

ACT 61

S.B. NO. 386

A Bill for an Act Relating to the Detention of a Minor in an Adult Jail or Lockup.

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

PART I

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

“§571-32 Detention; shelter; release; notice. (a) If a [child] minor 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, the [child] minor 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] minor requires care away from the [child's] minor's own home but does not require secure physical restriction, the [child] minor shall be given temporary care in any available nonsecure [child] minor caring institution, foster family home, or other shelter facility.

(b) The officer or other person who brings a [child] minor to a detention or shelter facility shall give notice to the court at once, stating the legal basis therefor and the reason why the [child] minor was not released to the [child's] minor's parents. If the facility to which the [child] minor is taken is not an agency of the court, the person in charge of the facility in which the [child] minor is placed shall promptly give notice to the court that the [child] minor is in that person's custody. ~~Prior to~~ Before acceptance of the [child] minor 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,] minor, the judge, officer, staff member, or the director of detention services may then order the [child] minor to be released, if possible, to the care of the [child's] minor's parent, guardian, legal custodian, or other responsible adult, or the judge may order the [child] minor held in the facility subject to further order or placed in some other appropriate facility.

(c) As soon as a [child] minor is detained, the [child's] minor'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] minor 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] minor if an order of detention has not been made.

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

- (1) Unless a court finds, after a hearing and in writing, that it is in the interest of justice as provided for in subsection (g)(2), a minor believed to come within section 571-11(1), or a minor awaiting trial or another legal process, who is treated as an adult for purposes of prosecution in criminal court and housed in a secure facility shall not:
 - (A) Have sight or sound contact with adult inmates; or
 - (B) Be held in any jail or lockup for adults, except as provided in subsection (g)(3); and
- (2) Detention in a jail or lockup for adults may be permitted for:

- (A) A minor accused of a non-status offense who is held for a period not to exceed six hours; provided that the minor is being held:
- (i) For processing or release;
 - (ii) While awaiting transfer to a juvenile facility; or
 - (iii) For a court appearance that occurs within the period of detention; or
- (B) A minor accused of a non-status offense who is awaiting an initial court appearance that will occur within forty-eight hours of the minor being taken into custody, excluding weekends and holidays, and where the jail or lockup for adults is in a location:
- (i) Outside a metropolitan statistical area, as defined by the Office of Management and Budget, and no acceptable alternative placement is available;
 - (ii) Where the distance to be traveled or the lack of highway, road, or transportation does not allow for court appearances within forty-eight hours, excluding weekends and holidays, such that a brief delay of no more than an additional forty-eight hours is excusable; or
 - (iii) Where safety concerns exist, such as severe and life-threatening weather conditions that do not allow for reasonably safe travel, in which case the time for an appearance may be delayed until twenty-four hours after the time that conditions allow for reasonably safe travel;

provided that the minor shall not have sight or sound contact with adult inmates; provided further that the State shall have a policy in effect that requires individuals who work with both minor and adult inmates in collocated facilities to be trained and certified to work with juveniles.

(e) No [child] minor may be held after the filing of a petition or motion, as specified in subsection (d), unless an order for continued detention or shelter has been made by a judge after a court hearing. If there is probable cause to believe that the [child] minor comes within section 571-11(1), the [child] minor may be securely detained, following a court hearing, in a detention facility for juveniles or may be held in a shelter. If there is probable cause to believe that the [child] minor comes within section 281-101.5 or 571-11(2), the [child] minor may be held, following a court hearing, in a shelter but [may] shall not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the [child] minor is subject to the provisions of chapter 582, Interstate Compact on Juveniles, or chapter 582D, Interstate Compact for Juveniles, or is allegedly in or has already been adjudicated for a violation of a valid court order, as provided under the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

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

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

- (1) Where a [child] minor transferred for criminal proceedings pursuant to a 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 transported promptly to the place of commitment.] minor shall not:

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

(B) Be held in any jail or lockup for adults, unless a court finds, after a hearing and in writing, that it is in the interest of justice;

(2) In determining whether it is in the interest of justice to permit a minor to be held in any jail or lockup for adults, or to have sight or sound contact with adult inmates, a court shall consider:

(A) The age of the minor;

(B) The physical and mental maturity of the minor;

(C) The present mental state of the minor, including whether the minor presents an imminent risk of self-harm;

(D) The nature and circumstances of the alleged offense;

(E) The minor's history of prior delinquent acts;

(F) The relative ability of the available adult and juvenile detention facilities to meet the specific needs of the minor and protect the safety of the public as well as other detained minors; and

(G) Any other relevant factor; and

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

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

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

(h) Provisions regarding bail shall not be applicable to ~~[children]~~ minors detained in accordance with this chapter, except that bail may be allowed after a ~~[child]~~ minor 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]~~ minor 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 and 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.

(k) The department of human services through the office of youth services shall certify police station cellblocks and community correctional centers that provide sight and sound separation between ~~[children]~~ minors and adults in secure custody. Only cellblocks and centers certified under this subsection shall be authorized to detain juveniles pursuant to section 571-32(d). The office of youth services may develop sight and sound separation standards, issue certifications, monitor and inspect facilities for compliance, cite facilities for violations, withdraw certifications, and require certified facilities to submit ~~[such]~~ data and information as requested. In addition, the office of youth services may monitor and inspect all cellblocks and centers for compliance with section 571-32(d)."

PART II

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

“§352-10 Circuit court disposition of offenders under eighteen years. The circuit court [~~may~~] shall 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. In such a case, when the term of confinement ordered by the court extends beyond the offender’s eighteenth birthday, the offender shall, upon reaching the age of eighteen, be committed to the custody of the department of public safety for completion of the sentence. Persons committed to the Hawaii youth correctional facilities under this section may be furloughed or paroled by the director, unless the commitment order issued by the court requires prior approval by the court or unless the offender is subject to a mandatory term of imprisonment which term has not yet expired.”

PART III

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

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

(Approved June 23, 2021.)