



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Human Services and Homelessness

Representative Joy A. San Buenaventura, Chair

Representative Nadine K. Nakamura, Vice Chair

Wednesday, March 11, 2020 at 10:00 a.m.

State Capitol, Conference Room 329

by

Christine E. Kuriyama

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2119, S.D. 1, Relating to the Room Confinement of Children at Detention and Shelter Facilities.

Purpose: Limits the circumstances under which children and minors at shelters may be subject to room confinement, and specifies the conditions and time limits for which room confinement may be imposed (SD1).

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 2119, S.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



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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 youth's behavior poses a risk of physical harm that cannot be otherwise 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.

Thank you for the opportunity to testify on this measure.

SB-2119-SD-1

Submitted on: 3/9/2020 2:24:14 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	Yes

Comments:

We know that solitary confinement is damaging for adults-especially those who have a mental illness. It goes without saying that it has to be even worse for children. This bill would at least place some parameters on that.



Hawai'i



Committees: Committee on Human Services and Homelessness
Hearing Date/Time: Wednesday, March 11, 2020/10:00am
Place: Conference Room 329
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2119, Relating to the Room Confinement of Children at Detention and Shelter Facilities

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

The American Civil Liberties Union of Hawai'i writes in **support** of S.B. 2119 S.D.1, with two suggested amendments. 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.

To further improve this measure, however, we respectfully request that the Committee amend S.B. 2119 S.D. 1 in the following ways: 1) 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; and 2) add a requirement for all shelters and detention centers to **report annually their compliance with the law**, including the number of incidents of room confinement every year, the number of youth impacted, age, gender, race, alternative strategies employed prior to use of room confinement, and reason those strategies failed and room confinement was necessary. We also recommend including the number of times room confinement exceeded four (or three, if our proposed amendment is adopted) hours and the authorizing official's name. This would be reported in full to the legislature or made public with identifying information removed. 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.¹ 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.² **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.

¹ 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>.

² 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>.

Chair San Buenaventura and Members of the Committee on Human Services and Homelessness

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

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.⁴ 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 S.B. 2119 S.D. 1. 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.

³ Feierman.

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

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Wednesday, March 11, 2020 at 10:00 a.m.

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by
Justin D. Levinson

Title: Senate Bill No. 2119, S.D. 1, Relating to the Room Confinement of Children at Detention and Shelter Facilities.

I am a Professor of Law at the University of Hawai'i William S. Richardson School of Law, where I teach Criminal Law and Law & Psychology, among other courses. (I am submitting this testimony in my individual capacity and not on behalf of the University.)

I strongly support Senate Bill No. 2119, S.D. 1. As our judiciary has pointed out, Hawai'i's juvenile justice system has progressed in the past decade, embracing more evidence-based and trauma responsive approaches in dealing with our children who are under the care of our criminal justice system. While the progress has been notable, there is more work to be done. This Bill will take a meaningful step by recognizing that our children are best served by a system that prepares them for a life of community contribution rather than one of increased trauma at the hands of outdated criminal justice practices (such as solitary confinement).

Modern scholarship rejects the concept that periods of isolation are necessary or helpful for children in the juvenile system. Many scholars believe—and I agree—that isolating children harms and traumatizes them and runs contrary to the rehabilitative goals of our juvenile laws.

As we think about the future of our great state, it seems to me that we should think deeply about the many ways that our criminal justice system can be improved so that it aligns with a safer and more prosperous future of Hawai'i. Eliminating the facility-imposed isolation of children in our state's juvenile justice care is one needed and important step towards achieving that realization.

Thank you for the opportunity to testify on this measure.

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