



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

March 19, 2021

TO: The Honorable Representative Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Representative Scot Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Bruce Shimoda, Executive Director

SUBJECT: **SB 387 SD1 HD1, RELATING TO ROOM CONFINEMENT OF CHILDREN AT
DETENTION AND SHELTER FACILITIES**

Hearing: Tuesday, March 23, 2021, 2:00 p.m.
Via Video Conference, State Capitol

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

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

To reduce confusion and for consistency in language proposed within SB 386 SD1 and SB 387 SD1 HD1, the OYS respectfully requests the use of the term "jail or lockup for adults", replacing the term "adult jail facility".

Section 1. (d) A child may be placed in room confinement in a juvenile detention or jail or lockup for adults ~~adult jail facility~~ only under the following conditions:".

OYS supports this bill that aims to reduce childhood trauma during detention and room confinement.

Thank you for the opportunity to present this testimony.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Judiciary and Hawaiian Affairs

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Tuesday, March 23, 2021 at 2:00 p.m.
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

by

Judge Christine E. Kuriyama
Deputy Chief Judge, Senior Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 387, S.D. 1, H.D. 1, Relating to the Room Confinement of Children at Detention and Shelter Facilities.

Purpose: Establishes conditions and time limits for placing a child in room confinement at a detention or shelter facility. Effective July 1, 2060 (HD1).

Judiciary's Position:

The Judiciary supports this measure, which is part of the Judiciary’s 2021 legislative package, but has one concern with the amendment of Senate Bill No.387, S.D.1, H.D.1. Our concern is the insertion of “adult jail facility” on page 3, line 4, as HRS, 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. We respectfully recommend “adult jail facility” on page 3, line 4, be deleted to read “juvenile detention only under the...”.



Senate Bill No.387, S.D.1, H.D. 1, Relating to the Room Confinement of Children at Detention and Shelter Facilities

House Committee on Judiciary and Hawaiian Affairs

Tuesday, March 23, 2021 at 2:00 p.m.

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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 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 of 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 Judiciary & Hawaiian Affairs**

March 23, 2021

S.B. No. 387 SD1, HD1: RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER FACILITIES

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender supports S.B. 387 SD1, HD1.

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.



Hawai'i

Committees: Committee on Judiciary & Hawaiian Affairs
Hearing Date/Time: Tuesday, 2:00pm, March 23, 2021
Place: Via Videoconference
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 387, S.D. 1, H.D. 1 Relating to the Room Confinement of Children at Detention and Shelter Facilities

Dear Chair Nakashima, Vice Chair Matayoshi, and members of the Committee:

The ACLU of Hawai'i writes in **support of S.B. 387, S.D. 1, H.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, H.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 Nakashima and Members of the Committee on Judiciary & Hawaiian Affairs
March 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, H.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
P.O. Box 3410
Honolulu, Hawai‘i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org



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 JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

Tuesday, March 23, 2021 - 2:00 pm – via videoconference

Support of SB387 SD1 HD1 - RELATING TO THE ROOM CONFINEMENT OF CHILDREN AT DETENTION AND SHELTER FACILITIES

The Hawaii Psychological Association (HPA) strongly supports SB387 SD1 HD1 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 Lichton, 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>

SB-387-HD-1

Submitted on: 3/21/2021 1:40:01 PM

Testimony for JHA on 3/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I support sb387 sd1 hd1