

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS
Thirtieth State Legislature
Regular Session of 2020
State of Hawaiʻi

February 5, 2020

RE: H.B. 2238; RELATING TO FAMILY COURTS.

Chair San Buenaventura, Vice Chair Nakamura, and members of the House Committee on Human Services and Homelessness, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 2238.

The purpose of H.B. 2238, is to force all minors under the age of sixteen to consult with legal counsel prior to any custodial interrogation. Although the proposed bill has good intentions, implementation of H.B. 2238 would infringe on an individual's Sixth Amendment right to counsel.

The Sixth Amendment ensures an individual – adult or minor – the right to counsel and is an individual's personal right, one that can be utilized or waived only by that person. H.B. 2238 attempts to specifically carve out minors as a protective class, but in doing so forcefully takes away their right to the protections granted by the Sixth Amendment.

“(a) Before a custodial interrogation of and before the waiver of any right against self-incrimination by a child under the age of sixteen, the child shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.”

By using “shall” and “may not”, this bill unquestionably requires or forces a minor to consult with counsel rather than ensure the right to counsel as envisioned by the Sixth Amendment. The Department does not believe that the intention of this bill was to take away a person's constitutional right, thus, H.B. 2238 should be deferred at this time to ensure that there is no conflict with the Sixth Amendment.

In addition, the Department is concerned that this bill does not adequately provide guidance on what is a sufficient “consultation”. This issue could arise in a case where an officer attempts to comply with subsection (a), and provides the minor with legal counsel who simply instructs the minor not to speak with anyone regarding the case. Subsequently, if the minor then decides after receiving such advice to speak with the officer, the Department is concerned that the lack of guidance in H.B. 2238 may lead to unnecessary issues regarding whether the consultation was sufficient enough to allow for the admissibility of any possible statements obtained. This deficiency would undoubtedly lead to the possible filing of a Rule 40 Hawaii Rules of Penal Procedure (HRPP) motion – ineffective assistance of counsel – against the initial attorney that was consulted.

For all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu opposes the passage of H.B. 2238. Thank you for the opportunity to testify on this matter.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Human Services & Homelessness**

February 3, 2020

H.B. No. 2238: RELATING TO FAMILY COURTS

Hearing: Wednesday, February 5, 2020, 9:00 a.m.

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

The Office of the Public Defender supports H.B. No. 2238 in part.

Access to Legal Counsel

We strongly support the requirement that any child under the age of sixteen have access to legal counsel before waiving any constitutionally protected right and before any custodial interrogation. Children require special and additional legal protections and legal assistance to help them understand, process and participate in any kind of custodial interrogation where constitutional rights are impacted. Children are particularly vulnerable to the pressures and complications of adult situations and interactions. Care and consideration should be taken to ensure that any child asked to waive a constitutional right fully understands and comprehends that decision and the consequences of that decision and that child should be guaranteed access to legal counsel.

A 2012 study on exonerations in the United States found that false confessions were obtained in 74% of exonerated minors who were 11-14 years of age at the time of the interrogation and 34% of the minors who were 15-17 years of age at the time of the interrogation, while only 8% of the adults without known mental disabilities falsely confessed when interrogated. (Gross, Samuel R. “Exonerations in the United States, 1989-2012: Report by the National Registry of Exonerations.” M. Shaffer, coauthor. The National Registry of Exonerations, (2012)). The study can be accessed at the following website:

https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf (last visited, January 27, 2020) (The discussion and data regarding false confessions by juveniles can be found on page 59-60).

Finally, the State of California recently enacted similar legislation in 2017. *See* Section 625.6 of the Welfare and Institutions Code, relating to juveniles. In enacting the statute, the Legislature of the State of California, in Senate Bill No. 395 (2017 Cal SB 395), found and declare the following:

(a) Developmental and neurological science concludes that the process of cognitive brain development continues into adulthood, and that the human brain undergoes “dynamic changes throughout adolescence and well into young adulthood” (*see*

Richard J. Bonnie, et al., *Reforming Juvenile Justice: A Developmental Approach*, National Research Council (2013), page 96, and Chapter 4). As recognized by the United States Supreme Court, children “‘generally are less mature and responsible than adults’” (J.D.B. v. North Carolina (2011) 131 S.Ct. 2394, 2397, quoting Eddings v. Oklahoma (1982) 455 U.S. 104, 115); “they ‘often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them’” (J.D.B., 131 S.Ct. at 2397, quoting Bellotti v. Baird (1979) 443 U.S. 622, 635); “they ‘are more vulnerable or susceptible to... outside pressures’ than adults” (J.D.B., 131 S.Ct. at 2397, quoting Roper v. Simmons (2005) 543 U.S. 551, 569); they “have limited understandings of the criminal justice system and the roles of the institutional actors within it” (Graham v. Florida (2010) 560 U.S. 48, 78); and “children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them” (J.D.B., 131 S.Ct. at 2397).

(b) Custodial interrogation of an individual by the state requires that the individual be advised of his or her rights and make a knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds. People under 18 years of age have a lesser ability as compared to adults to comprehend the meaning of their rights and the consequences of waiver. Additionally, a large body of research has established that adolescent thinking tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions (see, e.g., Steinberg et al., “Age Differences in Future Orientation and Delay Discounting,” *Child Development*, vol. 80 (2009), pp. 28-44; William Gardner and Janna Herman, “Adolescents’ AIDS Risk Taking: A Rational Choice Perspective,” in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al. (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer, “Recognizing the Child in the Delinquent,” *Kentucky Children’s Rights Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice Network, “Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates,” September 2012, pp. 1-2; Catherine C. Lewis, “How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications,” *Child Development*, vol. 52 (1981), pp. 538, 541-42). Addressing the specific context of police interrogation, the United States Supreme Court observed that events that “would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens” (Haley v. Ohio (1948) 332 U.S. 596, 599 (plurality opinion)), and noted that “‘no matter how sophisticated,’ a juvenile subject of police interrogation ‘cannot be compared’ to an adult subject” (J.D.B., 131 S.Ct. at 2403, quoting Gallegos v. Colorado (1962) 370 U.S. 49, 54). The law enforcement community now widely accepts what science and the courts have recognized: children and adolescents are much more vulnerable to psychologically coercive interrogations and in other dealings with the police than resilient adults experienced with the criminal justice system.

(c) For these reasons, in situations of custodial interrogation and prior to making a waiver of rights under Miranda v. Arizona (1966) 384 U.S. 436, youth under 18 years of age should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights.

Admissibility of Statements

The Office of the Public Defender opposes the following section of the measure

- (c) Violation of this section shall not prevent the admissibility of statements made by a child during or after custodial interrogation; provided:
 - (1) The officer who questioned the child in violation of this section reasonably believed that the information was necessary to protect life or property from an imminent threat; and
 - (2) The officer's questions were narrowly tailored to solicit only the information necessary to address the threat.

(Page 2, line17 to page 3, line 5).

Regardless of a statutory provision, any statements made by a child in violation of this measure will be subject to constitutional attack. This provision will not excuse any officer from interrogating a child without first advising the child of his Miranda rights, including the right to remain silent and his right to counsel. Moreover, any interrogation regarding "information necessary to protect life or property from an imminent threat" that takes place between the police officer and child will likely be a part of a fuller interrogation on other matters, including any involvement of an alleged crime. Therefore, despite the aforementioned provision, any statement, including "information necessary to protect life or property from an imminent threat," will be subject to a constitutional challenge.

Thank you for the opportunity to comment on H.B. No. 2238.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

Rep. Joy San Buenaventura, Chair

Rep. Nadine Nakamura, Vice Chair

Wednesday, February 5, 2020

9:00 am – Room 329

SUPPORT w/ AMENDMENT - HB 2238 - CUSTODIAL INTERROGATION OF MINORS

Aloha Chair San Buenaventura, 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 including the ten people who died in the last 5 months of 2019 and for **JAMES BORLING-SALAS** who was beaten and died on January 16th. We also remember the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day and we are always mindful that more than 1,200 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 from their ancestral lands.

HB 2238 requires that a child consult with legal counsel or with a parent, guardian, or legal custodian prior to any custodial interrogation and prior to waiving any rights against self-incrimination. Provides that statements obtained in violation of this section may be admissible if the information sought was narrowly tailored and reasonably necessary to address an imminent threat.

Community Alliance on Prisons supports protecting the rights of children and respectfully asks that the committee consider the following amendment: page 2, SECTION 2 is amended to read:

6 **~571- Child custodial interrogation; prior adult**

7 **consultation required.** (a) A child in custody shall consult

8 with legal counsel ~~or~~ **AND** with a parent, guardian, or legal

9 custodian prior to any custodial interrogation and prior to

10 waiving any rights against self-incrimination. This

11 consultation may take place in person, by telephone, or by video

12 conference but shall not be waived.

JUSTIFICATION FOR AMENDMENT:

Fifty years after the landmark Gault decision, The Atlantic article discusses the denial of due process for juveniles:

On May 15, 1967, the Supreme Court ruled that the state of Arizona violated Gault's due-process rights under the Fourteenth Amendment, and that Constitutional due-process rights apply to children as well as to adults. Justice Abe Fortas's majority opinion, dubbed "the Magna Carta for juveniles" by Chief Justice Earl Warren, stated that even in the case of juveniles, "Due process of law is the primary and indispensable foundation of individual freedom."

The primary holding in Gault is that children have the right to legal representation during the judicial process, and that proper procedure, not discretion, is necessary to ensure this right. "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him,'" Fortas wrote in his majority opinion, quoting Kent v. United States.

The primary holding in Gault is that children have the right to legal representation during the judicial process, and that proper procedure, not discretion, is necessary to ensure this right. "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him,'" Fortas wrote in his majority opinion, quoting Kent v. United States.¹

The National Juvenile Defender Center (NIHC) released a report 50 years after the Gault decision to determine just how successful that decision has been in protecting the due-process rights, and specifically access to legal counsel, for children who enter the court system. Their findings, detailed in the report², suggest that the majority of states fail to protect children's right to counsel, either in law or practice, in five significant ways.

- 11 states provide every child accused of an offense with a lawyer, regardless of financial status.
- No state guarantees lawyers for every child during interrogation, and only one state requires it under limited circumstances.
- 36 states allow children to be charged fees for a "free" lawyer.
- 43 states allow children to waive their right to a lawyer without first consulting with a lawyer.
- 11 states provide for meaningful access to a lawyer after sentencing, while every state keeps children under its authority during this time.

¹ The Children Being Denied Due Process - Most states fail to protect minors' entitlement to counsel, By JESSICA LAHEY, MAY 22, 2017. <https://www.theatlantic.com/education/archive/2017/05/the-children-being-denied-due-process/527448/>

² ACCESS DENIED - A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL, National Juvenile Defender Center, May 2017. https://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf

At a hearing for this bill last session, both the Honolulu prosecutor and the police testified that they only hold a child for 6 hours. This custodial interrogation should NEVER be conducted without an attorney. Being held in custody is scary for most people, and must be terrifying for a child under 16 years.

One of the most glaring examples is the case of the Central Park 5 and the miscarriage of justice that engulfed Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana and Korey Wise, the black and Latino teenagers from Harlem who were wrongly convicted of a heinous crime in 1989 and the miscarriage of justice that engulfed Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana and Korey Wise, the black and Latino teenagers from Harlem who were wrongly convicted.

The brutal beating and rape of a white woman in New York City's Central Park provoked public outrage and sensational headlines. Within days of the attack, McCray, 15; Richardson, 14; Salaam, 15; Santana, 14; and Wise, 16, implicated themselves in the rape and beating after hours of psychological pressure and aggressive interrogation at the hands of seasoned homicide detectives.

Less known is the story of the eventual exoneration of the men, who served full prison sentences. There is a film about this case called, WHEN THEY SEE US.

Research shows that children have a better shot of outgrowing their delinquent behavior and becoming productive adults with the right guidance. Thousands of children, particularly in rural areas, plead guilty without an attorney because they are scared. This affects them when they can't get jobs, housing, or higher education.

This amendment to this bill requires that the child discuss their case with an attorney BEFORE waiving his/her constitutional rights and making a decision that has lifelong consequences. The amendment also allows for the inclusion of the parent, guardian or legal custodian.

Community Alliance on Prisons urges the committee to pass this important bill.

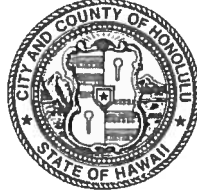
Mahalo for the opportunity to testify.

***“[I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase ‘due process.’
Under our Constitution, the condition of being a boy [or a girl]
does not justify a kangaroo court.”***

*Justice Abe Fortas
Gault Opinion*

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE **GB-KK**

February 5, 2020

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 329
Honolulu, Hawaii 96813

Dear Chair San Buenaventura and Members:

SUBJECT: House Bill No. 2238, Relating to Family Courts

I am Gail Beckley, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 2238, Relating to Family Courts, and submits the following concerns.

The HPD fully supports the constitutional right for all citizens and realize that juveniles are generally less mature and responsible than adults. Juveniles often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. During the custodial interrogation of juvenile suspects, the HPD affords them protection under the constitution by informing them of their rights. Refer to the Warning Juveniles Being Interrogated of Their Constitutional Rights (HPD-11 form) attached.

The HPD-11 form documents that the juvenile suspect makes a knowing, intelligent, and voluntary waiver of those rights if chosen before the interrogation proceeds. There are judicial procedures in place to review if the suspect's statement should be allowed in court.

The trial in juvenile cases is called the adjudicatory hearing. The family court judge will review the case and determine whether the facts as stated in the petition or

The Honorable Joy A. San Buenaventura, Chair
and Members
February 5, 2020
Page 2


warrant are true. The juvenile at the adjudicatory hearing has the right to be represented by a lawyer, and the family court judge will postpone the hearing to allow the juvenile to obtain a lawyer or for any other reason to have a fair trial.

In 2019, the HPD arrested over 7,000 juveniles for criminal offenses, and the HPD is concerned that mandating officers to allow criminal suspects under the age of sixteen to consult with legal counsel before they waive their rights may delay the investigation. The HPD foresees issues with this bill because it will prolong the detention of the juvenile. In compliance with federal law, the HPD cannot detain a juvenile for longer than six hours.

The HPD urges you to oppose House Bill No. 2238, Relating to Family Courts, and we appreciate the committee's consideration on these concerns.

Thank you for the opportunity to testify.

Sincerely,


Gail Beckley, Captain
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police

REPORT NO. _____

WARNING JUVENILES BEING INTERROGATED OF THEIR CONSTITUTIONAL RIGHTS

_____, do you know that you are in the presence of
Name custody

_____ at the _____ Police Station?
Name of Officer

Please Initial _____ Yes _____ No

I am going to ask you questions about _____ which occurred on
Offense(s)

_____ at _____, but first I want to inform you of certain
Date *Location*

rights you have under the Constitution. Before I ask you any questions you must understand your rights.

1. You have a right to remain silent. You don't have to say anything to me or answer any of my questions.
2. Anything you say may be used against you at your trial.
3. If you are 14 years of age or older, you should know that your case may be transferred from the Family or Juvenile Court to the Criminal Division of the Circuit Court, where you would be tried as an adult.
4. You have the right to have your parent or guardian or other adult present.
5. You have the right to have an attorney present while I talk to you. If you, or your parents or guardian, cannot afford an attorney, the court will appoint one for you, prior to any questioning.
6. If you decide to answer my questions without an attorney, parent, guardian, or other adult being present, you still have the right to stop answering at any time.

Please Initial

Do you understand what I have told you? _____ Yes _____ No

Do you want your parent, guardian, or other adult here? _____ Yes _____ No

Do you want an attorney now? _____ Yes _____ No

Would you like to tell me what happened? _____ Yes _____ No

Name of Witness 1

Name (Signature of Juvenile)

Address of Witness 1

_____ a.m. p.m.
Date *Time*

_____ a.m. p.m.
Date *Time*

Name of Witness 2

Comments:

Address of Witness 2

_____ a.m. p.m.
Date *Time*

HB-2238

Submitted on: 2/2/2020 3:16:00 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments:

HB-2238

Submitted on: 2/3/2020 1:59:19 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I support establishing a revolving fund in the Office of Youth Services for vocational programs for “young adults at risk” or “young adults” between the ages of 18 – 24 who have been arrested, or who have had contact with the police, or who are experiencing social, emotional, psychological, educational, or physical problems, and are no longer eligible for child protective services provided by the State due to the adult’s age.

Allowing commercial enterprises for the products produced can provide an array of services for young adults.

HB-2238

Submitted on: 2/4/2020 8:37:14 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristine Crawford	Individual	Support	No

Comments:



**TESTIMONY IN SUPPORT OF HB 2238 BEFORE
THE HAWAII HOUSE COMMITTEE ON HUMAN SERVICES &
HOMELESSNESS**

February 5, 2020

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

Human Rights for Kids respectfully submits this testimony for the official record to express our support for HB 2238. 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 2238 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

AGE AND MENTAL STATUS OF THE EXONERATED DEFENDANTS	PROPORTION WHO FALSELY CONFESSED
Under 18 Years Old at Time of Crime (71/188)	38%
<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 2238 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 pre-frontal 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 2238 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 2238 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 2238 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.

With hope and love,

A handwritten signature in black ink, appearing to read 'James L. Dold', with a stylized, flowing script.

James. L. Dold
President & Founder
Human Rights for Kids

HB-2238

Submitted on: 2/4/2020 9:02:06 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Support	No

Comments:

SUPPORT WITH AN AMENDMENT

Dear Chair San Buenaventura, Vice Chair Nakamura and Committee Members,

I am writing in support of HB 2238 RELATING TO FAMILY COURTS that requires that a child consult with legal counsel or with a parent, guardian, or legal custodian prior to any custodial interrogation and prior to waiving any rights against self-incrimination.

Society recognizes that youth lack the cognitive development that adults have. Consequently, youth should have even greater due process protections in place when subjected to custodial interrogation.

This bill is a starting point to ensure procedural due process protections are in place for youth.

Please amend this bill so that the child SHALL CONSULT WITH LEGAL COUNSEL AND PARENT, GUARDIAN, OR LEGAL GUARDAIN BEFORE any custodial interrogation takes place.

Thank you for the opportunity to submit testimony in support of this measure with the recommended amendment.

Sincerely,

Carrie Ann Shirota, JD

Honolulu, Hawaii