

ACT 201

H.B. NO. 2490

A Bill for an Act Relating to Juvenile Justice.

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

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

The working group's analysis revealed that Hawaii has made commendable improvements in its juvenile justice system. Juvenile arrests for serious violent and property offenses fell twenty-eight per cent between 2002 and 2011, and the number of youth annually admitted to the Hawaii youth correctional facility declined forty-one per cent as of 2013. However, the working group also identified several areas needing improvement.

Even amidst a decline in commitments to the Hawaii youth correctional facility, the working group sought to determine whether commitments to the facility were effectively targeted to protect public safety. Research reveals that secure facilities are most effective when targeted toward serious juvenile offenders who pose a public safety risk. However, when less serious youth are placed in secure facilities, the risk of repeat offenses increases. Further, mental health and substance abuse treatment are often more efficiently and effectively delivered in a community setting.

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

The legislature further finds that critical services to reduce delinquency, including mental health and substance abuse treatment, are not sufficiently resourced or accessible to Hawaii's youth.

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

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

The purpose of this Act is to:

- (1) Improve and enhance Hawaii's juvenile justice system by concentrating secure bed space on serious juvenile offenders and strengthening disposition, adjustment, diversion, and services available for juvenile offenders to ensure that family court judges, court staff, departmental staff, and service providers have the tools they need to keep youth safely and effectively in their communities; and
- (2) Increase interagency collaboration and implement a temporary oversight committee to continually improve juvenile justice practices and ensure accountability.

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

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

- (1) Programming, treatment, and service needs identified in the most recently conducted risk and needs assessment;
- (2) Individualized goals to guide successful reentry to the community during parole or following final discharge; and
- (3) Identification of, and a plan for, coordination with agencies that can provide or contract for existing programs and services relevant or necessary for successful reentry.

(b) The director or the director's designee shall consult with a committed person's parent, legal guardian, or custodian in developing the terms of the reentry plan and provide written copies of the plan to the committed person and the committed person's parent, legal guardian, or custodian. If requested, the director or the director's designee shall provide regular updates on the committed person's progress concerning the reentry plan to the committed person's parent, legal guardian, or custodian.

(c) The director or the director's designee may collaborate with, and provide information to, the probation officer of a person committed to the Hawaii youth correctional facilities who is serving a concurrent term of probation, upon the probation officer's request, for the probation officer to incorporate the reentry plan into the person's case plan required under section 571-A at the probation officer's discretion.

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

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

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

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

- (1) Supervision levels, frequency of contacts with probation officers and the court, and referrals to treatment and programs under section 571-31.4(c)(7) shall be established using, among other factors, the results of the risk and needs assessment conducted pursuant to section 571-45;
- (2) A case plan, as defined in section 571-2, shall be developed for each child and submitted to the court. The case plan shall be developed in consultation with the child and the child’s parent, legal guardian, or custodian. The probation officer assigned to each child shall keep the child’s parent, legal guardian, or custodian informed regarding development of and progress toward the case plan, the child’s conduct, compliance with the conditions of probation, and any other relevant matter in the child’s case;
- (3) A child whose probation term and case plan require in-person visits with a probation officer shall receive at least one home visit; provided that the first visit shall take place within forty-five days of the child’s placement on probation; provided further that a home visit shall not be required when the probation officer has reasonable perceptions of risks to the probation officer’s safety due to known factors of violent criminal activity or isolation of the child’s place of residence. The probation officer shall immediately report any reasonable perceptions of risks to a supervisor and may receive permission to waive the home visit requirement for the child or to conduct the home visit accompanied by another;
- (4) Probation officers shall have the authority to impose graduated sanctions in response to a violation of the rules and conditions of probation, as an alternative to judicial modification or revocation pursuant to section 571-50, or to award incentives or rewards for positive behavior exhibited by the child. The graduated sanctions and incentives shall be established as follows:
 - (A) The judiciary shall adopt guidelines and procedures for the development and application of a statewide graduated sanctions and incentives system in accordance with this section, and the deputy chief court administrator in each judicial circuit, or the administrator’s designee, shall adopt policies or procedures for the implementation of the adopted graduated sanctions and incentives system to guide probation officers in imposing sanctions and awarding incentives;
 - (B) The system shall include a series of presumptive sanctions for the most common types of probation violations but shall allow for a child’s risk level and seriousness of violation to be taken into consideration. The system shall also identify incentives that a child may receive as a reward for compliance with the rules and conditions of probation, completion of benchmarks, or positive behavior exceeding expectations, at the discretion of the probation officer;
 - (C) The system shall be developed with the following objectives:
 - (i) To respond quickly, consistently, and proportionally to violations of the rules and conditions of probation;
 - (ii) To reduce the time and resources expended by the court in responding to violations with judicial modification;

- (iii) To reduce the likelihood of a new delinquent act; and
- (iv) To encourage positive behavior;
- (D) At a child's first meeting with a probation officer after being adjudicated and disposed to a probation term, the probation officer shall provide written and oral notification to the child regarding the graduated sanctions and incentives system to ensure the child is aware of the sanctions and incentives that may be imposed or rewarded;
- (E) When issuing a sanction or incentive, the probation officer shall provide written notice to the child of the nature and date of the relevant behavior, the sanction or incentive imposed or rewarded, and, in the case of sanctions, any applicable time period in which the sanction will be in effect or by which corrective behavior must be taken. The probation officer shall provide this information to the court at the next regularly scheduled review hearing and inform the court of the child's response to the sanction or incentive; and
- (F) Each administrator of the juvenile client services branch in each judicial circuit shall report annually to the board of family court judges and the Hawaii juvenile justice state advisory council, the number and the per cent of children on probation who received a graduated sanction or incentive, the types of sanctions and incentives used, and the child's current probation status.

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

(b) A child is deemed to be compliant with the rules and conditions of probation, and shall be awarded earned discharge credits for the month, if there was no violation of rules and conditions of probation that month at a level that would warrant the filing of a petition or violation report. The court, at the request of the probation officer or on its own motion, may award discharge credits to children who have demonstrated substantial compliance with the rules and conditions of probation.

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

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

§571-C Statewide juvenile justice interdepartmental cluster; local juvenile justice interdepartmental cluster; high-need youth services coordination. (a) There is established a statewide juvenile justice interdepartmental cluster to provide coordinated services, as defined in section 571-2, to certain children under the jurisdiction of the family court, and to provide an avenue for regular collaboration between the judiciary and the child and adolescent mental health division of the department of health.

(b) The statewide cluster shall be composed of representatives from the major youth-serving agencies with statewide authority and responsibility. The

statewide cluster shall include, in addition to the judiciary, designees from the department of education, the department of health, and the office of youth services. At the discretion of the representatives in the statewide cluster, community service providers may be included as regular members.

The judiciary shall staff the statewide cluster and identify a place where development and management of coordinated services may be carried out on a regular basis.

The statewide cluster may establish local juvenile justice interdepartmental clusters that shall have the ability to refer individual cases or issues to the statewide cluster for review and recommendation.

The statewide cluster shall establish written policies and procedures for itself and any local juvenile justice interdepartmental clusters.

(c) Family courts may recommend youth for consideration by the statewide cluster based on the results of a risk and needs assessment conducted pursuant to section 571-45 indicating that a youth is high-need and if the youth is actively involved with two or more youth-serving agencies.

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

- (1) An assessment of the individual needs of the youth;
- (2) Identification of services currently being provided;
- (3) Identification of the necessary coordinated services;
- (4) Identification of the public or private agencies that can provide the necessary coordinated services to the youth, and a description of how each coordinated service will be funded;
- (5) If any necessary coordinated service need cannot be met, a specific explanation as to why the service need could not be met, such as a lack of funding or unavailability of service, which shall be reported to the board of family court judges and the Hawaii juvenile justice state advisory council; and
- (6) Opportunities for participation from the youth's legal parent, guardian, or custodian.

(e) The statewide cluster shall annually report the number of cases referred to the cluster, the number of cases in which a coordinated service plan was established, and the outcome of the cases. This report shall be submitted to the board of family court judges and the Hawaii juvenile justice state advisory council.

§571-D Family court; annual report. Each deputy chief court administrator, or the administrator's designee, shall submit an annual report to the board of family court judges and the Hawaii juvenile justice state advisory council that includes:

- (1) The number and per cent of cases ordered to administrative monitoring status;
- (2) The number and per cent of cases ordered to administrative monitoring status that were subsequently closed without a protective supervision or probation term;
- (3) The number and per cent of youth disposed to a probation term, and the outcome of the probation terms;
- (4) The number and per cent of cases committed to a Hawaii youth correctional facility; the underlying offense or type of probation violation or revocation precipitating commitment; and the age, race, and gender of the child; and

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- (5) The number and per cent of cases returned to court supervision on a maintained probation term following a release from a Hawaii youth correctional facility.”

SECTION 4. Section 352-25, Hawaii Revised Statutes, is amended to read as follows:

“§352-25 Furlough, parole, discharge. (a) 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 and the prosecutor’s office of the appropriate county a thirty-day notice prior to discharging a committed person. Prior court approval shall be obtained when such is specifically required in the commitment order.

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.

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

- (1) The results of a risk and needs assessment indicate the person is at a lower risk to reoffend;
- (2) The person has substantially complied with the facility rules and has had no significant misconduct in the prior two months;
- (3) The person has demonstrated efforts toward rehabilitation;
- (4) The person is likely to follow the reentry plan established pursuant to section 352-_____; and
- (5) A home visit has been completed and the living situation upon parole is determined to be safe and conducive to rehabilitation.

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. Nonresidential programs may be made available to selected persons on furlough such that they return to the facility during nontreatment hours.

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

SECTION 5. Section 352D-4, Hawaii Revised Statutes, is amended to read as follows:

“~~§352D-4~~ **Establishment; purpose.** There is established within the department of human services for administrative purposes only the office of youth services. The office of youth services is established to provide services and programs for youth at risk under one umbrella agency in order to facilitate optimum service delivery, to prevent delinquency, and to reduce the incidence of recidivism among juveniles through the provision of prevention, rehabilitation, and treatment services. The office shall also be responsible for program planning and development, intake/assessment, oversight, as well as consultation, technical assistance, and staff training relating to the delivery of services.

The office shall provide a continuum of services as follows:

- (1) An integrated intake/assessment and case management system;

- (2) The necessary educational, vocational, social counseling and mental health services;
- (3) Community-based shelter and residential facilities;
- (4) Oversight of youth services; and
- (5) Other programs which encourage the development of positive self-images and useful skills in such youth.

The executive director of the office of youth services shall submit annual reports to the legislature no later than twenty days prior to the convening of each regular session, reporting the services or programs funded pursuant to this section, the number of youth served by each service or program, and the results of the services or programs funded.

To this end, on July 1, 1991, this office shall assume the responsibilities for juvenile corrections functions, which were temporarily placed in the department of corrections pursuant to Act 338 of 1987. These functions shall include, but not be limited to, all responsibilities, under chapter 352, for the Hawaii youth correctional facilities.”

SECTION 6. Section 571-2, Hawaii Revised Statutes, is amended by adding nine new definitions to be appropriately inserted and to read as follows:

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

“Case plan” means a plan designed to ensure that a child on probation receives services and programming to achieve rehabilitation, proper care, and case management. The case plan may include rules and conditions of probation, goals related to reducing criminogenic needs, and evidence-based practices, requirements, services, and opportunities to incorporate the family.

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

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

“Home visit” means an announced or unannounced visit to a child’s place of residence, conducted by the child’s probation officer.

“Interdepartmental cluster” means the regular coordination of several agencies, directed by the judiciary, to more efficiently provide services for high-need, court-involved children.

“Presumptive sanction” means a probation violation sanction determined by a probation officer from a range of graduated sanctions for the most common types of violation, adopted by the judiciary pursuant to section 571-A(4) and based upon consideration of factors including the nature and severity of the violation and the child’s risk level.

“Risk and needs assessment” means a determination, based on an actuarial tool validated on Hawaii’s juvenile justice system-involved population, of specific factors that predict a child’s likelihood of recidivating and criminogenic factors that, when properly addressed, can reduce the likelihood of recidivating.

“Statewide cluster” means the statewide juvenile justice interdepartmental cluster as established under section 571-C.”

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SECTION 7. Section 571-5, Hawaii Revised Statutes, is amended to read as follows:

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

The board shall discuss and shall attempt to achieve agreement upon general policies for the conduct of the family courts and forms for use in such courts. The board shall recommend, for adoption by the supreme court, rules of court governing procedure and practices in such courts. The board shall provide the guidelines and procedures necessary to implement a single statewide standardized tool to conduct risk and needs assessments and validation of the tool every five years. The board may, within the limitations of the facilities available to the family courts of the State, seek the consolidation of the statistical and other data on the work and services of such courts and research studies that may be made of the problems of families and children dealt with by such courts to the end that the treatment of children and families subject to the jurisdiction of such courts shall achieve the highest possible degree of uniformity throughout the State and to the further end that knowledge of treatment, methods and therapeutic practices be shared among such courts. The board may also formulate recommendations for remedial legislation. All actions by the board shall be subject to the regulatory supervision of the chief justice of the supreme court.”

SECTION 8. Section 571-6, Hawaii Revised Statutes, is amended to read as follows:

“§571-6 Appointment and duties of employees. (a) For each family court, the judge, or the senior judge when there is more than one judge, shall appoint a chief administrative and executive officer who shall have the title of director of the family court. Under the general supervision of the senior judge or the judge, the director shall:

- (1) Prepare an annual budget for the court;
 - (2) Formulate procedures governing the routine administration of court services;
 - (3) Make recommendations to the court for improvement in court services;
 - (4) Make recommendations to the senior judge or the judge for the appointment of administrative, supervisory, consultant, and necessary professional and clerical and other personnel to perform the duties assigned to the court and the director;
 - (5) Provide supervision and consultation to the administrative and supervisory staff regarding the administration of court services, recruitment of personnel, in-service training, and fiscal and office management; and
 - (6) Perform other duties as the senior judge or the judge shall specify.
- (b) For each family court the judge or senior judge where there is more than one shall appoint necessary probation officers, social workers, and marital counselors and may appoint, or make arrangements for the services of physi-

cians, psychologists, psychiatrists, and other professionally competent persons, to carry on the work of the court.

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

SECTION 9. Section 571-31.2, Hawaii Revised Statutes, is amended to read as follows:

“§571-31.2 Juvenile intake and diagnostic services. (a) The court or other designated agency shall:

- (1) Notify the child’s parent, guardian or legal custodian or take reasonable action to ensure that such notice has been given;
- (2) Require the child, the child’s parent, the child’s guardian or legal custodian, or both, to appear at the court or other designated 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)~~ (A) Diversion from justice system processing, formal or informal, and closure of the case;
 - ~~(A)~~ (B) Release of a child to the care of the child’s parent or other responsible adult;
 - ~~(B)~~ (C) 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)~~ (D) Initiation of the filing of a complaint or petition;
 - ~~(D)~~ (E) Detention of a child, utilizing the standard set out in section 571-31.1 or temporary shelter in a nonsecure shelter; and
 - ~~(E)~~ (F) 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 written promise of a parent, guardian, or legal custodian to take the child to the court or other designated agency as in section 571-31(c). The failure of a parent, guardian, or other legal custodian to produce the child in court or at the other designated agency as required by an authorized notice may be pursued as provided in section 571-31(d).

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

SECTION 10. Section 571-31.4, Hawaii Revised Statutes, is amended to read as follows:

“§571-31.4 Informal adjustment, law violators. (a) When a child reasonably believed to come within section 571-11(1) is referred to the court or other designated agency, and is not diverted from processing, 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) The deputy chief court administrators of each circuit shall together establish a framework that includes the criteria probation officers shall use to guide the exercise of discretion in providing informal adjustment.

~~[(b)]~~ (c) 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;
- (9) Placement with nonsecure or secure shelter facilities;
- (10) Restitution providing for monetary payment by the parents of the child; or
- (11) Participation in a restorative justice program where the child and the child's parents or guardian, and other supporters of the child, may meet with the victim harmed by the child's law violation and the victim's supporters.

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

~~[(d)]~~ (e) 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.

(f) Intake officers shall compile annual reports that include the number and per cent of referrals informally adjusted, and the number and per cent of children informally adjusted who avoided further system processing. The administrator of the juvenile client services branch in each judicial circuit shall compile the annual reports from the probation intake sections into a single annual report for each judicial circuit and shall submit the final report to the board of family court judges and the Hawaii juvenile justice state advisory council."

SECTION 11. Section 571-31.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When a child reasonably believed to come within section 571-11(2) is referred to the court or other designated agency, informal adjustment ~~may~~ shall 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),]~~ 571-31.4(c), except section ~~[571-31.4(b)(1),]~~ 571-31.4(c)(1), and provided that placement with shelter facilities under section ~~[571-31.4(b)(9)]~~ 571-31.4(c)(9) shall be on a non-secure basis unless the child is processed under subsection (b) ~~[of this section].~~”

SECTION 12. Section 571-31.6, Hawaii Revised Statutes, is amended to read as follows:

“**§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) ~~[.]~~ and the criteria in the framework established pursuant to section 571-31.4(b), taking into account the availability of suitable method, program, or procedure for the child.”

SECTION 13. Section 571-41, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In the disposition part of the hearing any relevant and material information, including ~~[that]~~ information contained in a written report, study, or examination, and the results of a risk and needs assessment of the child conducted pursuant to section 571-45, shall be admissible, and may be relied upon to the extent of its probative value; provided that the maker of the written report, study, or examination shall be subject to both direct and cross-examination upon demand and when the maker is reasonably available. The disposition shall be based only upon the admitted evidence, and findings adverse to the child as to disputed issues of fact shall be based upon a preponderance of such evidence.”

SECTION 14. Section 571-45, Hawaii Revised Statutes, is amended to read as follows:

“**§571-45 [Investigation] Assessment and investigation prior to disposition[-]; suspension of delinquency proceedings; denial of services reporting.** (a) Prior to disposition, the court shall conduct a risk and needs assessment, using the tool procured and validated pursuant to section 571-5, for each child concerning whom a petition has been filed pursuant to section 571-11(1) and (2).

(b) ~~[Except where the requirement is waived by the judge]~~ In addition to the risk and needs assessment, a social study and a report in writing shall be made in the case of a ~~[minor]~~ child concerning whom a petition has been filed under section 571-11(1) and (2)[-], except where the judge waives the requirement to make a social study and a report in writing. The study shall be initiated upon the filing of a petition except in petitions filed under section 571-11(1) when it is ascertained that the ~~[minor]~~ child denies the allegations set forth in the petition.

In such case the study shall proceed only after the court after hearing has made a finding as to the allegations of the petition.

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

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

The judge may order and use a presentence investigation with respect to any criminal action under the jurisdiction of the court in accordance with the existing provisions of the law with respect to the making and use of such studies.

(d) If the results of the risk and needs assessment indicate a substance abuse or mental health need, the probation officer shall immediately refer the child to the department of health for an eligibility determination.

(e) The court, upon the motion of the child or on its own motion, may order the suspension of the delinquency proceedings, prior to adjudication, for a period of up to one year to obtain substance abuse or mental health treatment if the court finds:

- (1) The child presently needs and is likely to benefit from treatment;
and
- (2) The suspension of the delinquency proceedings will advance the interests of justice.

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

If the court, on the motion of the child or on its own motion, finds that the child has successfully completed the treatment program, the court may dismiss the suspended delinquency proceedings. If the court does not find that the child has satisfactorily completed treatment, the court may terminate the suspension and proceed with the case.

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

SECTION 15. 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~~ child 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 juris-

diction over the ~~minor~~ child. Upon the decree the court, by order duly entered, shall 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.

An order by the court placing a child on probation under this subparagraph shall include a definite term of probation stated in months or years, subject to extension or modification by the court pursuant to section 571-50. When conditions of probation include custody in a youth correctional facility, the custody shall be for a term not to exceed one year, after which time the ~~person~~ child 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~~:

(i) In a Hawaii youth correctional facility~~, in~~ if the child has been adjudicated for a felony-level offense or a violation or revocation of probation, or is committed to the facility from juvenile drug court or girls court on a court order. For a child eligible for placement in a Hawaii youth correctional facility, the court shall enter a finding of fact in the record stating the reasons the child is a public safety risk warranting placement in the correctional facility. No such finding of fact shall be required if the child is adjudicated for a felony against a person or a sex offense;

(ii) In a local public agency or institution~~, or in~~;

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

(iv) 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 place a child on administrative monitoring, as defined in section 571-2, pending completion of conditions as may be imposed by the court, to preempt the need for disposition to a full probation term, and to afford the child the opportunity to demonstrate behavior adjustments. Upon completion of the court-ordered conditions, the court shall discharge the child pursuant to section 571-50. If a child fails to complete the court-ordered conditions, the court may extend or modify the order pursuant to section 571-50, or dispose the child to probation status under paragraph (1)(A); or

~~(D)~~ (D) 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; 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 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, results of the risk and needs assessment conducted by the court, 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 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~~ child 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 16. (a) There is established a juvenile justice oversight advisory council, deemed to be temporary and for a special purpose. The purpose of the advisory council is to oversee implementation and issue necessary reports to carry out the juvenile justice reforms in this Act.

- (b) The duties of the advisory council are as follows:
 - (1) To review, evaluate, and make recommendations regarding the implementation of the reforms in this Act;
 - (2) To develop a uniform process for establishing and reviewing performance and outcome standards for the office of youth services and the family court division of the judiciary, as well as other interrelated agencies. The uniform process shall include the performance and outcome measures for each agency that shall be reviewed annually, the deadlines and format for the submission of the performance and outcome measures, and the entity to which the measures shall be reported;
 - (3) To review data and information submitted to the advisory council and submit annual reports to the executive, legislative, and judicial branches for the term the advisory council is in existence, evaluating implementation of the reforms in this Act and juvenile justice system effectiveness; and
 - (4) To review current eligibility requirements for mental health services for youth, with a focus on expanding access to services to ensure that youth determined to be at-risk and with a need for mental health services receive those services in a more comprehensive and timely

manner, through the department of health or its contracted mental health providers, collaborating and consulting with any relevant agency, and submit a report no later than twenty days prior to the convening of the 2016 regular session to the executive, legislative, and judicial branches, including the current eligibility requirements, recent changes to eligibility requirements, and recommendations for further changes to the eligibility requirements.

- (c) The advisory council shall be composed of seventeen members to be selected as follows, without regard to section 26-34, Hawaii Revised Statutes:
- (1) One member from the executive branch, appointed by the governor;
 - (2) One member from the house of representatives, appointed by the speaker of the house of representatives, or designee;
 - (3) One member from the senate, appointed by the president of the senate, or designee;
 - (4) One member from the judiciary, appointed by the chief justice of the supreme court, or designee;
 - (5) Four members to represent each of the four judicial circuits defined in section 603-1, Hawaii Revised Statutes, appointed by the chief justice of the supreme court, or designee;
 - (6) The executive director of the office of youth services;
 - (7) Two members from the child and adolescent mental health division of the department of health, appointed by the director of health;
 - (8) Two members from the department of education, appointed by the superintendent of education;
 - (9) One member from the department of human services, appointed by the director of human services;
 - (10) One juvenile justice stakeholder from the advocacy community, appointed by the executive director of the office of youth services;
 - (11) One juvenile crime victim advocate, selected from a list submitted by the victim-witness coordinators, and appointed by the governor; and
 - (12) One member from a law enforcement agency or a county prosecutor's office, appointed by the governor.

The advisory council shall meet within ninety days after appointment and organize itself by electing one of its members as chair and such other officers as the advisory council may consider necessary. Thereafter, the advisory council shall meet at least quarterly and at the call of the chair or by a majority of the members. The advisory council shall provide teleconferencing or videoconferencing capabilities for members to attend meetings remotely. A quorum shall consist of eight members.

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

(e) The judiciary shall provide staff support to the advisory council, at the request of the advisory council. The members shall serve without compensation.

(f) The advisory council shall cease to exist on the last day of the regular session of 2016, unless the advisory council is extended by concurrent resolution of the legislature.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,260,500 or so much thereof as may be necessary

for fiscal year 2014-2015 for the necessary costs and expenses incurred in carrying out the purposes of this Act.

The sum appropriated shall be expended by the office of youth services for the purposes of this Act.

SECTION 18. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawaii State Constitution or Article I, section 10, of the United States Constitution.

SECTION 19. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 20. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 21. This Act shall take effect on July 1, 2014, and apply to delinquent behavior committed on or after that date; provided that:

- (1) Section 15 shall take effect on October 1, 2014, and apply to delinquent behavior committed on or after that date; and
- (2) Sections 3 and 14 shall take effect on November 1, 2014, and apply to delinquent behavior committed on or after that date.

(Approved July 2, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.