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## A BILL FOR AN ACT

RELATING TO SENTENCING FOR JUVENILE OFFENDERS.

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

1           SECTION 1. This Act shall be known as the Hawaii Fair  
2 Sentencing of Youth Act.

3           The legislature acknowledges and recognizes that children  
4 are constitutionally different from adults and that these  
5 differences must be taken into account when children are  
6 sentenced for adult crimes. As stated by the United States  
7 Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012),  
8 "'only a relatively small proportion of adolescents' who engage  
9 in illegal activity 'develop entrenched patterns of problem  
10 behavior,' and 'developments in psychology and brain science  
11 continue to show fundamental differences between juvenile and  
12 adult minds,' for example, in 'parts of the brain involved in  
13 behavior control.'" Children are more vulnerable to negative  
14 influences and outside pressures, including from family and  
15 peers, they have limited control over their own environment, and  
16 may lack the ability to extricate themselves from horrific,  
17 crime-producing settings. The Supreme Court has emphasized  
18 through its decisions in *Roper v. Simmons*, 125 S. Ct. 1183



1 (2005), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Miller v.*  
2 *Alabama* that "the distinctive attributes of youth diminish the  
3 penological justifications for imposing the harshest sentences  
4 on juvenile offenders, even when they commit terrible crimes."  
5 Youthfulness both lessens a juvenile's moral culpability and  
6 enhances the prospect that, as the youth matures into an adult  
7 and neurological development occurs, the individual can become  
8 contributing members of society.

9 The legislature further acknowledges that the United States  
10 is the only country in the world that allows children to be  
11 sentenced to life imprisonment without parole, in violation of  
12 Article 37 of the United Nations Convention on the Rights of the  
13 Child, which categorically bars the imposition of "capital  
14 punishment [or] life imprisonment without the possibility of  
15 release . . . for offenses committed by persons below eighteen  
16 years of age."

17 Therefore, it is the intent of the legislature to:

- 18 (1) Establish sentence modification procedures for persons  
19 who were sentenced for an offense committed while they  
20 were under eighteen years of age;
- 21 (2) Establish sentencing considerations for persons  
22 sentenced in the adult criminal court system for an



1 offense committed while they were under eighteen years  
2 of age;

3 (3) Abolish life imprisonment without parole as a  
4 sentencing option for those convicted for offenses  
5 committed while under the age of eighteen; and

6 (4) Limit the minimum term of incarceration required  
7 before eligibility for parole for persons who were  
8 sentenced for an offense committed while they were  
9 under eighteen years of age.

10 SECTION 2. Chapter 706, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 "§706-A Sentence modification for offenses committed prior  
14 to age eighteen. (1) Notwithstanding any law to the contrary,  
15 a prisoner may file a motion for sentence modification and the  
16 court may reduce the term of imprisonment imposed upon the  
17 prisoner, if the prisoner was convicted as an adult for an  
18 offense committed prior to the prisoner achieving eighteen years  
19 of age and:

20 (a) The prisoner has served the greater of ten years  
21 imprisonment or the statutory minimum for the offense;



1        (b) The prisoner has not submitted a motion pursuant to  
2        this section within the previous five years; and

3        (c) The court finds, after considering the factors set  
4        forth in subsection (4), that the prisoner is not a  
5        danger to the safety of any prisoner or the community,  
6        has been rehabilitated, and has expressed remorse for  
7        the offense committed.

8        (2) A copy of the motion shall be served on the agency  
9        that prosecuted the case and shall include the prisoner's  
10       statement that the prisoner was less than eighteen years of age  
11       at the time the offense was committed and has served the greater  
12       of ten years imprisonment or the statutory minimum for the  
13       offense. The motion shall also include the prisoner's statement  
14       describing the prisoner's remorse and work towards  
15       rehabilitation, including evidence of participating in  
16       rehabilitative, educational, or vocational programs, if those  
17       programs have been available, or using self-study for self-  
18       improvement.

19       (3) The court may hold a hearing to determine whether the  
20       statements in the motion are true. If the court finds by a  
21       preponderance of the evidence that the statements in the motion  
22       are true, it shall consider whether to reduce the sentence



1 previously ordered and to resentence the prisoner as if the  
2 prisoner had not previously been sentenced; provided that the  
3 new sentence, if any, shall not be greater than the initial  
4 sentence. The prisoner and the prisoner's counsel shall have an  
5 opportunity to speak on the prisoner's behalf during the  
6 hearing. Victims or surviving family members, if the victim is  
7 deceased, shall retain the right to participate in the hearing.

8 (4) The court, in determining whether to reduce a term of  
9 imprisonment pursuant to subsection (1), shall consider:

10 (a) The nature of the offense and the history and  
11 characteristics of the prisoner;

12 (b) The extent of the prisoner's role in the offense and  
13 whether and to what extent an adult was also involved  
14 in the offense;

15 (c) Any statement by any victim of the offense for which  
16 the prisoner is imprisoned, or by a family member of  
17 the victim if the victim is deceased;

18 (d) Whether the prisoner has demonstrated maturity,  
19 rehabilitation, and a fitness to reenter society  
20 sufficient to justify a sentence modification;

21 (e) The prisoner's participation in rehabilitative,  
22 educational, or vocational programs, if those programs



- 1           have been made available, use of self-study for self-
- 2           improvement, and evidence of remorse;
- 3       (f) Any reports of physical, mental, or psychiatric
- 4           evaluation of the prisoner conducted by licensed
- 5           health care professionals;
- 6       (g) The prisoner's family and community circumstances at
- 7           the time of the offense, including any history of
- 8           abuse, trauma, or involvement in the child welfare
- 9           system;
- 10       (h) The diminished culpability of juveniles as compared to
- 11           that of adults;
- 12       (i) The hallmark features of youth, including immaturity,
- 13           impetuosity, and failure to appreciate risks and
- 14           consequences, which counsel against imposing the
- 15           harshest sentences on juveniles; and
- 16       (j) Any other information the court deems relevant to its
- 17           decision.
- 18       (5) The court shall state in open court and in writing,
- 19       the reasons for granting or denying a motion for sentence
- 20       modification under this section.
- 21       (6) If a motion for sentence modification is denied, the
- 22       prisoner may file another motion for sentence modification five



1 years from the date of the original motion. If a motion for  
2 sentence modification is denied a second time, the prisoner may  
3 file a third and final motion after five years. The court shall  
4 not entertain a fourth or successive motion for sentence  
5 modification.

6 (7) A prisoner who cannot to afford to retain counsel is  
7 entitled to have counsel appointed to represent and assist the  
8 prisoner for proceedings under this section, including any  
9 appeal, unless the prisoner waives this right.

10 (8) The provisions of this section shall be construed, and  
11 hearings pursuant to subsection (3) shall be conducted, so as to  
12 provide prisoners who were less than eighteen years of age at  
13 the time the offense was committed with a meaningful opportunity  
14 to obtain early release based on demonstrated maturity,  
15 rehabilitation, and remorse."

16 SECTION 3. Section 706-606, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§706-606 Factors to be considered in imposing a sentence.**

19 The court, in determining the particular sentence to be imposed,  
20 shall consider:

21 (1) The nature and circumstances of the offense and the  
22 history and characteristics of the defendant;



- 1           (2) The need for the sentence imposed:
  - 2               (a) To reflect the seriousness of the offense, to
  - 3               promote respect for law, and to provide just
  - 4               punishment for the offense;
  - 5               (b) To afford adequate deterrence to criminal
  - 6               conduct;
  - 7               (c) To protect the public from further crimes of the
  - 8               defendant; and
  - 9               (d) To provide the defendant with needed educational
  - 10              or vocational training, medical care, or other
  - 11              correctional treatment in the most effective
  - 12              manner;
- 13           (3) The kinds of sentences available; [~~and~~]
- 14           (4) The need to avoid unwarranted sentence disparities
- 15           among defendants with similar records who have been
- 16           found guilty of similar conduct[~~-~~]; and
- 17           (5) If the offense was committed while the defendant was
- 18           less than eighteen years of age, the court shall
- 19           consider the following additional factors:
  - 20               (a) Age of the defendant at the time of the offense;
  - 21               (b) Impetuosity of the defendant at the time of the
  - 22               offense;





- 1           (c)    Family and community environment of the  
2                    defendant;
- 3           (d)    Ability of the defendant to appreciate the risks  
4                    and consequences of the conduct;
- 5           (e)    Intellectual capacity of the defendant;
- 6           (f)    The outcome of any comprehensive mental health  
7                    evaluation conducted by an adolescent mental  
8                    health professional licensed in the State of  
9                    Hawaii;
- 10          (g)    Family or peer pressure on the defendant;
- 11          (h)    Level of the defendant's participation in the  
12                    offense;
- 13          (i)    Ability of the defendant to participate  
14                    meaningfully in the defendant's defense;
- 15          (j)    Capacity for rehabilitation;
- 16          (k)    School records and any special education  
17                    evaluations of the defendant;
- 18          (l)    Trauma history of the defendant;
- 19          (m)    Community involvement of the defendant;
- 20          (n)    Involvement in the child welfare system; and
- 21          (o)    Any other mitigating factor or circumstance the  
22                    court deems relevant to its decision."



1 SECTION 4. Section 706-656, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:

3 "(1) Persons over the age of eighteen at the time of the  
4 offense who are convicted of first degree murder or first degree  
5 attempted murder shall be sentenced to life imprisonment without  
6 possibility of parole.

7 As part of such sentence the court shall order the director  
8 of public safety and the Hawaii paroling authority to prepare an  
9 application for the governor to commute the sentence to life  
10 imprisonment with parole at the end of twenty years of  
11 imprisonment; provided that persons who are repeat offenders  
12 under section 706-606.5 shall serve at least the applicable  
13 mandatory minimum term of imprisonment.

14 Persons less than eighteen years of age at the time of the  
15 offense who are convicted of first degree murder or first degree  
16 attempted murder shall be sentenced to life imprisonment with  
17 the possibility of parole at the end of twenty years of  
18 imprisonment."

19 SECTION 5. Section 706-657, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§706-657 Enhanced sentence for second degree murder.** The  
22 court may sentence a person who was over the age of eighteen at



1 the time of the offense and who has been convicted of murder in  
2 the second degree to life imprisonment without possibility of  
3 parole under section 706-656 if the court finds that the murder  
4 was especially heinous, atrocious, or cruel, manifesting  
5 exceptional depravity or that the person was previously  
6 convicted of the offense of murder in the first degree or murder  
7 in the second degree in this State or was previously convicted  
8 in another jurisdiction of an offense that would constitute  
9 murder in the first degree or murder in the second degree in  
10 this State. As used in this section, the phrase "especially  
11 heinous, atrocious, or cruel, manifesting exceptional depravity"  
12 means a conscienceless or pitiless crime which is unnecessarily  
13 torturous to a victim and "previously convicted" means a  
14 sentence imposed at the same time or a sentence previously  
15 imposed which has not been set aside, reversed, or vacated.

16 Hearings to determine the grounds for imposing an enhanced  
17 sentence for second degree murder may be initiated by the  
18 prosecutor or by the court on its own motion. The court shall  
19 not impose an enhanced term unless the ground therefor has been  
20 established at a hearing after the conviction of the defendant  
21 and on written notice to the defendant of the ground proposed.  
22 Subject to the provision of section 706-604, the defendant shall



1 have the right to hear and controvert the evidence against the  
2 defendant and to offer evidence upon the issue.

3 The provisions pertaining to commutation in section 706-  
4 656(2), shall apply to persons sentenced pursuant to this  
5 section."

6 SECTION 6. Section 706-660.1, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§706-660.1 Sentence of imprisonment for use of a firearm,**  
9 **semiautomatic firearm, or automatic firearm in a felony. (1) A**  
10 **person convicted of a felony, where the person had a firearm in**  
11 **the person's possession or threatened its use or used the**  
12 **firearm while engaged in the commission of the felony, whether**  
13 **the firearm was loaded or not, and whether operable or not, may**  
14 **in addition to the indeterminate term of imprisonment provided**  
15 **for the grade of offense be sentenced to a mandatory minimum**  
16 **term of imprisonment without possibility of parole or probation**  
17 **the length of which shall be as follows:**

- 18 (a) For murder in the second degree and attempted murder  
19 in the second degree--up to fifteen years;
- 20 (b) For a class A felony--up to ten years;
- 21 (c) For a class B felony--up to five years; and
- 22 (d) For a class C felony--up to three years.



1 The sentence of imprisonment for a felony involving the use of a  
2 firearm as provided in this subsection shall not be subject to  
3 the procedure for determining minimum term of imprisonment  
4 prescribed under section 706-669; provided further that a person  
5 who is imprisoned in a correctional institution as provided in  
6 this subsection shall become subject to the parole procedure as  
7 prescribed in section 706-670 only upon the expiration of the  
8 term of mandatory imprisonment fixed under paragraph (a), (b),  
9 (c), or (d).

10 (2) A person convicted of a second firearm felony offense  
11 as provided in subsection (1) where the person had a firearm in  
12 the person's possession or threatened its use or used the  
13 firearm while engaged in the commission of the felony, whether  
14 the firearm was loaded or not, and whether operable or not,  
15 shall in addition to the indeterminate term of imprisonment  
16 provided for the grade of offense be sentenced to a mandatory  
17 minimum term of imprisonment without possibility of parole or  
18 probation the length of which shall be as follows:

19 (a) For murder in the second degree and attempted murder  
20 in the second degree--twenty years;

21 (b) For a class A felony--thirteen years, four months;

22 (c) For a class B felony--six years, eight months; and



1           (d)     For a class C felony--three years, four months.  
2     The sentence of imprisonment for a second felony offense  
3     involving the use of a firearm as provided in this subsection  
4     shall not be subject to the procedure for determining a minimum  
5     term of imprisonment prescribed under section 706-669; provided  
6     further that a person who is imprisoned in a correctional  
7     institution as provided in this subsection shall become subject  
8     to the parole procedure as prescribed in section 706-670 only  
9     upon expiration of the term of mandatory imprisonment fixed  
10    under paragraph (a), (b), (c), or (d).

11           (3)    A person convicted of a felony, where the person had a  
12    semiautomatic firearm or automatic firearm in the person's  
13    possession or used or threatened its use while engaged in the  
14    commission of the felony, whether the semiautomatic firearm or  
15    automatic firearm was loaded or not, and whether operable or  
16    not, shall in addition to the indeterminate term of imprisonment  
17    provided for the grade of offense be sentenced to a mandatory  
18    minimum term of imprisonment without possibility of parole or  
19    probation the length of which shall be as follows:

20           (a)    For murder in the second degree and attempted murder  
21                    in the second degree--twenty years;

22           (b)    For a class A felony--fifteen years;



1 (c) For a class B felony--ten years; and

2 (d) For a class C felony--five years.

3 The sentence of imprisonment for a felony involving the use of a  
4 semiautomatic firearm or automatic firearm as provided in this  
5 subsection shall not be subject to the procedure for determining  
6 a minimum term of imprisonment prescribed under section 706-669;  
7 provided further that a person who is imprisoned in a  
8 correctional institution as provided in this subsection shall  
9 become subject to the parole procedure as prescribed in section  
10 706-670 only upon expiration of the term of mandatory  
11 imprisonment fixed under paragraph (a), (b), (c), or (d).

12 (4) In imposing a modified sentence in a hearing upon a  
13 motion filed pursuant to 706-A, the imposition of a mandatory  
14 minimum sentence provided for in subsections (1) through (3) of  
15 this section shall be discretionary and left to the judgment of  
16 the court.

17 [~~4~~] (5) In this section:

18 (a) "Firearm" has the same meaning defined in section 134-  
19 1 except that it does not include "semiautomatic  
20 firearm" or "automatic firearm."

21 (b) "Automatic firearm" has the same meaning defined in  
22 section 134-1.



1 (c) "Semiautomatic firearm" means any firearm that uses  
2 the energy of the explosive in a fixed cartridge to  
3 extract a fired cartridge and chamber a fresh  
4 cartridge with each single pull of the trigger."

5 SECTION 7. Section 706-669, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§706-669 Procedure for determining minimum term of**  
8 **imprisonment.** (1) When a person has been sentenced to an  
9 indeterminate or an extended term of imprisonment, the Hawaii  
10 paroling authority shall, as soon as practicable but no later  
11 than six months after commitment to the custody of the director  
12 of the department of [+]public safety[+] hold a hearing, and on  
13 the basis of the hearing make an order fixing the minimum term  
14 of imprisonment to be served before the prisoner shall become  
15 eligible for parole.

16 (2) Before holding the hearing, the authority shall obtain  
17 a complete report regarding the prisoner's life before entering  
18 the institution and a full report of the prisoner's progress in  
19 the institution. The report shall be a complete personality  
20 evaluation for the purpose of determining the prisoner's degree  
21 of propensity toward criminal activity.





1           (3) The prisoner shall be given reasonable notice of the  
2 hearing under subsection (1) and shall be permitted to be heard  
3 by the authority on the issue of the minimum term to be served  
4 before the prisoner becomes eligible for parole. In addition,  
5 the prisoner shall:

6           (a) Be permitted to consult with any persons the prisoner  
7 reasonably desires, including the prisoner's own legal  
8 counsel, in preparing for the hearing;

9           (b) Be permitted to be represented and assisted by counsel  
10 at the hearing;

11           (c) Have counsel appointed to represent and assist the  
12 prisoner if the prisoner so requests and cannot afford  
13 to retain counsel; and

14           (d) Be informed of the prisoner's rights under (a), (b),  
15 and (c).

16           (4) The authority in its discretion may, in any particular  
17 case and at any time, impose a special condition that the  
18 prisoner will not be considered for parole unless and until the  
19 prisoner has a record of continuous exemplary behavior.

20           (5) After sixty days notice to the prosecuting attorney,  
21 the authority in its discretion may reduce the minimum term  
22 fixed by its order pursuant to subsection (1).



1           (6) A verbatim stenographic or mechanical record of the  
2 hearing shall be made and preserved in transcribed or  
3 untranscribed form.

4           (7) The State shall have the right to be represented at  
5 the hearing by the prosecuting attorney who may present written  
6 testimony and make oral comments and the authority shall  
7 consider such testimony and comments in reaching its decision.  
8 The authority shall notify the prosecuting attorney of the  
9 hearing at the time the prisoner is given notice of the hearing.  
10 The hearing shall be opened to victims or their designees or  
11 surviving immediate family members who may present a written  
12 statement or make oral comments.

13           (8) The authority shall establish guidelines for the  
14 uniform determination of minimum sentences which shall take into  
15 account both the nature and degree of the offense of the  
16 prisoner and the prisoner's criminal history and character. The  
17 guidelines shall be public records and shall be made available  
18 to the prisoner and to the prosecuting attorney and other  
19 interested government agencies.

20           (9) The authority, when determining the minimum sentence  
21 for a prisoner who committed an offense prior to the prisoner



1 achieving eighteen years of age, shall give additional  
2 consideration to the following:

3 (a) The diminished culpability of juveniles, based on  
4 brain and developmental differences, as compared to  
5 that of adults;

6 (b) The hallmark features of youth, including immaturity,  
7 impetuosity, and failure to appreciate risks and  
8 consequences, which counsel against imposing the  
9 harshest minimum sentences; and

10 (c) The prisoner's capacity for rehabilitation.

11 (10) The minimum term of imprisonment before a prisoner  
12 who was less than eighteen years of age at the time of the  
13 offense becomes eligible for parole shall be no longer than  
14 twenty years, or such shorter period as may be applicable. The  
15 authority shall ensure that the hearing to consider parole upon  
16 expiration of the minimum term as determined by this subsection  
17 shall provide a meaningful opportunity to obtain release and may  
18 adopt rules consistent with this objective."

19 SECTION 8. 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 9. If any provision of this Act, or the  
 2 application thereof to any person or circumstance, is held  
 3 invalid, the invalidity does not affect other provisions or  
 4 applications of the Act that can be given effect without the  
 5 invalid provision or application, and to this end the provisions  
 6 of this Act are severable.

7 SECTION 10. In codifying the new section added by section  
 8 2 of this Act, the revisor of statutes shall substitute  
 9 appropriate section numbers for the letters used in designating  
 10 the new section in this Act.

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

13 SECTION 12. This Act shall take effect upon its approval.  
 14

INTRODUCED BY:

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JAN 21 2014



# H.B. NO. 2116

**Report Title:**

Juvenile Offenders; Sentencing

**Description:**

Establishes new factors to be considered in sentencing those convicted of an offense committed while under the age of 18, and a sentencing modification process for the same. Eliminates sentences of life without parole for juvenile offenders. Requires the Hawaii Paroling Authority to establish guidelines for minimum term served before parole eligibility.

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

