



## *The Judiciary, State of Hawai‘i*

### **Testimony to the House Committee on Judiciary**

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 11, 2020, 2:00 p.m.

State Capitol, Conference Room 325

by

Christine E. Kuriyama

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1788, H.D. 1, Relating to the Room Confinement of Children at Detention and Shelter Facilities.

**Purpose:** Limits the circumstances under which children and minors at secure detention or shelters may be subject to room confinement, and specifies the conditions and time limits for which room confinement may be imposed.

### **Judiciary's Position:**

The Judiciary strongly supports House Bill No. 1788, H.D. 1 which is part of the Judiciary's 2020 legislative package.

Over the past decade, Hawai‘i's juvenile justice system has undergone a major philosophical shift moving away from practices that exert control over youth through punishment and moving toward evidence-based and trauma responsive approaches for holding youth accountable for their conduct. In keeping with our significant advances in how we handle youth, facilities that rely on room confinement to control youth must also change their approach. Both research and experience establish that any perceived brief benefits of room confinement obscure the fact that room confinement is not an effective deterrent for misbehavior, nor does it give youth the skills needed to behave differently in the future.

Long periods of isolation have negative consequences for youth as youth are especially vulnerable to the mental and emotional effects of room confinement. Room confinement poses a safety risk for youth, including increasing the likelihood of self-harm, suicide, and re-traumatizing



House Bill No. 1788, H.D.1, Relating to the Room Confinement of Children  
at Detention and Shelter Facilities ---

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youth who were already victimized. Over the past decade, increased awareness about the overuse and harm of room confinement have stimulated national momentum to end this inhumane practice.

Congress passed the First Step Act in 2018. This important law prohibits facilities that confine youth in federal custody from using room confinement as punishment and permits such confinement only when a youth's behavior poses a risk of physical harm that cannot otherwise be de-escalated. In addition to Congress, the United States Department of Justice and prominent national professional organizations have taken strong positions against the isolation of youth.

Given our significant advances in juvenile justice system reform, recent national developments, and research, the time is right for the State of Hawai'i to ensure the basic safety and protection of our children by firmly establishing statutory limits on the use of room confinement at detention and shelter facilities. The Judiciary agrees with the amendments set forth in H.D. 1.

Thank you for the opportunity to testify on this measure.

**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 Judiciary**

February 10, 2020

H.B. No. 1788, HD1: RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT  
DETENTION AND SHELTER FACILITIES

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

The Office of the Public Defender strongly supports H.B. No. 1788, HD1.

This measure codifies and improves safety and custody policies that were recommended and implemented in 2019 by the Courts and the administration of the Juvenile Detention Facility. We strongly support the reduction from four down to three hours of monitored confinement and other safety procedures that are included in this measure. Nationally, there has been a recognition of the harmful effects of solitary confinement or prolonged “room confinement” on juveniles in detention. This is especially true for juveniles experiencing a mental health crisis or ongoing mental health issues who have been separated from their family. Because there is a need for limitations and guidelines on the appropriate use of “room confinement,” we believe this measure addresses many of our concerns and codifies needed rules and procedures.

Thank you for the opportunity to comment on this measure.

**HB-1788-HD-1**

Submitted on: 2/10/2020 2:26:44 PM

Testimony for JUD on 2/11/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	aaup of hawaii	Support	No

Comments:



Hawai'i

**LATE**

Committees: Committee on Judiciary  
Hearing Date/Time: 2pm, February 11, 2020  
Place: Conference Room 325  
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 1788 HD1, Relating to the Room Confinement of Children at Detention and Shelter Facilities

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee:

The American Civil Liberties Union of Hawai'i writes in **support** of H.B. 1788 HD1. This bill effectively ends the use of juvenile solitary confinement in the state of Hawai'i, and we applaud the Judiciary's continued work on this issue.

We support the amended language to reduce the maximum length of time in solitary confinement from four hours to three hours to be in alignment with the First Step Act, S. 3747, which is the new national standard for youth in federal custody. We also support the new language adding a requirement for all shelters and detention centers to report annually their compliance with the law. The ACLU's National Prison Project has found this data reporting necessary to ensure that facilities actually comply with the law.

**Solitary confinement is actively harmful to youth health and development.**<sup>1</sup> We are concerned with the many uses of solitary, including protective confinement if the youth is in danger, administrative solitary confinement or segregation (perceived dangerousness or likely future conduct, housing decisions), seclusion for medical or psychological reasons, and medical quarantine. Though there may be medical or safety reasons for several of these types, the need to promote rehabilitation dramatically outweighs the mental and emotional costs of committing a child to solitary confinement. Other jurisdictions have moved away from the use of solitary confinement, sometimes via settlement agreements.<sup>2</sup> **The bill clarifies the definition of solitary confinement.** Without this bill, there is no maximum amount of time for these other types of solitary confinement, including administrative segregation and room confinement. The bill also clarifies the due process procedures available to the youth when an initial decision to confine a child is made.

**We know in the past juvenile solitary confinement in Hawai'i has been used as punishment.** The purpose of detention is rehabilitation; using solitary in this way is retaliatory in nature, overly punitive, and creates tension within the facility when therapies and educational services are also provided. The use of solitary confinement is contraindicated in these detention and shelter settings. Compounding these

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<sup>1</sup> Jessica Feerman, Karen U. Lindell, and Natane Eaddy. "Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities," Juvenile Law Center, August 2, 2017, <https://jlc.org/resources/unlocking-youth-legal-strategies-end-solitary-confinement-juvenile-facilities>.

<sup>2</sup> Kysel, Ian M., Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jails and Prisons (November 2, 2015). New York University Review of Law & Social Change, Vol. 40. Available at SSRN: <https://ssrn.com/abstract=2685112>.

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issues, commonly solitary is disproportionately applied, often to Native Hawaiian or Pacific Islander youth, youth with disabilities, and LGBTQ youth.<sup>3</sup>

**This bill significantly narrows the allowable reasons for, and the duration of, each instance of solitary confinement.** The ACLU of Hawai‘i discovered last year instances of the use of solitary confinement for verbal outbursts or having head lice; in several of these cases, the use extended into days or even weeks. For some of these vulnerable children, their suicidal ideation returned or was exacerbated due to the use of solitary confinement. More than half of youth who commit suicide in detention facilities do so in solitary confinement.<sup>4</sup> Often many children held in juvenile detention settings suffer from mental illnesses or have a disability. Note that the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act apply to children with disabilities in detention settings. The extended use of solitary confinement past a few hours is cruel, but especially so in these circumstances. Lowering the maximum to four (or three, if our proposed amendment is adopted) hours brings Hawai‘i into alignment with national best practices.

The youth who end up in detention have been failed by other state systems, including education, foster care, and mental health systems. Relying on the use of solitary confinement as a punitive tool, rather than a way for youth to calm down and aid in the rehabilitation process, exacerbates inequity and the dangers of confinement. For these reasons, the ACLU of Hawai‘i supports H.B. 1788 HD1. Thank you for the opportunity to testify.

Sincerely,

Rae Shih  
Legal Fellow  
ACLU of Hawai‘i

*The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai‘i has been serving Hawai‘i for 50 years.*

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<sup>3</sup> Feierman.

<sup>4</sup> Stop Solitary for Kids, “Ending Solitary Confinement in Juvenile and Adult Facilities,” the Center for Children’s Law and Policy, <https://www.stopsolitaryforkids.org/>.

American Civil Liberties Union of Hawai‘i  
P.O. Box 3410  
Honolulu, Hawai‘i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

**HB-1788-HD-1**

Submitted on: 2/10/2020 5:44:22 PM

Testimony for JUD on 2/11/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Individual	Support	No

Comments:

I support HB1788. I hope our local youth facilities don't think they can act as Homeland Security to put children in cages because they do not know how to properly treat the youth.

Please pass HB1799.

Mike Golojuch, Sr., Lt Col, USAF (Ret), MS, MPA

Secretary/Board Member, Rainbow Family 808