



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



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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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUFI HANKEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARL A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 2, 2009

The Honorable John M. Mizuno, Chair
and Members
Committee on Human Services
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

Subject: House Bill No. 819, Relating to Crime

I am Richard C. Robinson, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 819, Relating to Crime. Passage of this bill would allow for a more expedient judicial process for accused murderers who are age fifteen to seventeen. Currently, juvenile murder suspects have a waiver hearing in Family Court to determine if the juvenile can be prosecuted as an adult.

In 2007, a juvenile murder suspect was arrested, and a petition for waiver was filed. It took five separate Family Court hearings and more than one year before he was waived to be tried as an adult. Until today, the family of the victim has been deprived of the right to see the juvenile stand trial for his crimes. The Honolulu Police Department strongly believes that the victims' families deserve closure and justice, and justice delayed is justice denied.

Serving and Protecting With Aloha

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The Honolulu Police Department urges you to support House Bill No. 819,
Relating to Family Court Jurisdiction Over Minors.

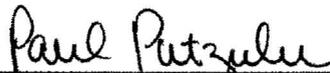
Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

Sec. 
BOISSE P. CORREA
Chief of Police

[REDACTED]

From: [REDACTED]@gmail.com
Sent: Monday, February 02, 2009 2:50 PM
To: HUS testimony
Subject: House Bill 819

I hope it's not too late to send this in: I SUPPORT KAREN'S LAW with all of my heart! Please give this family some closure. Thank you for your kindness.

- Genevieve Gandy (Special Education Teacher DOE)

From: Malanie McLellan [mailto:malanie.mclellan@yahoo.com]
Sent: Monday, February 02, 2009 1:59 PM
To: HUS testimony
Subject: HB819

I am resubmitting this letter of support since my last e-mail was apparently never received.

Members of the Committee:

My name is Malanie McLellan and I am Karen Ertell's daughter. I am writing in support of HB819.

I found my mother's body when I was 9 months pregnant with the grandson she will never meet. She had been brutally attacked, raped, beaten, robbed and finally strangled to death. The police describe the attack as "very well planned, very well executed and very well covered up". These are not the actions of a child but of a mature minded juvenile who will now face trial as an adult.

It took 15 long months before it was even determined whether her killer would be tried as a juvenile or as an adult for his crimes. These 15 long months were horrible. Day after day wondering when and if justice would be served. I would not wish this on anyone. It felt like we had been victimized yet again, only this time by the judicial system. The waiver hearing system in place for juveniles works for petty crimes but is not efficient for heinous crimes like 1st and 2nd degree murder. It is an enormous waste of manpower and taxpayer money.

Some opponents to this bill argue that the juvenile may have mental health issues in these cases but that is a moot point. Adults also have mental health issues in murder trials and those circumstances are taken into account regardless of whether it is a juvenile or adult case. The individual who committed the crime will still be allowed a fair trial and a chance to prove their innocence or guilt, and will also have a chance to present their own unique circumstance to the Judge and jury.

We are not talking about children, we are talking about 15-17 year olds who know right from wrong. What will it take before Hawaii sends the message that premeditated murder will not be tolerated? My mother's killer told his father and the police that part of the reason he kept up his criminal behavior is because he knew he could get away with it.

I urge you to please pass this bill to keep Hawaii safe and to prevent other families from having to go through what we went through.

Thank you for your consideration.

Malanie A.S. McLellan

[REDACTED]

From: [REDACTED]@bellsouth.net
Sent: Monday, February 02, 2009 10:55 AM
To: HUS testimony
Subject: HB819

Dear Representative

I want to emphasize our support for the proposed Karen's Law. I truly believe this law would make Hawaii safer for its citizens and visitors, reduce prolonged grieving for relatives, and save taxpayers money.

Please do the right thing and pass Karen's Law.

Sincerely

M McLellan and other relatives and friends of Karen

[REDACTED]

From: Jessica Brunsvold [REDACTED@gmail.com]
Sent: Monday, February 02, 2009 10:05 AM
To: HUS testimony
Subject: HB819

I strongly support Karen's Law, HB 819. Please email me with any questions.

Sincerely,

Jessica Brunsvold

[REDACTED]

From: [REDACTED]@gmail.com on behalf of Kelsy S. Dunlap ([REDACTED]@gmail.com)
Sent: Monday, February 02, 2009 8:40 AM
To: HUS testimony
Subject: HB819

I am Karen Ertell's niece and I support House Bill 819.

Other families should not have to wait to hear if their loved one's killer, no matter their age, will be held to the same laws as everyone else.

Sincerely,

Kelsy S Dunlap



From: April Ohara [mailto:@yahoo.com]
Sent: Monday, February 02, 2009 8:05 AM
To: HUSTestimony
Subject: HB819

I support Karen's Law House Bill 819 because people need to be responsible for their behavior in our society.

April S. Ohara

From: Bruddah Buck [redacted@gmail.com]
Sent: Monday, February 02, 2009 8:19 AM
To: HUS testimony
Subject: HB819

I support Karen's Law

Paul Giles

[REDACTED]

From: Tricia Holzman [trishholzman@gmail.com]
Sent: Monday, February 02, 2009 8:06 AM
To: HUS testimony
Subject: HB819

I would like to express my support of Karen's Law. It is my hope that this law will make Hawaii a safer place for all of our families. These children who are committing these heinous crimes need to be punished accordingly. Karen's Law is just what this island needs. Please consider the families who have already suffered and take action to prevent it from happening again.
Mahalo for considering my opinion in this important matter.

Sincerely,
--
Trish Holzman

From: Andrew McLellan [redacted@yahoo.com]
Sent: Monday, February 02, 2009 2:06 PM
To: HUS testimony
Subject: HB819

To Whom it May Concern:

My name is Andrew McLellan and I am Karen's son-in-law. I am writing in support of HB819.

I discovered my mother-in-law's body with my wife after she had been murdered. We expected justice to be swift. Instead, we waited for 15 months for a waiver hearing that only determined that Vernon Bartley would be tried as an adult for his very adult crime. This wait was a waste of time and money, and prolonged the grieving of Karen's family and friends.

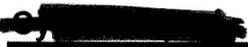
The waiver hearing process is sufficient for petty crimes but not for calculated murder. This should be a given. 15-17 year olds are mature enough to be emancipated in the state of Hawaii, yet why do we not hold them accountable for something as serious as planned murder?

Please pass this bill.

Thank you very much.

Aloha,

Andrew J. McLellan



From: Irene Ertell ([redacted]@yahoo.com]
Sent: Monday, February 02, 2009 9:25 AM
To: HUS testimony
Subject: HB 819

Please give this bill a hearing and protect others. It won't change anything for Karen's family, except to know that others will be better protected and families will not endure protracted grief.

Sincerely,
Irene Ertell



From: Chester Huan [redacted@me.com]
Sent: Monday, February 02, 2009 11:25 AM
To: HUS testimony
Cc: Malanie McLellan
Subject: House Bill 819

Dear Sir/Madam, I am writing in support for Karen's Law. Pre-trial hearings on whether or not to try 15-17 year old to be tried as adults for very heinous crimes is not only unfair to the families of the victims, it is also emotionally devastating. I have known Karen for 5 years, and was also a former employee of hers. Her lost to myself and her family is still being felt as strongly as the day she died. I only hope that no other family and friends would have to suffer through the burden of waiting to see if justice would be sought. I believe 15-17 year olds are old enough to know what is right and wrong, and are fully responsible for their actions. The law seeks to try these individuals for exceptionally heinous crimes, such as the case with Karen. Premeditated murder is a very adult crime, and 15-17 year olds are very capable of these crimes. I plead with you to pass Karen's Law. It will go a long way in making Hawaii safer for other families. Sincerely, Chester Huan Bright Eyes Coffee 808-371-0878 communitycoffee@mac.com

[REDACTED]

From: Amy Moore [amy.moore@yahoo.com]
Sent: Monday, February 02, 2009 10:12 AM
To: HUS testimony
Subject: House Bill 819

I urge you to pass Karen's Law.

Amy Moore



From: Jonathan Glaser [redacted@hotmail.com]
Sent: Monday, February 02, 2009 10:27 AM
To: HUS testimony
Subject: House Bill 819

I am in support of House Bill 819 "Karen's Law". I feel it necessary to try minors as adults that have consciously made the decision to end another's life. By implementing this law I feel our judicial system will work more efficiently by removing the pre-trial waiver hearing that has proven to only be a drawn out time consuming process that keeps all parties involved in a state of limbo. Thank you for your time and effort in support of this bill.

Mahalo,
Jonathan Glaser



From: Eric Martin [redacted@mac.com]
Sent: Monday, February 02, 2009 9:04 AM
To: HUS testimony
Subject: House Bill 819

I support Karen's Law.
Please help protect the people of Hawai'i.
Thank you.
Eric Martin
Mililani Hi.


From: Charles Asselbaye [redacted@hawaii.edu]
Sent: Monday, February 02, 2009 11:31 AM
To: HUS testimony
Subject: House Bill 819

To whom it may concern,

My name is Charles Asselbaye and I support Karen's Law in order to better protect my family from going through this painful period that Karen's relatives are going through right now.

Aloha,
Charles



From: Julie [REDACTED]@gmail.com]
Sent: Monday, February 02, 2009 8:15 AM
To: HUS testimony
Subject: I support Karen's Law

I support Karen's Law.

[REDACTED]

From: Valerie Callahan [REDACTED]@yahoo.com]
Sent: Monday, February 02, 2009 7:55 AM
To: HUS testimony
Subject: Karen Ertell's murder

To All Concerned Law Makers;

Karen's law will be the simplest thing you can do in your legislative session for 2009. You don't need any major research done, the facts are plain and simple. You kill you go to jail.

You kill when you are young you go to jail. Any 15-17 year old knows right from wrong. MURDER IS WRONG. Let the children and young adults of today know you are serious about changing the crime in Hawaii.

Valerie Callahan

[REDACTED]

From: Kevin Callahan [REDACTED]@hawaii.rr.com]
Sent: Sunday, February 01, 2009 6:35 AM
To: HUS testimony
Cc: Rep. Kymberly Pine
Subject: Karen's Law Testimony

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 Nakoia 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 than 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



From: Nancy McLellan [nancymc@hawaiiintel.net]
Sent: Monday, February 02, 2009 10:05 AM
To: HUS testimony
Subject: Karen's Law

Please I am in favor of Karen's Law. These outrageous crimes need fine tuning which is what Karen's Law would provide to the victims.
Thank You!

[REDACTED]

From: Erin Henderson [REDACTED]@yahoo.com]
Sent: Monday, February 02, 2009 9:55 AM
To: HUS testimony
Subject: Karen's Law

I support Karen's Law.

[REDACTED]

From: Reuben Nakagawa [REDACTED]@yahoo.com]
Sent: Monday, February 02, 2009 8:05 AM
To: HUS testimony
Subject: karen's law

i support karen's law. any minor 15-17 year old that is charged with a 1st or 2nd degree murder must be tried as an adult. that type of crime should be punishable to the full extent of the law.

thank you,
reuben nakagawa

[REDACTED]

From: tom larsson [REDACTED]@yahoo.com
Sent: Monday, February 02, 2009 11:42 AM
To: HUS testimony
Subject: Karen's Law

I support Karen's Law. Murder is murder and age should not be a factor in the judgement of the sentence. 15-17 yr olds have adult rights, such as driving and working, so they should also be able to take on adult responsibilities. I've watched my cousin grieve over her mother's death for over a year now, because the murderer was a minor and the trial dragged on. There is no reason why he should get less than the standard penalty for murder, if he did indeed commit the murder.

Jocelyn Larsson

Cynthia Nyross

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 30, 2009 6:32 PM
To: HUSstestimony
Cc: [REDACTED]@gmail.com
Subject: Testimony for HB819 on 2/2/2009 8:15:00 AM

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
Address: P O Box 37542 Honolulu, HI 96837
Phone: 808-[REDACTED]
E-mail: [REDACTED]@gmail.com
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.