

JAN 22 2009

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# A BILL FOR AN ACT

RELATING TO MINORS.

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

1 SECTION 1. Chapter 571, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§571- Murder in the first degree or murder in the  
5 second degree proceedings and records not confidential. (a) As  
6 used in this section:

7 "Legal record" means petitions, complaints, motions, and  
8 other papers filed in any case; transcripts of testimony taken  
9 by the court; and findings, judgments, orders, decrees, and  
10 other papers filed in proceedings before the court.

11 (b) Notwithstanding any other law to the contrary, in any  
12 proceeding in which a minor who is at least thirteen years of  
13 age and who is under the jurisdiction of the court pursuant to  
14 section 571-11(1) for an act that, if committed by an adult,  
15 would be murder in the first degree or murder in the second  
16 degree, all related legal proceedings related to the case shall



1 be open to the public and all legal records related to the  
2 proceedings shall be open for public inspection."

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

5 **"§571-22 Waiver of jurisdiction; transfer to other courts.**

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

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

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

18 (3) The safety of the community requires that the person  
19 be subject to judicial restraint for a period  
20 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) 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) If criminal proceedings instituted under subsection  
2 (a), (b), or (d) result in an acquittal or other discharge of  
3 the minor involved, no petition shall be filed thereafter in any  
4 family court based on the same facts as were alleged in the  
5 criminal proceeding.

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

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

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



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

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

7 (k) Any hearing to waive jurisdiction in which a minor who  
8 is at least thirteen years of age is being held for an act that,  
9 if committed by an adult, would be murder in the first degree or  
10 murder in the second degree, shall be open to the public."

11 SECTION 3. Section 571-84.6, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§571-84.6 Minor law violators; proceedings and records**  
14 **not confidential.** (a) As used in this section:

15 "Legal record" means petitions, complaints, motions, and  
16 other papers filed in any case; transcripts of testimony taken  
17 by the court; and findings, judgments, orders, decrees, and  
18 other papers and adjudication data, other than social records,  
19 filed in proceedings before the court.

20 "Social record" means those social and clinical studies,  
21 reports, or examinations prepared in any case pursuant to this  
22 chapter.



1 (b) Notwithstanding any other law to the contrary, in any  
2 proceeding in which a minor age fourteen years of age or older  
3 has been adjudicated by the court under section 571-11(1) for an  
4 act that if committed by an adult would:

5 (1) Be [~~murder in the first degree or second degree or~~  
6 attempted murder in the first degree;

7 (2) Result in serious bodily injury to or death of a  
8 victim;

9 (3) Be a class A felony; or

10 (4) Be a felony and the minor has more than one prior  
11 adjudication for acts that would constitute felonies  
12 if committed by an adult,

13 all legal records related to the above stated proceeding shall  
14 be open for public inspection, unless the administrative judge  
15 of the family court or the judge's designee finds in writing  
16 that there are significant and compelling circumstances peculiar  
17 to the case of such a nature that public inspection would be  
18 inconsistent with or defeat the express purpose of this section.  
19 All social records shall be kept confidential except as provided  
20 in section 571-84.

21 (c) Notwithstanding any other law to the contrary, in any  
22 case in which a minor age sixteen years of age or older comes





1 within section 571-11(1) is taken into custody for an act that  
2 if committed by an adult would:

3 (1) Be [~~murder in the first degree or second degree or~~]  
4 attempted murder in the first degree;

5 (2) Result in serious bodily injury to or death of a  
6 victim;

7 (3) Be a class A felony and the minor has one or more  
8 prior adjudications for an act that would constitute a  
9 felony if committed by an adult; or

10 (4) Be a class B or C felony and the minor has more than  
11 one prior adjudication for acts that would constitute  
12 felonies if committed by an adult,

13 all legal proceedings related to the above stated case shall be  
14 open to the public unless the administrative judge of the family  
15 court or the judge's designee finds in writing that there are  
16 significant and compelling circumstances peculiar to the case of  
17 such a nature that an open proceeding would be inconsistent with  
18 or defeat the express purpose of this section."

19 SECTION 4. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun, before its effective date.



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

3 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Will Egan



**Report Title:**

Minors; Family Court; Public Legal Records; Murder; Disclosure

**Description:**

Opens family court waiver of jurisdiction proceedings and legal records to the public in cases where a minor of a certain age or older is charged with murder in the first degree or murder in the second degree.

