



GOV. MSG. NO. 1162

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 23, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 23, 2021, the following bill was signed into law:

SB386 SD1 HD2 CD1

RELATING TO THE DETENTION OF A MINOR IN
AN ADULT JAIL OR LOCKUP
ACT 061 (21)

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

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

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

1 PART I

2 SECTION 1. Section 571-32, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§571-32 Detention; shelter; release; notice. (a) If a
5 [child] minor who is believed to come within section 571-11(1)
6 or (2) is not released as provided in section 571-31 and is not
7 deemed suitable for diversion, the [child] minor shall be taken
8 without unnecessary delay to the court or to the place of
9 detention or shelter designated by the court. If the court
10 determines that the [child] minor requires care away from the
11 [child's] minor's own home but does not require secure physical
12 restriction, the [child] minor shall be given temporary care in
13 any available nonsecure [child] minor caring institution, foster
14 family home, or other shelter facility.

15 (b) The officer or other person who brings a [child] minor
16 to a detention or shelter facility shall give notice to the
17 court at once, stating the legal basis therefor and the reason
18 why the [child] minor was not released to the [child's] minor's



1 parents. If the facility to which the [child] minor is taken is
2 not an agency of the court, the person in charge of the facility
3 in which the [child] minor is placed shall promptly give notice
4 to the court that the [child] minor is in that person's custody.
5 [~~Prior to~~] Before acceptance of the [child] minor for detention
6 or shelter care, a prompt inquiry shall be made by a duly
7 authorized staff member of the detention or shelter facility or
8 officer of the court. Where it is deemed in the best interests
9 of the [child,] minor, the judge, officer, staff member, or the
10 director of detention services may then order the [child] minor
11 to be released, if possible, to the care of the [child's]
12 minor's parent, guardian, legal custodian, or other responsible
13 adult, or the judge may order the [child] minor held in the
14 facility subject to further order or placed in some other
15 appropriate facility.

16 (c) As soon as a [child] minor is detained, the [child's]
17 minor's parents, guardian, or legal custodian shall be informed,
18 by personal contact or by notice in writing on forms prescribed
19 by the court, that they may have a prompt hearing held by a
20 circuit judge or district family judge regarding release or
21 detention. A [child] minor may be released on the order of the



1 judge with or without a hearing. The director of detention
2 services may order the release of the [child] minor if an order
3 of detention has not been made.

4 (d) No [child] minor shall be held in a detention facility
5 for juveniles or shelter longer than twenty-four hours,
6 excluding weekends and holidays, unless a petition or motion for
7 revocation of probation, or motion for revocation of protective
8 supervision has been filed, or unless the judge orders otherwise
9 after a court hearing. No ex parte motions shall be considered.
10 ~~[If there is probable cause to believe that the child comes~~
11 ~~within section 571-11(1), the child may be securely detained in~~
12 ~~a certified police station cellblock or community correctional~~
13 ~~center. The detention shall be limited to six hours. In areas~~
14 ~~which are outside a standard metropolitan statistical area, the~~
15 ~~detention may be up to twenty four hours, excluding weekends and~~
16 ~~holidays, if no detention facility for juveniles is reasonably~~
17 ~~available. Any detention in a police station cellblock or~~
18 ~~community correctional center shall provide for the sight and~~
19 ~~sound separation of the child from adult offenders.] For the~~
20 purposes of this section:



1 (1) Unless a court finds, after a hearing and in writing,
2 that it is in the interest of justice as provided for
3 in subsection (g) (2), a minor believed to come within
4 section 571-11(1), or a minor awaiting trial or
5 another legal process, who is treated as an adult for
6 purposes of prosecution in criminal court and housed
7 in a secure facility shall not:

8 (A) Have sight or sound contact with adult inmates;

9 or

10 (B) Be held in any jail or lockup for adults,
11 except as provided in subsection (g) (3); and

12 (2) Detention in a jail or lockup for adults may be
13 permitted for:

14 (A) A minor accused of a non-status offense who is
15 held for a period not to exceed six hours;
16 provided that the minor is being held:

17 (i) For processing or release;

18 (ii) While awaiting transfer to a juvenile
19 facility; or

20 (iii) For a court appearance that occurs within
21 the period of detention; or



1 (B) A minor accused of a non-status offense who is
2 awaiting an initial court appearance that will
3 occur within forty-eight hours of the minor being
4 taken into custody, excluding weekends and
5 holidays, and where the jail or lockup for adults
6 is in a location:
7 (i) Outside a metropolitan statistical area, as
8 defined by the Office of Management and
9 Budget, and no acceptable alternative
10 placement is available;
11 (ii) Where the distance to be traveled or the
12 lack of highway, road, or transportation
13 does not allow for court appearances within
14 forty-eight hours, excluding weekends and
15 holidays, such that a brief delay of no more
16 than an additional forty-eight hours is
17 excusable; or
18 (iii) Where safety concerns exist, such as severe
19 and life-threatening weather conditions that
20 do not allow for reasonably safe travel, in
21 which case the time for an appearance may be



1 delayed until twenty-four hours after the
2 time that conditions allow for reasonably
3 safe travel;
4 provided that the minor shall not have sight or sound
5 contact with adult inmates; provided further that the
6 State shall have a policy in effect that requires
7 individuals who work with both minor and adult inmates
8 in collocated facilities to be trained and certified
9 to work with juveniles.

10 (e) No [~~child~~] minor may be held after the filing of a
11 petition or motion, as specified in subsection (d), unless an
12 order for continued detention or shelter has been made by a
13 judge after a court hearing. If there is probable cause to
14 believe that the [~~child~~] minor comes within section 571-11(1),
15 the [~~child~~] minor may be securely detained, following a court
16 hearing, in a detention facility for juveniles or may be held in
17 a shelter. If there is probable cause to believe that the
18 [~~child~~] minor comes within section 281-101.5 or 571-11(2), the
19 [~~child~~] minor may be held, following a court hearing, in a
20 shelter but [~~may~~] shall not be securely detained in a detention
21 facility for juveniles for longer than twenty-four hours,



1 excluding weekends and holidays, unless the [child] minor is
2 subject to the provisions of chapter 582, Interstate Compact on
3 Juveniles, or chapter 582D, Interstate Compact for Juveniles, or
4 is allegedly in or has already been adjudicated for a violation
5 of a valid court order, as provided under the federal Juvenile
6 Justice and Delinquency Prevention Act of 1974, as amended.

7 (f) No [child] minor shall be released from detention
8 except in accordance with this chapter.

9 (g) When a minor is ordered to be held or detained by the
10 court:

11 (1) Where a [child] minor transferred for criminal
12 proceedings pursuant to a waiver of family court
13 jurisdiction is detained, the ~~[child shall be held in~~
14 ~~the detention facility used for persons charged with~~
15 ~~crime. When a child is ordered committed to an agency~~
16 ~~or institution, the child shall be transported~~
17 ~~promptly to the place of commitment.] minor shall not:~~

18 (A) Have sight or sound contact with adult inmates;

19 or

20 (B) Be held in any jail or lockup for adults,



1 unless a court finds, after a hearing and in writing,
2 that it is in the interest of justice;
3 (2) In determining whether it is in the interest of
4 justice to permit a minor to be held in any jail or
5 lockup for adults, or to have sight or sound contact
6 with adult inmates, a court shall consider:
7 (A) The age of the minor;
8 (B) The physical and mental maturity of the minor;
9 (C) The present mental state of the minor, including
10 whether the minor presents an imminent risk of
11 self-harm;
12 (D) The nature and circumstances of the alleged
13 offense;
14 (E) The minor's history of prior delinquent acts;
15 (F) The relative ability of the available adult and
16 juvenile detention facilities to meet the
17 specific needs of the minor and protect the
18 safety of the public as well as other detained
19 minors; and
20 (G) Any other relevant factor; and



1 (3) If a court determines that it is in the interest of
2 justice to permit a minor to be held in any jail or
3 lockup for adults, or to have sight or sound contact
4 with adult inmates:

5 (A) The court shall hold a hearing no less frequently
6 than once every thirty days, or in the case of a
7 rural jurisdiction, no less frequently than once
8 every forty-five days, to review whether it
9 remains in the interest of justice to permit the
10 minor to be held in a jail or lockup for adults
11 or to have sight or sound contact with adult
12 inmates; and

13 (B) The minor shall not be held in any jail or lockup
14 for adults, or permitted to have sight or sound
15 contact with adult inmates, for more than one
16 hundred eighty days, unless the court, in
17 writing, determines there is good cause for an
18 extension, or the minor expressly waives this
19 limitation.

20 (h) Provisions regarding bail shall not be applicable to
21 ~~[children]~~ minors detained in accordance with this chapter,



1 except that bail may be allowed after a [~~child~~] minor has been
2 transferred for criminal prosecution pursuant to waiver of
3 family court jurisdiction.

4 (i) The official in charge of a facility for the detention
5 of adult offenders or persons charged with crime shall inform
6 the court immediately when a [~~child~~] minor who is or appears to
7 be under eighteen years of age is received at the facility.

8 (j) Any other provision of law to the contrary
9 notwithstanding, any person otherwise subject to proceedings
10 under chapter 832 and who is under the age of eighteen may be
11 confined in a detention facility or correctional facility by
12 order of a judge for the purposes set forth in section 832-12,
13 832-15, or 832-17.

14 (k) The department of human services through the office of
15 youth services shall certify police station cellblocks and
16 community correctional centers that provide sight and sound
17 separation between [~~children~~] minors and adults in secure
18 custody. Only cellblocks and centers certified under this
19 subsection shall be authorized to detain juveniles pursuant to
20 section 571-32(d). The office of youth services may develop
21 sight and sound separation standards, issue certifications,



1 monitor and inspect facilities for compliance, cite facilities
2 for violations, withdraw certifications, and require certified
3 facilities to submit [~~such~~] data and information as requested.
4 In addition, the office of youth services may monitor and
5 inspect all cellblocks and centers for compliance with
6 section 571-32(d)."

7 PART II

8 SECTION 2. Section 352-10, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§352-10 Circuit court disposition of offenders under**
11 **eighteen years.** The circuit court [~~may~~] shall commit all
12 offenders under eighteen years of age, duly convicted before the
13 court, to the Hawaii youth correctional facilities in all cases
14 where the court deems the sentence to be more suitable than the
15 punishment otherwise authorized by law. In such a case, when
16 the term of confinement ordered by the court extends beyond the
17 offender's eighteenth birthday, the offender shall, upon
18 reaching the age of eighteen, be committed to the custody of the
19 department of public safety for completion of the sentence.
20 Persons committed to the Hawaii youth correctional facilities
21 under this section may be furloughed or paroled by the director,



1 unless the commitment order issued by the court requires prior
2 approval by the court or unless the offender is subject to a
3 mandatory term of imprisonment which term has not yet expired."

4 PART III

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 23 day of JUN, 2021

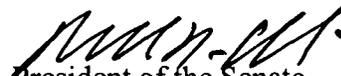


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

SB No. 386, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives