



*The Judiciary, State of Hawai'i*

**Testimony to the Senate Committee on Human Services**

Senator Joy A San Buenaventura, Chair

Senator Les Ihara, Jr., Vice Chair

Thursday, February 4, 2021, 3:05 P.M.

VIA VIDEOCONFERENCE

State Capitol, Conference Room 225

by

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Program Specialist

Family Court of the First Circuit

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**Bill No. and Title:** Senate Bill No. 387, 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: Strongly Support**

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 their approach. Both research and experience establish that any perceived brief benefits of room confinement obscures 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



Bill No. 387, Relating to the Room Confinement of Children at Detention and Shelter Facilities  
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about the over use 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 use room confinement at detention and shelter facilities.

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 Senate Committee on Human Services**

February 5, 2021

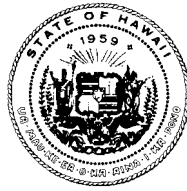
S.B. No. 387: RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP

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

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

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 3, 2021

TO: The Honorable Senator Joy A. San Buenaventura, Chair  
Senate Committee on Human Services

The Honorable Senator Les Ihara Jr., Vice Chair  
Senate Committee on Human Services

FROM: Bruce Shimoda, Executive Director

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

Hearing: Thursday, February 4, 2021, 3:05 p.m.  
Via Video Conference, State Capitol

**OFFICE'S POSITION:** Office of Youth Services (OYS) appreciates the intent of the measure and respectfully requests significant amendments.

**PURPOSE:** The purpose of the measure is to establish 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. Limits on how, when and for how long room confinement or isolation shall be implemented on Hawaii's children should be developmentally appropriate and used only as necessary for the safety and well-being of the child and/or the facility.

OYS supports the intent of this bill that supports reducing childhood trauma during detention and room confinement. OYS finds the bill proposes some beneficial language, however, the language is vague and open for interpretation. The term "room confinement" could mean both unsecured and secured containment. OYS has concerns about how the term may apply to shelters, status offenders, and time limits.

By applying room confinement to a shelter, the shelter consequently, by federal definition, becomes a "lock up." As such, status offenders cannot be placed within a shelter in accordance with the Juvenile Justice Reform Act of 2018 (JRA), section 223 (a) 11(A) that provides,

"that a juvenile shall not be placed in a secure detention facility or a secure correctional facility, if (i) the juvenile is charged with or has committed an offense that would not be criminal if committed by an adult[.]"

Therefore, OYS recommends adding the following clarifying language to page 1, line 6:

**"§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, **and is a non-status offender,** the child shall be..."

In addition, the shelter, now a "lock up," would be required to be monitored by the State as such. Youth who commit a criminal act, and within a lock up, may only be held for a period no longer than six hours. Longer than six hours is a violation of section 223(a)13(A), JRA, "juveniles who are accused of non-status offenses and who are detained in such jail or lockup for a period not to exceed 6 hours – (i) for processing or release; (ii) while awaiting transfer to a juvenile facility; or (iii) in which period such juveniles make a court appearance[.]"

As written, the proposal is in conflict with federal law that does not allow for provisions that permit for additional time in room confinement. Therefore, OYS recommends the following language be removed from page 5, line 12:

~~(7) If the child is not returned to the general population following a hearing pursuant to paragraph (6), one or more of the following shall occur: (A) Mental~~

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The Honorable Senator Les Ihara Jr., Vice Chair

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~~health or medical personnel shall be consulted about the child's care; (B) An individualized plan shall be developed that includes goals and objectives to be met in order to reintegrate the child into the general population; or~~

Shelters are unsecured facilities utilized to meet alternative shelter needs for youth that don't require the constraints of detention. To apply room confinement to shelters counteracts their purpose. If a child requires more restrictive care, a shelter is not appropriate facility for the youth and therefore room confinement should not be necessary. As such, and to ensure compliance with the federal Juvenile Justice Reform Act, it is recommended that shelter facilities be removed from the provisions on page 3, line 3:

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

Thank you for the opportunity to present this testimony.

**SB-387**

Submitted on: 2/1/2021 6:43:49 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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

Committees: Committee on Human Services  
Hearing Date/Time: 3:05pm, February 4, 2021  
Place: Conference Room 225  
Re: *Testimony of the ACLU of Hawai'i in Support of S.B. 387, Relating to the Room Confinement of Children at Detention and Shelter Facilities*

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

The ACLU of Hawai'i writes in **support of S.B. 387, 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** 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;<sup>1</sup> 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.**<sup>2</sup> 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.<sup>3</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>4</sup> **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.

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<sup>1</sup> 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)).

<sup>2</sup> 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>.

<sup>3</sup> 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).

<sup>4</sup> 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>.



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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.<sup>5</sup>

**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.<sup>6</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 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**. 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.*

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<sup>5</sup> Feierman.

<sup>6</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/>.

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**SB-387**

Submitted on: 2/3/2021 4:02:00 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in support.

**LATE**