
A BILL FOR AN ACT

RELATING TO SEX ASSAULTS COMMITTED BY MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 352-28, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§352-28 Transfer to correctional facility.** Any person,
4 after the person's sixteenth birthday, who has been committed to
5 the care of the director and disrupts the order and the
6 discipline of any state-operated youth correctional facility or
7 injures the staff or other person committed to the facility or
8 for other good cause, may be transferred by the director to an
9 adult correctional facility, with the prior approval of the
10 family court, for the balance of the term provided for by the
11 court. If such person demonstrates sufficient improvement or
12 progress, or for other good reason, the family court may order
13 the person's return to a youth correctional facility[-];
14 provided that a person who has been transferred to an adult
15 correctional facility pursuant to an order made under section
16 571-48 shall not be returned to a youth correctional facility
17 after the person becomes eighteen."



1 SECTION 2. Section 571-48, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§571-48 Decree, if informal adjustment or diversion to a**
4 **private or community agency or program has not been effected.**

5 When a minor is found by the court to come within section
6 571-11, the court shall so decree and in its decree shall make a
7 finding of the facts upon which the court exercises its
8 jurisdiction over the minor. Upon the decree the court, by
9 order duly entered, shall proceed as follows:

10 (1) As to a child adjudicated under section 571-11(1) [÷],
11 except as provided in paragraph (2):

12 (A) The court may place the child on probation:

13 (i) In the child's own home; or

14 (ii) In the custody of a suitable person or
15 facility elsewhere, upon conditions
16 determined by the court.

17 When conditions of probation include
18 incarceration in a youth correctional facility,
19 the incarceration shall be for a term not to
20 exceed one year, after which time the person
21 shall be allowed to reside in the community



1 subject to additional conditions as may be
2 imposed by the court;

3 (B) The court may vest legal custody of the child,
4 after prior consultation with the agency or
5 institution, in a Hawaii youth correctional
6 facility, in a local public agency or
7 institution, or in any private institution or
8 agency authorized by the court to care for
9 children; or place the child in a private home.
10 If legal custody of the child is vested in a
11 private agency or institution in another state,
12 the court shall select one that is approved by
13 the family or juvenile court of the other state
14 or by that state's department of social services
15 or other appropriate department; or

16 (C) The court may fine the child for a violation
17 which would be theft in the third degree by
18 shoplifting if committed by an adult. The court
19 may require the child to perform public services
20 in lieu of the fine;



1 (2) As to a child adjudicated under section 571-11(1) for
2 an act that would constitute an offense under section
3 707-730:

4 (A) The court may vest legal custody of the child in
5 a Hawaii youth correctional facility until the
6 child attains the age of eighteen on condition
7 that the child thereafter be transferred,
8 pursuant to section 352-28, to the custody of the
9 director of public safety to be imprisoned for
10 the balance of the maximum term of imprisonment
11 specified by the offense;

12 (B) The court shall retain jurisdiction after the
13 person becomes eighteen; provided that the person
14 shall otherwise be subject to the procedure for
15 determining a minimum term of imprisonment
16 pursuant to section 706-669 and for parole
17 pursuant to section 706-670.

18 [~~2~~] (3) As to a child adjudicated under section
19 571-11(2):

20 (A) The court may place the child under protective
21 supervision, as hereinabove defined, in the
22 child's own home, or in the custody of a suitable

1 person or agency elsewhere, upon conditions
2 determined by the court; or

3 (B) The court may vest legal custody of the child,
4 after prior consultation with the agency or
5 institution, in a local governmental agency or
6 institution licensed or approved by the State to
7 care for children, with the exception of an
8 institution authorized by the court to care for
9 children. If legal custody of the child is
10 vested in a private agency or institution in
11 another state, the court shall select one that is
12 approved by the family or juvenile court of the
13 other state or by that state's department of
14 social services or other appropriate department;
15 provided that the child may not be committed to a
16 public or private institution operated solely for
17 the treatment of law violators;

18 [~~3~~] (4) An order vesting legal custody of a minor in an
19 individual, agency, or institution under section 571-
20 11(2) shall be for an indeterminate period but shall
21 not remain in force or effect beyond three years from
22 the date entered, except that the individual,



1 institution, or agency may file with the court a
2 petition for renewal of the order and the court may
3 renew the order if it finds such renewal necessary to
4 safeguard the welfare of the child or the public
5 interest. The court, after notice to the parties, may
6 conduct a hearing on the petition. Renewal may be
7 periodic during minority, but no order shall have any
8 force or effect beyond the period authorized by
9 section 571-13. An agency granted legal custody shall
10 be subject to prior approval of the court in any case
11 in which the child is to reside without the
12 territorial jurisdiction of the court and may be
13 subject to prior approval in other cases. An
14 individual granted legal custody shall exercise the
15 rights and responsibilities personally unless
16 otherwise authorized by the court;

17 [~~+4~~] (5) Whenever the court commits a child to the care of
18 the director of human services or executive director
19 of the office of youth services, or vests legal
20 custody of a child in an institution or agency it
21 shall transmit with the order copies of the clinical
22 reports, social study, and other information pertinent



1 to the care and treatment of the child, and the
2 institution or agency shall give to the court any
3 information concerning the child that the court may at
4 any time require. An institution or agency receiving
5 a child under this paragraph shall inform the court
6 whenever the status of the child is affected through
7 temporary or permanent release, discharge, or transfer
8 to other custody. An institution to which a child is
9 committed under section 571-11(1) or (2) shall not
10 transfer custody of the child to an institution for
11 the correction of adult offenders, except as
12 authorized in this chapter and under chapter 352;

13 [~~+5~~] (6) The court may order, for any child within its
14 jurisdiction, whatever care or treatment is authorized
15 by law;

16 [~~+6~~] (7) In placing a child under the guardianship or
17 custody of an individual or of a private agency or
18 private institution, the court shall give primary
19 consideration to the welfare of the child;

20 [~~+7~~] (8) In support of any order or decree under section
21 571-11(1) or (2), the court may require the parents or
22 other persons having custody of the child, or any



1 other person who has been found by the court to be
2 encouraging, causing, or contributing to the acts or
3 conditions which bring the child within the purview of
4 this chapter and who are parties to the proceeding, to
5 do or to omit doing any acts required or forbidden by
6 law, when the judge deems this requirement necessary
7 for the welfare of the child. The court may also make
8 appropriate orders concerning the parents or other
9 persons having custody of the child and who are
10 parties to the proceeding. If such persons fail to
11 comply with the requirement or with the court order,
12 the court may proceed against them for contempt of
13 court;

14 [~~(8)~~] (9) In support of any order or decree for custody or
15 support, the court may make an order of protection
16 setting forth reasonable conditions of behavior to be
17 observed for a specified time, binding upon both
18 parents or either of them. This order may require
19 either parent to stay away from the home or from the
20 other parent or children, may permit the other to
21 visit the children at stated periods, or may require a



1 parent to abstain from offensive conduct against the
2 children or each other;

3 [~~(9)~~] (10) The court may dismiss the petition or otherwise
4 terminate its jurisdiction at any time;

5 [~~(10)~~] (11) In any other case of which the court has
6 jurisdiction, the court may make any order or judgment
7 authorized by law;

8 [~~(11)~~] (12) The court may order any person adjudicated
9 pursuant to section 571-11(1) to make restitution of
10 money or services to any victim who suffers loss as a
11 result of the child's action, or to render community
12 service;

13 [~~(12)~~] (13) The court may order any person adjudicated
14 pursuant to section 571-11(2) to participate in
15 community service; and

16 [~~(13)~~] (14) The court may order the parents of an
17 adjudicated minor to make restitution of money or
18 services to any victim, person, or party who has
19 incurred a loss or damages as a result of the child's
20 action."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.
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HB 3078

Report Title:

Sex Assault; Disposition of Minor Accused

Description:

Permits family court to commit minor, age 11 or older at the time of act that constitutes the offense of first degree sexual assault, for full term authorized by definition of offense. Provides for minor upon attaining age of majority, to be committed to custody of director of public safety for balance of term.

