

JAN 19 2022

A BILL FOR AN ACT

RELATING TO THE ROOM CONFINEMENT OF MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 571-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§571-32 Detention; shelter; release; notice.** (a) If a
4 minor who is believed to come within section 571-11(1) [~~or (2)~~]
5 is not released as provided in section 571-31 and is not deemed
6 suitable for diversion, then the minor shall be taken without
7 unnecessary delay to the court or to the place of detention or
8 shelter designated by the court. If a minor who is believed to
9 come within section 571-11(2) is not released as provided in
10 section 571-31, and is not deemed suitable for diversion, then
11 the minor shall be taken without unnecessary delay to the court
12 or to the place of shelter designed by the court. If the court
13 determines that the minor requires care away from the minor's
14 own home but does not require secure physical restriction, the
15 minor shall be given temporary care in any available nonsecure
16 minor caring institution, foster family home, or other shelter
17 facility.



1 (b) The officer or other person who brings a minor to a
2 detention or shelter facility shall give notice to the court at
3 once, stating the legal basis therefor and the reason why the
4 minor was not released to the minor's parents. If the facility
5 to which the minor is taken is not an agency of the court, the
6 person in charge of the facility in which the minor is placed
7 shall promptly give notice to the court that the minor is in
8 that person's custody. Before acceptance of the minor for
9 detention or shelter care, a prompt inquiry shall be made by a
10 duly authorized staff member of the detention or shelter
11 facility or officer of the court. Where it is deemed in the
12 best interests of the minor, the judge, officer, staff member,
13 or ~~the~~ director of detention services may then order the minor
14 to be released, if possible, to the care of the minor's parent,
15 guardian, legal custodian, or other responsible adult, or the
16 judge may order the minor held in the facility subject to
17 further order or placed in some other appropriate facility.

18 (c) As soon as a minor is detained, the minor's parents,
19 guardian, or legal custodian shall be informed, by personal
20 contact or by notice in writing on forms prescribed by the
21 court, that they may have a prompt hearing held by a circuit



1 judge or district family judge regarding release or detention.
2 A minor may be released on the order of the judge with or
3 without a hearing. The director of detention services may order
4 the release of the minor if an order of detention has not been
5 made.

6 (d) No minor shall be held in a detention facility for
7 juveniles or shelter longer than twenty-four hours, excluding
8 weekends and holidays, unless a petition or motion for
9 revocation of probation, or motion for revocation of protective
10 supervision has been filed, or unless the judge orders otherwise
11 after a court hearing. No ex parte motions shall be considered.
12 For the purposes of this section:

13 (1) Unless a court finds, after a hearing and in writing,
14 that it is in the interest of justice as provided for
15 in subsection (g)(2), a minor believed to come within
16 section 571-11(1), or a minor awaiting trial or
17 another legal process, who is treated as an adult for
18 purposes of prosecution in criminal court and housed
19 in a secure facility shall not:

20 (A) Have sight or sound contact with adult inmates;
21 or



(B) Be held in any jail or lockup for adults,
except as provided in subsection (g)(3); and

(2) Detention in a jail or lockup for adults may be
permitted for:

(A) A minor accused of a non-status offense who is
held for a period not to exceed six hours;
provided that the minor is being held:

(i) For processing or release;

(ii) While awaiting transfer to a juvenile
facility; or

(iii) For a court appearance that occurs within
the period of detention; or

(B) A minor accused of a non-status offense who is
awaiting an initial court appearance that will
occur within forty-eight hours of the minor being
taken into custody, excluding weekends and
holidays, and where the jail or lockup for adults
is in a location:

(i) Outside a metropolitan statistical area, as
defined by the Office of Management and



1 Budget, and no acceptable alternative
2 placement is available;

3 (ii) Where the distance to be traveled or the
4 lack of highway, road, or transportation
5 does not allow for court appearances within
6 forty-eight hours, excluding weekends and
7 holidays, such that a brief delay of no more
8 than an additional forty-eight hours is
9 excusable; or

10 (iii) Where safety concerns exist, such as severe
11 and life-threatening weather conditions that
12 do not allow for reasonably safe travel, in
13 which case the time for an appearance may be
14 delayed until twenty-four hours after the
15 time that conditions allow for reasonably
16 safe travel;

17 provided that the minor shall not have sight or sound
18 contact with adult inmates; provided further that the
19 State shall have a policy in effect that requires
20 individuals who work with both minor and adult inmates



1 in collocated facilities to be trained and certified
2 to work with juveniles.

3 (e) No minor may be held after the filing of a petition or
4 motion, as specified in subsection (d), unless an order for
5 continued detention or shelter has been made by a judge after a
6 court hearing. If there is probable cause to believe that the
7 minor comes within section 571-11(1), the minor may be securely
8 detained, following a court hearing, in a detention facility for
9 juveniles or may be held in a shelter. If there is probable
10 cause to believe that the minor comes within section 281-101.5
11 or 571-11(2), the minor may be held, following a court hearing,
12 in a shelter but shall not be securely detained in a detention
13 facility for juveniles for longer than twenty-four hours,
14 excluding weekends and holidays, unless the minor is subject to
15 the provisions of chapter 582, Interstate Compact on Juveniles,
16 or chapter 582D, Interstate Compact for Juveniles, or is
17 allegedly in or has already been adjudicated for a violation of
18 a valid court order, as provided under the federal Juvenile
19 Justice and Delinquency Prevention Act of 1974, as amended.

20 (f) No minor shall be released from detention except in
21 accordance with this chapter.



(g) When a minor is ordered to be held or detained by the court:

(1) Where a minor transferred for criminal proceedings pursuant to a waiver of family court jurisdiction is detained, the minor shall not:

(A) Have sight or sound contact with adult inmates;

or

(B) Be held in any jail or lockup for adults, unless a court finds, after a hearing and in writing, that it is in the interest of justice;

(2) In determining whether it is in the interest of justice to permit a minor to be held in any jail or lockup for adults, or to have sight or sound contact with adult inmates, a court shall consider:

(A) The age of the minor;

(B) The physical and mental maturity of the minor;

(C) The present mental state of the minor, including whether the minor presents an imminent risk of self-harm;

(D) The nature and circumstances of the alleged offense;



(E) The minor's history of prior delinquent acts;

(F) The relative ability of the available adult and juvenile detention facilities to meet the specific needs of the minor and protect the safety of the public as well as other detained minors; and

(G) Any other relevant factor; and

(3) If a court determines that it is in the interest of justice to permit a minor to be held in any jail or lockup for adults, or to have sight or sound contact with adult inmates:

(A) 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 be held in a jail or lockup for adults or to have sight or sound contact with adult inmates; and

(B) The minor shall not be held in any jail or lockup for adults, or permitted to have sight or sound



1 contact with adult inmates, for more than one
2 hundred eighty days, unless the court, in
3 writing, determines there is good cause for an
4 extension, or the minor expressly waives this
5 limitation.

6 (h) A minor may be placed in room confinement in a
7 juvenile detention or adult jail facility only under the
8 following conditions:

9 (1) Room confinement may only be used as a temporary
10 response to a minor's behavior, and only if:

11 (A) The behavior poses an immediate and substantial
12 risk of danger to the minor's self or another
13 individual, or a serious and immediate threat to
14 the safety and orderly operation of the facility;
15 or

16 (B) The minor is an imminent escape risk;

17 (2) Because of the potential impact on a minor's mental or
18 physical health, room confinement may only be used for
19 the minimum time necessary for the minor to regain
20 self-control, and only after less restrictive options
21 or techniques, including de-escalation, conflict and



1 behavioral management techniques, and intervention by
2 a qualified mental health professional, have been
3 attempted, exhausted, and failed;

4 (3) If a minor is placed in room confinement, the reasons
5 for the room confinement shall be explained to the
6 minor. The minor shall also be informed that release
7 from room confinement will occur immediately when the
8 minor exhibits self-control and is no longer deemed a
9 threat to the minor's safety or the safety of others;

10 (4) If a minor is placed in room confinement, the
11 following individuals shall be notified on the next
12 business day and provided the reasons for the room
13 confinement as well as the location and duration of
14 the confinement:

15 (A) The senior judge of the family court;

16 (B) The presiding judge who ordered the minor to be
17 held at the facility;

18 (C) The deputy chief court administrator; and

19 (D) The social services manager of the juvenile
20 client services branch for the circuit court of
21 the first circuit;



1 (5) Room confinement shall not be used for purposes of
2 punishment or disciplinary sanction, coercion,
3 convenience, or retaliation, or to address staffing
4 shortages at the facility;

5 (6) A minor may be held in room confinement for no more
6 than three hours unless the minor is a danger to
7 themselves or another, or the on-call judge grants an
8 extension of no more than three additional hours of
9 confinement. Thereafter, the minor shall be returned
10 to the general population; provided that if a minor is
11 held in room confinement for more than three hours, a
12 hearing shall be held before the family court on the
13 next business day, at which time the minor shall be
14 provided legal representation;

15 (7) If the minor is not returned to the general population
16 following a hearing pursuant to paragraph (6), the
17 minor shall be transferred to a location where
18 services may be provided to the minor without the need
19 for room confinement; provided that if a qualified
20 mental health professional determines that the level
21 of crisis service needed is not presently available at



1 the location, the superintendent or deputy
2 superintendent of the facility shall initiate a
3 referral to a facility that can meet the needs of the
4 minor;

5 (8) All rooms used for room confinement shall have
6 adequate and operational lighting, and ventilation for
7 the comfort of the minor, and shall be clean and
8 resistant to suicide and self-harm;

9 (9) The minor shall have access to drinking water, toilet
10 facilities, hygiene supplies, and reading materials
11 approved by a qualified mental health professional;

12 (10) The minor shall have the same access as provided to
13 minors in the general population of the facility to
14 meals, contact with parents or legal guardians, legal
15 assistance, educational programs, and medical and
16 mental health services; and

17 (11) The minor shall be continuously monitored by facility
18 staff.

19 For the purposes of this subsection, "room confinement"
20 means the placement of a minor in a room, cell, or area with
21 minimal or no contact with persons other than court staff and



1 attorneys. "Room confinement" does not include confinement of a
2 minor in a single-person room or cell for brief periods of
3 locked room time as necessary for required institutional
4 operations and does not include confinement during sleep hours.

5 ~~[(+h)]~~ (i) Provisions regarding bail shall not be
6 applicable to minors detained in accordance with this chapter,
7 except that bail may be allowed after a minor has been
8 transferred for criminal prosecution pursuant to waiver of
9 family court jurisdiction.

10 ~~[(+i)]~~ (j) The official in charge of a facility for the
11 detention of adult offenders or persons charged with crime shall
12 inform the court immediately when a minor who is or appears to
13 be under eighteen years of age is received at the facility.

14 ~~[(+j)]~~ (k) Any other provision of law to the contrary
15 notwithstanding, any person otherwise subject to proceedings
16 under chapter 832 and who is under the age of eighteen may be
17 confined in a detention facility or correctional facility by
18 order of a judge for the purposes set forth in section 832-12,
19 832-15, or 832-17.

20 ~~[(+k)]~~ (l) The department of human services through the
21 office of youth services shall certify police station cellblocks



1 and community correctional centers that provide sight and sound
2 separation between minors and adults in secure custody. Only
3 cellblocks and centers certified under this subsection shall be
4 authorized to detain juveniles pursuant to section 571-32(d).

5 The office of youth services may develop sight and sound
6 separation standards, issue certifications, monitor and inspect
7 facilities for compliance, cite facilities for violations,
8 withdraw certifications, and require certified facilities to
9 submit data and information as requested. In addition, the
10 office of youth services may monitor and inspect all cellblocks
11 and centers for compliance with section 571-32(d)."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

15
INTRODUCED BY: *M. W. W.*
By Request



S.B. NO. 2115

Report Title:

Judiciary Package; Juveniles; Room Confinement; Detention:
Shelter Facility

Description:

Establishes conditions and time limits for placing a minor in room confinement at a detention or shelter facility. Effective upon approval.

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