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## 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 if  
3                    committed by an adult;

4        (2) The minor has not been charged with any other criminal  
5                    offense arising from the same incident; and

6        (3) The minor is at least fifteen years of age, but less  
7                    than eighteen years of age.

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

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

21        [~~f~~] (g) If criminal proceedings instituted under  
22        subsection (a), (b), or (d) result in an acquittal or other



1 discharge of the minor involved, no petition shall be filed  
2 thereafter in any family court based on the same facts as were  
3 alleged in the criminal proceeding.

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

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

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



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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, 2012.

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INTRODUCED BY:

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*GI*

JAN 26 2011



**Report Title:**

Crime; Minors Tried as Adults

**Description:**

Mandates minors aged 15-17 be tried as adults in cases of first degree murder when no other offenses are charged. Provides for discretionary remand of the minor to the family court in specified cases. Effective 1/1/2012.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

