



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021 at 9:45 a.m.

State Capitol

VIA VIDEO CONFERENCE

WRITTEN TESTIMONY ONLY

by

Judge Christine E. Kuriyama

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 387, 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 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 this measure from its legislative package, but has two concerns with the proposed amendments in S.D. 1. First, the insertion of “and is a non-status offender” on page 1, line 6, is redundant to H.R.S. section 571-11 (1), and creates confusion on whether or not a status offender can be placed in a shelter facility designated by the court. The court relies on shelter services for status offenders under its jurisdiction and this amendment will only frustrate the court’s ability to respond to the needs of status offenders.



Senate Bill No. 387, S.D.1, Relating to Room Confinement of Children at
Detention and Shelter Facilities
Senate Committee on Judiciary
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Our second concern is the insertion of “adult jail facility” on page 3, line 4, as H.R.S. Chapter 571 governs the family court. The statutory authority governing the operations of Hawai‘i’s adult jails rests with the State Department of Public Safety.

The Judiciary respectfully recommends the aforementioned amendments be reconsidered as the deletion of “or shelter facility” will address the intent of the amendments related to room confinement in shelter facilities and will eliminate confusion regarding the placement of children in a shelter facility by the courts.

Over the past decade, Hawai‘i’s juvenile justice system has undergone a major philosophical shift 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’ reliance on room confinement to control youth must also change. 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 retraumatizing 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 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 room confinement at detention and shelter facilities.

Thank you for the opportunity to testify on this measure.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 387, S.D. 1, RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER FACILITIES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 23, 2021 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Erin K.S. Torres,
Deputy Attorney General, at 693-7081)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments on this bill.

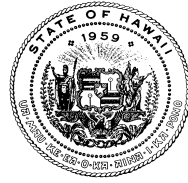
The purpose of the bill is to specify conditions and time limits for placing a child in room confinement at a detention or shelter facility under section 571-32, Hawaii Revised Statutes (HRS).

The Committee on Human Services followed the recommendations of the Office of Youth Services (OYS) and made several amendments to the bill. The intent of the amendment to section 571-32(a) in section 1, on page 1, line 6, of the bill that inserted the words "and is a non-status offender" was to clarify that status offenders cannot be placed in secure detention facilities. However, as it is written, the amendment creates a contradiction within section 571-32(a) because the remaining wording still refers to a child within section 571-11(2), HRS, which covers status offenders. The amendment may also cause uncertainty as to whether a status offender can be placed in a shelter. For clarity and consistency, section 1, page 1, lines 3-13, should be amended to read as follows:

"§571-32 Detention; shelter; release; notice. (a) If a child who is believed to come within section 571-11(1) [~~or (2)~~] is not released as provided in section 571-31 and is not deemed suitable for diversion, the

child shall be taken without unnecessary delay to the court or to the place of detention or shelter designated by the court. If the court determines that the child requires care away from the child's own home but does not require secure physical restriction, the child shall be given temporary care in any available nonsecure child caring institution, foster family home, or other shelter facility. If a child who is believed to come within section 571-11(2) is not released as provided in section 571-31 and is not deemed suitable for diversion, the child shall be taken without unnecessary delay to the court or to the place of shelter designated by the court."

If the Committee chooses to pass this measure, we respectfully ask that it make the clarifying amendment suggested by the Department.



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB 387
RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER
FACILITIES**

SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOPE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: 2/23/2021

Hearing Time: 9:45 AM

1 **Department Position:** The Department of Health (“Department”) strongly SUPPORTS the bill,
2 and offers the following comments.

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the
4 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,
6 private and community resources. Through the BHA, the Department is committed to carrying
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and
8 person-centered.

9 In alignment with this person-centered value, the Department acknowledges that years
10 of research have documented the negative mental health consequences of seclusion and
11 confinement on youth in detention facilities. Specifically, studies suggest strong links between
12 room confinement and numerous health and safety risks including self-harm and suicide, and
13 increased trauma, anxiety, and depression^{1,2}. As you may be aware, the Department provides

¹ e.g., Kysel, I. M. (2016). Banishing solitary: Litigating an end to the solitary confinement of children in jails and prisons. *New York University Review of Law & Social Change*, 40(4), 675-720.

² American Academy of Child and Adolescent Psychiatry (AACAP) Policy Statement, 2012

1 mental health services to youth who are placed at the Detention Home and at the Youth
2 Correctional Facility. The Child and Adolescent Mental Health Division (CAMHD) clinicians who
3 provide these services have been working with the leadership at both facilities to curtail the use
4 of room confinement.

5 The research points to numerous evidence-based alternatives to reduce room
6 confinement including (but not limited to) adopting an overall philosophy that takes a
7 rehabilitative approach; developing specific policies and procedures for use of isolation that are
8 consistent with best-practice guidelines and include staff and youth input; utilizing data to
9 manage and monitor isolation use; implementing a positive behavioral management plan; and
10 providing ongoing training to facility staff and skill building with youth³. The Department is
11 more than willing to continue to partner with the Judiciary and the Office of Youth Services to
12 further this effort.

13 Thank you for the opportunity to testify on this measure.

³ Council of Juvenile Correctional Administrators. (2015). Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation [Toolkit] Retrieved from <http://www.cjca.net>

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

February 23 2021

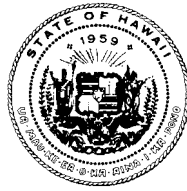
S.B. No. 387 SD1: RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER FACILITIES

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender supports the intent of S.B. 387 SD1.

This measure codifies safety and custody policies that were recommended and implemented in 2019 by the Courts and the administration of the Juvenile Detention Facility. 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 and who have been separated from their family. This measure addresses many of our concerns and codifies necessary rules and procedures, as there is a need for limitations and guidelines on the appropriate use of “room confinement.”

Thank you for the opportunity to comment on this measure.



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

February 22, 2021

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Senator Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

FROM: Bruce Shimoda, Executive Director

SUBJECT: SB 387 SD1, RELATING TO ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER FACILITIES

Hearing: Tuesday, February 23, 2021, 9:45 a.m.
Via Video Conference, State Capitol

OFFICE'S POSITION: Office of Youth Services (OYS) supports this bill and respectfully requests amendments.

PURPOSE: The purpose of this bill is to establish necessary conditions and time limits for placing a child in room confinement at a detention or shelter facility.

Detention of children prior to disposition has represented one of the most serious concerns of the juvenile justice system that has resulted in large numbers of children being incarcerated, high costs of detention, and physical and psychological trauma. Children in detention miss educational opportunities, disconnect from support systems, and often endure violence while detained. Such detainment, at a time when they are presumed innocent, can have detrimental long-lasting effects; reducing their likelihood of returning to school, reducing employment opportunities, increasing their chance of experiencing homelessness, negatively affecting their social emotional development, and increasing delinquency behaviors. The additional effects of room confinement or isolation during detention can also further traumatize children and reduce their opportunities to becoming thriving members of our community. How, when and the duration of room confinement or isolation must be

developmentally appropriate and used only as necessary for the safety and well-being of the child and/or the facility.

OYS supports the language recommended in testimony by the Department of the Attorney General, Section 1, page 1, lines 3-13. OYS respectfully requests that any reference to room confinement being allowed at “shelters” be removed. The application of room confinement to a shelter may negatively impact shelter accessibility for children in need, and place federal regulations and monitoring under the Juvenile Justice Reform Act of 2028 (JRA), intended for detention facilities, onto shelters.

OYS respectfully requests the following proposed language:

“(d) A child may be placed in room confinement in a ~~juvenile detention or adult jail or shelter~~ facility only under the following conditions:”

Additionally, we support suggestions made by ACLU Hawaii to add a clause that prohibits the use of consecutive periods of room confinement that may evade the spirit and purpose of this bill, and a requirement for all detention facilities to report annually their compliance with this 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 the reasons those strategies failed.

Thank you for the opportunity to present this testimony.

SB-387-SD-1

Submitted on: 2/19/2021 5:04:48 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments:

This is a very good bill. We believe solitary confinement is bad policy generally in the prison for adults. All the more so is that true in the case of juveniles.



Hawai'i Psychological Association

For a Healthy Hawai'i

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021 - 9:45 am – via videoconference

Support of SB387 SD1 - RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER FACILITIES

The Hawaii Psychological Association (HPA) strongly supports SB387 SD1 which will minimize the use of room confinement with children and youth at detention facilities and other juvenile settings. HPA members who provide services in juvenile facilities have been working with their leadership to curtail the use of room confinement over the past several years, and are encouraged to see this problem addressed legislatively.

Significant research - over many years – has clearly documented the negative mental health consequences of seclusion and confinement on youth in detention homes and other facilities. Specifically, studies suggest strong links between room confinement and numerous health and safety risks, including self-harm and suicide, increased trauma, anxiety, and depression^{1,2}.

The research points to numerous evidence-based alternatives that can be used to reduce room confinement including (but not limited to) a detention facility: (1) embracing an overall philosophy that takes a rehabilitative approach; (2) developing specific policies and procedures for use of isolation that are consistent with best-practice guidelines, which includes staff and youth input; (3) utilizing data to manage and monitor isolation use; (4) implementing a positive behavioral management plan; (5) providing ongoing training to facility staff; and (6) skill building with youth³. HPA urges the committee to pass this important measure aimed at ending this harmful and unnecessary practice.

Thank you for the opportunity to provide input into this important bill.

Sincerely,

Alex Lichten, Ph.D.

Chair, HPA Legislative Action Committee

¹ e.g., Kysel, I. M. (2016). Banishing solitary: Litigating an end to the solitary confinement of children in jails and prisons. *New York University Review of Law & Social Change*, 40(4), 675-720.

² American Academy of Child and Adolescent Psychiatry (AACAP) Policy Statement, 2012

³ Council of Juvenile Correctional Administrators. (2015). Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation [Toolkit] Retrieved from <http://www.cjca.net>



Hawai'i

Committees: Committee on Judiciary
Hearing Date/Time: 9:45am, February 23, 2021
Place: Via Videoconference
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 387, S.D. 1 Relating to the Room Confinement of Children at Detention and Shelter Facilities

Dear Chair Rhoads, Vice Chair Keohokalole, and members of the Committee:

The ACLU of Hawai'i writes in **support of S.B. 387, 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. 387, S.D. 1** in the following ways: 1) add a clause that **prohibits the use of consecutive periods of room confinement** to evade the spirit and purpose of the bill;¹ 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 three hours and the authorizing official's name. This would be reported in full to the legislature or made available to the public upon request, 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.² A number of studies show that extreme social isolation and lack of environmental stimulation can impose serious cognitive, emotional, and psychological harm—even after only a short period of confinement and even absent additional harsh conditions.³ 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.⁴ **This 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.

¹ Modeled after the First Step Act, which is the new national standard for youth in federal custody ("Spirit and purpose" clause, codified at 18 U.S.C. § 5043(b)(2)(D)).

² Jessica Feierman, 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>.

³ Frederica Coppola, *The Brain in Solitude: An (Other) Eighth Amendment Challenge to Solitary Confinement*, J. OF L. & BIOSCIENCES, 184, 207 (2019); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 132 (2003) (survey of studies on the effects of solitary confinement).

⁴ Kysel, Ian M., *Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jails and Prisons*, 40 NEW YORK UNIVERSITY REVIEW OF LAW & SOCIAL CHANGE (2015), available <https://ssrn.com/abstract=2685112>.

Chair Rhoads and Members of the Committee on Judiciary
February 23, 2021
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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. Solitary is also often disproportionately applied, commonly to Native Hawaiian or Pacific Islander youth, youth with disabilities, and LGBTQ youth.⁵

This bill significantly narrows the allowable reasons for, and the duration of, each instance of solitary confinement. In the past, the ACLU of Hawai‘i has discovered 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 as a result. More than half of youth who commit suicide in detention facilities do so in solitary confinement.⁶ 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 three 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. 387, S.D. 1**. Thank you for the opportunity to testify.

Sincerely,



Hope Kerpelman
Legal and Legislative 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 over 50 years.

⁵ Feierman.

⁶ 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
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LATE

SB-387-SD-1

Submitted on: 2/22/2021 1:03:14 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Bonham	Individual	Support	No

Comments:

I appreciate that this bill aims to reduce the amount of time youth are kept in solitary confinement. Solitary confinement is inherently distressing to youth and it is unrealistic to expect them to spend long hours in their cell without it negatively impacting their mental health. In addition to the individuals who must be notified by the next business day of a youth having been placed in solitary, I suggest that mental health professionals be immediately notified and allowed access to youth to assist in de-escalation and emotional regulation. If a youth is able to regulate their behavior I also suggest that they be released from solitary confinement immediately.

Thank you for the opportunity to testify on this matter.