

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

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

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

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
13 to) adopting an overall philosophy that takes a rehabilitative approach; developing specific
14 policies and procedures for use of isolation that are consistent with best-practice guidelines and
15 include staff and youth input; utilizing data to manage and monitor isolation use; implementing a
16 positive behavioral management plan; and providing ongoing training to facility staff and skill

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 building with youth.³ The Department is more than willing to continue to partner with the
2 Judiciary and the Office of Youth Services to further this effort.

3 **Offered Amendments:** None

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

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

6

7

8

9

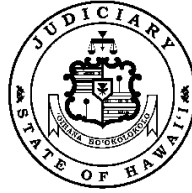
10

11

12

13

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>



The Judiciary, State of Hawai‘i

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

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Friday, February 25, 2022 at 9:45 a.m.
State Capitol, Via Videoconference

By

Carol Matsuoka
Program Specialist
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

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

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 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 term “qualified mental health professional” be amended to read “mental health professional” in the proposed new subsections (h)(2), (h)(7) and (9) of H.R.S. Section 571-32 as follows:

(1) p. 10, line 2, subsection (h)(2):

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

(2) Because of the potential impact on a minor's mental or physical health, room confinement may only be used for the minimum time necessary for the minor to regain self-control, and only after less restrictive options or techniques, including de-escalation, conflict and behavioral management techniques, and intervention by a **qualified** mental health professional, have been attempted, exhausted, and failed

(2) p. 11, line 20, subsection (h)(7):

(7) If the minor is not returned to the general population following a hearing pursuant to paragraph (6), the minor shall be transferred to a location where services may be provided to the minor without the need for room confinement; provided that if a **qualified** mental health professional determines that the level of crisis service needed is not presently available at the location, the superintendent or deputy superintendent of the facility shall initiate a referral to a facility that can meet the needs of the minor;

(3) p. 12, line 11, subsection (h)(9):

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

Use of the term mental health professional is consistent with the credentialing process for the Department of Health’s Child and Adolescent Mental Health Division. The requirement for a “qualified” mental health professional is too restrictive for the purpose of this bill.



Senate Bill No. 2115, Relating to Room Confinement
Senate Committee on Judiciary
Friday, February 25, 2022 at 9:45 a.m.
Page 3

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 Senate Committee on Judiciary**

February 25, 2022

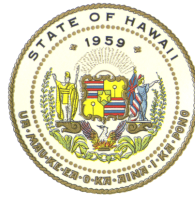
S.B. No. 2115: RELATING TO THE ROOM CONFINEMENT OF MINORS

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

The Office of the Public Defender supports S.B. 2115.

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 24, 2022

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

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

FROM: Leanne Gillespie, Acting Executive Director

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

Hearing: February 25, 2022, 9:45 a.m.
Via Videoconference, State Capitol

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 supports the primary focus of SB 2115 creating a safe and supportive environment while limiting the use of room confinement of minors in a detention or shelter facility. OYS supports the implementation of positive alternative behavior management techniques that utilize trauma informed practices and rehabilitative approaches. 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. SB 2115 provides a clear definition and limited circumstances of room confinement and procedures for due process prior to a minor being confined and during confinement.

Additionally, OYS strongly supports the use of qualified mental health professionals to implement effective treatment models and assessments, monitoring harmful behaviors, and accountability for the use of room confinement.

Thank you for the opportunity to testify on this measure.

**OPPORTUNITY
YOUTH
ACTION HUI**

25 February 2022

Senate Committee on Judiciary
Hearing Time: 9:45 a.m.
Location: Virtual
Re: SB 2115 Relating to Room Confinement of Minors

Aloha e Chair Rhoads, Vice-Chair Keohokalole, and members of the Committee:

We are writing in **support** of SB 2115 relating to the room confinement of minors. This bill establishes conditions and time limits for placing a minor in room confinement at a detention or shelter facility. Concerns about the effectiveness, and danger, of youth confinement have grown, according to a report by the National Conference of State Legislatures, and the practice of placing juveniles in solitary confinement is being reassessed. Solitary confinement, also known as room confinement, seclusion, isolation or segregation, can include physical and social isolation in a cell for 22 to 24 hours a day. Such isolation can lead to depression, anxiety, psychosis and psychological and developmental harm, according to the American Academy of Child and Adolescent Psychiatry. Research also shows that more than half of all suicides in juvenile facilities occurred while young people were held in isolation.¹ We are in support of this bill.

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 homelessness 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.

¹ <https://www.ncsl.org/research/civil-and-criminal-justice/rethinking-solitary-confinement-for-juveniles.aspx>



Hawai'i

Committees: Committee on Judiciary
Hearing Date/Time: Friday, 9:45am, February 25, 2022
Place: Via Videoconference
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2115 Relating to the Room Confinement of Minors

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

The ACLU of Hawai'i writes in **support of S.B. 2115** 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. 2115** 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 (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.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. The bill also clarifies the due process procedures available to the youth when an initial decision to confine a child is made.

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 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>.

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

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 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. 2115**. 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 Feerman.

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/>.

LATE

TO: The Honorable Senator Clarence K. Nishihara, Chair Senate Committee
on Public Safety, Intergovernmental, and Military Affairs

The Honorable Senator Lynn DeCoite, Vice Chair Senate Committee on
Public Safety, Intergovernmental, and Military Affairs

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

Hearing: February 25, 2022, 9:45 a.m.
Via Videoconference, State Capitol

Aloha. My name is Kristina Danley and I am a student in the Thompson School of Social Work at University of Hawaii Mānoa who plans to specialize in child welfare. I am writing to share my support for SB 2115.

There has been research proving that solitary confinement or “room confinement” is extremely detrimental to mental health and is an ineffective form of punishment. I support a more effective alternative to behavior management which is a rehabilitative approach with a focus on trauma-informed practices since most minors involved in the justice system have experienced traumatic events. However, in the event that the minor is at risk of injuring themselves or others, temporary room confinement may be the best option to deescalate a situation or allow for the minor to return to a state of emotional regulation.

Furthermore, I support that SB 2115 is clearly stating new rules and procedures and establishing statutory limits for “room confinement”.

Mahalo for the opportunity to testify in support of this measure.

Kristina Danley

808-463-6016