

JAN 23 2014

A BILL FOR AN ACT

RELATING TO JUVENILE JUSTICE.

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

1 SECTION 1. The legislature finds that in August 2013, the
2 governor, chief justice, president of the senate, and speaker of
3 the house of representatives established the Hawaii juvenile
4 justice working group. The working group was composed of
5 stakeholders from the executive, legislative, and judicial
6 branches, as well as representatives from key stakeholder groups
7 including law enforcement, prosecution, public defense, and
8 community service providers. The working group was charged with
9 the development of policies to reduce recidivism and crime by
10 improving outcomes for youth in the juvenile justice system;
11 maximizing the effectiveness of Hawaii's correctional dollars
12 and placement options; and grounding Hawaii's policies in data
13 and research.

14 The working group's analysis revealed that Hawaii has made
15 commendable improvements in its juvenile justice system.
16 Juvenile arrests fell twenty-eight per cent, and the number of
17 youth annually admitted to the Hawaii youth correctional
18 facility declined forty-one per cent between 2004 and 2013.



1 However, the working group also identified several areas needing
2 improvement.

3 Even amidst a decline in commitments to the Hawaii youth
4 correctional facility, the working group sought to determine
5 whether commitments to the facility were effectively targeted to
6 protect public safety. Research reveals that secure facilities
7 are most effective when targeted toward serious youth who pose a
8 public safety risk. However, when less serious youth are placed
9 in secure facilities, the risk of reoffending increases.

10 Further, mental health and substance abuse treatment are often
11 more efficiently and effectively delivered in a community
12 setting.

13 The legislature also finds that over the last decade, the
14 proportion of youth in Hawaii confined for nonviolent offenses
15 has risen, as has the proportion confined for misdemeanor
16 offenses. In fiscal year 2013, seventy-two and sixty-one per
17 cent of admissions for a new offense were youth committed for a
18 nonviolent or misdemeanor offense, respectively. Between fiscal
19 year 2004 and fiscal year 2013, average lengths of stay in
20 Hawaii youth correctional facility rose from 2.5 months to 7.2
21 months, and forty-six per cent of the commitments to the
22 correctional facility came from the neighbor islands, which are



1 home to just thirty per cent of all youth. Critical services to
2 reduce delinquency, including mental health and substance abuse
3 treatment, are not sufficiently resourced or accessible to
4 Hawaii's youth.

5 The analysis revealed that each bed in the Hawaii youth
6 correctional facility costs Hawaii taxpayers more than \$199,000
7 per year. Despite this level of investment and the longer
8 lengths of stay, seventy-five per cent of youth released from
9 the facilities between 2005 and 2007 were re-adjudicated in
10 family court or re-convicted in the adult criminal justice
11 system within three years of release.

12 The legislature further finds that opportunities for
13 strengthening juvenile probation were also identified by the
14 working group. During the last decade, probation terms
15 increased one hundred fifty-five per cent, but probation staff
16 still encounter significant difficulty in accessing resources
17 for youth on probation. Furthermore, inconsistent probation
18 practices across the circuits may lead to disparate treatment of
19 youth.

20 The purpose of this Act is to improve and enhance Hawaii's
21 juvenile justice system by concentrating secure bed space on
22 serious juvenile offenders and strengthening juvenile probation



1 to ensure judges and court staff have the tools and sentencing
2 options they need to keep youth safely and effectively in their
3 communities. This Act amends chapters 352 and 571, Hawaii
4 Revised Statutes, enhances interagency collaboration,
5 establishes performance measures, and implements a temporary
6 oversight committee to continually improve juvenile justice
7 practices and ensure accountability.

8 SECTION 2. Chapter 352, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§352- Reentry plans; notification.** (a) The director
12 or the director's designee shall develop a comprehensive reentry
13 plan for each person committed to the Hawaii youth correctional
14 facilities who is not serving a concurrent term of probation.
15 The scope of the reentry plan shall address the period of time
16 from admission to the Hawaii youth correctional facilities until
17 parole or final discharge from the department. The reentry plan
18 shall seek to prepare committed persons for transition to the
19 community. The reentry plan required under this section shall
20 be completed within thirty days of a person's commitment to the
21 Hawaii youth correctional facilities, and shall include:



1 (1) Programming, treatment, and service needs identified
2 in the most recently conducted risk and needs
3 assessment;

4 (2) Individualized goals to guide successful transition to
5 the community during parole or following final
6 discharge; and

7 (3) Identification of, and a plan for, coordination with
8 agencies that can provide or contract for existing
9 programs and services relevant or necessary for
10 successful reentry.

11 (b) The director or the director's designee shall consult
12 with a person's parent, legal guardian, or custodian on the
13 terms of the plan and provide written copies of the plan to the
14 person and the person's parent, legal guardian, or custodian.
15 If requested, the director or the director's designee shall
16 provide regular updates on the person's progress concerning the
17 reentry plan to the person's parent, legal guardian, or
18 custodian.

19 (c) The director or the director's designee may
20 collaborate with, and provide information to, probation officers
21 of youth committed to the Hawaii youth correctional facilities
22 who are serving a concurrent term of probation, upon the



1 probation officer's request, in order for the probation officer
2 to incorporate reentry planning into the person's case plan at
3 the probation officer's discretion.

4 (d) The director or the director's designee shall notify
5 the parent, legal guardian, or custodian, and any relevant
6 agency or service provider that may be involved in the person's
7 transition to the community, at least thirty days prior to
8 discharging a committed person.

9 (e) The director or the director's designee shall review,
10 and update if necessary, reentry plans for each person taken
11 into custody pursuant to section 352-26."

12 SECTION 3. Chapter 571, Hawaii Revised Statutes, is
13 amended by adding three new sections to be appropriately
14 designated and to read as follows:

15 **"§571- Probation supervision requirements. Every child**
16 placed on probation pursuant to section 571-48(1)(A) shall be
17 supervised in accordance with the following requirements:

18 (1) Supervision levels, frequency of contacts with
19 probation officers and the court, and referrals to
20 treatment and programs under section 571-31.4(c)(7)
21 shall be established using, among other factors, the



1 results of the risk and needs assessment conducted
2 pursuant to section 571-45;

3 (2) A case plan, as defined in section 571-2, shall be
4 developed for each child and submitted to the court.
5 The case plan shall be developed in consultation with
6 the child and the child's parent, legal guardian, or
7 custodian. The probation officer assigned to each
8 child shall keep the child's parent, legal guardian,
9 or custodian informed regarding development of and
10 progress towards the case plan, the child's conduct,
11 compliance with the conditions of probation, and any
12 other relevant matter in the child's case;

13 (3) A child whose probation term and case plan require
14 in-person visits with a probation officer shall
15 receive at least one home visit, defined as an
16 announced or unannounced visit to the child's place of
17 residence, conducted by the child's probation officer,
18 within forty-five days of the child's placement on
19 probation. A home visit is not required when the
20 probation officer has reasonable perceptions of risks
21 to safety due to known factors of violent criminal
22 activity or isolation of the child's place of



1 residence. The probation officer shall immediately
2 report any reasonable perceptions of risks to a
3 supervisor, and may receive permission to waive the
4 home visit requirement for the child or to conduct the
5 home visit accompanied by another;

6 (4) Probation officers shall have the authority to impose
7 graduated sanctions and to award incentives in
8 response to a violation of the rules and conditions of
9 probation, as an alternative to judicial modification
10 or revocation pursuant to section 571-50, or as a
11 reward for positive behavior exhibited by the child.
12 The graduated sanctions and incentives shall be
13 established as follows:

14 (A) The judiciary shall adopt guidelines and
15 procedures for the development and application of
16 a statewide graduated sanctions system in
17 accordance with this section, and the deputy
18 chief court administrator in each judicial
19 circuit, or the administrator's designee, shall
20 adopt policies or procedures for the
21 implementation of the adopted graduated sanctions



1 system to guide probation officers in imposing
2 sanctions and awarding incentives;

3 (B) The system shall include a series of presumptive
4 sanctions for the most common types of probation
5 violations, and shall take into account the
6 child's risk level and seriousness of the
7 violation. The system shall also identify
8 incentives that a child may receive as a reward
9 for compliance with the rules and conditions of
10 supervision, completion of benchmarks, or
11 positive behavior exceeding expectations, at the
12 discretion of the probation officer;

13 (C) The system shall be developed with the following
14 objectives:

15 (i) To respond quickly, consistently, and
16 proportionally to violations of the rules
17 and conditions of probation;

18 (ii) To reduce the time and resources expended by
19 the court in responding to violations with
20 judicial modification;

21 (iii) To reduce the likelihood of a new delinquent
22 act; and



1 (iv) To encourage positive behavior;

2 (D) At a child's first meeting with a probation
3 officer after being adjudicated and disposed to a
4 probation term, the probation officer shall
5 provide written and oral notification to the
6 child regarding the graduated sanctions system to
7 ensure the child is aware of the sanctions and
8 incentives that may be imposed;

9 (E) When issuing a sanction or incentive, the
10 probation officer shall provide written notice to
11 the child of the nature and date of the relevant
12 behavior, the sanction or incentive imposed, and
13 any applicable time period in which the sanction
14 will be in effect or by which corrective behavior
15 must be taken. The probation officer shall
16 provide this information to the court at the next
17 regularly scheduled review hearing, and inform
18 the court of the child's response to the sanction
19 or incentive; and

20 (F) Each administrator of the juvenile client
21 services branch in each judicial circuit shall
22 report annually to the board of family court



1 judges and the Hawaii juvenile justice state
2 advisory council, the number and the per cent of
3 children on probation who received a graduated
4 sanction or incentive, the types of sanctions and
5 incentives used, and the child's current
6 probation status.

7 **§571- Earned discharge from probation; reporting**
8 **requirements.** (a) A child placed on probation pursuant to
9 section 571-48(1)(A) shall be eligible to receive earned
10 discharge credits to reduce the length of the probation term.
11 Earned discharge credits shall reduce the term of probation by
12 thirty days for each calendar month of compliance with the rules
13 and conditions of probation.

14 (b) A youth is deemed to be compliant with the rules and
15 conditions of probation, and shall be awarded earned discharge
16 credits for the month, if there was no violation of rules and
17 conditions of probation during the month at the level warranting
18 the filing of a petition or violation report. The court, at the
19 request of the probation officer or on its own motion, may award
20 discharge credits to youth who have demonstrated substantial
21 compliance with the rules and conditions of probation.



1 (c) The judiciary shall adopt policies and procedures for
2 the awarding of earned credits for discharge from probation.

3 (d) Each administrator of the juvenile client services
4 branch in each judicial circuit shall annually provide to the
5 board of family court judges and the Hawaii juvenile justice
6 state advisory council, the number and per cent of youth who
7 received earned discharge credits and the number of credits
8 earned by each youth.

9 **§571- Juvenile justice interdepartmental cluster; high-**
10 **need youth services coordination.** (a) There is established a
11 statewide juvenile justice interdepartmental cluster to provide
12 coordinated services, as defined in section 571-2, to certain
13 youth within the family court division of the judiciary, and to
14 provide an avenue for regular collaboration between the
15 judiciary and the child and adolescent mental health division of
16 the department of health.

17 (b) The statewide cluster shall be composed of
18 representatives from the major youth-serving agencies with
19 statewide authority and responsibility. The statewide cluster
20 shall include, in addition to the judiciary, the department of
21 education, the department of health, and the office of youth
22 services. At the discretion of the representatives in the



1 cluster, community service providers may be included as regular
2 members.

3 The judiciary shall staff the statewide cluster and provide
4 an identified place where development and management of
5 coordinated services may be carried out on a regular basis.

6 The statewide cluster may establish clusters at the local
7 level. If local juvenile justice interdepartmental clusters are
8 established, the local clusters shall have the ability to refer
9 individual cases or issues to the statewide cluster for review
10 and recommendation.

11 The statewide cluster shall establish written policies and
12 procedures for itself and any local clusters.

13 (c) Family courts may recommend youth for consideration by
14 the statewide cluster based on the results of a risk and needs
15 assessment indicating that a youth is high-need and if the youth
16 is actively involved in two or more youth-serving agencies.

17 (d) Coordinated services for justice system-involved youth
18 shall be identified and carried out using a coordinated service
19 plan, developed during regular meetings of the statewide
20 cluster. The coordinated service plan shall include:

21 (1) An assessment of the individual needs of the youth;

22 (2) Identification of services currently being provided;



1 (3) Identification of the necessary coordinated services;

2 (4) Identification of the public or private agencies that

3 can provide the necessary coordinated services to the

4 youth, and a description of how each coordinated

5 service will be funded;

6 (5) If any necessary coordinated service need cannot be

7 met, a specific explanation as to why the service need

8 could not be met, such as a lack of funding or

9 unavailability of service, which shall be reported to

10 the board of family court judges and the Hawaii

11 juvenile justice state advisory council; and

12 (6) Opportunities for participation from the youth's legal

13 parent, guardian, or custodian.

14 (e) The statewide cluster shall annually report the number

15 of cases referred to the cluster, the number of cases in which a

16 coordinated service plan was established, and the outcome of the

17 cases. This report shall be submitted to the board of family

18 court judges and the Hawaii juvenile justice state advisory

19 council."

20 SECTION 4. Section 352-25, Hawaii Revised Statutes, is

21 amended to read as follows:



1 **"§352-25 Furlough, parole, discharge.** (a) The director,
2 for good reasons shown to the director's satisfaction, may
3 furlough or parole any person committed to the director's
4 custody. The director shall give the court and the prosecutor's
5 office of the appropriate county a thirty-day notice prior to
6 discharging a committed person. Prior court approval shall be
7 obtained when such is specifically required in the commitment
8 order.

9 No furlough, parole, or discharge shall be granted unless
10 it appears to the director that there is a reasonable
11 probability that the person will not violate the law and that
12 the person's release is not incompatible with the welfare and
13 safety of society.

14 (b) When granting parole, the director shall consider
15 whether:

16 (1) The results of a risk and needs assessment indicate
17 the person is a lower risk to reoffend;

18 (2) The person has substantially complied with the
19 facility rules and has had no significant misconduct
20 in the prior two months;

21 (3) The person has demonstrated efforts towards
22 rehabilitation;



1 (4) The person is likely to follow the reentry plan; and

2 (5) A home visit has been completed and the living

3 situation upon release is determined to be safe and

4 conducive to rehabilitation.

5 The form of furlough or parole may include return to the
6 person's own home, transfer to another youth correctional
7 facility, a group home or foster home placement, or other
8 appropriate alternative. Nonresidential programs may be made
9 available to selected persons on furlough such that they return
10 to the facility during nontreatment hours.

11 (c) The director shall submit an annual report to the
12 board of family court judges and the Hawaii juvenile justice
13 state advisory council. The report shall include the number of
14 persons committed to the director's custody who are not serving
15 a concurrent term of probation, the number of those persons who
16 were granted parole in the previous year, the length of the
17 parole term for each paroled person, and the number of persons
18 on parole who return to the Hawaii youth correctional facilities
19 for any reason."

20 SECTION 5. Section 571-2, Hawaii Revised Statutes, is
21 amended by adding six new definitions to be appropriately
22 inserted and to read as follows:



1 "Administrative monitoring" means a legal status of a
2 child adjudicated for a status offense or a law violation who is
3 not placed on legal status, but is ordered by the court to
4 complete a discrete, small number of conditions within a short
5 time period, and without regular court appearances.

6 "Case plan" means a plan designed to ensure that a child on
7 probation receives services and programming to achieve
8 rehabilitation, proper care, and case management. The case plan
9 may include but is not limited to conditions of probation, goals
10 related to reducing criminogenic needs, and evidence-based
11 programming requirements, services, and opportunities to
12 incorporate the family.

13 "Coordinated services" means treatment, education, care,
14 services, and other resources provided by one or more distinct
15 state or local agencies in a coordinated manner for a child who
16 is involved in two or more youth-serving agencies.

17 "Evidence-based practices" means supervision policies,
18 procedures, and practices, as well as treatment and intervention
19 programs, that research demonstrates are likely to reduce
20 delinquency amongst children in the juvenile justice system.



1 "Interagency cluster" means the regular coordination of
2 several agencies, directed by the judiciary, to more efficiently
3 provide services for high-need, court-involved children.

4 "Risk and needs assessment" means a determination, based on
5 an actuarial tool validated on Hawaii's juvenile justice system-
6 involved population, of specific factors that predict a child's
7 likelihood of recidivating and criminogenic factors that, when
8 properly addressed, can reduce the likelihood of recidivating."

9 SECTION 6. Section 571-5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§571-5 Board of family court judges.** A board of family
12 court judges, which shall consist of all the State's family
13 court judges and district family judges is hereby created. The
14 board shall annually elect from among its members a chairperson
15 who shall preside at meetings of the board. The chairperson
16 shall have no other authority not specifically authorized under
17 this chapter, or any applicable rule of the supreme court, or
18 specifically delegated by a majority of the board. The board
19 shall meet at stated times to be fixed by it but not less often
20 than once every six months, and on call of the chairperson.

21 The board shall discuss and shall attempt to achieve
22 agreement upon general policies for the conduct of the family



1 courts and forms for use in such courts. The board shall
2 recommend, for adoption by the supreme court, rules of court
3 governing procedure and practices in such courts. The board
4 shall provide the policies and procedures necessary to implement
5 a single statewide standardized tool to conduct risk and needs
6 assessments, as defined by section 571-2, and validation of the
7 tool every five years. The board may, within the limitations of
8 the facilities available to the family courts of the State, seek
9 the consolidation of the statistical and other data on the work
10 and services of such courts and research studies that may be
11 made of the problems of families and children dealt with by such
12 courts to the end that the treatment of children and families
13 subject to the jurisdiction of such courts shall achieve the
14 highest possible degree of uniformity throughout the State and
15 to the further end that knowledge of treatment, methods and
16 therapeutic practices be shared among such courts. The board
17 may also formulate recommendations for remedial legislation.
18 All actions by the board shall be subject to the regulatory
19 supervision of the chief justice of the supreme court."

20 SECTION 7. Section 571-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§571-6 Appointment and duties of employees.** (a) For

2 each family court, the judge, or the senior judge when there is
3 more than one judge, shall appoint a chief administrative and
4 executive officer who shall have the title of director of the
5 family court. Under the general supervision of the senior judge
6 or the judge, the director shall:

7 (1) Prepare an annual budget for the court;

8 (2) Formulate procedures governing the routine
9 administration of court services;

10 (3) Make recommendations to the court for improvement in
11 court services;

12 (4) Make recommendations to the senior judge or the judge
13 for the appointment of administrative, supervisory,
14 consultant, and necessary professional and clerical
15 and other personnel to perform the duties assigned to
16 the court and the director;

17 (5) Provide supervision and consultation to the
18 administrative and supervisory staff regarding the
19 administration of court services, recruitment of
20 personnel, in-service training, and fiscal and office
21 management; and



(6) Perform other duties as the senior judge or the judge shall specify.

(b) For each family court the judge or senior judge where there is more than one shall appoint necessary probation officers, social workers, and marital counselors and may appoint, or make arrangements for the services of physicians, psychologists, psychiatrists, and other professionally competent persons, to carry on the work of the court.

(c) Pursuant to subsection (a)(5), each probation officer shall complete training annually on juvenile justice or probation supervision best practices; provided that funding is available. The form and length of the training shall be determined by the deputy chief court administrators, or their designee, and at their discretion, training may be conducted jointly between judicial circuits, as defined in section 603-1."

SECTION 8. Section 571-31.2, Hawaii Revised Statutes, is amended to read as follows:

"§571-31.2 Juvenile intake and diagnostic services. (a)

The court or other designated agency shall:

(1) Notify the child's parent, guardian or legal custodian or take reasonable action to ensure that such notice has been given;



1 (2) Require the child, the child's parent, the child's
2 guardian or legal custodian, or both, to appear at the
3 court or other designated agency as soon as
4 practicable for a family counseling session to attempt
5 a quick resolution of their problem;

6 (3) Investigate, evaluate, make necessary determination,
7 and take appropriate actions regarding:

8 (A) Diversion from justice system processing, formal
9 or informal, and closure of the case;

10 ~~[(A)]~~ (B) Release of a child to the care of the
11 child's parent or other responsible adult;

12 ~~[(B)]~~ (C) Extending to or making arrangement for the
13 securing of suitable informal adjustment under
14 section 571-31.4, 571-31.5 or 571-31.6;

15 ~~[(C)]~~ (D) Initiation of the filing of a complaint or
16 petition;

17 ~~[(D)]~~ (E) Detention of a child, utilizing the standard
18 set out in section 571-31.1 or temporary shelter
19 in a nonsecure shelter; and

20 ~~[(E)]~~ (F) Making such other informal disposition as
21 may be suitable.



1 (b) If the intake officer believes it desirable, such
2 officer may take action to obtain the child or the written
3 promise of a parent, guardian, or legal custodian to take the
4 child to the court or other designated agency as in section
5 571-31(c). The failure of a parent, guardian, or other legal
6 custodian to produce the child in court or at the other
7 designated agency as required by an authorized notice may be
8 pursued as provided in section 571-31(d).

9 (c) For cases diverted under subsection (a)(3)(A), intake
10 officers shall compile reports at least monthly enumerating the
11 aggregate number of cases diverted and the types of alleged
12 offenses precipitating the referral of the child to the court.
13 These reports shall be submitted to the administrator of the
14 juvenile client services branch in each judicial circuit, who
15 shall compile the reports into an annual report for each
16 judicial circuit, to be submitted to the board of family court
17 judges and the Hawaii juvenile justice state advisory council."

18 SECTION 9. Section 571-31.4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§571-31.4 Informal adjustment, law violators.** (a) When
21 a child reasonably believed to come within section 571-11(1) is
22 referred to the court or other designated agency, and is not



1 diverted from processing, informal adjustment may be provided to
2 the child by an intake officer duly authorized by the family
3 court only where the facts reasonably appear to establish prima
4 facie jurisdiction and are admitted and where a consent is
5 obtained from the child's parent, guardian, or legal custodian,
6 and the child, if of sufficient age and understanding.

7 (b) The deputy chief court administrators of each circuit
8 shall together establish a framework that includes the criteria
9 probation officers shall use to guide the exercise of discretion
10 in providing informal adjustment.

11 ~~[(b)]~~ (c) Informal adjustment under this section may
12 include, among other suitable methods, programs, and procedures,
13 the following:

- 14 (1) Participation in restitution projects to obtain
15 appropriate victim satisfaction;
- 16 (2) Participation in community service projects so as to
17 establish the child's self value in the community;
- 18 (3) Participation in community-based programs which work
19 with the child and family to maintain and strengthen
20 the family unit so that the child may be retained in
21 the child's own home;



(4) Submission to neighborhood courts or panels upon procedures to be established by the court. As used in this paragraph "neighborhood courts or panels" are community organizations designed to settle minor disputes between parties on a voluntary basis using mediation or nonbinding arbitration;

(5) Participation in programs to support, counsel, or provide work and recreational opportunities to help prevent delinquency;

(6) Participation in educational programs or supportive services designed to help delinquents and to encourage other youths to remain in elementary and secondary schools or in alternative learning situations;

(7) Participation in youth-initiated programs and outreach programs designed to assist youth and families;

(8) Appropriate physical and medical examinations, vocational and aptitude testing, examinations for learning disabilities or emotional dysfunctions, and suitable counseling and therapy;

(9) Placement with nonsecure or secure shelter facilities;

(10) Restitution providing for monetary payment by the parents of the child; or



1 (11) Participation in a restorative justice program where
2 the child and the child's parents or guardian, and
3 other supporters of the child, may meet with the
4 victim harmed by the child's law violation and the
5 victim's supporters.

6 ~~[(+e)]~~ (d) Informal adjustment projects, programs, and
7 services may be provided through public agencies or private
8 agencies.

9 ~~[(+d)]~~ (e) In the event resources and services for informal
10 adjustment are not available, have failed, are reasonably
11 believed to fail if attempted, or are unable to respond to the
12 needs of the child or family, the intake officer shall proceed
13 with formal action, or take such action as is otherwise allowed
14 under this chapter.

15 (f) Intake officers shall compile annual reports that
16 include the number and per cent of referrals informally
17 adjusted, and the number and per cent of children informally
18 adjusted who avoided further system processing. The
19 administrator of the juvenile client services branch in each
20 judicial circuit shall compile the annual reports from the
21 probation intake sections into a single annual report for each
22 judicial circuit and shall submit the final report to the board



1 of family court judges and the Hawaii juvenile justice state
2 advisory council."

3 SECTION 10. Section 571-31.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) When a child reasonably believed to come within
6 section 571-11(2) is referred to the court or other designated
7 agency, informal adjustment ~~[may]~~ shall be provided to the child
8 by an intake officer duly authorized by the family court only
9 where the facts reasonably appear to establish prima facie
10 jurisdiction and are admitted and where a consent is obtained
11 from the child's parent, guardian, or legal custodian, and the
12 child, if of sufficient age and understanding. Informal
13 adjustment under this section may include, among other suitable
14 methods, programs, and procedures, listed in section
15 ~~[571-31.4(b),]~~ 571-31.4(c), except section ~~[571-31.4(b)(1),]~~
16 571-31.4(c)(1), and provided that placement with shelter
17 facilities under section ~~[571-31.4(b)(9)]~~ 571-31.4(c)(9) shall
18 be on a nonsecure basis unless the child is processed under
19 subsection (b) ~~[of this section]."~~

20 SECTION 11. Section 571-31.6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§571-31.6 Informal adjustment, minor who may be both law**
2 **violin and status offender.** When a child is reasonably
3 believed to come within section 571-11(1) and (2), the intake
4 officer may exercise discretion to process informal adjustment
5 under section 571-31.4 [~~or 571-31.5~~]. In making that
6 determination, the officer shall be guided by the criteria set
7 out in section 571-31.1(c)(1) to (5) [7] and the criteria in the
8 framework established pursuant to section 571-31.4(b), taking
9 into account the availability of suitable method, program, or
10 procedure for the child."

11 SECTION 12. Section 571-41, Hawaii Revised Statutes, is
12 amended by amending subsection (d) to read as follows:

13 "(d) In the disposition part of the hearing any relevant
14 and material information, including that contained in a written
15 report, study, or examination, including the results of a risk
16 and needs assessment of the child conducted pursuant to section
17 571-45, shall be admissible, and may be relied upon to the
18 extent of its probative value; provided that the maker of the
19 written report, study, or examination shall be subject to both
20 direct and cross-examination upon demand and when the maker is
21 reasonably available. The disposition shall be based only upon
22 the admitted evidence, and findings adverse to the child as to



1 disputed issues of fact shall be based upon a preponderance of
2 such evidence."

3 SECTION 13. Section 571-45, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§571-45 [Investigation] Assessment and investigation**
6 **prior to disposition.** Prior to disposition, the court shall
7 conduct a risk and needs assessment, using the tool procured and
8 validated pursuant to section 571-5, for each minor concerning
9 whom a petition has been filed pursuant to section 571-11(1) and
10 (2).

11 ~~[Except where the requirement is waived by the judge]~~ In
12 addition to the risk and needs assessment, a social study and a
13 report in writing shall be made in the case of a minor
14 concerning whom a petition has been filed under section
15 571-11(1) and (2) [---], except where the judge waives the
16 requirement to make a social study and a report in writing. The
17 study shall be initiated upon the filing of a petition except in
18 petitions filed under section 571-11(1) when it is ascertained
19 that the minor denies the allegations set forth in the petition.
20 In such case the study shall proceed only after the court after
21 hearing has made a finding as to the allegations of the
22 petition.



1 Except where the requirement is waived by the judge, social
2 studies shall also be made in proceedings to decide disputed or
3 undetermined legal custody and in custody disputes arising out
4 of a divorce action. In all other awards of custody arising out
5 of a divorce action, including those where an agreement with
6 respect to custody has been made by the parties, and in any
7 other case or class of cases, the judge may order a social study
8 when the judge has reason to believe such action is necessary to
9 assure adequate protection of the minor or of any other person
10 involved in the case. By special order of the judge or by rule
11 of court a social study may be required in support cases
12 covering financial ability and other matters pertinent to making
13 an order of support. The use of such studies in custody and
14 support hearings shall be subject to the applicable provisions
15 of section 571-41.

16 ~~[Social]~~ The results of the risk and needs assessment and
17 any social studies required by this section shall be presented
18 to and considered by the judge prior to making disposition[+]
19 pursuant to section 571-41(d).

20 The judge may order and use a presentence investigation
21 with respect to any criminal action under the jurisdiction of



1 the court in accordance with the existing provisions of the law
2 with respect to the making and use of such studies.

3 If the results of the risk and needs assessment indicate a
4 substance abuse or mental health need, the probation officer
5 shall immediately refer the minor to the department of health
6 for an eligibility determination.

7 The court, upon the motion of the minor or on its own
8 motion, may order the suspension of the delinquency proceedings,
9 prior to adjudication, for a period of up to one year to obtain
10 substance abuse or mental health treatment if the court finds:

11 (1) The minor presently needs and is likely to benefit
12 from treatment; and

13 (2) The suspension of the delinquency proceedings will
14 advance the interests of justice.

15 No later than one month before the end of the period of
16 suspension of the delinquency proceedings, the treatment
17 provider shall submit a report on whether the minor has
18 completed the treatment program.

19 If the court, on the motion of the minor or on its own
20 motion, finds that the minor has successfully completed the
21 treatment program, the court may dismiss the suspended
22 delinquency proceedings. If the court does not find that the



1 minor has satisfactorily completed treatment, the court may
2 terminate the suspension and proceed with the case.

3 A probation officer referring a youth to the department of
4 health under this section shall report any subsequent denial of
5 services to the administrator of the juvenile client services
6 branch in each judicial circuit. The administrators of the
7 juvenile client services branch shall submit an annual report
8 compiling all such denials to the board of family court judges
9 and the Hawaii juvenile justice state advisory council."

10 SECTION 14. Section 571-48, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§571-48 Decree, if informal adjustment or diversion to a**
13 **private or community agency or program has not been effected.**

14 When a minor is found by the court to come within section
15 571-11, the court shall so decree and in its decree shall make a
16 finding of the facts upon which the court exercises its
17 jurisdiction over the minor. Upon the decree the court, by
18 order duly entered, shall proceed as follows:

19 (1) As to a child adjudicated under section 571-11(1):

20 (A) The court may place the child on probation:

21 (i) In the child's own home; or



1 (ii) In the custody of a suitable person or
2 facility elsewhere, upon conditions
3 determined by the court.

4 An order by the court placing a child on
5 probation under subparagraph (A) shall include a
6 definite term of probation stated in months or
7 years, subject to extension or modification by
8 the court pursuant to section 571-50. When
9 conditions of probation include custody in a
10 youth correctional facility, the custody shall be
11 for a term not to exceed one year, after which
12 time the person shall be allowed to reside in the
13 community subject to additional conditions as may
14 be imposed by the court;

15 (B) The court may vest legal custody of the child,
16 after prior consultation with the agency or
17 institution~~[in]~~:

18 (i) In a Hawaii youth correctional facility~~[in]~~
19 if the child has been adjudicated for a
20 felony-level offense or a violation or
21 revocation of probation, or is committed to
22 the facility from juvenile drug court or



1 girls court on a court order. For a child
2 eligible for placement in a Hawaii youth
3 correctional facility, the court shall enter
4 a finding of fact in the record stating the
5 reasons the child is a public safety risk
6 warranting placement in the correctional
7 facility. No such finding of fact shall be
8 required if the child is adjudicated for a
9 felony against a person or a sex offense;

10 (ii) In a local public agency or institution~~[, or~~
11 ~~in]~~;

12 (iii) In any private institution or agency
13 authorized by the court to care for
14 children; or ~~[place the child in]~~

15 (iv) In a private home.

16 If legal custody of the child is vested in a
17 private agency or institution in another state,
18 the court shall select one that is approved by
19 the family or juvenile court of the other state
20 or by that state's department of social services
21 or other appropriate department; ~~[or]~~



1 (C) The court may place a child on administrative
2 monitoring, as defined in section 571-2, pending
3 completion of such conditions as may be imposed
4 by the court, in order to preempt the need for
5 disposition to a full probation term, and to
6 afford the child the opportunity to demonstrate
7 behavior adjustments. Upon completion of the
8 court-ordered conditions, the court shall
9 discharge the youth pursuant to section 571-50.
10 In the event that a child fails to complete the
11 court-ordered conditions, the court may extend or
12 modify the order pursuant to section 571-50, or
13 dispose the youth to probation status under
14 subsection (1)(A); or

15 [~~(C)~~] (D) The court may fine the child for a violation
16 which would be theft in the third degree by
17 shoplifting if committed by an adult. The court
18 may require the child to perform public services
19 in lieu of the fine;

20 (2) As to a child adjudicated under section 571-11(2):

21 (A) The court may place the child under protective
22 supervision, as hereinabove defined, in the



1 child's own home, or in the custody of a suitable
2 person or agency elsewhere, upon conditions
3 determined by the court; or

4 (B) The court may vest legal custody of the child,
5 after prior consultation with the agency or
6 institution, in a local governmental agency or
7 institution licensed or approved by the State to
8 care for children, with the exception of an
9 institution authorized by the court to care for
10 children. If legal custody of the child is
11 vested in a private agency or institution in
12 another state, the court shall select one that is
13 approved by the family or juvenile court of the
14 other state or by that state's department of
15 social services or other appropriate department;
16 provided that the child may not be committed to a
17 public or private institution operated solely for
18 the treatment of law violators;

19 (3) An order vesting legal custody of a minor in an
20 individual, agency, or institution under section
21 571-11(2) shall be for an indeterminate period but
22 shall not remain in force or effect beyond three years



1 from the date entered, except that the individual,
2 institution, or agency may file with the court a
3 petition for renewal of the order and the court may
4 renew the order if it finds such renewal necessary to
5 safeguard the welfare of the child or the public
6 interest. The court, after notice to the parties, may
7 conduct a hearing on the petition. Renewal may be
8 periodic during minority, but no order shall have any
9 force or effect beyond the period authorized by
10 section 571-13. An agency granted legal custody shall
11 be subject to prior approval of the court in any case
12 in which the child is to reside without the
13 territorial jurisdiction of the court and may be
14 subject to prior approval in other cases. An
15 individual granted legal custody shall exercise the
16 rights and responsibilities personally unless
17 otherwise authorized by the court;

- 18 (4) Whenever the court commits a child to the care of the
19 director of human services or executive director of
20 the office of youth services, or vests legal custody
21 of a child in an institution or agency, it shall
22 transmit with the order copies of the clinical



1 reports, social study, results of the risk and needs
2 assessment conducted by the court, and other
3 information pertinent to the care and treatment of the
4 child, and the institution or agency shall give to the
5 court any information concerning the child that the
6 court may at any time require. An institution or
7 agency receiving a child under this paragraph shall
8 inform the court whenever the status of the child is
9 affected through temporary or permanent release,
10 discharge, or transfer to other custody. An
11 institution to which a child is committed under
12 section 571-11(1) or (2) shall not transfer custody of
13 the child to an institution for the correction of
14 adult offenders, except as authorized in this chapter
15 and under chapter 352;

16 (5) The court may order, for any child within its
17 jurisdiction, whatever care or treatment is authorized
18 by law;

19 (6) In placing a child under the guardianship or custody
20 of an individual or of a private agency or private
21 institution, the court shall give primary
22 consideration to the welfare of the child;



1 (7) In support of any order or decree under section
2 571-11(1) or (2), the court may require the parents or
3 other persons having custody of the child, or any
4 other person who has been found by the court to be
5 encouraging, causing, or contributing to the acts or
6 conditions which bring the child within the purview of
7 this chapter and who are parties to the proceeding, to
8 do or to omit doing any acts required or forbidden by
9 law, when the judge deems this requirement necessary
10 for the welfare of the child. The court may also make
11 appropriate orders concerning the parents or other
12 persons having custody of the child and who are
13 parties to the proceeding. If such persons fail to
14 comply with the requirement or with the court order,
15 the court may proceed against them for contempt of
16 court;

17 (8) In support of any order or decree for custody or
18 support, the court may make an order of protection
19 setting forth reasonable conditions of behavior to be
20 observed for a specified time, binding upon both
21 parents or either of them. This order may require
22 either parent to stay away from the home or from the



1 other parent or children, may permit the other to
2 visit the children at stated periods, or may require a
3 parent to abstain from offensive conduct against the
4 children or each other;

5 (9) The court may dismiss the petition or otherwise
6 terminate its jurisdiction at any time;

7 (10) In any other case of which the court has jurisdiction,
8 the court may make any order or judgment authorized by
9 law;

10 (11) The court may order any person adjudicated pursuant to
11 section 571-11(1) to make restitution of money or
12 services to any victim who suffers loss as a result of
13 the child's action, or to render community service;

14 (12) The court may order any person adjudicated pursuant to
15 section 571-11(2) to participate in community service;
16 [and]

17 (13) The court may order the parents of an adjudicated
18 minor to make restitution of money or services to any
19 victim, person, or party who has incurred a loss or
20 damages as a result of the child's action[~~+~~]; and

21 (14) Each deputy chief court administrator, or the
22 administrator's designee, shall submit annual reports



1 to the board of family court judges and the Hawaii
2 juvenile justice state advisory council, that
3 includes:

4 (A) The number and per cent of cases ordered to
5 administrative monitoring status;

6 (B) The number and per cent of cases ordered to
7 administrative monitoring status that were
8 subsequently closed without a protective
9 supervision or probation term;

10 (C) The number and per cent of youth disposed to a
11 probation term, and the outcome of the probation
12 terms;

13 (D) The number and per cent of cases committed to a
14 Hawaii youth correctional facility; the
15 underlying offense or type of probation violation
16 or revocation precipitating commitment; and the
17 age, race, and gender of the child; and

18 (E) The number and per cent of cases returned to
19 court supervision on a maintained probation term
20 following a release from a Hawaii youth
21 correctional facility."



1 SECTION 15. There is established a juvenile justice
2 oversight advisory council, deemed to be temporary and for a
3 special purpose. The purpose of the advisory council is to
4 oversee implementation and issue necessary reports to carry out
5 the juvenile justice reforms in this Act.

6 The duties of the advisory council are as follows:

- 7 (1) To review, evaluate, and make recommendations
8 regarding the implementation of the reforms in this
9 Act;
- 10 (2) To develop a uniform process for establishing and
11 reviewing performance and outcome standards for the
12 office of youth services and the family court division
13 of the judiciary, as well as other interrelated
14 agencies. The uniform process shall include the
15 performance and outcome measures for each agency that
16 shall be reviewed annually, the deadlines and format
17 for the submission of the performance and outcome
18 measures, and the entity to which the measures shall
19 be reported;
- 20 (3) To review data and information submitted to the
21 advisory council and submit annual reports to the
22 executive, legislative, and judicial branches for the



1 term the advisory council is in existence, evaluating
2 implementation of the reforms in this Act and juvenile
3 justice system effectiveness; and

- 4 (4) To review current eligibility requirements for mental
5 health services for youth, with a focus on expanding
6 access to services to ensure that youth determined to
7 be at-risk and with a need for mental health services
8 receive those services in a more comprehensive and
9 timely manner, through the department of health or its
10 contracted mental health providers, collaborating and
11 consulting with any relevant agency, and submit a
12 report no later than twenty days prior to the
13 convening of the 2016 regular session to the
14 executive, legislative, and judicial branches,
15 including the current eligibility requirements, recent
16 changes to eligibility requirements, and
17 recommendations for further changes to the eligibility
18 requirements.

19 The advisory council shall comprise sixteen members to be
20 selected as follows, without regard to section 26-34, Hawaii
21 Revised Statutes:



- (1) One member from the executive branch, appointed by the governor;
- (2) One member from the house of representatives, appointed by the speaker of the house of representatives, or designee;
- (3) One member from the senate, appointed by the president of the senate, or designee;
- (4) One member from the judiciary, appointed by the chief justice of the supreme court, or designee;
- (5) Four members to represent each of the four judicial circuits defined in section 603-1, Hawaii Revised Statutes, appointed by the chief justice of the supreme court, or designee;
- (6) The executive director of the office of youth services;
- (7) Two members from the child and adolescent mental health division of the department of health, appointed by the director of health;
- (8) One member from the school based behavioral health division of the department of education, appointed by the superintendent of education;



(9) One member from the special education section of the department of education, appointed by the superintendent of education;

(10) One juvenile justice stakeholder from the advocacy community, appointed by the director of the office of youth services;

(11) One juvenile crime victim advocate, selected from a list submitted by the victim-witness coordinators, and appointed by the governor; and

(12) One member from a law enforcement agency or a county prosecutor's office, appointed by the governor.

The advisory council shall receive copies of all data, reports, performance measures, and other evaluative materials submitted to any agency or branch of government under this Act, and may request further data analysis or information from youth-serving agencies in order to carry out its duties. The advisory council may also request recidivism data from the attorney general.

The advisory council shall meet within ninety days after appointment and organize itself by electing one of its members as chair and such other officers as the advisory council may consider necessary. Thereafter, the advisory council shall meet



1 at least quarterly and at the call of the chair or by a majority
2 of the members. The advisory council shall provide
3 teleconferencing or videoconferencing capabilities for members
4 to attend meetings remotely. A quorum shall consist of eight
5 members.

6 The judiciary shall provide staff support to the advisory
7 council, at the request of the advisory council. The members
8 shall serve without compensation.

9 The advisory council shall cease to exist on the last day
10 of the 2016 regular session of the legislature, unless extended
11 by concurrent resolution of the legislature.

12 SECTION 16. This Act shall not be applied so as to impair
13 any contract existing as of the effective date of this Act in a
14 manner violative of either the Hawaii State Constitution or
15 Article I, section 10, of the United States Constitution.

16 SECTION 17. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 18. This Act shall take effect on July 1, 2014,
19 and apply to delinquent behavior committed on or after that
20 date; provided that section 14 shall take effect on September 1,
21 2014, and apply to delinquent behavior committed on or after
22 that date; provided that sections 3 and 13 shall take effect on



1 January 1, 2015, and apply to delinquent behavior committed on
2 or after that date.

3

INTRODUCED BY: Shiranne Chun Oakland

Melanie Anna
Hedberg

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Hedberg



Report Title:

Juvenile Justice; Juvenile Probation; Juvenile Justice Oversight
Advisory Council

Description:

Enhances the juvenile justice system by concentrating secure bed space on serious juvenile offenders. Strengthens juvenile probation to ensure judges have sentencing options such as informal adjustment that keep youth safely and effectively in their communities. Requires a risk and needs assessment to be conducted for each minor prior to disposition. Enhances interagency collaboration by establishing performance measures and a statewide juvenile justice interdepartmental cluster to provide coordinated services to certain youth within family court. Establishes a juvenile justice oversight advisory council.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

