

ACT 290

S.B. NO. 2115

A Bill for an Act Relating to the Room Confinement of Minors.

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

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

“§571-32 Detention; shelter; release; notice. (a) If a 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, then the minor shall be taken without unnecessary delay to the court or to the place of detention or shelter designated by the court. If a minor who is believed to come within section 571-11(2) is not released as provided in section 571-31, and is not deemed

suitable for diversion, then the minor shall be taken without unnecessary delay to the court or to the place of shelter designated by the court. If the court determines that the minor requires care away from the minor's own home but does not require secure physical restriction, the minor shall be given temporary care in any available nonsecure minor caring institution, foster family home, or other shelter facility.

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

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

(d) No 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. 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 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 minor comes within section 571-11(1), the 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 minor comes within section 281-101.5 or 571-11(2), the minor may be held, following a court hearing, in a shelter but shall not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the 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 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 minor transferred for criminal proceedings pursuant to a waiver of family court jurisdiction is detained, the 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) A minor may be placed in room confinement in a juvenile detention or adult jail facility only under the following conditions:
 - (1) Room confinement may only be used as a temporary response to a minor's behavior, and only if:
 - (A) The behavior poses an immediate and substantial risk of danger to the minor's self or another individual, or a serious and immediate threat to the safety and orderly operation of the facility; provided that any decision to hold a minor in room confinement due to a mental health emergency shall be made by a mental health professional and based upon the mental health professional's examination of the minor; or
 - (B) The minor is an imminent escape risk;
 - (2) Because of the potential impact on a minor's mental or physical health, room confinement may only be used for the minimum time necessary for the minor to regain self-control, and only after less restrictive options or techniques, including de-escalation, conflict and behavioral management techniques, and intervention by a mental health professional, have been attempted, exhausted, and failed;
 - (3) If a minor is placed in room confinement, the reasons for the room confinement shall be explained to the minor. The minor shall also be informed that release from room confinement will occur immediately when the minor exhibits self-control and is no longer deemed a threat to the minor's safety or the safety of others;
 - (4) If a minor is placed in room confinement, the following individuals shall be notified on the next business day and provided the reasons for the room confinement as well as the location and duration of the confinement:
 - (A) The senior judge of the family court;¹
 - (B) The presiding judge who ordered the minor to be held at the facility;¹
 - (C) The deputy chief court administrator; and
 - (D) The social services manager of the juvenile client services branch for the circuit court of the first circuit;
 - (5) Room confinement shall not be used for purposes of punishment or disciplinary sanction, coercion, convenience, or retaliation, or to address staffing shortages at the facility;
 - (6) A minor may be held in room confinement for no more than three hours unless the minor is a danger to themselves or another, or the on-call judge grants an extension of no more than three additional

hours of confinement. Thereafter, the minor shall be returned to the general population; provided that if a minor is held in room confinement for more than three hours, a hearing shall be held before the family court on the next business day, at which time the minor shall be provided legal representation;

- (7) A minor shall not be returned to room confinement immediately after returning to the general population from room confinement for the purposes of evading the reporting requirements and room confinement restrictions pursuant to this section;
- (8) If the minor is not returned to the general population following a hearing pursuant to paragraph (6), the minor shall be transferred to a location where services may be provided to the minor without the need for room confinement; provided that if a mental health professional determines that the level of crisis service needed is not presently available at the location, the superintendent or deputy superintendent of the facility shall initiate a referral to a facility that can meet the needs of the minor;
- (9) All rooms used for room confinement shall have adequate and operational lighting, ventilation for the comfort of the minor, and shall be clean and resistant to suicide and self-harm;
- (10) The minor shall have access to drinking water, toilet facilities, hygiene supplies, and reading materials approved by a mental health professional;
- (11) The minor shall have the same access as provided to minors in the general population of the facility to meals, contact with parents or legal guardians, legal assistance, educational programs, and medical and mental health services;
- (12) The minor shall be continuously monitored by facility staff; and
- (13) The judiciary shall post quarterly on the judiciary's website a report of its detention center detailing their compliance with this section. Each report shall include:
 - (A) The number of incidents of room confinement every year;
 - (B) The number of minors impacted;
 - (C) The age, gender identity, and race of minors impacted;
 - (D) Any alternative strategies employed before the use of room confinement, the reasons those alternative strategies failed, and why room confinement was necessary; and
 - (E) The incidence of mental illness.

For the purposes of this subsection:

"Mental health professional" means a qualified mental health professional or mental health professional supervised by a qualified mental health professional.

"Room confinement" means the placement of a minor in a room, cell, or area with minimal or no contact with persons other than court staff and attorneys. "Room confinement" does not include confinement of a minor in a single-person room or cell for brief periods of locked room time as necessary for required institutional operations and does not include confinement during sleep hours.

(h) (i) Provisions regarding bail shall not be applicable to minors detained in accordance with this chapter, except that bail may be allowed after a minor has been transferred for criminal prosecution pursuant to waiver of family court jurisdiction.

(i) (j) 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 minor who is or appears to be under eighteen years of age is received at the facility.

~~[(j)]~~ (k) 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)]~~ (l) 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 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 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).”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 12, 2022.)

Note

1. ";" should be underscored.