

**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, and  
Homelessness and Committee on Corrections, Military & Veterans**

March 18, 2021

S.B. No. 386, SD1: RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP

Chairs Yamane and Ohno, Vice Chairs Tam and Ganaden, and Members of the Committee:

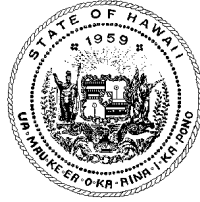
The Office of the Public Defender supports the intent of S.B. 386, SD1.

This measure provides additional guidance and restrictions concerning any detention of a juvenile in an adult detention facility. It provides rules and procedures to be followed in the event a juvenile is being held in custody and clarifies that any juvenile shall not be housed with or have contact with adults subject to very limited exceptions.

This measure also includes rules and procedures concerning juveniles who have been waived into adult courts. The Office of the Public Defender supports the proposed restrictions and procedures; however, we maintain our position that no juvenile should ever be held in an adult detention facility and that all juveniles should be held in juvenile facilities without exception.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**MAX N. OTANI**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Tommy Johnson**  
Deputy Director  
Corrections

**Jordan Lowe**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

**TESTIMONY ON SENATE BILL 386, SENATE DRAFT 1  
RELATING TO DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP.**

by  
Max N. Otani, Director

House Committee on Health, Human Services, and Homelessness  
Representative Ryan I. Yamane, Chair  
Representative Adrian K. Tam, Vice Chair

**AND**

House Committee on Corrections, Military, and Veterans  
Representative Takashi Ohno, Chair  
Representative Sonny Ganaden, Vice Chair

Thursday, March 18, 2021; 11:15 a.m.  
State Capitol, Via Video Conference

Chairs Yamane and Ohno, Vice Chairs Tam and Ganaden, and Members of the Committees:

Senate Bill (SB) 386, Senate Draft (SD) 1 proposes to clarify the circumstances under which a minor may be detained in an adult jail or lockup; delineates the specific processes the court must follow in determining if the detention of a minor in an adult jail or lockup would be in the best interests of justice; and if approved, requires that the minor be detained by the Department of Public Safety (PSD) in a location where the minor will not have sight or sound contact with adult inmates. In addition, this measure would require PSD staff working with minor and adult inmates in collocated facilities to be trained and certified to work with minors.

Understanding the intent of SB 386, SD 1, the Department seeks clarification on certain tenets of this measure and offers the following comments for the Committees' consideration.

As written, this measure appears to allow judges to order juveniles to be held in PSD facilities irrespective of the Prison Rape Elimination Act (PREA) of 2003 and the Juvenile Justice Delinquency Prevention Act, Federal Code 34 U.S.C.A., and/or waiver of jurisdiction. PSD seeks clarification in this regard.

At present, Hawaii's correctional facilities include eight (8) jails and prisons that are old and outdated, manpower-intensive, and constantly in need of repairs. As of February 28, 2021, six (6) of the eight (8) facilities were operating above their designed capacity and have been for some time (see attached February 2021 inmate population report). The newest correctional facility in Hawaii is the Halawa Correctional Facility, which opened in 1985 and is now over 35 years old. The remaining seven (7) facilities range in age from 40 to over 100 years old.

While the Department could conceivably comply with a judge's order to temporarily house a juvenile in one of our facilities, doing so, would require removing all other inmates/detainees from the designated housing module. Given our already severely overcrowded conditions, which have forced PSD to house approximately 1,000 inmates on the mainland in a contracted private prison, it is clear that PSD has no capacity to safely and securely relocate an entire module of adult offenders in order to accommodate one or more juvenile offenders.

Further, it should be noted, PSD facilities are not designed to, nor do they provide, the developmentally appropriate rehabilitative services required by youth, and, in fact, detaining juveniles in adult jails or lockups may be detrimental to youths.

At present, PSD's Adult Correctional Officers, Case Managers, and/or other staff members are specifically trained to work with adult offenders. If

Testimony on SB 386, SD 1  
House Committee on Health, Human Services  
and Housing and  
House Committee on Corrections, Military, and Veterans  
March 18, 2021  
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enacted, SB 386, SD 1 would require the Department to provide training for a number of its staff to be specially trained and certified to work with juveniles, adding costs to the Department's operating budget.

Thank you for the opportunity to seek clarification and submit comments regarding SB 386, SD 1.

Attachment

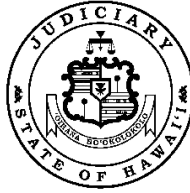
**DEPARTMENT OF PUBLIC SAFETY  
END OF MONTH POPULATION REPORT**

Date: 2/29/2021

FAC.	DESIGN BED CAP.	OPER. BED CAP.	HEAD COUNT ENDING																		
			TOT.	M	F	SENT. FEL.		SENT. FEL. PROB.		SENT. MISD.		PRETRIAL FEL.		PRETRIAL MISD.		OTHER JURIS.		PAR VIOL.		PRB VIOL.	
						M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
HCCC	206	226	296	247	49	31	3	37	5	7	2	115	21	11	5	4	1	22	6	20	6
SNF	90	132	106	106	0	106															
HMSF	496	992	766	766	0	232		7		1		15						505		6	
KCCC	110	128	141	122	19	35	3	18	8	9	2	43	3	8	2	0	0	1	0	8	1
KCF	200	200	131	131	0	131															
MCCC	209	301	303	264	39	15		32	8	5		135	20	11	1	1		23	1	42	9
OCCC	628	954	913	818	95	107		73	13	19	2	406	43	43	7	2				168	30
WCCC	258	260	205	0	205		140				1		2						61		1
WCF	294	334	229	229	0	154												75			
<b>TOTAL</b>	<b>2491</b>	<b>3527</b>	<b>3090</b>	<b>2683</b>	<b>407</b>	<b>811</b>	<b>146</b>	<b>167</b>	<b>34</b>	<b>41</b>	<b>7</b>	<b>714</b>	<b>89</b>	<b>73</b>	<b>15</b>	<b>7</b>	<b>1</b>	<b>626</b>	<b>68</b>	<b>244</b>	<b>47</b>

	CONTRACTED FACILITIES																			
	TOT.	M	F	SF		SFP		SM		PTF		PTM		OJ		PARV		PRBV		
				M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
RED ROCK CC, AZ	0	0	0																	
SAGUARO CC, AZ	999	999	0	956													43			
FEDERAL DET. CTR. <sup>1</sup>	5	5	0					1		1		1								2
<b>TOTAL</b>	<b>1004</b>	<b>1004</b>	<b>0</b>	<b>956</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>43</b>	<b>0</b>	<b>2</b>	<b>0</b>

FAC.	DESIGN BED CAP.	OPER. BED CAP.	ASSIGNED COUNT ENDING																		
			TOT.	M	F	SENT. FEL.		SENT. FEL. PROB.		SENT. MISD.		PRETRIAL FEL.		PRETRIAL MISD.		OTHER JURIS.		PAR VIOL.		PRB VIOL.	
						M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
HCCC	206	226	309	259	50	34	3	41	6	8	2	115	21	11	5	7	1	22	6	21	6
SNF	90	132	106	106	0	106															
HMSF	496	992	769	769	0	232		7		1		15						508		6	
KCCC	110	128	150	129	21	39	5	18	8	12	2	43	3	8	2	0	0	1	0	8	1
KCF	200	200	131	131	0	131															
MCCC	209	301	303	264	39	15		32	8	5		135	20	11	1	1		23	1	42	9
OCCC	628	954	925	830	95	113		73	13	20	2	408	43	44	7	2				170	30
WCCC	258	260	232	0	232		164		1	1		2							63		1
WCF	294	334	229	229	0	154												75			
<b>MAINLAND</b>			999	999	0	956												43			
<b>TOTAL</b>	<b>2491</b>	<b>3527</b>	<b>4153</b>	<b>3716</b>	<b>437</b>	<b>1780</b>	<b>172</b>	<b>171</b>	<b>36</b>	<b>46</b>	<b>7</b>	<b>716</b>	<b>89</b>	<b>74</b>	<b>15</b>	<b>10</b>	<b>1</b>	<b>672</b>	<b>70</b>	<b>247</b>	<b>47</b>



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-First Legislature, 2021 Regular Session**

**House Committee on Health, Human Services, and Homelessness**

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

**House Committee on Corrections, Military, and Veterans**

Representative Takashi Ohno, Chair  
Representative Sonny Ganaden, Chair

Thursday, March 18, 2021 at 11:15 a.m.  
State Capitol, Conference Room 329  
VIA VIDEOCONFERENCE

By

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

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**Bill No. and Title:** Senate Bill No. 386, S.D. 1, Relating to Detention of a Minor in an Adult Jail or Lockup.

**Purpose:** Requires a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup or be permitted sight or sound contact with adult offenders. (SD1)

**Judiciary's Position:**

The Judiciary strongly supports Senate Bill No. 386, S.D. 1, which is included in the Judiciary's 2021 legislative package. The Juvenile Justice Reform Act of 2018 requires states to take action before December 21, 2021.

By amending H.R.S. § 571-32 relating to the transfer of minors to the adult criminal justice system, this bill ensures minors are protected from the harms of adult jails or lockups. Specifically, the amendments make clear the jurisdiction of the Family Court over a minor transferred for criminal proceedings pursuant to waiver. We agree with the Federal law



Senate Bill No. 386, S.D. 1, Relating to Detention of a Minor in an  
Adult Jail or Lockup

House Committee on Health, Human Services, and Homelessness

House Committee on Corrections, Military, and Veterans

Thursday, March 18, 2021 at 11:15a.m.

Page 2

that minors should be transferred to an adult jail **only** if it is in the interest of justice. When a youth is transferred to the adult criminal justice system, the lifelong consequences of placement in the criminal justice system have a profoundly negative effect on both the youth and our community.

We have concerns with the deletion in S.D. 1 of this bill. S.D. 1 deleted the provision, "...or in the case of a rural jurisdiction, not less frequently than once every forty-five days." (page 6, line 9, subsection (3) (A)). This provision is included in the federal law and recognizes allowances for neighbor island jurisdictions. Therefore, we respectfully request that this provision be restored and included in subsection (3) (A), to read as follows: 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 held in a jail or lockup for adults or to have sight or sound contact with adult inmates; and

There is an abundance of evidence that youth are fundamentally different from adults and are more likely to experience abuse, commit suicide, and be exposed to prolonged periods of isolation. The federal Prison Rape Elimination Act of 2003 (PREA) addresses the security challenges of incarcerating youth in adult facilities, citing that youth are more likely to be victimized in an adult facility than in a juvenile facility. Adult facilities do not provide the developmentally appropriate rehabilitative services youth require as adult facilities are not designed or staffed for the rehabilitation of youth. Most youth will return to their communities as young adults.

The Family Court's determination for waiver is governed by statute and is guided by the growing body of research on adolescent brain development. Once a determination is made to transfer a youth to the adult criminal justice system, the Family Court's jurisdiction is terminated. While the practice of judicial waiver of a youth is considered the most appropriate form of waiver, our current statutes do not allow for a pathway back to juvenile court.

Encouraged by PREA and the Juvenile Justice Delinquency Prevention Act, Federal Code 34 U.S.C.A. §11133 provides financial incentives to treat youth in a more developmentally appropriate system of care. The proposed amendments will ensure the State of Hawai'i is in compliance with federal law, in part by maintaining research-based necessary practices of sight and sound separation of youth from adults, and also eliminate confusion over the nature and scope of the Family Court's ongoing jurisdiction over the youth.

The fiscal impact of this bill is related to the **potential** reduction of not less than 20% in Federal Title II Formula Grant funds allocated to the State of Hawai'i for violation(s) of the sight and sound separation requirement of the JJRA, and the costs incurred by the State to ensure sight



Senate Bill No. 386, S.D. 1, Relating to Detention of a Minor in an  
Adult Jail or Lockup

House Committee on Health, Human Services, and Homelessness

House Committee on Corrections, Military, and Veterans

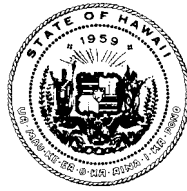
Thursday, March 18, 2021 at 11:15a.m.

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and sound separation of a minor in an adult jail. These Federal funds are used to fund community-based programs for minors.

Thank you for the opportunity to testify on this measure.





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

March 17, 2021

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

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

The Honorable Representative Takashi Ohno, Chair  
House Committee on Corrections, Military, & Veterans

The Honorable Representative Sonny Ganaden, Vice Chair  
House Committee on Corrections, Military, & Veterans

FROM: Bruce Shimoda, Executive Director

SUBJECT: **SB 386 SD1, RELATING TO THE DETENTION OF A MINOR IN ADULT JAIL OR LOCKUP**

Hearing: Thursday, March 18, 2021 at 11:15 a.m.  
Via Videoconference, State Capitol

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

**PURPOSE:** The purpose of the measure is to align Hawaii's detention laws with U.S. Federal laws that protect youth from certain harmful conditions in the justice system.

In alignment with the core requirements set forth by the Juvenile Justice and Delinquency Prevention (JJDP) Act as amended, OYS adheres and encourages the standards of ensuring safety and equitable treatment for youth who are involved in the criminal justice system.

The consequences and life-long effects of youth placement in the criminal justice system is profound. Full brain development and maturity is proven to extend beyond teen years. Studies suggests young adults reach full maturity past age twenty-five while adults are defined as eighteen-year-old. Research legitimizes the ongoing discussion that minors should not be

held to the same standard of responsibility as adults. Therefore, housing a minor in an adult jail or lock-up could lead to harmful effects.

There are detrimental consequences to the health and well-being of minors who are incarcerated in adult facilities. Studies found that minors held in adult facilities are at higher risk of sexual abuse and violence, greater risk of solitary confinement, and experience increased odds of recidivism. Statistics have also revealed an alarming prevalence of suicidal thoughts and attempts among youth who are held in adult facilities than youth in juvenile facilities.

The Office of Youth Services (OYS) supports Senate Bill 386, relating to the detention of a minor in an adult jail or lockup. OYS supports Bill 386 for the following reasons:

- Ensures the State of Hawaii is in compliance and aligned with federal law.
- Ensures the majority of minors are housed in an age-appropriate facilities.
- If a court determines that it is in the interest of justice to permit a minor to be housed at an adult facility, there is an ongoing review process.
- Reduce the devastating consequences and life-long effects on youths mental and physical well-being.
- Reduce the risk of recidivism.

Thank you for the opportunity to present this testimony.

**SB386 SD1**

RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP

Ke Kōmike Hale o ke Olakino, ka Lawelawe Kānaka, a me ka Pilikia Ho‘okuewa

House Committee on Health, Human Services, & Homelessness

Ke Kōmike Hale o nā mea Pa‘ahao, ke Kuleana Pū‘ali Koa, a me Nā Koa Kahiko

House Committee on Corrections, Military, & Veterans

Malaki 17, 2021

11:15 a.m.

Lumi 329

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB386 SD1, which would require a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup, or be permitted sight or sound contact with adult offenders. **This measure may help to mitigate the long-lasting traumas that may be inflicted upon youth, including a disproportionate number of Native Hawaiians, who are unnecessarily exposed to adult pa‘ahao in our criminal justice system.**

**Native Hawaiian youth are disproportionately represented in the juvenile justice system, which may contribute significantly to Native Hawaiians’ disproportionate representation in the criminal justice system as a whole.** In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system. This report found that Native Hawaiian youth are disproportionately represented in the juvenile justice system and are also the most frequently arrested ethnic group in all offense categories.<sup>1</sup> In 2012, the Native Hawaiian Justice Task Force (NHJTF) was tasked by the Legislature to address the issues raised in OHA’s 2010 report; in its report, the NHJTF further acknowledged that “an individual’s contact with the criminal justice system . . . often begins at youth.”<sup>2</sup> **Accordingly, OHA believes that a close examination of the juvenile justice system may be critical to mitigating the substantial and disproportionate impacts of the criminal justice system on the Native Hawaiian community.**

SB386 SD1 will help provide the appropriate process to reduce the rates of juvenile contact with the adult corrections system. **OHA understands that when a youth offender is transferred to adult correctional facilities, it may have a profoundly negative effect on both the youth and larger community.** For example, there is strong evidence that youth are fundamentally different from adults and are more likely to experience abuse, commit suicide, and be exposed to prolonged periods of isolation if they enter into an adult

<sup>1</sup> THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 10 (2010), available at [http://www.oha.org/wp-content/uploads/2014/12/ir\\_final\\_web\\_rev.pdf](http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf).

<sup>2</sup> THE OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT 23 N. 28 (2012), available at [http://www.oha.org/wp-content/uploads/2012NHJTF\\_REPORT\\_FINAL\\_0.pdf](http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf).

facility. The federal Prison Rape Elimination Act of 2003 (PREA) further addresses the security challenges of incarcerating youth in adult facilities, finding that youth are five times more likely to be victimized in an adult facility than in a juvenile facility.<sup>3</sup> Adult facilities also do not provide the developmentally appropriate rehabilitative services youth require, as adult facilities are not specifically designed or staffed for the rehabilitation of youth; the unnecessary incarceration of a juvenile in our adult facilities may thereby foreclose opportunities for intervention that can reduce the likelihood of their continued contact with the criminal justice system, as they transition into adulthood. **By providing for judicial review and approval before any minor can be transferred to an adult correctional facility, this measure will ensure that youth, including Native Hawaiian youth, enter our adult correctional facilities only when necessary, and thereby mitigate the long-lasting impacts that arise from the incarceration of youth in adult facilities.**

As a final note, OHA understands that the Juvenile Justice Delinquency Prevention Act, Federal Code 34 U.S.C.A. §11133, provides financial incentives to treat youth in a more developmentally appropriate system of care. The passage of SB386 SD1 will better ensure that the State of Hawai‘i complies with this federal law.

Accordingly, OHA urges the Committees to **PASS** SB386 SD1. Mahalo for the opportunity to testify on this important issue.

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<sup>3</sup> 34 U.S.C. § 30301.

**SB-386-SD-1**

Submitted on: 3/16/2021 8:16:48 AM

Testimony for HHH on 3/18/2021 11:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch, Sr.	Rainbow Family 808	Support	No

Comments:

Rainbow Family 808 definitely supports SB386. Please pass this bill.

Mike Golojuch, Sr., Secretary, Rainbow Family 808

**SB-386-SD-1**

Submitted on: 3/15/2021 6:11:39 PM

Testimony for HHH on 3/18/2021 11:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl Burghardt	Individual	Support	No

Comments:

Support

**SB-386-SD-1**

Submitted on: 3/16/2021 3:01:59 AM

Testimony for HHH on 3/18/2021 11:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

At no time should a juvenile be exposed to the happenings of an adult prison. I have worked in juvenile facilities and have seen the detrimental implications left to an impressionable young adult to figure out on their own. In many cases, this is an underlying factor in creating the solid foundation of a career criminal.

COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

Rep. Ryan I. Yamane, Chair

Rep. Adrian K. Tam, Vice Chair

COMMITTEE ON CORRECTIONS, MILITARY, & VETERANS

Rep. Takashi Ohno, Chair

Rep. Sonny Ganaden, Vice Chair

Thursday, March 18, 2021

Conference Room 329 & Videoconference

RE: Support for SB386 SD1: RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP.

Aloha Chair, Vice Chair and distinguished committee members. My name is Kira Rapozo I am currently a MSW Student at the Thompson School of Social Work and Public Health at U.H Manoa. SB 386 requires a family court to make findings, after a hearing and in writing, before a minor can be transferred to an adult jail or lockup or be permitted sight or sound contact with adult offenders. Adult facilities do not provide the developmentally appropriate rehabilitative services that youth require. This can impact the youth in many negative ways, the safety of the youth is a concern when they are exposed to adult correctional settings. This puts the youth at risk to experience feelings of isolation, abuse suicide ideation and negatively impact the youth's rehabilitation. Housing youth in age-appropriate facilities could help to reduce the devastating consequences and life-long effects on youths mental and physical well-being, with youth getting the proper



rehabilitation this could lower the risk of recidivism and allow them to be part of the community in a healthy way.

Thank you for the opportunity to testify.