

# SB. NO. 1120

JAN 24 2013

## A BILL FOR AN ACT

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

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 352-8, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§352-8 Guardianship [~~and custody~~] of the person  
4 committed. [~~(a)~~] Notwithstanding any law to the contrary, the  
5 director shall be the guardian of every youth committed to or  
6 received at the Hawaii youth correctional facilities. The  
7 director shall have all the powers and duties of a natural  
8 guardian of the youth; provided that the director shall not be  
9 liable in damages for the tortious acts committed by the youth.

10 [~~(b) The director shall have custody of any committed  
11 person who is eighteen years of age or older for the period  
12 provided for by the court.~~]"

13 SECTION 2. Section 352-9, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§352-9 Period committed. (a) All persons committed to  
16 the Hawaii youth correctional facilities shall be committed for  
17 the period of their minority or as otherwise ordered by the

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1 court. Such persons may be placed on furlough or parole if  
2 deemed appropriate. The power to discharge a person committed  
3 to a youth correctional facility is reserved to the director;  
4 provided that the director shall give a thirty-day notice of  
5 such intended discharge to the appropriate court and to the  
6 prosecutor's office of the appropriate county. Prior court  
7 approval for furlough, parole, or discharge of all minors,  
8 committed by the family court to a youth correctional facility  
9 for the period of their minority or otherwise, shall be obtained  
10 when such is specifically required in the commitment order. In  
11 any case, no person [~~nineteen~~] eighteen years or older shall be  
12 incarcerated in a youth correctional facility.

13 (b) In those cases where the term of commitment to a youth  
14 correctional facility extends beyond the person's [~~nineteenth~~]  
15 eighteenth birthday, the person shall be placed on juvenile  
16 parole pursuant to the original family court order for the  
17 balance of the person's term of commitment; provided that such  
18 term does not extend beyond the person's twentieth birthday  
19 unless earlier terminated."

20 SECTION 3. Section 352-26, Hawaii Revised Statutes, is  
21 amended by amending subsections (b) and (c) to read as follows:

22 "(b) In the case of a person under [~~nineteen~~] eighteen  
23 years of age, such designated employee may:

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1           (1) Notify the director or the director's designated agent  
2           of such alleged violation and, if the director issues  
3           a written order to such effect, take such person into  
4           custody and place such person in such appropriate  
5           youth correctional facility as may be designated in  
6           such order until determinations as to such person's  
7           further care and treatment are made. In the event of  
8           retaking for an alleged violation of parole, the  
9           director or the director's agent shall notify the  
10          person, and the person's parent, guardian, or  
11          custodian of the right to legal counsel and to appeal  
12          the issuance and execution of such order. The office  
13          of juvenile parole shall hold a hearing within thirty  
14          days after the person's return to determine whether  
15          parole should be revoked. The juvenile parole office  
16          staff shall render reasonable aid to the person in  
17          preparation for the hearing.

18          (2) Take such person into custody and place the person in  
19          an appropriate youth correctional facility until  
20          determinations as to such person's further care and  
21          treatment are made by the department if such employee  
22          has reason to believe that permitting such person to  
23          remain in the person's own home or other place within

1 the community would be dangerous to the person or to  
2 the community or that such person is about to flee the  
3 jurisdiction of the department. Such employee, at the  
4 time of taking such person into custody, shall advise  
5 such person as to the specific terms and conditions of  
6 the person's parole or furlough which the person is  
7 alleged to have violated and of the person's right to  
8 legal counsel and appeal. Provisions regarding  
9 possible parole revocation shall apply as enumerated  
10 in paragraph (1).

11 (c) In the case of a [~~nineteen-year-old~~] person eighteen  
12 or nineteen years of age, such [a] designated employee may:

13 (1) Take the person into custody and place the person in  
14 an appropriate adult correctional facility if the  
15 alleged violation constitutes a crime and the director  
16 has been notified and subsequently issued a written  
17 order to that effect. In the event of retaking for  
18 such an alleged violation of parole, the director or  
19 the director's agent shall notify the person of the  
20 right to legal counsel and to appeal the issuance and  
21 execution of such order. The office of juvenile  
22 parole shall hold a hearing within thirty days after  
23 the person's incarceration in an adult facility to

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1 determine whether parole should be revoked. The  
2 juvenile parole office staff shall render reasonable  
3 aid to the person in preparation for the hearing.

4 (2) Notify the director of an alleged violation of  
5 parole. The director may petition the family court  
6 for an ex parte order based on the alleged violation  
7 to take the person into custody and place the person  
8 in an appropriate adult correctional facility. The  
9 person shall be notified of the issuance and execution  
10 of such a court order and of the right to legal  
11 counsel and appeal. A juvenile parole office hearing  
12 shall be held within thirty days after a person's  
13 placement in an adult facility to determine whether  
14 parole shall be revoked."

15 SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

18  
19 INTRODUCED BY: Anna Driscoll

20 BY REQUEST

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**Report Title:**

Maximum Age for Commitment to a Youth Correctional Facility

**Description:**

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

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE MAXIMUM AGE FOR COMMITMENT TO A YOUTH CORRECTIONAL FACILITY.

PURPOSE: To eliminate the incarceration of eighteen year olds in a youth correctional facility.

MEANS: Amend sections 352-8, 352-9, and 352-26 (b) and (c), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Chapter 571, HRS, creates within the State a system of family courts whose purpose is to promote reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment of offenders, and reduce juvenile delinquency.

Chapter 352, HRS, establishes the Hawaii youth correctional facility (HYCF) to provide for the custody, rehabilitation, and institutional care and services for youth committed by the courts of the State.

While the two chapters align with regards to addressing issues related to juvenile delinquency, there is one significant inconsistency. The majority of the sections of chapter 571 clearly address children as does the majority of the sections within chapter 352. However, sections 352-8, 352-9, and 352-26, HRS, allow for the continued incarceration of persons after reaching the age of adulthood at a youth 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.

Consistent with that upper age of jurisdiction, chapter 571, HRS, Family Court, defines "child" or "minor" as a person less than eighteen years of age. "Adult" is defined as a person eighteen years of age or older.

References to "child" or "minor" are found throughout chapter 571. Specifically, as it relates to this justification, all references are to "child" or "minor" in the following sections of chapter 571 related to juvenile delinquency:

- Section 571-11 Jurisdiction; children
- Section 571-31 Taking children into custody; release; notice
- Section 571-32 Detention; shelter; release; notice
- Section 571-33 Detention and shelter facilities
- Section 571-48 Decree, if informal adjustment or diversion to a private or community agency or program has not been effected

Additionally, per section 571-13, Retention of jurisdiction:

"Further, in the case of any person who is alleged to have committed an offense under



section 571-11 prior to reaching eighteen years of age, the court shall have jurisdiction after the person becomes eighteen for the purpose of holding hearings and/or entering orders of disposition concerning the alleged offenses or for the purpose of making and issuing orders for pre-trial detention of persons aged eighteen years or older to an adult correctional facility, when the person is alleged to have committed an act or acts during the person's minority that would constitute a violation of section 571-11(1). This section shall not be construed, however, to confer any jurisdiction upon the family court over a person for any criminal act committed after the person achieves eighteen years of age."

Under section 352-10, HRS, "When the term of commitment ordered by the court extends beyond the offender's eighteenth birthday, the offender shall, upon reaching the age of eighteen, be committed to the custody of the department of public safety for completion of the sentence."

The incarceration of adults with children is contrary to statutory intent, adversely affects the goals of the HYCF, and creates a dangerous and unsafe setting by placing adults with children. This is recognized at Hawaii's juvenile detention home as eighteen year olds may not be detained there.

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.

The requested amendments to sections 352-8, 352-9, and 352-26 will align those sections with chapter 571 and the other sections of chapter 352. Additionally, it is a critical amendment considering:

- An eighteen year old is statutorily an adult.
- With the exception of the provisions outlined in section 571-14, HRS, the Family Court has no jurisdiction over a person for any criminal act committed after the person achieves eighteen years of age.
- Eighteen year olds may not be detained in the juvenile detention home.
- Youth committed to HYCF by the Circuit Court must be transferred to the Department of Public Safety upon reaching the age of eighteen.
- Incarcerated adults create a dangerous and unsafe environment when housed with children, and are obstacles to the rehabilitation of those children.

Impact on the public: In the past 2.5 fiscal years (FY 2010-2011 - December FY 2012-2013), there have been 310 commitments to the HYCF. Commitments to age 19 comprise only 15 percent of those commitments. Of the commitments to age 19, 50 percent of those were persons already eighteen years of age at the time of commitment, i.e., this 50 percent were committed for a violation of probation, not a new criminal offense. All other commitments to age 19 were when persons were age seventeen, or only 7.5 percent of all commitments (23 of 310 commitments) in 2.5 fiscal years.

The overall impact on the public would be to require families and community-based agencies to better prepare to assist these youth in their transition to adulthood. This would be of benefit to the public 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.

Impact on the department and other agencies:  
There would be no impact of the Department of Public Safety as eighteen year olds who commit offenses already fall under its purview.

The inability of the Family Court to hold persons in a juvenile correctional facility beyond the age of eighteen will require the court to seek alternative community-based services for those youth committed to age 19 upon their eighteenth birthday. Such services will better serve these young people and their families than incarceration.

GENERAL FUND: 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.

OTHER FUNDS: N/A.

PPBS PROGRAM DESIGNATION: HMS 503.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.