



TESTIMONY IN SUPPORT OF SENATE BILL 2108
RELATING TO JURISDICTION

Senate Committee on Health and Human Services
Hawai'i State Capitol

February 2, 2026

1:05 PM

Room 225

Dear Chair San Buenaventura, Vice Chair McKelvey, and Members of the Senate Committee on Health and Human Services:

The Office of Hawaiian Affairs (OHA) **SUPPORTS SB2108** which amends the factors family courts must consider when determining whether to waive jurisdiction over a minor for criminal proceedings, preserves family court jurisdiction over subsequent acts, and requires courts to retain jurisdiction when clear and convincing evidence shows the minor was trafficked, sexually abused, or raped by the alleged victim in the case.

Research examining youth prosecuted as adults shows that many enter the justice system with significant trauma histories, including prior emotional, physical, or sexual abuse, and that a substantial subset were victims of exploitation or trafficking.¹ At the same time, Hawai'i-focused research highlights that justice-involved youth experience elevated behavioral health risks, such as substance use and suicidality, while receiving limited services across the continuum of care, particularly for youth from historically marginalized communities.² These findings collectively support the need for SB2108, which ensures that family courts explicitly consider trauma, coercion, and child welfare involvement when making jurisdictional decisions, and prevents the transfer of youth whose alleged offenses are rooted in abuse or exploitation into the adult criminal justice system.

Native Hawaiian youth are disproportionately represented in both the juvenile justice and child welfare systems, which contributes to Native Hawaiians' overrepresentation in the adult criminal justice system. Prior OHA research has found that Native Hawaiian youth are more likely to be arrested across offense categories and more likely to experience early and repeated system

¹ Human Rights for Kids, The Childhood Trauma-to-Prison Pipeline: The Prosecution and Incarceration of Traumatized Children As Adults (Nov. 20, 2025), available at <https://humanrightsforkids.org/wp-content/uploads/The-Childhood-Trauma-to-Prison-Pipeline.pdf>

² Tai-An Miao, Earl S. Hishinuma & Karen N. Umemoto, Implications for a System of Care in Hawai'i for Youth Involved in the Justice System and Substance Use, *Haw. J. Health & Soc. Welf.* 81(12 Supp. 3) 27–36 (Dec. 2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9783811/>

involvement.³ Contact with the justice system often begins in childhood, frequently following exposure to adverse childhood experiences, family disruption, or foster care involvement.

SB2108 appropriately strengthens family court discretion by explicitly requiring courts to consider a minor's exposure to childhood trauma, involvement in the child welfare system, and status as a victim of trafficking or sexual abuse. Importantly, the bill also ensures that a minor is not transferred into the adult system when the alleged victim exerted abuse or coercion over the minor before or during the commission of the offense. These safeguards recognize that youth who commit offenses under conditions of exploitation or abuse are fundamentally different from adult offenders and are more likely to benefit from rehabilitative, trauma-informed interventions available through the family court.

By preserving family court jurisdiction and limiting unnecessary transfers to adult criminal court, SB2108 helps mitigate the long-term harms associated with prosecuting youth as adults. These harms include increased recidivism, poorer health outcomes, and diminished opportunities for rehabilitation. This approach aligns with evidence-based practices that prioritize accountability while recognizing youth development, diminished culpability, and the potential for growth and reform. For these reasons, the Office of Hawaiian Affairs respectfully urges this Committee to **PASS SB2108**.

Mahalo nui for the opportunity to provide testimony on this important measure.

³ Office of Hawaiian Affairs, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* 10 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf

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February 2, 2026

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Health and Human Services**

S.B. 2108: RELATING TO JURISDICTION

**Chair San Buenaventura, Vice-Chair McKelvey, and Members of the
Committee:**

The Office of the Public Defender **supports S.B. 2108:**

The Office of the Public Defender supports the inclusion of factors relating to a juvenile's adverse childhood experiences, childhood trauma, sexual abuse, mental health history and the other factors detailed in this measure when the Family Court is determining whether a waiver is appropriate. The Family Courts have been incorporating the principles of trauma-informed care in the handling of juvenile cases and this measure extends these principles into a determination as to whether a juvenile should be waived into the adult court system for law violations. This measure would codify these principles and include them as part of a detailed list of factors that the Family Court would be mandated to include in any social study report or risk assessment report related to a juvenile facing the possibility of a waiver.

As to subsection (c)(4), we support this amendment. Our youth are often targeted by adults who prey upon their vulnerabilities, lack of maturity, and susceptibility to pressure. We believe the inclusion of this factor is important for the Family Court to consider when determining the appropriateness of a waiver.

As to subsection (j), we propose the removal of the language “and order the minor held for criminal proceedings” on lines 18-19. First, a charge in juvenile court is not a criminal proceeding. The juvenile courts use the term “law violation”. Second, we oppose restricting any family court judge from considering supervised release options other than incarceration for a juvenile facing a possible waiver for a law violation who has been trafficked, sexually abuse, or raped. There are treatment options available that may be more appropriate for a juvenile facing the aftermath of sexual abuse, including residential treatment programs. We ask that the measure be amended to remove this language to read as follows:

(j) If the court finds by clear and convincing evidence that the minor was trafficked, sexually abused, or raped by the alleged victim in the case before or during the commission of the alleged offense, the court shall retain jurisdiction and not waive jurisdiction.

Thank you for the opportunity to provide testimony on this measure.

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THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai'i

February 1, 2026

RE: S.B. 2108; RELATING TO JURISDICTION.

Chair San Buenaventura, Vice Chair McKelvey, and members of the Senate Committee on Health and Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comment on S.B. 2108.

S.B. 2108 expands the factors family courts must consider when deciding whether to waive jurisdiction over juveniles charged with serious felonies. It also mandates retention of jurisdiction when clear and convincing evidence shows that the minor was trafficked, sexually abused, or raped by the alleged victim before or during the charged offense.

While adverse childhood experiences correlate with diagnosed antisocial behavior,¹ the causal relationship remains unclear. Most abused children do not commit crimes, and defendants may misrepresent their histories to avoid accountability.² The bill requires judges to consider trauma and mitigating circumstances before transfer to adult court.

Clear and convincing evidence requires the factfinder to determine that the claimed fact is highly probable³—a threshold higher than preponderance of the evidence but lower than proof beyond reasonable doubt.⁴

Thank you for the opportunity to testify.

¹ See Note, *Bias Baked In: How Antisocial Personality Disorder Diagnoses Trigger Legal Failures*, 138 HARV. L. REV. 1101, 1109 (2025).

² See Stanton E. Samenow, *INSIDE THE CRIMINAL MIND* 29-48 (2014 ed.) (outlining manipulative behaviors employed by some juvenile criminals).

³ *Matter of JK*, 149 Hawai'i 400, 409, 491 P.3d 1179, 1188 (App. 2021).

⁴ See *State v. Rodrigues*, 128 Hawai'i 200, 206 n.12, 286 P.3d 809, 815 n.12 (2012).

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**TESTIMONY IN SUPPORT OF SB 2108 BEFORE THE HAWAII SENATE HEALTH
AND HUMAN SERVICES COMMITTEE**

Hearing Date: February 2, 2026

Dear Chair San Buenaventura and Members of the Committee:

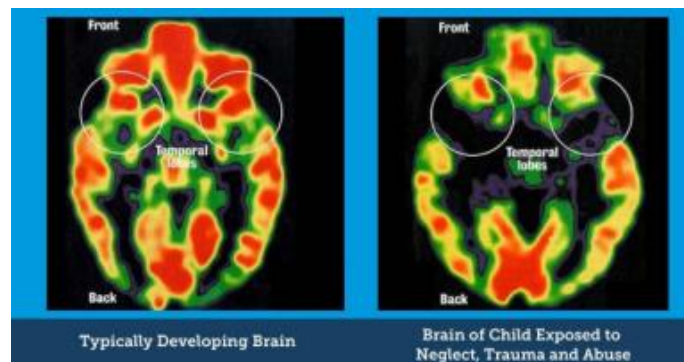
Human Rights for Kids respectfully submits this testimony for the official record to express our full support for SB 2108 and to urge the committee to pass this important measure. We are grateful to Senator Gabbard for his leadership in introducing this bill and appreciate the Hawaii Legislature's willingness to address this important human rights issue concerning the treatment of Hawaii's children in 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 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 HB 2108 because it will ensure that a child's full experience is considered by a court before their case can be waived to adult criminal court. The practice of disregarding child status and sending children to adult criminal court is a human rights abuse. SB 2108 would mandate the court to consider a child's exposure to adverse childhood experiences, childhood trauma, involvement in the child welfare or foster care systems, and status as a victim of human trafficking, sexual abuse, or rape or whether the child has any diagnosable mental, emotional, or physical disability that would be best treated through the family court. SB 2108 would further remove a provision that mandates once a child is waived to adult court that any subsequent court involvement must also be waived to adult court. Finally, SB 2108 mandates that if a court finds a child to be a victim of trafficking, sexual abuse or rape by the alleged victim in the case prior to the commission of the offense, that the case must remain in juvenile court ensuring that the lived experience of the child is considered when making such an important jurisdictional decision.

Adverse Childhood Experiences

In the vast majority of cases, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness, or are formerly incarcerated. Research by Human Rights for Kids has shown that nationally more than 70% of children tried as adults experienced both physical and emotional abuse prior to their offense. Another 45% experienced sexual abuse. Almost every child tried as an adult came from single parent homes where witnessing domestic violence (53%), substance abuse (75%), and mental illness (54%) were normalized. The average ACE score was 6.31 out of 10 and the average age of onset of abuse was 6 years old. Further, approximately 30% of the people we surveyed who were tried as adults for crimes they committed as children were trafficking survivors. This type of trauma 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.

Childhood trauma is the primary driver and root cause for how and why so many kids end up in the criminal legal system. Policies that prohibit courts from holding full hearings that consider all the relevant factors and permit children to be charged as adults ignore this truism and divest juvenile court judges – who are trained in child development – from making a decision of what is in the best interest of the child and society. Because most of the children accused of crimes have been victims themselves, automatic or de facto automatic adult charging policies ignore and disregard both the victim and child status of these offenders. That is not to say that in appropriate cases public safety considerations may require the court to waive juvenile court jurisdiction, but that that decision rightfully should rest with juvenile court judges. These judges are in the best position to weigh a child's trauma history with their potential for rehabilitation if kept within the juvenile system.

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 of regulating their emotions, controlling their impulses, evaluating risk and reward, and engaging in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment. Children's underdeveloped brains and proclivity for irrational decision-making 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.

It is for these reasons that children should also not be automatically subject to criminal court jurisdiction. In every aspect of our society, we require individuals who work with or make decisions about our children to be specially trained in child development, i.e. teachers, day care workers, pediatricians, nurses, etc. However, in Hawaii currently, children are not always entitled to a full child status hearing before their case is waived to adult court. Divesting juvenile court judges of this decision-making authority is counter to how we treat children in every other aspect of our society. Like pediatricians and teachers in health care and learning settings, we should bestow decision making authority over our children in the legal system with juvenile court judges who have been trained specifically on child development.

International Human Rights Law

In 1989 the United Nations adopted the Convention on the Rights of the Child (CRC), which sets forth minimum standards for the treatment of children who come into conflict with the law. For the purposes of this legislation, Articles 10 and 14 of the International Covenant on Civil and Political Rights states: "Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status . . . the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation." Article 37 of the CRC adds that: "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." The need to treat children differently from adults is at the core of these human rights protections. Treating children as adults, regardless of the crime they are accused of, without due consideration of all the contributing factors is a human rights abuse.

We strongly urge this committee to vote favorably upon SB 2108 to ensure courts fully consider all the factors of a child's experience before their case can be waived to adult court and to ensure children are treated fairly and with dignity when they come into the justice system. Thank you for your consideration

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