

A Bill for an Act Relating to the Juvenile Justice System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to create and implement a master plan for the juvenile justice system for the State of Hawaii. The 1974 Juvenile Justice Plan, formulated by the State Law Enforcement and Juvenile Delinquency Planning Agency, dealt generally with philosophical approaches regarding juvenile justice. This plan as implemented, addresses the practical aspect—more particularly, the establishment, management, and operation of specific departments and agencies involved in the juvenile justice system, such as the State Law Enforcement Planning Agency, the Honolulu Police Department, the Family Court, and Department of Social Services and Housing.

The plan as structured by this Act creates an integrated relationship among the agencies and institutions that have juvenile justice responsibilities, alters, to some degree, responsibilities given to those agencies and institutions, and establishes clear authority for introducing new programs. The system will be characterized by facilitation of a creative diversity of programs and the maximum utilization of government and community resources that effectively respond to the safety of the community and to the need of each individual juvenile processed through the system.

The components of this juvenile justice system are the police departments of each county, particularly their juvenile crime prevention bureaus, the new juvenile intake agencies operating under the family courts, the family courts including detention homes and probation departments, the corrections division of the department of social services and housing and most particularly its youth correctional facility, and the shelter homes, public and private, in the State which provide shelter for status offenders and diversion and placement for certain juvenile offenders, and the prosecuting attorneys of each county.

Section 571-1, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-1 Construction and purpose of chapter. This chapter shall be liberally construed to the end that children and families whose rights and well-being are jeopardized shall be assisted and protected, and secured in those rights through action by the court; that the court may formulate a plan adapted to the requirements of the child and his family and the necessary protection of the community, and may utilize all state and community resources to the extent possible in its implementation.

This chapter creates within this State a system of family courts and it shall be a policy and purpose of said courts to promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce juvenile delinquency. The court shall conduct all proceedings to the end that no adjudication by the court of the status of any child under this chapter shall be deemed a conviction; no such adjudication shall impose any civil disability ordinarily resulting from conviction; no child shall be found guilty or be deemed a criminal by reason of such adjudication; no child shall be charged with crime or be convicted in any court except as otherwise provided in this chapter; and all children found responsible for offenses shall receive dispositions that

provide incentive for reform or deterrence from further misconduct, or both. The disposition made of a child or any evidence given in the court, shall not operate to disqualify the child in any civil service or military application or appointment. Any evidence given in any case under section 571-11 shall not in any civil, criminal, or other cause in any court be lawful or proper evidence against the child for any purpose whatever except in subsequent cases involving the same child under section 571-11."

JUVENILE JUSTICE INTERAGENCY BOARD

SECTION 2. It is readily discernible that the success of the juvenile justice system will require coordination that spans the boundaries of governmental and agency jurisdictions. It is also obvious that the design function for the creating, budgeting, and staffing of specific programs will require the expertise of personnel in the field.

The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER JUVENILE JUSTICE INTERAGENCY BOARD

Sec. -1 Juvenile justice interagency board. There is established within the state law enforcement planning agency for administrative purposes the juvenile justice interagency board, consisting of seven members which shall include a police chief of one of the counties, a senior judge of the family courts, the prosecuting attorney of a county, and a representative from a private social service agency, appointed by the governor as provided in section 26-34, and, the superintendent of education, the public defender, and the director of social services as ex-officio members.

The director of the state law enforcement planning agency shall be the executive secretary of the board.

Sec. -2 Duties of the board. The board shall meet no less than quarterly in accordance with rules which it shall establish for the purposes of this chapter, promote implementation of the juvenile justice plan, and advise agencies involved in the juvenile justice process as to general policies for cooperation and coordination, uniform procedures and policies, and a unified and integrated juvenile information reporting and retrieval system.

The director or the first deputy director of each department or agency involved in the juvenile justice process shall be present at each of the meetings of this board."

POLICE

SECTION 3. At present, the responsibility of the Honolulu police department in the juvenile justice system includes the detection of juvenile crime, the apprehension of juvenile law violators and status offenders, and a program of counseling and releasing juveniles arrested for minor offenses, in particular first offenders and very young offenders. Studies have shown that counsel and release by the police is extremely effective and that seventy-five per cent of the youths charged with a status offense who were counseled and released were not rearrested within the study period.

In order to enhance the value of the police counsel and release program, the police should be authorized to engage in a follow-up program in order to keep youths from further arrests and to assist them if they need services.

1. Section 571-72, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-72 Duties and powers; reports. The juvenile crime prevention bureau shall direct its attention specifically to the suppression, prevention, and investigation of crimes committed by children under the age of eighteen years, and any police officer shall have the power and authority to take and detain any minor coming within section 571-11 at the bureau or other suitable places for questioning and investigation. If it appears upon conclusion of the investigation that the minor does come within such provisions, the minor may be counseled and released, and follow-up counseling provided or the minor may be referred to the family court or to a proper agency for treatment, and a written report of the findings of the officer shall be submitted to the court or the agency.”

2. Section 571-73, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-73 No limitations on family courts. Nothing in section 571-71 or 571-72 shall be construed to divest family courts of any of their powers, but the same shall specifically grant to the police departments of the several counties the power to take; detain; question; investigate; provide outreach, counsel, release, and follow-up services; and refer to appropriate social or other agencies, private or governmental, as the facts of the case appear to justify, minors coming within section 571-72, subject, however, to sections 571-31 and 571-32.”

RELEASE, CUSTODY AND DETENTION

SECTION 4. At the present time, the provisions of the Hawaii Revised Statutes lack a clear statement of criteria for the release, custody, and detention of a minor by a police officer, intake officer, and other person. This section will provide that standard.

1. Section 571-2, Hawaii Revised Statutes, is amended by amending the definition of “detention” to read as follows:

“(7) “Detention” means the temporary care of children who require custody in physically secure facilities:

- (A) For their immediate welfare;
- (B) For the protection of the community;
- (C) While awaiting transfer to another jurisdiction or
- (D) Because of violation of a family court order of probation or protective supervision.”

2. Section 571-31, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-31 Taking children into custody; release; notice. (a) A child may be taken into custody by any police officer without order of the judge when there are reasonable grounds to believe that a child comes within section 571-11(1) or (2), or by any police or probation officer when there are reasonable grounds to believe that the child has violated a court order of probation or protective supervision.

(b) When an officer or other person takes a child into custody the parents, guardian, or legal custodian shall be notified immediately. The child shall be (1)

released to the care of the child's parent or other responsible adult; (2) referred or delivered to an appropriate intake agency with or without simultaneous release to parent or other responsible adult; or (3) taken directly to a detention facility, if the child's immediate welfare or the protection of the community requires it, or the child is subject to detention for violation of a court order of probation or protective supervision.

(c) If the person taking the child into custody believes it desirable, the child's parent, guardian, or legal custodian may be required to sign a written promise to bring the child to the intake agency at the time arranged, or to the court at the time directed by the court.

(d) If a parent or other responsible custodian fails to produce the child in court or at the intake agency as required by an authorized notice, or when notified by the court, a summons or warrant may be issued for the apprehension of that person or the child or both. The court may assess the cost of the issuance and execution of the summons or warrant against the person."

3. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be designated section 571-31.1 and to read as follows:

"Sec. 571-31.1 Standard for detention. (a) As used in this chapter, "protection of the community" means there is a threat to, and a necessity to protect, the person or property of others from:

- (1) A minor who is alleged to have committed an offense which caused physical harm, or a threat of physical harm, to another person; or
- (2) A minor who is alleged to have committed an offense which caused damage to, or theft of, property; and
 - (A) The minor's record reveals a pattern of behavior which has caused damage to, or loss of, property; and
 - (B) Previous control measures have failed.

(b) As used in this chapter, "immediate welfare" means:

- (1) The minor is in physical, emotional, or psychological danger, or may be prior to the court's disposition;
- (2) No parent or other responsible adult known to the decision-maker is willing and able to provide the type and degree of supervision necessary to protect the minor from that danger;
- (3) No other secure facility is appropriate and available.

(c) In determining whether the immediate welfare or the protection of the community requires a minor's detention, an officer or other person may take into consideration the following, among other pertinent factors:

- (1) The severity of the violation or violations which the child is reasonably believed to have committed;
- (2) The frequency with which the child is reasonably believed to have committed such or other violations;
- (3) The child's age, character, physical, and mental health;
- (4) The interpersonal relationships between the child, the family, and the community; and
- (5) Any previous history of referrals to the court."

4. Section 571-32, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-32 Detention; shelter; release; notice. (a) If a child who is believed to come within section 571-11(1) or (2) is not released as provided in section 571-31 and is not deemed suitable for diversion, such child shall be taken without unnecessary delay to the court or to the place of detention or shelter designated by the court. If the court determines that the child requires care away from the child’s own home but does not require secure physical restriction, such child shall be given temporary care in any available non-secure child caring institution, foster family home, or other shelter facility.

(b) The officer or other person who brings a child to a detention or shelter facility shall at once give notice to the court, stating the legal basis therefor and the reason why the child was not released to the child’s parents. In case the facility to which the child is taken is not an agency of the court, the person in charge of the facility in which the child is placed shall promptly give notice to the court that the child is in that person’s custody. Prior to acceptance of the child for detention or shelter care, a prompt inquiry shall be made by a duly authorized staff member of the detention or shelter facility or officer of the court. Where it is deemed in the best interests of the child, the judge or such officer or staff member or the director of detention services may then order the child to be released, if possible, to the care of the child’s parent, guardian, legal custodian, or other responsible adult, or the judge may order the child held in the facility subject to further order or placed in some other appropriate facility.

(c) As soon as a child is detained, the child’s parents, guardian, or legal custodian shall be informed, by personal contact or by notice in writing on forms prescribed by the court, that they may have a prompt hearing held by a circuit judge or district family judge regarding release or detention. A child may be released on the order of the judge with or without a hearing. The director of detention services may order the release of the child if an order of detention has not been made.

(d) No child shall be held in detention or shelter longer than forty-eight hours, excluding Sundays and court holidays, unless a petition has been filed or unless the judge shall otherwise order. No child may be so held longer than forty-eight hours, excluding Sundays and court holidays, after the filing of a petition unless an order for such continued detention or shelter has been signed by the judge.

(e) No child shall be released from such detention except in accordance with this chapter.

(f) No child shall at any time be detained in a police station cellblock or community correctional center for more than twelve hours, except that, by the judge’s order in which the reasons therefor shall be specified, a child whose conduct or condition endangers the child’s own safety or the safety of others in the detention facility for children, or in counties where there is no detention facility for children, may be placed in some other place of confinement that the judge considers proper, including the places of detention for adults specified in this subsection.

(g) Where a child transferred for criminal proceedings pursuant to waiver of family court jurisdiction is detained, the child shall be held in the detention facility used for persons charged with crime. When a child is ordered committed to an agency or institution, the child shall be promptly transported to the place of commitment.

(h) Provisions regarding bail shall not be applicable to children detained in accordance with this chapter, except that bail may be allowed after a child has been

transferred for criminal prosecution pursuant to waiver of family court jurisdiction.

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

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

JUVENILE INTAKE AGENCIES

SECTION 5. Under the present system the police must provide intake services in connection with the family court. Their holding facilities are at times inadequate in capacity and inappropriate for non-law violators who cannot for a variety of reasons be returned to their families. The police station is usually not an appropriate place to conduct family counseling. It also may be felt to have an undeserved stigmatizing effect by children who have not committed a crime. Similar problems face the family court and the families that become involved with it. The court is frequently forced to use the only facility presently under its control, the detention home, for the temporary custody of non-law violators as well as law violators.

Under the juvenile justice plan established by this Act, the objective is to provide intake agencies to perform the functions of registering, family counseling, and temporary custody of juveniles in trouble in order to speed up the intake process, increase the chances of returning non-law violators to their families, and provide appropriate conditions of confinement for those juveniles who require temporary custodial treatment.

1. Section 571-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Informal adjustment" means the effort by intake officers, the courts, or others to provide a child referred to them or brought before them, and where appropriate that child's family, opportunity and aid before and in lieu of formally processing the child under this chapter. The objective of this effort is to afford opportunity and aid so that the child, and where appropriate the child's family, may realize voluntary adjustment of behavior and obtain counseling and edification so as to better allow the child's appropriate emergence into adult society."

2. Section 571-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Status offender" means any child coming within the family court's jurisdiction under section 571-11(2) (D), (E), or (F). Such child is distinguished from (A) a law violator under section 571-11(1) who comes into the family court upon allegations such person has committed an act which would constitute a crime if committed by an adult, and (B) a neglected or abused child under section 571-11(2)(A), (B) or (C)."

3. Chapter 571, Hawaii Revised Statutes, is amended by adding five new sections to read as follows:

"Sec. 571-31.2 Juvenile intake agency. (a) Not later than July 1, 1981, the

court shall establish an intake agency, which, when a child is referred or delivered to the agency, shall:

- (1) Notify the child's parent, guardian or legal custodian or take reasonable action to ensure that such notice has been given;
- (2) Require the child, the child's parent, the child's guardian or legal custodian, or both, to appear at the intake agency as soon as practicable for a family counseling session to attempt a quick resolution of their problem;
- (3) Investigate, evaluate, make necessary determination, and take appropriate actions regarding:
 - (A) Release of a child to the care of the child's parent or other responsible adult;
 - (B) Extending to or making arrangement for the securing of suitable informal adjustment under section 571-31.4, 571-31.5 or 571-31.6;
 - (C) Initiation of the filing of a complaint or petition;
 - (D) Detention of a child, utilizing the standard set out in section 571-31.1; and
 - (E) Making such other informal disposition as may be suitable.

(b) If the intake officer believes it desirable, such officer may take action to obtain the child or the parent, guardian, or legal custodian's written promise to come or bring the child to the intake agency, referral agency, or court as in section 571-31(c). The parent or other responsible custodian's failure to produce the child in court, at the intake agency, or at a referral agency as required by an authorized notice may be pursued as provided in section 571-31(d).

Sec. 571-31.3 Voluntary assistance. (a) A child or the child's parent, guardian, or legal custodian may voluntarily apply to an intake agency to obtain appropriate services, including family conciliation and counseling, regarding issues or problems involving the child which are not being successfully resolved within the family. Upon such application, the intake agency shall render appropriate services to the child and the family or assist in securing such services from other appropriate agencies.

Sec. 571-31.4 Informal adjustment, law violators. (a) When a child reasonably believed to come within section 571-11(1) is referred to an intake agency, informal adjustment may be provided to the child by an intake officer duly authorized by the family court only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where a consent is obtained from the child's parent, guardian, or legal custodian, and the child, if of sufficient age and understanding.

(b) Informal adjustment under this section may include, among other suitable methods, programs, and procedures, the following:

- (1) Participation in restitution projects to obtain appropriate victim satisfaction;
- (2) Participation in community service projects so as to establish the child's self value in the community;
- (3) Participation in community-based programs which work with the child and family to maintain and strengthen the family unit so that the child may be retained in 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; or
- (9) Placement with non-secure or secure shelter facilities.

(c) Informal adjustment projects, programs, and services may be provided through the intake agency, other public agencies, or private agencies.

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

Sec 571-31.5 Informal adjustment, status offenders. (a) When a child reasonably believed to come within section 571-11(2) is referred to an intake agency, informal adjustment may be provided to the child by an intake officer duly authorized by the family court only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where a consent is obtained from the child’s parent, guardian, or legal custodian, and the child, if of sufficient age and understanding. Informal adjustment under this section may include, among other suitable methods, programs, and procedures, listed in section 571-31.4(b), except section 571-31.4(b) (1), and provided that placement with shelter facilities under section 571-31.4(b) (9) shall be on a non-secure basis unless the child is processed under subsection (b) of this section.

(b) In the event resources and services for informal adjustment are not available, have failed, are reasonably believed to fail if attempted, or are unable to respond to the needs of the child or family, the intake officer shall proceed with formal action, or take such action as is otherwise allowed under this chapter.

Sec. 571-31.6 Informal adjustment, minor who may be both law violator and status offender. When a child is reasonably believed to come within section 571-11(1) and (2), the intake officer may exercise discretion to process informal adjustment under section 571-31.4 or 571-31.5. In making that determination, the officer shall be guided by the criteria set out in section 571-31.1(c) (1) to (5), taking into account the availability of suitable method, program, or procedure for the child.”

CURFEW VIOLATIONS

SECTION 6. At the present time curfew violation by minors under section 577-16, Hawaii Revised Statutes, is the only offense which would not be a crime if done by an adult, but which, nonetheless, renders the minor subject to punishment

meted out for crime-equivalent behavior. The purpose of this section is to change that situation and to make curfew violation by minors subject to section 571-11(2), or a status offense.

Section 577-16, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 577-16 Curfew; children in public streets, prohibited when; penalty.

Any child under sixteen years of age, who, except in case of necessity, or except when permitted so to do in writing by a judge of the family court, goes or remains on any public street, highway, public place, or private place held open to the public after ten o'clock in the evening and before four o'clock in the morning, unaccompanied by either a parent or guardian, or an adult person duly authorized by a parent or guardian to accompany the child, is subject to adjudication under section 571-11(2).”

FAMILY COURT—JURISDICTION AND PROCEDURE

SECTION 7. At the present time the provisions of the Hawaii Revised Statutes lack a clear criteria for the waiver of jurisdiction of a minor to the adult criminal court. The purpose of this section is to provide that criteria, better clarify the provisions relating to the extradition of minors between Hawaii and other states and to generally conform the provisions relating to the family court with the basic intent of this Act.

1. Section 571-11, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. Regardless of where the violation occurred jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.
- (2) Concerning any child living or found within the circuit
 - (A) Who is neglected as to proper or necessary support, or as to medical or other care necessary for the child's well-being, or who is abandoned by the child's parent or other custodian; or
 - (B) Who is subjected to physical or emotional deprivation or abuse as a result of the failure of any person or agency to exercise that degree of care for which the person or agency is legally responsible; or
 - (C) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible.
 - (D) Who is beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare; or
 - (E) Who is neither attending school nor receiving educational services required by law whether through the child's own misbehavior or non-attendance or otherwise; or
 - (F) Who is in violation of curfew.

- (3) To determine the custody of any child or appoint a guardian of the person of any child.
- (4) For the adoption of a person under chapter 578.
- (5) For the termination of parental rights under sections 571-61 to 571-63.
- (6) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.
- (7) For the treatment or commitment of a mentally defective, mentally retarded, or mentally ill child.
- (8) Under the Interstate Compact on Juveniles under chapter 582.”

2. Sections 571-12 and 571-13, Hawaii Revised Statutes, are amended to read as follows:

“**Sec. 571-12 Transfer from other courts.** If, during the pendency of a criminal charge against a minor in another court, it is ascertained that the minor was less than eighteen years old when such minor allegedly committed the offense, such other court shall forthwith transfer the case to the family court, together with all the papers, documents, and any available transcripts of testimony connected with it. The court making the transfer shall order that the minor be taken forthwith to the place of detention designated by the family court or to that court itself, or shall release the minor to the custody of the minor’s parent or guardian or other person legally responsible for the minor, to be brought before the family court at a time designated by it. The family court shall then proceed as provided in this chapter.

Sec. 571-13 Retention of jurisdiction. Except as otherwise provided in this chapter, jurisdiction obtained by the court in the case of a minor may be retained by it, for the purposes of this chapter, after the minor becomes eighteen years of age until the full term for which any order entered shall have expired; provided such term shall not extend beyond the time the person achieves twenty years of age unless judicially terminated prior thereto. Further, in the case of any person who is alleged to have committed an offense under section 571-11 prior to reaching eighteen years of age, the court shall have jurisdiction after the person becomes eighteen for the purpose of holding hearings and/or entering orders of disposition concerning the alleged offenses; provided, however, that such jurisdiction shall terminate when the person achieves twenty years of age. This section shall not be construed, however, to confer any jurisdiction upon the family court over a person for any criminal act committed after the person achieves eighteen years of age.”

3. Section 571-21, Hawaii Revised Statutes, is amended as follows:

a. By amending subsection (a) to read as follows:

“(a) Except as provided in subsection (b), whenever the court is informed by any person that a minor is within the purview of section 571-11(1) or (2), the intake officer shall make a preliminary investigation to determine whether informal adjustment is suitable under section 571-31.4 or 571-31.5. The court may authorize the filing of a petition, may make whatever arrangement for informal adjustment that is suitable under section 571-31.4, 571-31.5, or 571-31.6; or may take such action as is otherwise allowed under this chapter. Efforts to effect informal adjustment may be continued not longer than three months without review by the judge.”

b. By amending subsection (c) to read as follows:

“(c) When a complaint or petition is made or sought to be filed against a

member of the complainant's family, the court's staff may, when required by the judge or if requested by either party, process the matter under section 571-31.3."

4. Section 571-22, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 571-22 Waiver of jurisdiction; transfer to other courts. (a) The court may waive jurisdiction and order a minor or adult held for criminal proceedings after the full investigation and hearing where the person during the person's minority, but on or after the person's sixteenth birthday, is alleged to have committed an act which would constitute a felony if committed by an adult, and the court finds there is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill, is not treatable in any available institution or facility within the State designed for the care and treatment of children, or that the safety of the community requires that the person continue under judicial restraint for a period extending beyond the person's minority.

(b) The factors to be considered in deciding whether jurisdiction should be waived under this section are as follows:

- (1) The seriousness of the alleged offense.
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or wilful manner.
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
- (4) The desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime.
- (5) The sophistication and maturity of the minor as determined by consideration of the minor's home, environmental situation, emotional attitude, and pattern of living.
- (6) The record and previous history of the juvenile, including previous contacts with the family court, other law enforcement agencies, courts in other jurisdictions, prior periods of probation to this court, or prior commitments to juvenile institutions.
- (7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the minor (if the minor is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the family court.
- (8) All other relevant matters.

(c) Transfer of a child sixteen years or older for criminal proceedings terminates the jurisdiction of the court over the child with respect to any subsequent acts which would otherwise be within the court's jurisdiction under section 571-11(1) and thereby confers jurisdiction over the child to a court of competent criminal jurisdiction.

(d) If criminal proceedings instituted under subsections (a) and (c) of this section result in an acquittal or other discharge of the minor involved, no petition shall thereafter be filed in any family court based on the same facts as were alleged in the criminal proceeding.

(e) A minor shall not be subject to criminal prosecution based on the facts

giving rise to a petition filed under this chapter except as otherwise provided in this chapter.

(f) Where the petition has been filed in a circuit other than the minor's residence, the judge may in the judge's discretion transfer the case to the family court of the circuit of the minor's residence.

(g) When a petition is filed bringing a minor before the court under section 571-11(1) and (2), and the minor resides outside of the circuit, but within the State, the court may after a finding as to the allegations in the petition certify the case for disposition to the family court having jurisdiction where the minor resides. Thereupon, such court shall accept the case and may dispose of the case as if the petition was originally filed in that court. Whenever a case is so certified, the certifying court shall forward to the receiving court certified copies of all pertinent legal and social records."

5. Sections 571-41.1 and 571-41.2, Hawaii Revised Statutes, are amended to read as follows:

"Sec. 571-41.1 Extradition of minors to Hawaii. Any person who violates, or is alleged to have violated, any law of this State defining a crime, and is at the time of the offense under the age of eighteen years, and who thereafter flees from this State may be proceeded against in the manner provided by chapter 832. Upon return of such person to this State by extradition or otherwise, proceedings shall be commenced in the manner provided for in this chapter.

Sec. 571-41.2 Extradition of minors from Hawaii. Any person who violates, or is alleged to have violated, any law of another state defining a crime and is at the time of the offense under the age of eighteen years, and who thereafter flees from that state and is found in this State may be proceeded against in the manner provided for in chapter 832. The circuit judge shall, for the purpose of detention, hold a hearing to determine whether the juvenile should be detained at the juvenile detention home or detention facility or in any other appropriate setting."

6. Section 571-48, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 571-48 Decree, if informal adjustment or diversion to a private or community agency or program has not been effected. When a minor is found by the court to come within section 571-11, the court shall so decree and in its decree shall make a finding of the facts upon which the court exercises its jurisdiction over the minor. Upon such decree the court shall, by order duly entered, proceed as follows:

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

(A) The court may place the child on probation (i) in the child's own home or (ii) in the custody of a suitable person or facility elsewhere, upon conditions determined by the court. When conditions of probation include incarceration in a youth correctional facility, such incarceration shall be for a term not to exceed one year, after which time the person shall be allowed to reside in the community subject to additional conditions as may be imposed by the court.

(B) The court may vest legal custody of the child, after prior consultation with the agency or institution, in a Hawaii youth correctional facility,

- in a local public agency or institution, or in any private institution or agency authorized by the court to care for children; or place the child in a private home. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other equivalent department.
- (C) The court may fine the child for a violation which would be theft in the third degree by shoplifting if committed by an adult. The court may require the child to perform public services in lieu of the fine.
- (2) As to a child adjudicated under section 571-11(2):
- (A) The court may place the child under protective supervision, as hereinabove defined, in the child's own home, or in the custody of a suitable person or agency elsewhere, upon conditions determined by the court.
- (B) The court may vest legal custody of the child, after prior consultation with the agency or institution in a local governmental agency or institution licensed or approved by the State to care for children, with the exception of an institution primarily for the care and treatment of children committed under section 571-11(1) or in any private agency or institution authorized by the court to care for children. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other equivalent department; provided that the child may not be committed to a public or private institution operated solely for the treatment of law violators.
- (3) An order vesting legal custody of a minor in an individual, agency, or institution under section 571-11(2) shall be for an indeterminate period but shall not remain in force or effect beyond three years from the date entered, except that the individual, institution, or agency may file with the court a petition for renewal of the order and the court may renew the order if it finds such renewal necessary to safeguard the welfare of the child or the public interest. The court may, after notice to the parties, conduct a hearing on the petition. Renewal may be periodic during minority, but no order shall have any force or effect beyond the period authorized by section 571-13. An agency granted legal custody shall be subject to prior approval of the court in any case in which the child is to reside without the territorial jurisdiction of the court and may be subject to prior approval in other cases. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.
- (4) Whenever the court commits a child to the care of the director of social services or vests legal custody of a child in an institution or agency it shall transmit with the order copies of the clinical reports, social study, and other information pertinent to the care and treatment of the child, and the institution or agency shall give to the court any information concerning the child that the court may at any time require. An institution or agency receiving a child under this paragraph shall inform the court whenever the status of the

child is affected through temporary or permanent release, discharge, or transfer to other custody. An institution to which a child is committed under section 571-11(1) or (2) shall not transfer custody of the child to an institution for the correction of adult offenders, except as authorized herein and under chapter 352.

- (5) The court may order, for any child within its jurisdiction, whatever care or treatment is authorized by law.
- (6) In placing a child under the guardianship or custody of an individual or of a private agency or private institution, the court shall give primary consideration to the welfare of the child.
- (7) In support of any order or decree under section 571-11(1) or (2), the court may require the parents or other persons having the custody of the child, or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter and who are parties to the proceeding, to do or to omit doing any acts required or forbidden by law, when the judge deems this requirement necessary for the welfare of the child. If such persons fail to comply with the requirement, the court may proceed against them for contempt of court.
- (8) In support of any order or decree for custody or support, the court may make an order of protection setting forth reasonable conditions of behavior to be observed for a specified time, binding upon both parents or either of them. This order may require either parent to stay away from the home or from the other parent or children, may permit the other to visit the children at stated periods, or may require a parent to abstain from offensive conduct against the children or each other.
- (9) The court may dismiss the petition or otherwise terminate its jurisdiction at any time.
- (10) In any other case of which the court has jurisdiction, the court may make any order or judgment authorized by law.
- (11) The court may order any person adjudicated pursuant to section 571-11(1) to make restitution of money or services to any victim who suffers loss as a result of the child's action, or to render community service.
- (12) The court may order any person adjudicated pursuant to section 571-11(2) to participate in community service."

HAWAII YOUTH CORRECTIONAL FACILITIES

SECTION 8. Chapter 352, Hawaii Revised Statutes, entitled "Hawaii Youth Correctional Facility" has not been amended since 1976 and contains many obsolete sections. Moreover, the new juvenile justice plan contains new concepts which make a complete restatement of chapter 352 clearer and more efficient than a revision.

Because of the lack of a clearly stated juvenile justice plan, the facilities at the Koolau site have not received adequate funding to keep them in acceptable condition to accomplish their purpose. The increase in the number of juveniles committed to the facility have caused it to become overcrowded. It is therefore required that these facilities be immediately repaired, refurbished, and to the extent possible, be modi-

fied to increase the capacity of the facility. Funds shall be appropriated to accomplish this temporary purpose.

Even if restored, the present facilities will become totally inadequate after about five years. In order to efficiently use the land available, and provide acceptable confinement and support facilities, a completely new layout of functions and structures is required.

1. The Hawaii Revised Statutes is amended by repealing chapter 352 in its entirety and substituting a new chapter 352 to read as follows:

“CHAPTER 352

HAWAII YOUTH CORRECTIONAL FACILITIES

Sec. 352-1 Definitions. In this chapter, unless the context clearly indicates otherwise:

- (1) “Department” means that portion of the department of social services and housing concerned with matters within the purview of this chapter;
- (2) “Director” means the director of social services;
- (3) “Discharge” means the ending of the director of social services’ supervision of a person when the term of the person’s commitment has ended or when the director believes the purpose of the term of commitment has been achieved;
- (4) “Furlough” means an authorized absence of short duration from a youth correctional facility;
- (5) “Parole” means the conditional release of a person committed to a youth correctional facility whereby the person remains in the custody of the director and under the supervision of the juvenile parole office;
- (6) “Term of commitment” means the time period during which family court retains jurisdiction over a person after adjudication. During the term of commitment, the family court may vest custody of the person in another person, organization, agency, facility, or other suitable entity.

Sec. 352-2 Establishment and supervision of the Hawaii youth correctional facilities. The director shall develop and operate Hawaii youth correctional facilities for adjudicated law violators committed by the court to the director’s supervision. These facilities under the direction and supervision of the director shall provide residential and nonresidential treatment programs including education, evaluation, detention, counseling, recreation, employment, medical and dental care, and vocational training for committed persons.

Sec. 352-3 Contracting with private agencies for residential youth facilities. The department may contract with private agencies to provide residential youth facilities.

Sec. 352-4 Rules and regulations. The director may adopt rules and regulations to carry out the purposes of this chapter. The rules and regulations shall be approved by the governor but shall not be subject to chapter 91 or require publication in order to be valid and binding upon all committed persons and officers and employees of such facilities. The rules shall be printed from time to time.

Sec. 352-5 Staff standards and training. The director shall establish written standards of conduct and operation to govern each staff member during working hours. New staff members shall undergo initial training to prepare them to comply with the standards. Attendance at periodic training sessions shall be mandatory to increase staff members' effectiveness in carrying out their duties. For purposes of this section, "staff member" means any employee of the Hawaii youth correctional facilities who is directly involved with the treatment and care of persons committed to a facility.

Sec. 352-6 Appropriation made out of general revenues. All appropriations for the director and for facilities under the control of the director shall be made from and out of any available moneys received from the general revenues of the State and not out of the special fund for the maintenance of public schools.

Sec. 352-7 Records. The director shall establish a record of all facts relating to the admission, discharge, escape, death, medical history, programs, and significant occurrences concerning a committed person. An exact account shall also be kept of all moneys received for work performed by the committed persons and from authorized sources for the use of any committed person, as well as of the expenditure of such moneys as shall be authorized from time to time by the director.

Sec. 352-8 Guardianship and custody of the person committed. (a) Notwithstanding any law to the contrary, the director shall be the guardian of the person of every youth committed to or received at the Hawaii youth correctional facilities. The director shall have all the powers and duties of a natural guardian of the person of the youth; provided that the director shall not be liable in damages for the tortious acts committed by the youth.

(b) The director shall have custody of any committed person who is eighteen years of age or older for the period provided for by the court.

Sec. 352-9 Period committed. All persons committed to the Hawaii youth correctional facilities shall be committed for the period of their minority or as otherwise ordered by the court. Such persons may be placed on furlough or parole if deemed appropriate. The power to discharge a committed person is reserved to the director subject to the director giving a thirty-day notice of such intended discharge to the appropriate court to afford the court an opportunity to order otherwise. In any case, no person nineteen years of age or older shall be incarcerated in a youth correctional facility.

(b) In those cases where the term of commitment extends beyond the person's nineteenth birthday, the person shall be placed on juvenile parole pursuant to the original family court order for the balance of the person's term of commitment; provided that such term does not extend beyond the person's twentieth birthday unless earlier terminated.

Sec. 352-10 Circuit court disposition of offenders under eighteen years. The circuit court may commit all offenders under eighteen years of age, duly convicted before the court, to the Hawaii youth correctional facilities in all cases where the court deems the sentence to be more suitable than the punishment otherwise authorized by law. Persons so committed may be furloughed or paroled by the director.

Sec. 352-11 Commitments directed, how. All commitments from the family courts of the State shall be directed to the director and may specify the appropriate facility for placement purposes. The committing court or judge shall designate a juvenile probation officer, police officer, or any qualified person to deliver the committed person to a youth correctional facility. The officer or person designated to deliver the committed person to the designated facility shall be charged by such commitment with the execution of all orders for the custody and safekeeping of the person committed to the director until delivered to the director or the director's duly authorized agent. All direct expenses excluding salaries or wages attending the delivery of such committed persons to their places of destination shall be paid by the court. The director shall be charged by such commitments with the execution of all orders for the custody, placement, and safekeeping of the committed persons.

Sec. 352-12 Segregation of committed persons. Persons committed to the youth correctional facilities shall be kept segregated based on considerations including age, maturity level, attitude, behavior, offense committed, commitment period, and rehabilitation status.

Sec. 352-13 Evaluation, counseling, training. The director shall provide the opportunity for intelligence and aptitude evaluation, psychological testing and counseling, prevocational and vocational training, and employment counseling to all persons committed to the youth correctional facilities. Counseling services shall be available for the committed person's family during the term of commitment.

Sec. 352-14 Educational programs provided by the department of education. The department of education shall provide educational programs for those persons committed to the youth correctional facilities. These educational programs shall be adapted to the needs of the persons committed as prescribed by the department of education in coordination with the director of the department of social services.

Sec. 352-15 Recreational and program activities. The director shall provide the opportunity for the recreation of those persons committed to the facilities. Work programs for such persons shall be established and may include farming, sewing, plant nursery, and animal husbandry.

Sec. 352-16 Establishment of work release. (a) The director, in accordance with rules and regulations adopted by the director, may establish a work release plan for persons who are committed to the director's care and who are receiving care and treatment in a youth correctional facility; provided that such a plan shall not interfere with any educational program in which such persons may be enrolled.

(b) Under such a work release plan, any such person may be authorized to secure or continue in suitable employment outside of such youth correctional facility, and unless otherwise authorized by the department with respect to specific cases, return to and remain in such facility during non-working hours.

(c) Employment under such a work release plan shall be at a wage no less than the minimum wage authorized in chapter 387.

(d) It shall be the duty of the employer of a person participating in a work release plan to transmit to the director the earnings of such persons. The transmission to the director of the earnings of such person shall operate to discharge such employer

from any further obligation to such person except with respect to any taxes lawfully withheld from the wages of such person.

(e) The earnings transmitted to the director by a person's employer under a work release plan shall be held to the account of such person.

Sec. 352-17 Compensation in facilities. The director may provide, in accordance with rules and regulations adopted by the director, for the payment of compensation, which shall not be considered as wages, for work performed by a person placed in a youth correctional facility while in such facility and not participating in a work release plan under section 352-16. The compensation shall be credited to the account of such person.

Sec. 352-18 Establishment of trust accounts. All sums collected pursuant to sections 352-16 and 352-17, and from other authorized sources shall be placed in a bank trust account or federally insured savings account to the credit of persons committed pursuant to this chapter. The director or director's agent shall maintain individual ledger accounts for each committed person and shall issue each person a periodic statement showing deposits and withdrawals.

Sec. 352-19 Withdrawals from accounts. (a) The director may permit withdrawals by a committed person from the person's account for the following purposes:

- (1) Disbursement to the dependents of such person for such amounts as the person is legally obligated to pay;
- (2) To satisfy the whole or part of any debt of such person;
- (3) Disbursement to relatives of the person;
- (4) To secure a release from any person making a claim against the committed person for crimes affecting property.

(b) The director may make withdrawals from a committed person's account for purposes of restitution payments as ordered by a court.

(c) The director may retain any balance remaining until the termination of the director's legal custody of such person at which time the director shall transfer the balance to the person, the person's guardian, or to whomever legal custody is transferred.

Sec. 352-20 Disposition of inactive accounts. Where money in an individual person's account on the books of the Hawaii youth correctional facilities has not been claimed by such person or the person's legal representative within one year after the person has or would have reached the age of majority, the director shall remit to the director of finance all moneys standing to the credit of the person in the account, taking the receipt of the director of finance therefor. All such moneys shall thereupon, become a state realization; provided that at any such time within five years after the payment into the treasury of moneys from any such account, the person or the legal representative of the person, who would have been entitled to receive the same from the director upon making satisfactory proof to the comptroller of the State of such right, shall receive the amount thereof out of any moneys not otherwise appropriated upon warrant drawn by the comptroller.

Sec. 352-21 Youth correctional facilities' benefit fund; disposition of income. The director shall establish a youth correctional facilities' benefit fund for the purpose of the welfare and recreation of the persons committed. The director shall

deposit all moneys arising from any program activities at the facilities, except those amounts credited to the committed persons' accounts pursuant to section 352-18, to the credit of the youth correctional facilities' benefit fund.

Sec. 352-22 Periodic re-examination of status of persons committed to the department. The director shall cause to be made periodic re-examination of the status of each person who is committed to the department and who has not been finally discharged from such commitment, which shall:

- (1) Include a study of all pertinent circumstances of such person's personal and family situation and an evaluation of the progress made by such person since the previous study;
- (2) Be made for the purpose of ascertaining all relevant facts necessary to determine whether existing decisions, orders, and dispositions with respect to such persons should be modified or continued in force; and
- (3) Be conducted as frequently as the department deems necessary but in any event, at intervals not to exceed six months with respect to each such person.

Sec. 352-23 Community services section. There is established a community services section within the youth correctional facilities which shall coordinate the placement of persons committed to the care of the director in educational, vocational, and work release programs and residential placement. The section also shall advise the director or the director's duly authorized agent as to the granting of parole, furlough, release, and other matters affecting the commitment of a person. The community services section shall have an administrator with sufficient support staff to effectuate the purposes of this section and section 352-24.

Sec. 352-24 Office of juvenile parole. The director shall establish an office of juvenile parole. The office shall be part of the community services section and shall include a sufficient number of juvenile parole officers to effectively accomplish the purposes of this section specifically and this chapter generally. The duties of the juvenile parole officer shall include:

- (1) Assisting in locating appropriate residential placement for paroled persons;
- (2) Efforts to obtain suitable employment for paroled persons;
- (3) Assisting a paroled person in adjusting to community life by familiarizing the person with available community resources and providing opportunities for counseling;
- (4) Maintaining a record of all paroled persons and periodically updating information therein concerning the residence, employment, and wages, and such details concerning the person's health, conduct, and environment as may come to the juvenile parole officer's attention either from reports or through the officer's own personal investigation;
- (5) To make such other investigations, secure such other information and data, perform such other duties, and make such other reports, in addition to those which may be required by law, as may be required by the director.

Sec. 352-25 Furlough, parole, discharge. The director, for good reasons shown to the director's satisfaction, may furlough or parole any person committed to the director's custody. The director shall give the court a thirty-day notice prior to

discharging a committed person to afford the court an opportunity to order otherwise. Court approval shall be obtained when such is specifically required in accordance with section 352-29.

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

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

Sec. 352-26 Taking into custody and detaining persons for violations of terms and conditions of parole and furlough and attempted escape. (a) With respect to any person whose legal custody was vested in the director, who has been paroled or furloughed from a youth correctional facility by the director and returned to the person's own home or other place within the community, the provisions of subsection (b) or (c) shall apply, if, in the opinion of a designated employee of the department, such person is in violation of the terms and conditions of the person's parole or furlough.

(b) In the case of a person under nineteen years of age, such designated employee may:

(1) Notify the director or the director's designated agent of such alleged violation and, if the director issues a written order to such effect, take such person into custody and place such person in such appropriate youth correctional facility as may be designated in such order until determinations as to such person's further care and treatment are made. In the event of retaking for an alleged violation of parole, the director or the director's agent shall notify the person, and the person's parent, guardian, or custodian of the right to legal counsel and to appeal the issuance and execution of such order. The office of juvenile parole shall hold a hearing within thirty days after the person's return to determine whether parole should be revoked. The juvenile parole office staff shall render reasonable aid to the person in preparation for the hearing.

(2) Take such person into custody and place the person in an appropriate youth correctional facility until determinations as to such person's further care and treatment are made by the department if such employee has reason to believe that permitting such person to remain in the person's own home or other place within the community would be dangerous to the person or to the community or that such person is about to flee the jurisdiction of the department. Such employee, at the time of taking such person into custody, shall advise such person as to the specific terms and conditions of the person's parole or furlough which the person is alleged to have violated and of the person's right to legal counsel and appeal. Provisions regarding possible parole revocation shall apply as enumerated in paragraph (1).

(c) In the case of a nineteen-year-old person such a designated employee may:

(1) Take the person into custody and place the person in an appropriate adult

correctional facility if the alleged violation constitutes a crime and the director has been notified and subsequently issued a written order to that effect. In the event of retaking for such an alleged violation of parole, the director or the director's agent shall notify the person of the right to legal counsel and to appeal the issuance and execution of such order. The office of juvenile parole shall hold a hearing within thirty days after the person's incarceration in an adult facility to determine whether parole should be revoked. The juvenile parole office staff shall render reasonable aid to the person in preparation for the hearing.

- (2) Notify the director of an alleged violation of parole. The director may petition the family court for an ex parte order based on the alleged violation to take the person into custody and place the person in an appropriate adult correctional facility. The person shall be notified of the issuance and execution of such a court order and of the right to legal counsel and appeal. A juvenile parole office hearing shall be held within thirty days after a person's placement in an adult facility to determine whether parole shall be revoked.

(d) Any person whose legal custody has been vested in the director and who has escaped from the facility may be taken into custody by a police officer or an employee of the department without a warrant or an order issued by the director and returned to the facility.

(e) When called upon by any designated employee of the department, any police officer shall assist in taking a person into custody pursuant to the provisions of this section.

Sec. 352-27 Harboring or concealing a person away from custody assigned by competent authority. Any person who knowingly and intentionally harbors or conceals a person who was in the custody of a Hawaii youth correctional facility, guardian, employer, or any other person with whom the person was placed by the court or the director without the permission of the custodian, guardian, employer, or such other person shall be guilty of a misdemeanor offense.

Sec. 352-28 Transfer to correctional facility. Any person after the person's sixteenth birthday, who has been committed to the care of the director and disrupts the order and the discipline of any state-operated youth correctional facility or injures the staff or other person committed to the facility or for other good cause, may be transferred by the director to an adult correctional facility with the approval of the family court for the balance of the term provided for by the court. If such person demonstrates sufficient improvement or progress, or for other good reason, the family court may order the person's return to a youth correctional facility.

Sec. 352-29 Termination of director's right to supervise person. (a) The authority of the director to supervise the conduct of a person who has been committed to the director's care, unless such authority shall be sooner terminated pursuant to this chapter or chapter 571, shall cease:

- (1) At the expiration date of the order of commitment issued unless the director has, prior to such expiration date, sought and obtained from the court an extension of such order; or

- (2) Whenever the director, prior to the termination otherwise of such order, determines that the purposes of such order have been achieved in the case of a person under age eighteen; provided that if the commitment order reserves the approval of the family court for any discharge before termination, the director shall obtain approval of the court for a discharge; or
- (3) Whenever the director, prior to the termination otherwise of such order, determines that the purposes of such order have been achieved in the case of a person committed to a term extending beyond the person's eighteenth birthday and obtains court approval prior to discharge.

(b) The director, in each case described in subsection (a)(1), (2), and (3) of this section, shall immediately notify the person, the court, the police department of the county where the committed person resided before commitment, and, if a minor, the person's parent or guardian of the termination of the director's supervision over such person.

Sec. 352-30 Delegation of responsibilities. The director may delegate any of the director's responsibilities pursuant to this chapter to a representative of the department except those that relate to the discharge of a person committed to a youth correctional facility.

Sec. 352-31 Costs. All costs incurred under section 352-28 shall be paid by the director out of any funds appropriated for the Hawaii youth correctional facilities."

CHILD SHELTER FACILITIES

SECTION 9. At present, there are insufficient child shelter facilities to handle the children who are runaways, unmanageable, or otherwise unable to be returned to their homes by the police, the courts, or other diversion authorities. This is a serious problem for the juvenile justice system. In general these facilities are privately operated and are used by private welfare organizations, the department of social services, and the family courts mostly on a fee-for-service basis. One reason for this shortage is the fact that a recent amendment to the law placed the responsibility for setting the standards for "special treatment" facilities with the department of health. The department of health in turn wrote regulations so broad that child shelter facilities fell under stringent provisions similar to the medical standards and staff training requirements for hospitals. This has impeded the establishment, and will increase the cost of new facilities.

1. Section 346-16, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 346-16 Definitions. (a) As used in this chapter:

- (1) "Child placing organization" means any person, agency, or organization, excepting family courts and the department of social services and housing, engaged in the investigation, placement, and supervision of children in foster care;
- (2) "Child caring institution" means any institution, other than an institution of the State, maintained for the purpose of receiving six or more minor children for care and maintenance, not of common parents, apart from their parents or guardians on a twenty-four hour basis for monetary payment.

This term shall not apply to any boarding school which is essentially and primarily engaged in educational work;

- (3) "Foster boarding home" means any children's boarding home in which one or more, but less than six, minor children are received for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge.

(b) None of the facilities defined in subsection (a) shall be considered a special treatment facility in the sense of section 321-11(10) unless clinical treatment of mental or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility."

2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"Sec. 571-32.1 Contract and fee-for-service accommodations. To provide for children under section 571-32, the family court may provide, on a contractual or on fee-for-service basis, accommodations in child caring institutions or foster boarding homes which meet the intent of section 346-17."

SECTION 10. Severability. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications and to this end the provisions of this Act are severable.

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 12. This Act shall take effect upon its approval; provided, however, that subsection 3 of SECTION 5 shall take effect not later than July 1, 1981.

(Approved June 18, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.