

JAN 22 2009

A BILL FOR AN ACT

RELATING TO FAMILY COURT JURISDICTION OVER MINORS.

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

1 SECTION 1. The purpose of this Act is to require the
2 family court to waive jurisdiction over a minor who is charged
3 with first or second degree murder when the minor is fifteen
4 years of age or older and when there is no evidence that the
5 minor is committable to an institution for the mentally
6 defective or retarded or the mentally ill. Under those
7 circumstances, the family court shall order that the minor be
8 held for criminal proceedings as an adult offender.

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

11 "**§571-22 Waiver of jurisdiction; transfer to other courts.**

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



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

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

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

10 (b) 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, but on or
14 after the person's fourteenth birthday, is alleged to
15 have committed an act that would constitute a felony
16 if committed by an adult and either:

17 (A) The act resulted in serious bodily injury to a
18 victim;

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



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

4 (2) There is no evidence the person is committable to an
5 institution for the mentally defective or retarded or
6 the mentally ill.

7 (c) The factors to be considered in deciding whether
8 jurisdiction should be waived under subsection (a) or (b) are as
9 follows:

10 (1) The seriousness of the alleged offense;
11 (2) Whether the alleged offense was committed in an
12 aggressive, violent, premeditated, or wilful manner;

13 (3) Whether the alleged offense was against persons or
14 against property, greater weight being given to
15 offenses against persons, especially if personal
16 injury resulted;

17 (4) The desirability of trial and disposition of the
18 entire offense in one court when the minor's
19 associates in the alleged offense are adults who will
20 be charged with a crime;

21 (5) The sophistication and maturity of the minor as
22 determined by consideration of the minor's home,



1 environmental situation, emotional attitude, and
2 pattern of living;

3 (6) The record and previous history of the minor,
4 including previous contacts with the family court,
5 other law enforcement agencies, courts in other
6 jurisdictions, prior periods of probation to the
7 family court, or prior commitments to juvenile
8 institutions;

9 (7) The prospects for adequate protection of the public
10 and the likelihood of reasonable rehabilitation of the
11 minor (if the minor is found to have committed the
12 alleged offense) by the use of procedures, services,
13 and facilities currently available to the family
14 court; and

15 (8) All other relevant matters.

16 (d) ~~[The]~~ Except as provided in subsection (e), the court
17 may waive jurisdiction and order a minor or adult held for
18 criminal proceedings if, after a full investigation and hearing,
19 the court finds that:

20 (1) The person during the person's minority is alleged to
21 have committed an act that would constitute murder in
22 the first degree or second degree or attempted murder



1 in the first degree or second degree if committed by
2 an adult; and

3 (2) There is no evidence the person is committable to an
4 institution for the mentally defective or retarded or
5 the mentally ill.

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

9 (1) The minor is alleged to have committed an act, during
10 the minor's minority but on or after the minor's
11 fifteenth birthday, that would constitute murder in
12 the first degree or second degree if committed by an
13 adult; and

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

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



1 [~~(f)~~] (g) If criminal proceedings instituted under
2 subsection (a), (b), [~~e~~] (d), or (e) result in an acquittal or
3 other discharge of the minor involved, no petition shall be
4 filed thereafter in any family court based on the same facts as
5 were alleged in the criminal proceeding.

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

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

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



1 court certified copies of all pertinent legal and social
2 records.

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

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

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

13 SECTION 5. This Act shall take effect on July 1, 2009.

14

INTRODUCED BY: Will Eyo



Report Title:

Family Court Jurisdiction; Minors; Murder; Tried as Adults

Description:

Requires the family court to waive jurisdiction when a minor of 15 years or older is charged with murder in the first or second degree and order the minor to be held for criminal proceedings before a court of competent criminal jurisdiction.

