



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

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

Tuesday, March 2, 2021, 9:35 a.m.
State Capitol
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

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

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

Purpose: Ensures State compliance with the Juvenile Justice Reform Act of 2018 as codified under 34 U.S.C.A. Section 11133, requiring the Family Court to make findings, after a hearing and in writing, before a minor can be transferred to an adult facility.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 386 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.

When a youth is transferred to the adult criminal justice system, the lifelong consequences of placement in the criminal justice system has a profoundly negative effect on both the youth and our community. 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



Senate Bill No. 386, Relating to Detention of a Minor in an
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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 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.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

March 2, 2021

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

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

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

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.



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

February 28, 2021

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

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

FROM: Bruce Shimoda, Executive Director

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

Hearing: Tuesday, March 2, 2021, 9:35 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 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.

DAVID Y. IGE
GOVERNOR



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No. _____

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

by
Max N. Otani, Director

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

Tuesday, March 2, 2021; 9:35 a.m.
State Capitol, Via Video Conference

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

The Department of Public Safety (PSD) offers comments on Senate Bill (SB) 386, which seeks to clarify the circumstance in which a minor may be detained in an adult jail or lockup; provides specific processes the Court must follow in determining if detention of a minor in an adult jail or lockup would be in the best interests of justice; and if approved, would require the Department of Public Safety (PSD) to detain the minor in a location without sight or sound contact of adult inmates. In addition, the measure would require PSD staff working with minor and adult inmates in collocated facilities to be trained and certified to work with minors.

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

The Department is also concerned that the overcrowded conditions of its facilities would make it extremely difficult to accommodate a minor(s) as

stipulated in this measure. 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 January 31, 2021, six (6) of the eight (8) facilities were operating above their designed capacity and have been for some time (See attached January 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 PSD could conceivably comply with a judge's order to temporarily house juveniles in our facilities, doing so, would require all other inmates/detainees to be vacated from that particular housing module. Given our already severely overcrowded conditions, which has forced PSD to house approximately 1,000 inmates on the mainland in a contracted private prison, the Department has no other safe and secure space in which to place an entire module of adult offenders in order to accommodate juvenile offenders.

Further, the Department notes, it does not have Adult Correctional Officers, Case Managers, and/or other staff members specifically trained and certified to work with juveniles, as our facilities are chartered as adult correctional facilities. Programmatically, we are not set up to provide the developmentally appropriate rehabilitative services required by youth and respectfully suggest that detaining juveniles in adult jails or lockups may, in fact, be detrimental to youth.

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

SB-386

Submitted on: 2/26/2021 3:28:05 PM

Testimony for JDC on 3/2/2021 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments:

We think this is a good idea.

SB386

RELATING TO THE DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo
Senate Committee on Judiciary

Malaki 2, 2021

9:35 a.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB386, 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.¹ 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.”² **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 will help provide the appropriate process to reduce the rates of juvenile contact with the adult corrections system. **OHA understands that when a youth is transferred to adult jails or 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 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

¹ 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.

² 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.

times more likely to be victimized in an adult facility than in a juvenile facility.³ 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.

As a final note, 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 will better ensure that the State of Hawai'i complies with this federal law.

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

³ 34 U.S.C. § 30301.