

JAN 23 2008

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Section 571-22, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§571-22 Waiver of jurisdiction; transfer to other courts.

4 (a) The court may waive jurisdiction and order a minor or adult
5 held for criminal proceedings after full investigation and
6 hearing where the person during the person's minority, but on or
7 after the person's sixteenth birthday, is alleged to have
8 committed an act that would constitute a felony if committed by
9 an adult, and the court finds that:

10 (1) There is no evidence the person is committable to an
11 institution for the mentally defective or retarded or
12 the mentally ill;

13 (2) The person is not treatable in any available
14 institution or facility within the State designed for
15 the care and treatment of children; or



1 (3) The safety of the community requires that the person
2 be subject to judicial restraint for a period
3 extending beyond the person's minority.

4 (b) The court may waive jurisdiction and order a minor or
5 adult held for criminal proceedings if, after a full
6 investigation and hearing, the court finds that:

7 (1) The person during the person's minority, but on or
8 after the person's fourteenth birthday, is alleged to
9 have committed an act that would constitute a felony
10 if committed by an adult and either:

11 (A) The act resulted in serious bodily injury to a
12 victim;

13 (B) The act would constitute a class A felony if
14 committed by an adult; or

15 (C) The person has more than one prior adjudication
16 for acts that would constitute felonies if
17 committed by an adult; and

18 (2) There is no evidence the person is committable to an
19 institution for the mentally defective or retarded or
20 the mentally ill.



1 (c) The factors to be considered in deciding whether
2 jurisdiction should be waived under subsection (a) or (b) are as
3 follows:

4 (1) The seriousness of the alleged offense;
5 (2) Whether the alleged offense was committed in an
6 aggressive, violent, premeditated, or wilful manner;

7 (3) Whether the alleged offense was against persons or
8 against property, greater weight being given to
9 offenses against persons, especially if personal
10 injury resulted;

11 (4) The desirability of trial and disposition of the
12 entire offense in one court when the minor's
13 associates in the alleged offense are adults who will
14 be charged with a crime;

15 (5) The sophistication and maturity of the minor as
16 determined by consideration of the minor's home,
17 environmental situation, emotional attitude, and
18 pattern of living;

19 (6) The record and previous history of the minor,
20 including previous contacts with the family court,
21 other law enforcement agencies, courts in other
22 jurisdictions, prior periods of probation to the



1 family court, or prior commitments to juvenile
2 institutions;

3 (7) The prospects for adequate protection of the public
4 and the likelihood of reasonable rehabilitation of the
5 minor (if the minor is found to have committed the
6 alleged offense) by the use of procedures, services,
7 and facilities currently available to the family
8 court; and

9 (8) All other relevant matters.

10 (d) The court may waive jurisdiction and order a minor or
11 adult held for criminal proceedings if, after a full
12 investigation and hearing, the court finds that:

13 (1) The person during the person's minority is alleged to
14 have committed an act that would constitute murder in
15 the first degree or second degree or attempted murder
16 in the first degree or second degree if committed by
17 an adult; and

18 (2) There is no evidence the person is committable to an
19 institution for the mentally defective or retarded or
20 the mentally ill.

21 (e) If, incident to a hearing at which the person's prior
22 court record under section 571-11(1) is established, the court



1 determines that a minor of at least fifteen years of age, but
2 less than eighteen years of age, has been charged with an act
3 that would constitute a violation of chapters 707-701, 707-
4 701.5, 707-730(1)(a), 707-730(1)(b), 707-730(1)(d), 707-
5 730(1)(e), or 707-732 if committed by an adult, the court shall
6 waive jurisdiction and order the minor held for criminal
7 proceedings.

8 ~~(e)~~ (f) Transfer of a minor for criminal proceedings
9 terminates the jurisdiction of the court over the minor with
10 respect to any subsequent acts that would otherwise be within
11 the court's jurisdiction under section 571-11(1) and thereby
12 confers jurisdiction over the minor to a court of competent
13 criminal jurisdiction.

14 ~~(f)~~ (g) If criminal proceedings instituted under
15 subsection (a), (b), or (d) result in an acquittal or other
16 discharge of the minor involved, no petition shall be filed
17 thereafter in any family court based on the same facts as were
18 alleged in the criminal proceeding.

19 ~~(g)~~ (h) A minor shall not be subject to criminal
20 prosecution based on the facts giving rise to a petition filed
21 under this chapter, except as otherwise provided in this
22 chapter.



1 ~~[(h)]~~ (i) Where the petition has been filed in a circuit
2 other than the minor's residence, the judge, in the judge's
3 discretion, may transfer the case to the family court of the
4 circuit of the minor's residence.

5 ~~[(i)]~~ (j) When a petition is filed bringing a minor before
6 the court under section 571-11(1) and (2), and the minor resides
7 outside of the circuit, but within the State, the court, after a
8 finding as to the allegations in the petition, may certify the
9 case for disposition to the family court having jurisdiction
10 where the minor resides. Thereupon, the court shall accept the
11 case and may dispose of the case as if the petition was
12 originally filed in that court. Whenever a case is so
13 certified, the certifying court shall forward to the receiving
14 court certified copies of all pertinent legal and social
15 records.

16 ~~[(j)]~~ (k) If the court waives jurisdiction pursuant to
17 subsection (b) or (d), the court also may waive its jurisdiction
18 with respect to any other felony charges arising from the same
19 episode to the charge for which the minor was waived."

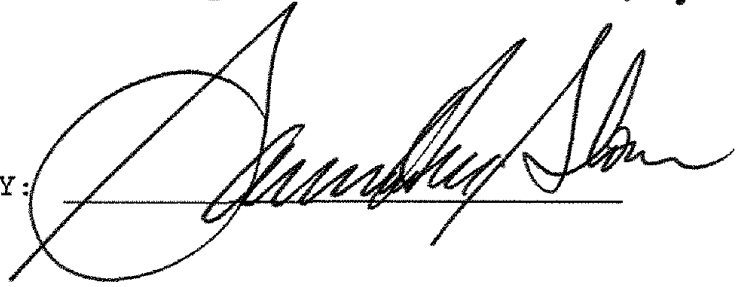
20 SECTION 2. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 3. This Act shall take effect on January 1, 2009.



S.B. NO. 3179

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Assemblyman Steven", is written over a horizontal line. The signature is cursive and stylized.



Report Title:

Crime

Description:

Mandates minors be tried as adults in cases of first degree murder, second degree murder, first degree sexual assault and second degree sexual assault.

