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## A BILL FOR AN ACT

RELATING TO SERIOUS OFFENSES COMMITTED BY MINORS.

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

1 SECTION 1. Section 352-9, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) [~~It~~] Except as provided in section 571-48(2), in  
4 those cases where the term of commitment to a youth correctional  
5 facility extends beyond the person's nineteenth birthday, the  
6 person shall be placed on juvenile parole pursuant to the  
7 original family court order for the balance of the person's term  
8 of commitment; provided that [~~such~~] the term does not extend  
9 beyond the person's twentieth birthday unless earlier  
10 terminated."

11 SECTION 2. Section 352-28, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§352-28 Transfer to correctional facility.** Any person  
14 after the person's sixteenth birthday, who has been committed to  
15 the care of the director and disrupts the order and the  
16 discipline of any state-operated youth correctional facility or  
17 injures the staff or other person committed to the facility or



1 for other good cause, may be transferred by the director to an  
2 adult correctional facility, with the prior approval of the  
3 family court, for the balance of the term provided for by the  
4 court. If [~~such~~] the person demonstrates sufficient improvement  
5 or progress, or for other good reason, the family court may  
6 order the person's return to a youth correctional facility[-];  
7 provided that a person who has been transferred to an adult  
8 correctional facility pursuant to an order made under section  
9 571-48 shall not be returned to a youth correctional facility  
10 upon attaining the age of eighteen."

11 SECTION 3. Section 571-48, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§571-48 Decree, if informal adjustment or diversion to a**  
14 **private or community agency or program has not been effected.**

15 When a minor is found by the court to come within section  
16 571-11, the court shall so decree and in its decree shall make a  
17 finding of the facts upon which the court exercises its  
18 jurisdiction over the minor. Upon the decree the court, by  
19 order duly entered, shall proceed as follows:

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

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



- 1 (i) In the child's own home; or  
2 (ii) In the custody of a suitable person or  
3 facility elsewhere, upon conditions  
4 determined by the court.

5 When conditions of probation include custody in a  
6 youth correctional facility, the custody shall be  
7 for a term not to exceed one year, after which  
8 time the person shall be allowed to reside in the  
9 community subject to additional conditions as may  
10 be imposed by the court;

- 11 (B) The court may vest legal custody of the child,  
12 after prior consultation with the agency or  
13 institution, in a Hawaii youth correctional  
14 facility, in a local public agency or  
15 institution, or in any private institution or  
16 agency authorized by the court to care for  
17 children; or place the child in a private home.  
18 If legal custody of the child is vested in a  
19 private agency or institution in another state,  
20 the court shall select one that is approved by  
21 the family or juvenile court of the other state



1 or by that state's department of social services  
2 or other appropriate department; or

3 (C) The court may fine the child for a violation  
4 which would be theft in the third degree by  
5 shoplifting if committed by an adult. The court  
6 may require the child to perform public services  
7 in lieu of the fine;

8 (2) As to a child adjudicated under section 571-11(1) for  
9 an act that would constitute an offense under section  
10 707-701, 707-701.5, or 707-730, the court may vest  
11 legal custody of the child in a Hawaii youth  
12 correctional facility until the child attains the age  
13 of eighteen on the condition that the person  
14 thereafter be transferred, pursuant to section 352-28,  
15 to the custody of the director of public safety to be  
16 imprisoned until the person has attained the age of  
17 twenty-six. A minor offender adjudicated under this  
18 section may be placed in an adult correctional  
19 facility;

20 [+2+] (3) As to a child adjudicated under section  
21 571-11(2):



- 1 (A) The court may place the child under protective  
2 supervision, as hereinabove defined, in the  
3 child's own home, or in the custody of a suitable  
4 person or agency elsewhere, upon conditions  
5 determined by the court; or
- 6 (B) The court may vest legal custody of the child,  
7 after prior consultation with the agency or  
8 institution, in a local governmental agency or  
9 institution licensed or approved by the State to  
10 care for children, with the exception of an  
11 institution authorized by the court to care for  
12 children. If legal custody of the child is  
13 vested in a private agency or institution in  
14 another state, the court shall select one that is  
15 approved by the family or juvenile court of the  
16 other state or by that state's department of  
17 social services or other appropriate department;  
18 provided that the child may not be committed to a  
19 public or private institution operated solely for  
20 the treatment of law violators;
- 21 [~~3~~] (4) An order vesting legal custody of a minor in an  
22 individual, agency, or institution under section



1 571-11(2) shall be for an indeterminate period but  
2 shall not remain in force or effect beyond three years  
3 from the date entered, except that the individual,  
4 institution, or agency may file with the court a  
5 petition for renewal of the order and the court may  
6 renew the order if it finds such renewal necessary to  
7 safeguard the welfare of the child or the public  
8 interest. The court, after notice to the parties, may  
9 conduct a hearing on the petition. Renewal may be  
10 periodic during minority, but no order shall have any  
11 force or effect beyond the period authorized by  
12 section 571-13. An agency granted legal custody shall  
13 be subject to prior approval of the court in any case  
14 in which the child is to reside without the  
15 territorial jurisdiction of the court and may be  
16 subject to prior approval in other cases. An  
17 individual granted legal custody shall exercise the  
18 rights and responsibilities personally unless  
19 otherwise authorized by the court;

20 [~~4~~] (5) Whenever the court commits a child to the care of  
21 the director of human services or executive director  
22 of the office of youth services, or vests legal



1 custody of a child in an institution or agency, it  
2 shall transmit with the order copies of the clinical  
3 reports, social study, and other information pertinent  
4 to the care and treatment of the child, and the  
5 institution or agency shall give to the court any  
6 information concerning the child that the court may at  
7 any time require. [~~Am~~] Except as provided in  
8 paragraph (2), an institution or agency receiving a  
9 child under this paragraph shall inform the court  
10 whenever the status of the child is affected through  
11 temporary or permanent release, discharge, or transfer  
12 to other custody. An institution to which a child is  
13 committed under section 571-11(1) or (2) shall not  
14 transfer custody of the child to an institution for  
15 the correction of adult offenders, except as  
16 authorized in this chapter and under chapter 352;

17 [~~+5~~] (6) The court may order, for any child within its  
18 jurisdiction, whatever care or treatment is authorized  
19 by law;

20 [~~+6~~] (7) In placing a child under the guardianship or  
21 custody of an individual or of a private agency or



1 private institution, the court shall give primary  
2 consideration to the welfare of the child;

3 [~~(7)~~] (8) In support of any order or decree under section  
4 571-11(1) or (2), the court may require the parents or  
5 other persons having custody of the child, or any  
6 other person who has been found by the court to be  
7 encouraging, causing, or contributing to the acts or  
8 conditions which bring the child within the purview of  
9 this chapter and who are parties to the proceeding, to  
10 do or to omit doing any acts required or forbidden by  
11 law, when the judge deems this requirement necessary  
12 for the welfare of the child. The court may also make  
13 appropriate orders concerning the parents or other  
14 persons having custody of the child and who are  
15 parties to the proceeding. If such persons fail to  
16 comply with the requirement or with the court order,  
17 the court may proceed against them for contempt of  
18 court;

19 [~~(8)~~] (9) In support of any order or decree for custody or  
20 support, the court may make an order of protection  
21 setting forth reasonable conditions of behavior to be  
22 observed for a specified time, binding upon both





1 parents or either of them. This order may require  
2 either parent to stay away from the home or from the  
3 other parent or children, may permit the other to  
4 visit the children at stated periods, or may require a  
5 parent to abstain from offensive conduct against the  
6 children or each other;

7 [~~+9~~] (10) The court may dismiss the petition or otherwise  
8 terminate its jurisdiction at any time;

9 [~~+10~~] (11) In any other case of which the court has  
10 jurisdiction, the court may make any order or judgment  
11 authorized by law;

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

17 [~~+12~~] (13) The court may order any person adjudicated  
18 pursuant to section 571-11(2) to participate in  
19 community service; and

20 [~~+13~~] (14) The court may order the parents of an  
21 adjudicated minor to make restitution of money or  
22 services to any victim, person, or party who has



1           incurred a loss or damages as a result of the child's  
2           action."

3           SECTION 4. Section 706-667, Hawaii Revised Statutes, is  
4 amended by amending subsection (3) to read as follows:

5           "(3) Special term. A young adult defendant convicted of a  
6 felony, in lieu of any other sentence of imprisonment authorized  
7 by this chapter, may be sentenced to a special indeterminate  
8 term of imprisonment if the court is of the opinion that such  
9 special term is adequate for the young adult defendant's  
10 correction and rehabilitation and will not jeopardize the  
11 protection of the public. When ordering a special indeterminate  
12 term of imprisonment, the court shall impose the maximum length  
13 of imprisonment, which shall be eight years for a class A  
14 felony, five years for a class B felony, and four years for a  
15 class C felony. The minimum length of imprisonment shall be set  
16 by the Hawaii paroling authority in accordance with section 706-  
17 669. During this special indeterminate term, the young adult  
18 shall be incarcerated separately from career criminals, when  
19 practicable.

20           This section shall not apply to the offenses of murder,  
21 [~~or~~] attempted murder[~~-~~], or sexual assault in the first  
22 degree."



1 SECTION 5. This Act shall not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun, before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2008.



**Report Title:**

Sex Assault; Murder; Disposition of Minor Accused

**Description:**

Permits family court to commit a minor, who commits an act that constitutes sexual assault or murder, to be incarcerated at a youth correctional facility until age 18 then transferred to the custody of the Director of Public Safety until age 26. (HB3372 HD1)

