. PLEASE listen to your constituents. The Community is tired of this type of Juvenile Crime and wants to be safe.

Thank you for your time and consideration in this Bill.

Kevin P. Callahan