

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 & Hawaiian Affairs**

March 24, 2021

S.B. No. 386, SD1, HD1: RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP

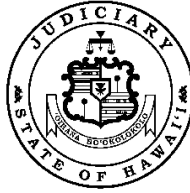
Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender supports the intent of S.B. 386, SD1, HD1.

This measure provides additional guidance and restrictions concerning any detention of a juvenile in an adult detention facility. It provides rules and procedures to be followed in the event a juvenile is being held in custody and clarifies that any juvenile shall not be housed with or have contact with adults subject to very limited exceptions.

This measure also includes rules and procedures concerning juveniles who have been waived into adult courts. The Office of the Public Defender supports the proposed restrictions and procedures; however, we maintain our position that no juvenile should ever be held in an adult detention facility and that all juveniles should be held in juvenile facilities without exception.

Thank you for the opportunity to comment on this measure.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, March 24, 2021 2:30 p.m.
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

By
Judge Christine E. Kuriyama
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 386, S.D. 1, H.D. 1, Relating to Detention of a Minor in an Adult Jail or Lockup.

Purpose: Requires a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup or be permitted sight or sound contact with adult offenders, subject to certain circumstances. (HD1)

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 386, S.D. 1, H.D. 1, which is included in the Judiciary's 2021 legislative package. The Juvenile Justice Reform Act of 2018 requires states to take action before December 21, 2021.

By amending H.R.S. § 571-32 relating to the transfer of minors to the adult criminal justice system, this bill ensures minors are protected from the harms of adult jails or lockups. Specifically, the amendments make clear the jurisdiction of the Family Court over a minor transferred for criminal proceedings pursuant to waiver. We agree with the Federal law that minors should **not** be transferred to an adult jail unless it is in the interest of justice. When a youth is transferred to the adult criminal justice system, the lifelong consequences of placement in the criminal justice system have a profoundly negative effect on both the youth and our community.



Senate Bill No. 386, S.D. 1, H.D. 1, Relating to Detention of a Minor in an
Adult Jail or Lockup

House Committee on Judiciary and Hawaiian Affairs

Wednesday, March 24, 2021 at 2:30 p.m.

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We have concerns with the deletion in both S.D. 1 and H.D. 1 of this bill. S.D. 1 deleted the provision, "...or in the case of a rural jurisdiction, not less frequently than once every forty-five days." (page 9, line 4, subsection (3) (A)). This provision is included in the federal law and recognizes allowances *for neighbor island jurisdictions*. Therefore, we respectfully request that this provision be restored and included in subsection (3) (A), to read as follows: "... The court shall hold a hearing no less frequently than once every thirty days, *or in the case of a rural jurisdiction, no less frequently than once every forty-five days*, to review whether it remains in the interest of justice to permit the minor to held in a jail or lockup for adults or to have sight or sound contact with adult inmates; and..." (pertinent language noted in bold and italics)

There is an abundance of evidence that youth are fundamentally different from adults and are more likely to experience abuse, commit suicide, and be exposed to prolonged periods of isolation. The federal Prison Rape Elimination Act of 2003 (PREA) addresses the security challenges of incarcerating youth in adult facilities, citing that youth are more likely to be victimized in an adult facility than in a juvenile facility. Adult facilities do not provide the developmentally appropriate rehabilitative services youth require as adult facilities are not designed or staffed for the rehabilitation of youth. Most youth will return to their communities as young adults.

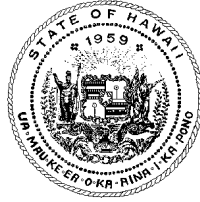
The Family Court's determination for waiver is governed by statute and is guided by the growing body of research on adolescent brain development. Once a determination is made to transfer a youth to the adult criminal justice system, the Family Court's jurisdiction is terminated. While the practice of judicial waiver of a youth is considered the most appropriate form of waiver, our current statutes do not allow for a pathway back to juvenile court.

Encouraged by PREA and the Juvenile Justice Delinquency Prevention Act, Federal Code 34 U.S.C.A. §11133 provides financial incentives to treat youth in a more developmentally appropriate system of care. The proposed amendments will ensure the State of Hawai'i is in compliance with federal law, in part by maintaining research-based necessary practices of sight and sound separation of youth from adults, and also eliminate confusion over the nature and scope of the Family Court's ongoing jurisdiction over the youth.

The fiscal impact of this bill is related to the **potential** reduction of not less than 20% in Federal Title II Formula Grant funds allocated to the State of Hawai'i for violation(s) of the sight and sound separation requirement of the JJRA, and the costs incurred by the State to ensure sight and sound separation of a minor in an adult jail. These Federal funds are used to fund community-based programs for minors.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 386, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP.**

by
Max N. Otani, Director

House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, March 24, 2021; 2:30 p.m.
State Capitol, Via Video Conference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

Senate Bill (SB) 386, Senate Draft (SD) 1, House Draft (HD) 1 proposes to clarify the circumstances under which a minor may be detained in an adult jail or lockup; delineates the specific processes the court must follow in determining if the detention of a minor in an adult jail or lockup would be in the best interests of justice; and if approved, requires that the minor be detained by the Department of Public Safety (PSD) in a location where the minor will not have sight or sound contact with adult inmates. In addition, this measure would require PSD staff working with minor and adult inmates in collocated facilities to be trained and certified to work with minors.

Understanding the intent of SB 386, SD 1, HD 1, the Department seeks clarification on certain tenets of this measure and offers the following comments for the Committee's consideration.

As written, this measure appears to allow judges to order juveniles to be held in PSD facilities irrespective of the Prison Rape Elimination Act (PREA) of 2003 and the Juvenile Justice Delinquency Prevention Act, Federal Code 34 U.S.C.A., and/or waiver of jurisdiction. PSD seeks clarification in this regard.

At present, Hawaii's correctional facilities include eight (8) jails and prisons that are old and outdated, manpower-intensive, and constantly in need of repairs. As of February 28, 2021, six (6) of the eight (8) facilities were operating above their designed capacity and have been for some time (see attached February 2021 inmate population report). The newest correctional facility in Hawaii is the Halawa Correctional Facility, which opened in 1985 and is now over 35 years old. The remaining seven (7) facilities range in age from 40 to over 100 years old.

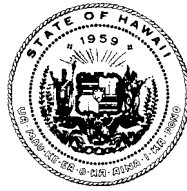
While the Department could conceivably comply with a judge's order to temporarily house a juvenile in one of our facilities, doing so, would require removing all other inmates/detainees from the designated housing module. Given our already severely overcrowded conditions, which have forced PSD to house approximately 1,000 inmates on the mainland in a contracted private prison, it is clear there is nowhere to safely and securely relocate an entire module of adult offenders in order to accommodate one or more juvenile offenders.

Further, it should be noted, PSD facilities are not designed to, nor do they provide the developmentally appropriate rehabilitative services required by youth, and, in fact, detaining juveniles in adult jails or lockups may be detrimental to their well-being.

At present, PSD's Adult Correctional Officers, Case Managers, and/or other staff members are specifically trained to work with adult offenders. If enacted, SB 386, SD 1, HD 1 would require the Department to provide training for a number of its staff to be specially trained and certified to work with juveniles, adding costs to the Department's operating budget.

Thank you for the opportunity to seek clarification and submit comments regarding SB 386, SD 1, HD 1.

Attachment



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
1010 Richards Street, Suite 314
Honolulu, Hawaii 96813

March 23, 2021

TO: The Honorable Representative Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Representative Scot Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Bruce Shimoda, Executive Director

SUBJECT: **SB 386 SD1 HD1, RELATING TO THE DETENTION OF A MINOR IN ADULT JAIL OR
LOCKUP**

Hearing: Wednesday, March 24, 2021 at 2:30 p.m.
Via Videoconference, State Capitol

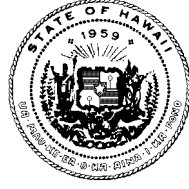
OFFICE'S POSITION: Office of Youth Services (OYS) supports this measure.

PURPOSE: The purpose of the measure is to align Hawaii's detention laws with U.S. Federal laws that protect youth from certain harmful conditions in the justice system.

The consequences and life-long effects of youth placement in the criminal justice system is profound. There are detrimental consequences to the health and well-being of minors who are incarcerated in adult facilities. Increasing oversight and review as to when and how this may take place will reduce the incidences of trauma on youth.

Thank you for the opportunity to present this testimony.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

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

March 23, 2021

TO: The Honorable Representative Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **SB 386 SD1 HD1 – RELATING TO THE DETENTION OF A MINOR IN ADULT JAIL OR LOCKUP.**

Hearing: March 24, 2021, 2:30 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of this Judiciary measure. Defers to the testimonies of the Judiciary and the Department of Public Safety.

The Senate Committee on Human Services passed the measure unamended, and the Senate Committee on the Judiciary amended the measure by:

- (1) Requiring the court to hold a hearing no less frequently than once every thirty days if a minor is held in a jail or lockup for adults, to review whether the detention of a child in a jail or lockup for adults remains in the interest of justice; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The House Committees on Health, Human Services, and Homelessness, and Corrections, Military, & Veterans, amended the measure by defecting the date and making technical amendments.

PURPOSE: The bill requires a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup or be permitted sight or sound contact with adult offenders, subject to certain circumstances. Effective 7/1/2060. (HD1)

Improved oversight and conditions that consider the well-being and safety of youth involved in the juvenile justice system help to reduce or prevent new trauma that may likely arise from any exposure to adult correctional settings and systems.

DHS understands the significance of past and potential future trauma and provides services to children and families through a trauma and healing-informed care approach. Children under the care and custody of DHS may also be involved in the juvenile justice system. DHS appreciates the efforts to protect and promote their well-being.

Given the fiscal implications discussed by the Judiciary, passage of this measure is important as the State cannot afford to lose any available funding to support the juvenile justice system.

Thank you for the opportunity to provide testimony in support of this measure.

SB386 SD1 HD1

RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 24, 2021

2:30 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB386 SD1 HD1, which would require a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup, or be permitted sight or sound contact with adult offenders. **This measure may help to mitigate the long-lasting traumas that may be inflicted upon youth, including a disproportionate number of Native Hawaiians, who are unnecessarily exposed to adult pa‘ahao in our criminal justice system.**

Native Hawaiian youth are disproportionately represented in the juvenile justice system, which may contribute significantly to Native Hawaiians’ disproportionate representation in the criminal justice system as a whole. In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system. This report found that Native Hawaiian youth are disproportionately represented in the juvenile justice system and are also the most frequently arrested ethnic group in all offense categories.¹ In 2012, the Native Hawaiian Justice Task Force (NHJTF) was tasked by the Legislature to address the issues raised in OHA’s 2010 report; in its report, the NHJTF further acknowledged that “an individual’s contact with the criminal justice system . . . often begins at youth.”² **Accordingly, OHA believes that a close examination of the juvenile justice system may be critical to mitigating the substantial and disproportionate impacts of the criminal justice system on the Native Hawaiian community.**

SB386 SD1 HD1 will help provide the appropriate process to reduce the rates of juvenile contact with the adult corrections system. **OHA understands that when a youth is transferred to adult jails or correctional facilities, it may have a profoundly negative effect on both the youth and the larger community.** For example, there is strong evidence that youth are fundamentally different from adults and are more likely to experience abuse, commit suicide, and be exposed to prolonged periods of isolation if they enter into an adult facility. The federal Prison Rape Elimination Act of 2003 (PREA) further addresses the security challenges of incarcerating youth in adult facilities, finding

¹ THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 10 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

² THE OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT 23 N. 28 (2012), available at http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

that youth are five times more likely to be victimized in an adult facility than in a juvenile facility.³ Adult facilities also do not provide the developmentally appropriate rehabilitative services youth require, as adult facilities are not specifically designed or staffed for the rehabilitation of youth; the unnecessary incarceration of a juvenile in our adult facilities may thereby foreclose opportunities for intervention that could otherwise reduce the likelihood of their continued contact with the criminal justice system, as they transition into adulthood.

As a final note, the Juvenile Justice Delinquency Prevention Act, Federal Code 34 U.S.C.A. §11133, provides financial incentives to treat youth in a more developmentally appropriate system of care. The passage of SB386 SD1 HD1 will better ensure that the State of Hawai'i complies with this federal law.

Accordingly, OHA urges the Committees to **PASS** SB386 SD1 HD1. Mahalo for the opportunity to testify on this important issue.

³ 34 U.S.C. § 30301.

SB-386-HD-1

Submitted on: 3/22/2021 4:32:43 PM

Testimony for JHA on 3/24/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I support sb386 sd1 hd1

Testimony of
SYLVIA LEE, MSW STUDENT

Before the
Senate Committee on Judiciary and Hawaiian Affairs

Wednesday, March 24, 2021

2:30 pm

VIA VIDEOCONFERENCE

Conference Room 325

State Capitol

415 South Beretania Street

In Consideration of

Senate Bill 386

RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP

Honorable Chair Mark Nakashima, Vice Chair Scot Matayoshi, and Members of the House Committee on Judiciary, thank you for the opportunity to provide testimony concerning Senate Bill 386, relating to the detention of a minor in an adult jail or lockup.

My name is Sylvia Lee, and I am currently a graduate student at the University of Hawaii at Manoa, Thompson School of Social Work and Public Health. Senate Bill 386 proposes to require a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup or be permitted sight or sound contact with adult offenders, subject to certain circumstances. **I am testifying to support the intent of Senate Bill 386.**

Incarcerating youth in adult facilities can have life-long effects. Research has shown that of all incarcerated people, youth held with adults are at the highest risk of sexual abuse and are 36 times more likely to commit suicide than youth in juvenile facilities. For adolescent brain development, it is crucial for youth to have social interaction, social services, and mental stimulation during this period as it will inhibit their ability to employ the psychosocial skills necessary to prevent future recidivism. Adult prisons and jails are not designed to provide age-appropriate services, thus, they are not able to accommodate the developmental, physical, psychological, educational needs that are unique to adolescents. In addition, minors isolated from their families and communities can expose youth to the risk of victimization that may further exacerbate trauma; constant exposure to trauma can have debilitating consequences on the youth's entire life course. As most youth can be held accountable and supported through processes such as restorative justice and social service interventions, it is essential for institutions

to consider options that can better recognize their unique vulnerabilities and provide the necessary support. Therefore, I fully support the intent of Senate Bill 386.

Thank you very much for this opportunity and for your dedicated support.

Sylvia Lee
sylviam@hawaii.edu