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Holding Children Accountable for Their Crimes

By Jody Kent Lavy

Hawaii is poised to take an important step toward establishing age-appropriate measures for holding children accountable when they are convicted of serious crimes. If the state legislature passes House Bill 2116, a crucial youth sentencing reform bill, Hawaii will further solidify its standing as a national leader in criminal justice reform.

HB 2116, introduced by Representatives Karen Awana and John Mizuno, would eliminate life in prison without parole as a sentencing option for children. The bill appropriately reflects the notion that children are different from adults and that this difference should be acknowledged when holding them accountable, while ensuring public safety and fiscal responsibility.

This sensible proposal unanimously passed the House Human Services Committee and is currently awaiting a hearing in the House Judiciary Committee.

Specifically, HB 2116, would give guidance to judges to consider the unique characteristics of youth before sentencing a child who has been transferred to adult court. The bill would also allow individuals who were transferred and sentenced as children in adult court to file a petition for a sentencing review after they have served a minimum required term of no more than 20 years imprisonment if they express remorse for their crimes and demonstrate that they have been rehabilitated.

Rep. Awana and Rep. Mizuno's proposed reform falls in line with three U.S. Supreme Court rulings issued in the last decade that have found that children are constitutionally different from adults and, as such, should not be subject to our country's harshest punishments. The United States is the only country in the world known to impose these sentences upon our children.

The UN Convention on the Rights of the Child prohibits "capital punishment and life without the possibility of release" as forms of punishment for people younger than 18. The United States and Somalia are the only countries that have not ratified this Convention, which prohibits this cruel and unusual punishment.

In 2007, the Hawaii Legislature adopted H.C.R. 69, "Urging the Adoption of the United Nations' Convention on the Rights of the Child," acknowledging that children have universally recognized human rights that must be protected. Nationwide, approximately 2,500 people have been sentenced to life without parole for crimes committed as children.

These sentences ignore what every parent knows and brain research has proven – children are impulsive, do not always think through the long-term consequences of their actions and may be easily influenced by peers and older individuals. We also know that children possess a unique capacity for change and rehabilitation.

The U.S. Supreme Court has scaled back the use of life-without-parole sentences in two recent rulings. In 2010, the Court ruled in *Graham v. Florida* that it is unconstitutional to impose these sentences upon children who are convicted of non-homicide crimes. The Supreme Court ruled in *Miller v. Alabama* that children may not receive automatic life-without-parole sentences. By acting now, Hawaii can uphold its reputation as smart on crime, rather than holding on to outdated, impractical and immoral strategies.

States throughout the country are revisiting their youth sentencing policies, in light of the Supreme Court's recent decisions. Policymakers in California, Delaware, Texas and Wyoming have changed their laws since *Miller* to create second chances for children who would have previously been sentenced to die in prison. The Massachusetts Supreme Judicial Court struck down life without parole for children under the state constitution's ban on cruel or unusual punishment.

A growing number of opinion leaders, such as President Jimmy Carter and Newt Gingrich, newspaper editorial pages and family members of people who died as a result of crimes committed by youth have expressed their support for age-appropriate reforms. In addition, people who were incarcerated as youth and are working now to keep other youth from making the same mistakes.

These individuals exemplify the potential for children to change. National organizations, such as the U.S. Conference of Catholic Bishops, the PTA and the American Correctional Association are among the more than 100 national organizations that have signed on to the Campaign for the Fair Sentencing of Youth's statement of principles, which calls for age-appropriate alternatives to these sentences. The American Bar Association also has said that children should be treated as children and should not be subject to life without parole sentences.

The time is now to make this imperative and yet modest reform to Hawaii's youth sentencing laws and come into compliance with the international human rights standards for children. We encourage the legislature to advance HB 2116 and look forward to serving as a resource throughout this process.

About the author: *Jody Kent Lavy is director and national coordinator at the Campaign for the Fair Sentencing of Youth, a national coalition and clearinghouse that coordinates, develops and supports efforts to implement fair and age-appropriate sentences for youth. She previously served as public policy coordinator at the ACLU National Prison Project and spent three years monitoring Los Angeles County jails for the ACLU of Southern California.*