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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. The legislature acknowledges and recognizes  
2 that children are constitutionally different from adults and  
3 that these differences must be taken into account when children  
4 are sentenced for adult crimes. As stated by the United States  
5 Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012),  
6 "only a relatively small proportion of adolescents who engage in  
7 illegal activity develop entrenched patterns of problem  
8 behavior, and developments in psychology and brain science  
9 continue to show fundamental differences between juvenile and  
10 adult minds, for example, in parts of the brain involved in  
11 behavior control." Children are more vulnerable to negative  
12 influences and outside pressures, including from family and  
13 peers, they have limited control over their own environment, and  
14 they may lack the ability to extricate themselves from horrific,  
15 crime-producing settings. The Supreme Court has emphasized  
16 through its decisions in *Roper v. Simmons*, 125 S. Ct. 1183  
17 (2005), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Miller v.*  
18 *Alabama* that "the distinctive attributes of youth diminish the



1 penological justifications for imposing the harshest sentences  
2 on juvenile offenders, even when they commit terrible crimes."  
3 Youthfulness both lessens a juvenile's moral culpability and  
4 enhances the prospect that, as the youth matures into an adult  
5 and neurological development occurs, the individual can become a  
6 contributing member of society.

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

15       Therefore, the purpose of this Act is to:

- 16       (1) Abolish life imprisonment without the possibility of  
17 parole as a sentencing option for those convicted for  
18 offenses committed while under the age of eighteen;  
19 and
- 20       (2) Establish a limit on the minimum term of imprisonment  
21 before a prisoner who was less than eighteen years of



1           age at the time of the offense becomes eligible for  
2           parole.

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

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

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

16           Persons under the age of eighteen years at the time of the  
17 offense who are convicted of first degree murder or first degree  
18 attempted murder shall be sentenced to life imprisonment with  
19 the possibility of parole."

20           SECTION 3. Section 706-657, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§706-657 Enhanced sentence for second degree murder.** The  
2 court may sentence a person who was eighteen years of age or  
3 over at the time of the offense and who has been convicted of  
4 murder in the second degree to life imprisonment without the  
5 possibility of parole under section 706-656 if the court finds  
6 that the murder was especially heinous, atrocious, or cruel,  
7 manifesting exceptional depravity or that the person was  
8 previously convicted of the offense of murder in the first  
9 degree or murder in the second degree in this State or was  
10 previously convicted in another jurisdiction of an offense that  
11 would constitute murder in the first degree or murder in the  
12 second degree in this State. As used in this section, the  
13 phrase "especially heinous, atrocious, or cruel, manifesting  
14 exceptional depravity" means a conscienceless or pitiless crime  
15 which is unnecessarily torturous to a victim and "previously  
16 convicted" means a sentence imposed at the same time or a  
17 sentence previously imposed which has not been set aside,  
18 reversed, or vacated.

19           Hearings to determine the grounds for imposing an enhanced  
20 sentence for second degree murder may be initiated by the  
21 prosecutor or by the court on its own motion. The court shall  
22 not impose an enhanced term unless the ground therefor has been



1 established at a hearing after the conviction of the defendant  
2 and on written notice to the defendant of the ground proposed.  
3 Subject to the provision of section 706-604, the defendant shall  
4 have the right to hear and controvert the evidence against the  
5 defendant and to offer evidence upon the issue.

6 The provisions pertaining to commutation in section  
7 706-656(2), shall apply to persons sentenced pursuant to this  
8 section."

9 SECTION 4. Section 706-669, Hawaii Revised Statutes, is  
10 amended to read as follows:

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

20 (2) Before holding the hearing, the authority shall obtain  
21 a complete report regarding the prisoner's life before entering  
22 the institution and a full report of the prisoner's progress in



1 the institution. The report shall be a complete personality  
2 evaluation for the purpose of determining the prisoner's degree  
3 of propensity toward criminal activity.

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

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

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

14 (c) Have counsel appointed to represent and assist the  
15 prisoner if the prisoner so requests and cannot afford  
16 to retain counsel; and

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

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



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

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

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

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



1       (9) The minimum term of imprisonment before a prisoner who  
2 was less than eighteen years of age at the time of the offense  
3 becomes eligible for parole shall be no longer than twenty years  
4 or such shorter period as may be applicable. The authority  
5 shall ensure that the hearing to consider parole upon expiration  
6 of the minimum term as determined by this subsection shall  
7 provide a meaningful opportunity to obtain release and may adopt  
8 rules consistent with this objective."

9       SECTION 5. If any provision of this Act, or the  
10 application thereof to any person or circumstance, is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of the Act that can be given effect without the  
13 invalid provision or application, and to this end the provisions  
14 of this Act are severable.

15       SECTION 6. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17       SECTION 7. This Act shall take effect on July 1, 2014, and  
18 shall apply to proceedings that were begun but not concluded  
19 before its effective date.





**Report Title:**

Juvenile Offenders; Sentencing

**Description:**

Eliminates sentences of life imprisonment without the possibility of parole for juvenile offenders. Establishes a limit on the minimum term of imprisonment before a prisoner who was less than eighteen years of age at the time of the offense becomes eligible for parole. (SD1)

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

