
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

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

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

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

8 (A) The act resulted in serious bodily injury to a
9 victim;

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

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

15 (2) There is no evidence the person is committable to an
16 institution for the mentally defective or retarded or
17 the mentally ill.

18 (c) The factors to be considered in deciding whether
19 jurisdiction should be waived under subsection (a) or (b) are as
20 follows:

21 (1) The seriousness of the alleged offense;

- 1 (2) Whether the alleged offense was committed in an
2 aggressive, violent, premeditated, or wilful manner;
- 3 (3) Whether the alleged offense was against persons or
4 against property, greater weight being given to
5 offenses against persons, especially if personal
6 injury resulted;
- 7 (4) The desirability of trial and disposition of the
8 entire offense in one court when the minor's
9 associates in the alleged offense are adults who will
10 be charged with a crime;
- 11 (5) The sophistication and maturity of the minor as
12 determined by consideration of the minor's home,
13 environmental situation, emotional attitude, and
14 pattern of living;
- 15 (6) The record and previous history of the minor,
16 including previous contacts with the family court,
17 other law enforcement agencies, courts in other
18 jurisdictions, prior periods of probation to the
19 family court, or prior commitments to juvenile
20 institutions;
- 21 (7) The prospects for adequate protection of the public
22 and the likelihood of reasonable rehabilitation of the

1 minor (if the minor is found to have committed the
2 alleged offense) by the use of procedures, services,
3 and facilities currently available to the family
4 court; and

5 (8) All other relevant matters.

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

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

14 (2) There is no evidence the person is committable to an
15 institution for the mentally defective or retarded or
16 the mentally ill.

17 (e) The court shall waive jurisdiction and order a minor
18 to be held in a youth correctional facility for criminal
19 proceedings if, after a full investigation and hearing, the
20 court finds that:

1 (1) The minor is alleged to have committed an act that
2 would constitute murder in the first degree or second
3 degree if committed by an adult; and

4 (2) The minor is at least fifteen years of age, but less
5 than eighteen years of age.

6 Subsequent to a waiver by the family court, upon motion by the
7 defendant, the circuit court may remand the minor back to the
8 jurisdiction of the family court if the circuit court finds that
9 the rehabilitation of the minor would be seriously impaired if
10 the minor remained under the jurisdiction of the circuit court,
11 or that the minor is committable to an institution for the
12 mentally defective or retarded or the mentally ill.

13 [~~(e)~~] (f) Transfer of a minor for criminal proceedings
14 terminates the jurisdiction of the court over the minor with
15 respect to any subsequent acts that would otherwise be within
16 the court's jurisdiction under section 571-11(1) and thereby
17 confers jurisdiction over the minor to a court of competent
18 criminal jurisdiction.

19 [~~(f)~~] (g) If criminal proceedings instituted under
20 subsection (a), (b), or (d) result in an acquittal or other
21 discharge of the minor involved, no petition shall be filed

1 thereafter in any family court based on the same facts as were
2 alleged in the criminal proceeding.

3 ~~[(g)]~~ (h) A minor shall not be subject to criminal
4 prosecution based on the facts giving rise to a petition filed
5 under this chapter, except as otherwise provided in this
6 chapter.

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

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

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

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

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

10 SECTION 4. This Act shall take effect on January 1, 2010.

Report Title:

Crime; Minors Tried as Adults

Description:

Mandates minors aged 15-17 be tried as adults in cases of first and second degree murder. Provides for discretionary remand of the minor in specified cases. (SD1)