

# **SB 1120**

**Report Title:**

RELATING TO THE MAXIMUM AGE FOR COMMITMENT TO A  
YOUTH CORRECTIONAL FACILITY

**Description:**

Eliminates the incarceration of eighteen year olds in a youth correctional  
facility.

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1120  
RELATING TO  
THE MAXIMUM AGE FOR COMMITMENT TO A  
YOUTH CORRECTIONAL FACILITY

by  
Ted Sakai, Interim Director  
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Department of Public Safety is submitting comments concerning Senate Bill 1120, which would establish the upper age limit for youth incarcerated at the Hawaii Youth Correctional Facility (HYCF) at 18. This measure, as written, would require 18-year old juveniles adjudicated by the Family Courts be placed in an adult facility should they violate the conditions of their parole from HYCF.

The Department met with Office of Youth Services Executive Director David Hipp to discuss its concern about committing an adjudicated youth subject to Family Court jurisdiction to an adult facility. As a result of that discussion, an agreement was reached to prevent such an occurrence.

We respectfully request this Committee amend this measure by rescinding Section 352-26(c), the wording that would allow adjudicated youth to be placed in an adult facility. We ask that you delete the language found on page 4, line 11, through page 5, line 14, and replace it with the following:

"[(c) In the case of a nineteen-year-old person such a designated employee may:

- (1) ~~Take the person into custody and place the person in an appropriate adult correctional facility if the alleged violation constitutes a crime and the director has been notified and subsequently issued a written order to that effect. In the event of retaking for such an alleged violation of parole, the director or the director's agent shall notify the person of the right to legal counsel and to appeal the issuance and execution of such order. The office of juvenile parole shall hold a hearing within thirty days after the person's incarceration in an adult facility to determine whether parole should be revoked. The juvenile parole office staff shall render reasonable aid to the person in preparation for the hearing.~~
- (2) ~~Notify the director of an alleged violation of parole. The director may petition the family court for an ex parte order based on the alleged violation to take the person into custody and place the person in an appropriate adult correctional facility. The person shall be notified of the issuance and execution of such a court order and of the right to legal counsel and appeal. A juvenile parole office hearing shall be held within thirty days after a person's placement in an adult facility to determine whether parole shall be revoked.]~~

[(d)] (c) Any person whose legal custody has been vested in the director and who has escaped from the facility may be taken into custody by a police officer or an employee of the department without a warrant or an order issued by the director and returned to the facility.

[(e)] (d) When called upon by any designated employee of the department, any police officer shall assist in taking a person into custody pursuant to the provisions of this section."

Thank you for the opportunity to testify.

NEIL ABERCROMBIE  
GOVERNOR



PATRICIA MCMANAMAN  
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DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 12, 2013

TO: The Honorable Will Espero, Chair  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 1120 – RELATING TO THE MAXIMUM AGE FOR COMMITMENT TO A YOUTH CORRECTIONAL FACILITY**

Hearing: Tuesday, February 12, 2013; 2:45 p.m.  
Conference Room 224, State Capitol

**PURPOSE:** The purpose of S.B. 1120 is to eliminate the incarceration of eighteen year olds in a youth correctional facility.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) strongly supports this Administration bill.

The incarceration of adults with children is contrary to statutory intent, adversely affects the goals of the Hawaii Youth Correctional Facility (HYCF), and creates a dangerous and unsafe setting by placing adults with children.

Further recognition of the inherent danger of placing children with adults is evidenced by the action of Hawaii Legislature, which in 2011 repealed section 352-28, HRS, that allowed the transfer of children from the HYCF to an adult correctional facility.

According to the federal Office of Juvenile Justice and Delinquency Prevention's Statistical Briefing Book for 2010, every state in the United States has an upper age of jurisdiction (i.e., the oldest age at which a juvenile court has original jurisdiction over an

individual for law violating behavior) at age seventeen or less. For thirteen states the age is sixteen or younger.

Additionally, the maximum age over which juvenile courts may extend jurisdiction over an individual ranges significantly from state to state – typically from ages 15 to 24. Hawaii is one of only a few states that has no upper age of jurisdiction. In those states where such jurisdiction may include placement in a correctional facility, the young adults are housed separately from juveniles.

This bill will require families and community-based agencies to better prepare to assist these youth in their transition to adulthood. The public will benefit as the longer a person is incarcerated, the less likely he or she is to return to school or become gainfully employed, and the more likely he or she will be to recidivate as compared to a person who received services within his or her community.

Reducing the incarceration of eighteen year olds would decrease the average daily population at the Hawaii Youth Correctional Facility by as much as 20 percent based on FY 2011-2012 statistics. Such a reduction would allow for the closing of Ho`okipa Makai, a sixteen-bed secure dormitory style facility across Kalaniana'ole Highway from the Hawaii Youth Correctional Facility.

The estimated operating cost savings of closing Ho`okipa Makai is conservatively estimated at approximately \$614,900. Additionally, it would allow for staff to be reassigned to the other living units, which will have a significant impact on reducing overtime.

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



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Public Safety,  
Intergovernmental and Military Affairs**

The Hon. Will Espero, Chair  
The Hon. Rosalyn H. Baker, Vice Chair

Tuesday, February 12, 2013  
2:45 p.m.  
State Capitol, Conference Room 224

by

Catherine H. Remigio  
District Family Judge  
Family Court of the First Circuit

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**Bill No. and Title:** Senate Bill No. 1120, Relating to the Maximum Age for Commitment To a Youth Correctional Facility

**Purpose:** Eliminates the incarceration of a person, 18 years of age, at a youth correctional facility. Provides that that person will be placed on parole. Include provisions under which the person may be transferred to an adult correctional facility.

**Judiciary's Position:**

The Judiciary respectfully opposes this bill, which places, on parole, any 18 year old who is committed to HYCF, and appears to render adult correctional facilities the only option for an 18 year old whose alleged violation of the terms and conditions of the person's parole constitutes a crime. The reasons for our opposition are:

1. The current statute already allows the Office of Youth Services (OYS)/Hawaii Youth Correctional Facility (HYCF) to utilize adult correctional facilities if the person is 19 yrs old and the alleged violation constitutes a crime. However, the current statute also gives much more discretion to HYCF in choosing the most appropriate treatment of furloughed and paroled youth. This bill widens the "net" of young people who will be exposed to learning



Senate Bill No. 1120, Relating to the Maximum Age for Commitment to a Youth  
Correctional Facility

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Tuesday, February 12, 2013 at 2:45 p.m.

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criminal behavior from older incarcerated persons as well as subjecting youth to possible harm. In 2011, the Legislature agreed with OYS that, in the case of youth, the statute (HRS Section 352-28) that allowed HYCF to detain youth (those persons, age 16 and older, whose behavior was endangering the safety of HYCF) in the adult correctional facility, should be repealed (Act 18 of 2011). In part, the repeal was based upon:

Your Committees find that this measure will ensure that youth committed to the Hawaii Youth Correctional Facility will not be transferred, for disciplinary or other reasons, to adult correctional facilities, where they would be exposed to serious adult offenders and subjected to possible physical, mental, and sexual assault. (Senate Standing Committee Report No. 839, re HB No. 1067, HD 1, March 23, 2011)

2. Increasing the exposure of youth to more experienced criminal behavior would be a disservice to both the youth and the community.
3. Inflating the population of adult correctional facilities seems to be a costly way to deal with wayward youth who are not dangerous.
4. Cutting off OYS's role as guardian of committed youth, who are 18 years of age, will be problematic for all concerned. It will make OYS's supervisory efforts more difficult. Youth will be left to their own resources and/or resources of families that may be marginal.

The family court is very appreciative and admiring of the efforts of the OYS as they continue their difficult work of ensuring that HYCF is effective, efficient, humane, and focused on rehabilitation of youth. We also understand that there will always be some tension about the appropriateness of the use of HYCF for certain teens. Despite this tension, the family court and OYS have a long history of close collaboration and we are confident this history of collaboration and mutual respect will continue. Therefore, we do not take this position of opposition lightly. However, we do not believe that this will, in either the short or long term, be in the best interest of the facility, the youth, and the community.

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

**-NEIL ABERCROMBIE**  
GOVERNOR



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STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
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February 11, 2013

**TO:** The Honorable Will Espero, Chair  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

**FROM:** David Hipp, Executive Director

**SUBJECT:** **S.B. 1120 – REATING TO THE MAXIMUM AGE FOR COMMITMENT TO A YOUTH CORRECTIONAL FACILITY**

Hearing: Tuesday, February 12, 2013; 2:45 p.m.  
State Capitol, Conference Room 224

**PURPOSE:** The purpose of S.B. 1120 is to eliminate incarceration of eighteen year olds in a youth correctional facility.

**OFFICE'S POSITION:** OYS strongly supports this Administration bill.

We all understand that the period of childhood is all too brief. As the designated guardian of every youth committed to the Hawaii Youth Correctional Facilities (HYCF) it is the duty of the OYS executive director to maximize and create the best possible conditions for youth to rehabilitate and reintegrate back into their families and communities. As stated in 352-2-1 HRS, it is important "to harmonize the sometimes conflicting requirements of public safety, secure placement, and individualized services for law violators in the custody and care of the director. "

The incarceration of youth has been widely shown nationwide to be the least effective means of rehabilitating young people who have run afoul of the law. In a study released by The Annie E. Casey Foundation last year titled "No Place for Kids", clear and comprehensive evidence is presented outlining the ineffectiveness of incarceration, and the actual harm it does to our youth. Additionally, per the longtime president of the National Council on Crime and Delinquency in the same study: *"We have to recognize that incarceration of youth per se is toxic, so we need to reduce incarceration of young people to the very dangerous few. And we've got to recognize that if we lock up a lot of kids, it going to increase crime."*



The incarceration of youth who are not a risk to public safety was one of the issues raised by the federal monitors from the U.S. Department of Justice (DOJ) during the 5 years the State of Hawaii was bound by a memorandum of agreement with the DOJ.

The Office of Youth Services for the past 2 years has been working closely with the Judiciary et al. to identify stronger front end and community based services to address the needs of our state's at-risk and troubled youth.

Of continued concern is the incarceration of eighteen year olds (who are legally adults) with youth at the Hawaii Youth Correctional Facility (HYCF). This is not a public safety issue given the following facts regarding eighteen year olds who are committed to HYCF:

- Percentage committed for a crime committed at the age of 18 = **0%**
- Percentage committed for a violation of probation = **100%**
- Percentage committed who had never previously been at HYCF = **66%**
- Percentage committed who have never committed a felony = **40%**
- Percentage committed who do not have a Felony A or B in their history = **80%**

It is important to note that when an eighteen year old is arrested for a criminal offense, he/she is processed as an adult – which is consistent with statutory intent. Furthermore, federal requirements do not allow for the incarceration of eighteen year olds charged as adults with juveniles.

The majority of the commitments to HYCF are between the ages of fourteen and sixteen. The impact that eighteen year olds have on these youth is significantly detrimental to the rehabilitation of these young people.

HRS §571, Family Courts, clearly delineates between an “adult” and a “child”. Every section of HRS §571 related to juvenile delinquency refers to “child” or “minor”. The Family Court’s statute for the standards for juvenile detention only references “child” or “minor”. The Family Court will not place an eighteen year old in the juvenile detention home, but will place an eighteen year old in a juvenile correctional facility. It is HYCF’s own enabling statute that enables the court to incarcerate eighteen year olds at a juvenile facility.

One issue is the Family Court’s retention of jurisdiction of juvenile cases until the Age of 19. By eliminating the option to incarcerate eighteen year olds at HYCF, the court will be required

The Honorable Will Espero  
February 11, 2013  
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to seek alternative community based services for these young adults. Such services will far better serve this age group and their families than incarceration will.

The passage of this bill would greatly clarify and support this effort to align the various statutes to be consistent as to the age of eligibility for services.

Thank you for the opportunity to present this testimony.

**SB1120**

Submitted on: 2/7/2013

Testimony for PSM on Feb 12, 2013 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Support	No