

## ACT 114

S.B. NO. 1346

A Bill for an Act Relating to Youth.

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

SECTION 1. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Effective July 1, 1990, the functions and authority heretofore exercised by the department of corrections relating to adult [and juvenile] corrections and the intake service centers; the functions and authority heretofore exercised by the judiciary relating to the sheriff’s office and judiciary security personnel; and the functions and authority heretofore exercised by the department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division shall be transferred to the department of public safety.”

SECTION 2. Section 352-1, Hawaii Revised Statutes, is amended by amending the definitions of “department”, “director”, and “discharge” to read as follows:

““Department” means the department of [public safety.] human services; provided that the powers, duties, and functions relating to the Hawaii youth correctional facilities shall be administered by the office of youth services.

“Director” means the [director of public safety.] executive director of the office of youth services.

“Discharge” means the ending of the [director of public safety’s] executive director of the office of youth 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.”

SECTION 3. Section 352-2.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter creates within the department of [public safety,] human services, and to be placed within the office of youth services under the supervision of the director and such other subordinates as the director shall designate, the Hawaii youth correctional facilities, in order to provide for the incarceration, punishment, and institutional care and services to reintegrate into their communities and families, children committed by the courts of the State.”

SECTION 4. Section 352-14, Hawaii Revised Statutes, is amended to read as follows:

**“§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 public safety].”

SECTION 5. Section 571-48, Hawaii Revised Statutes, is amended to read as follows:

**“§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 the decree the court, by order duly entered, shall proceed as follows:

- (1) As to a child adjudicated under 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, the 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 appropriate department[.]; or
  - (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 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[.]; or
  - (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 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 appropriate 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, after notice to the parties, may 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 human services or [director of public safety,] executive director of the office of youth 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 in this chapter 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. The court may also make appropriate orders concerning the parents or other persons having custody of the child and who are parties to the proceeding. If such persons fail to

- comply with the requirement or with the court order, 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[.]; and
  - (13) The court may order the parents of an adjudicated minor to make restitution of money or services to any victim, person, or party who has incurred a loss or damages as a result of the child's action."

SECTION 6. (a) All rights, powers, functions, and duties of the department of public safety relating to the Hawaii youth correctional facilities are transferred to the department of human services to be administered by the office of youth services.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which that officer or employee is transferred or appointed.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

(b) All appropriate records, appropriations, equipment, machines, files, supplies, contracts, books, papers, documents, maps and other personal property heretofore made, used, acquired, or held by the department of public safety relating to the Hawaii youth correctional facilities' functions transferred to the department of human services shall be transferred with the functions to which they relate and be administered by the office of youth services.

SECTION 7. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature for review at its next regular session.

SECTION 8. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith. All acts passed during this regular session of 1991, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 1991.

(Approved May 10, 1991.)