

JAN 22 2009

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) ~~[In]~~ 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,]~~ sixteen years or older,
15 who has been committed to the care of the director ~~[and disrupts~~
16 ~~the order and the discipline of any state-operated youth~~
17 ~~correctional facility or injures the staff or other person~~



1 ~~committed to the facility or for other good cause,]~~ may be
2 transferred by the director to an adult correctional facility,
3 with the prior approval of the family court, for the balance of
4 the term provided for by the court[-]:

5 (1) If the person:

6 (A) Disrupts the order and the discipline of any
7 state-operated youth correctional facility; or

8 (B) Injures the staff or other person committed to
9 the facility; or

10 (2) For other good cause.

11 If [~~such~~] the person demonstrates sufficient improvement or
12 progress, or for other good reason, the family court may order
13 the person's return to a youth correctional facility[-];
14 provided that a person who has been transferred to an adult
15 correctional facility pursuant to an order made under section
16 571-48 shall not be returned to a youth correctional facility
17 upon attaining the age of eighteen."

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

20 "**§571-48 Decree, if informal adjustment or diversion to a**
21 **private or community agency or program has not been effected.**

22 When a minor is found by the court to come within section



1 571-11, the court shall so decree and in its decree shall make a
2 finding of the facts upon which the court exercises its
3 jurisdiction over the minor. Upon the decree the court, by
4 order duly entered, shall proceed as follows:

5 (1) [~~As~~] Except as provided in paragraph (2), as to a
6 child adjudicated under section 571-11(1) [~~+~~],

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

8 (i) In the child's own home; or

9 (ii) In the custody of a suitable person or
10 facility elsewhere, upon conditions
11 determined by the court.

12 When conditions of probation include custody in a
13 youth correctional facility, the custody shall be
14 for a term not to exceed one year, after which
15 time the person shall be allowed to reside in the
16 community subject to additional conditions as may
17 be imposed by the court;

18 (B) The court may vest legal custody of the child,
19 after prior consultation with the agency or
20 institution, in a Hawaii youth correctional
21 facility, in a local public agency or
22 institution, or in any private institution or



1 agency authorized by the court to care for
2 children; or place the child in a private home.
3 If legal custody of the child is vested in a
4 private agency or institution in another state,
5 the court shall select one that is approved by
6 the family or juvenile court of the other state
7 or by that state's department of social services
8 or other appropriate department; or

9 (C) The court may fine the child for a violation
10 which would be theft in the third degree by
11 shoplifting if committed by an adult. The court
12 may require the child to perform public services
13 in lieu of the fine;

14 (2) As to a child adjudicated under section 571-11(1) for
15 an act that would constitute an offense under section
16 707-701, 707-701.5, or 707-730, the court may vest
17 legal custody of the child in a Hawaii youth
18 correctional facility until the child attains the age
19 of eighteen on the condition that thereafter the
20 person shall be transferred to the custody of the
21 director of public safety and the jurisdiction of the



1 circuit court to be imprisoned in an adult
2 correctional facility;

3 [~~(2)~~] (3) As to a child adjudicated under section
4 571-11(2):

5 (A) The court may place the child under protective
6 supervision, as [~~hereinabove~~] defined in this
7 section, in the child's own home, or in the
8 custody of a suitable person or agency elsewhere,
9 upon conditions determined by the court; or

10 (B) The court may vest legal custody of the child,
11 after prior consultation with the agency or
12 institution, in a local governmental agency or
13 institution licensed or approved by the State to
14 care for children, with the exception of an
15 institution authorized by the court to care for
16 children. If legal custody of the child is
17 vested in a private agency or institution in
18 another state, the court shall select one that is
19 approved by the family or juvenile court of the
20 other state or by that state's department of
21 social services or other appropriate department;
22 provided that the child may not be committed to a



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



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



1 ~~[(5)]~~ (6) The court may order, for any child within its
2 jurisdiction, whatever care or treatment is authorized
3 by law;

4 ~~[(6)]~~ (7) In placing a child under the guardianship or
5 custody of an individual or of a private agency or
6 private institution, the court shall give primary
7 consideration to the welfare of the child;

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



1 the court may proceed against them for contempt of
2 court;

3 ~~[(8)]~~ (9) In support of any order or decree for custody or
4 support, the court may make an order of protection
5 setting forth reasonable conditions of behavior to be
6 observed for a specified time, binding upon both
7 parents or either of them. This order may require
8 either parent to stay away from the home or from the
9 other parent or children, may permit the other to
10 visit the children at stated periods, or may require a
11 parent to abstain from offensive conduct against the
12 children or each other;

13 ~~[(9)]~~ (10) The court may dismiss the petition or otherwise
14 terminate its jurisdiction at any time;

15 ~~[(10)]~~ (11) In any other case of which the court has
16 jurisdiction, the court may make any order or judgment
17 authorized by law;

18 ~~[(11)]~~ (12) The court may order any person adjudicated
19 pursuant to section 571-11(1) to make restitution of
20 money or services to any victim who suffers loss as a
21 result of the child's action, or to render community
22 service;



1 [~~(12)~~] (13) The court may order any person adjudicated
2 pursuant to section 571-11(2) to participate in
3 community service; and

4 [~~(13)~~] (14) The court may order the parents of an
5 adjudicated minor to make restitution of money or
6 services to any victim, person, or party who has
7 incurred a loss or damages as a result of the child's
8 action."

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

11 "(3) Special term. A young adult defendant convicted of a
12 felony, in lieu of any other sentence of imprisonment authorized
13 by this chapter, may be sentenced to a special indeterminate
14 term of imprisonment if the court is of the opinion that [~~such~~]
15 the special term is adequate for the young adult defendant's
16 correction and rehabilitation and will not jeopardize the
17 protection of the public. When ordering a special indeterminate
18 term of imprisonment, the court shall impose the maximum length
19 of imprisonment, which shall be eight years for a class A
20 felony, five years for a class B felony, and four years for a
21 class C felony. The minimum length of imprisonment shall be set
22 by the Hawaii paroling authority in accordance with section



1 706-669. During this special indeterminate term, the young
2 adult shall be incarcerated separately from career criminals,
3 when practicable.

4 This section shall not apply to the offenses of murder
5 [~~or~~], attempted murder[~~or~~], or sexual assault in the first
6 degree."

7 SECTION 5. This Act shall not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun, before its effective date.

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on July 1, 2009.

13

INTRODUCED BY: Will Eyring



Report Title:

Sex Assault; Murder; Disposition of Minors Accused

Description:

Requires a minor who is adjudicated for an act that would constitute murder in the first or second degree, or sexual assault in the first degree, to be under the jurisdiction of the circuit court and imprisoned in an adult correctional facility when the minor is transferred to the custody of the director of public safety upon reaching 18.

