

The Judiciary, State of Hawai‘i

**Testimony to the Thirty-First Legislature
2022 Regular Session**

House Committee on Health, Human Services, and Homelessness

Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair

Tuesday, March 15, 2022, 9:00 a.m.
State Capitol, Conference Room 329, Via Videoconference

by
Carol Matsuoka
Program Specialist
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2115, S.D. 1, Relating to the Room Confinement of Minors.

Purpose: Establishes conditions and time limits for placing a minor in room confinement at a detention or shelter facility. (SD1)

Judiciary's Position: Strongly Support

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’ 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 re-traumatizing youth who were already victimized. Over the past decade, increased awareness about the over use and harm of room confinement have stimulated national momentum to end this practice.



We respectfully request that the following amendments be made in the proposed new sections (h)(1)(A), and (h)(1)(B)(13) of H.R.S. Section 571-32 as follows:

(1) p. 9, line 15, subsection (h)(1)(A):

(A) The behavior poses an immediate and substantial risk of danger to the minor's self or another individual, or a serious and immediate threat to the safety and orderly operation of the facility; provided that any decision to ~~[place or]~~ hold a minor in room confinement due to a mental health emergency shall be made by a mental health professional and based upon the mental health professional's examination of the minor; or

In the event of a mental health emergency, facility staff must have the ability to ensure the minor's safety until emergency services respond. Such an event may require facility staff to immediately **place** a minor experiencing a mental health emergency in one of the facility's crisis cells for their safety. These crisis cells are designed to limit the possibility for self-harm.

(2) p. 13, line 11, subsection (h)(1)(B)(13):

(13) The ~~[department of human services]~~ **judiciary** shall post quarterly on the ~~[department of human services']~~ **judiciary's** website a report of ~~[all shelters and]~~ **its** detention centers detailing their compliance with this section. Each report shall include:

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 in secure detention 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 House Committee on Health, Human Services &
Homelessness**

March 15, 2022

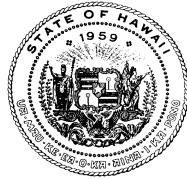
S.B. No. 2115, SD1: RELATING TO THE ROOM CONFINEMENT OF MINORS

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Office of the Public Defender supports S.B. 2115, 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 HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB2115 SD1
RELATING TO THE ROOM CONFINEMENT OF MINORS**

REPRESENTATIVE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS

Hearing Date: 2/25/2022

Room Number: Via Videoconference

1 **Department Position:** The Department of Health strongly SUPPORTS the bill and offers the
2 following comments.

3 **Department Testimony:**

4 Years of research have documented the negative mental health consequences of seclusion and
5 confinement on youth in detention facilities. Specifically, studies suggest strong links between
6 room confinement and numerous health and safety risks including self-harm and suicide, and
7 increased trauma, anxiety, and depression^{1,2}.

8 The Department of Health's Child & Adolescent Mental Health Division (CAMHD) provides
9 mental health services to youth that includes persons placed at the Detention Home and at the
10 Youth Correctional Facility. CAMHD clinicians who provide these services have been working
11 with the leadership at both facilities to curtail the use of room confinement. The research points
12 to numerous evidence-based alternatives to reduce room confinement including (but not limited

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 to) adopting an overall philosophy that takes a rehabilitative approach; developing specific
2 policies and procedures for use of isolation that are consistent with best-practice guidelines and
3 include staff and youth input; utilizing data to manage and monitor isolation use; implementing a
4 positive behavioral management plan; and providing ongoing training to facility staff and skill
5 building with youth³. The Department is more than willing to continue to partner with the
6 Judiciary and the Office of Youth Services to further this effort.

7 **Offered Amendments:** The Department of Health respectfully requests that "mental health
8 professional" be replaced with "qualified mental health professional" throughout the bill.

9 A “qualified mental health profession” is licensed in the State of Hawaii, while a “mental health
10 professional” is not licensed. Due to the serious nature of room confinement and potential safe
11 risk to minors, it is recommended that a “qualified mental health professional” who is licensed in
12 the state of Hawaii make decisions regarding room confinement.

13 **Fiscal Implications:** None for the Department of Health (DOH).

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

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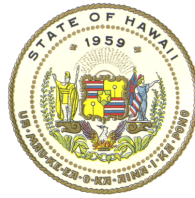
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³ Council of Juvenile Correctional Administrators. (2015). Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation [Toolkit] Retrieved from <http://www.cjca.net>

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

March 14, 2022

TO: The Honorable Representative Ryan I. Yamane, Chair
House Committee on Health, Human Services and Homelessness

The Honorable Representative Adrian K. Tam, Vice Chair
House Committee on Health, Human Services and Homelessness

FROM: Leanne Gillespie, Acting Executive Director

SUBJECT: **SB 2115 SD1 – RELATING TO THE ROOM CONFINEMENT OF MINORS**

Hearing: Tuesday, March 15, 2022 at 9:00 a.m.
State Capitol Room 329 & Videoconference

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

PURPOSE: The purpose of the bill is to specify the conditions and time limits for placing minors in room confinement at a detention or shelter facility.

OYS agrees that the use of room confinement as a temporary response to behaviors that pose immediate and substantial risk of harm adds to the safety and welfare of youth and staff in juvenile detention and shelter facilities. This measure permits room confinement as a de-escalation or “cooling off” period after all other less restrictive approaches are exhausted; furthermore, it provides a clear definition and limitations of room confinement.

OYS strongly supports the implementation of positive alternative behavior management techniques that utilize trauma informed practices and rehabilitative approaches. It is vital that qualified mental health professionals are utilized to implement effective treatment models and assessments, monitor harmful behaviors, and account for the use of room confinement. This measure is necessary to establish proper guidelines and safeguards in practice and policy and is an important step toward improving conditions for minors in facilities.

Thank you for the opportunity to testify on this measure.

SB-2115-SD-1

Submitted on: 3/11/2022 6:08:59 PM

Testimony for HHH on 3/15/2022 9:00:44 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Comments	Written Testimony Only

Comments:

Solitary confinement is not good for anyone-especially children. It really should never be used. However, if it must, these guidelines seem to be a step in the right direction.

**OPPORTUNITY
YOUTH
ACTION HUI**

15 March 2022

House Committee on Health, Human Services, & Homelessness
Hearing Time: 09:00am
Location: CR329 & Virtual Videoconference
Re: SB 2115, SD1, Relating to the Room Confinement of Minors

Aloha e Chair Yamane, Vice-Chair Tam, and members of the Committee:

We are writing in **strong support** of SB 2115, SD1, relating to the room confinement of minors. This bill would establish conditions and time limits for placing a minor in room confinement at a detention or shelter facility.

This measure would protect children from the negative effects of prolonged and ineffective room confinement. According to findings from the 2016 Juvenile Residential Facility Census (released in December 2018), 46% of all facilities reported locking youth in their rooms. Among public facilities, 81% of local facilities and 68% of state facilities reported locking youth in sleeping rooms. Those who experience confinement are more likely to develop **anxiety, depression, suicidal thoughts, and psychosis**. The practice also affects physical health, increasing a person's risk for a range of conditions, including fractures, vision loss, and chronic pain. We believe this bill is a pivotal and important step in the effort to protect and care for minors in the system.

The Opportunity Youth Action Hui is a collaboration of organizations and individual committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs.

We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth houselessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

Please support SB 2115.



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521 -8995

COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

Ryan I. Yamane, Chair

Rep. Adrian K. Tam, Vice Chair

Tuesday, March 15, 2022 - 9:00 am – via videoconference

Support of SB2115 SD1 - RELATING TO THE ROOM CONFINEMENT OF MINORS

The Hawaii Psychological Association (HPA) strongly supports SB2115 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 Health, Human Services, & Homelessness
Hearing Date/Time: Tuesday, 9:00am, March 15, 2022
Place: Via Videoconference / Conference Room 329
Re: Testimony of the ACLU of Hawai'i in Strong Support of S.B. 2115, S.D. 1 Relating to the Room Confinement of Minors

Dear Chair Yamane, Vice Chair Tam, and members of the Committee:

The ACLU of Hawai'i writes in **strong support of S.B. 2115, S.D. 1**. 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.

Solitary confinement is actively harmful to youth health and development.¹ 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.² We are concerned with the many uses of solitary, including protective confinement (if the youth is in danger), administrative solitary confinement (perceived dangerousness or likely future conduct), and seclusion for medical or psychological reasons. Though there may be medical or safety reasons for isolation, 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.³ **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. 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.⁴

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

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 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).

³ 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), <https://ssrn.com/abstract=2685112>.

⁴ Feerman.

Chair Yamane and Members of the Committee on Health, Human Services, & Homelessness
March 15, 2022
Page 2 of 2

half of youth who commit suicide in detention facilities do so in solitary confinement.⁵ 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 **strongly supports S.B. 2115, 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 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
P.O. Box 3410
Honolulu, Hawai‘i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org