

JAN 16 2014

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# A BILL FOR AN ACT

RELATING TO YOUNG ADULT OFFENDERS.

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

1           SECTION 1. The legislature finds that Hawaii is one of a  
2 diminishing number of states that allows juveniles to be  
3 sentenced to life imprisonment without the possibility of  
4 parole. The United States is the only nation in the world that  
5 still imposes life imprisonment without the possibility of  
6 parole on juveniles, according to an article in the *Huffington*  
7 *Post*, dated September 20, 2013.

8           The legislature also finds that recent decisions by the  
9 United States Supreme Court have cast doubt upon the practice of  
10 sentencing juveniles to life imprisonment without the  
11 possibility of parole. In 2010, the United States Supreme Court  
12 held in Graham v. Florida, 130 S. Ct. 2011 (2010), that  
13 sentencing juveniles to life without parole for crimes not  
14 involving murder violated the United States Constitution. In  
15 2012, the United States Supreme Court held in Miller v. Alabama,  
16 132 S. Ct. 2455 (2012), that sentencing juveniles to mandatory  
17 life imprisonment without the possibility of parole for any  
18 offenses violated the United States Constitution.



1           The legislature also finds that sentencing juveniles to  
2 life imprisonment without the possibility of parole is  
3 inconsistent with Hawaii's values. In 2007, the legislature  
4 adopted H.C.R. 69, H.D. 2, "Urging the Adoption of the United  
5 Nations' Convention on the Rights of the Child." Permanently  
6 condemning one of Hawaii's citizens for a crime committed as a  
7 juvenile does not reflect Hawaii's values as a state and does  
8 not comport with Hawaii's expressed commitment to children's  
9 rights.

10           The legislature further finds that many psychological  
11 studies have shown that juveniles lack the neurological  
12 development to appreciate the gravity and consequences of their  
13 actions sufficiently to justify permanently condemning them to  
14 imprisonment. Condemnation without subsequent review for  
15 rehabilitation is an irrational and cruel punishment unsupported  
16 by science and unjustified by morality.

17           Accordingly, the purpose of this Act is to remove any  
18 possibility that an individual convicted of a crime committed  
19 when the individual was a youth will result in the individual  
20 being sentenced to life imprisonment without the possibility of  
21 parole, and to provide expanded opportunities and resources for  
22 young adult rehabilitation.



1 SECTION 2. Chapter 353C, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§353C- Young adult rehabilitation special fund. (a)

5 There is established the young adult rehabilitation special fund  
6 to be administered by the department of public safety. The fund  
7 shall consist of:

- 8 (1) Funds appropriated by the legislature; and  
9 (2) Federal funds received by the State or through  
10 executive order of the President of the United States  
11 for the purpose of public safety or corrections;  
12 provided that the acceptance and use of federal funds  
13 shall not commit state funds for services and shall  
14 not place an obligation upon the legislature to  
15 continue the purpose for which the federal funds are  
16 made available.

17 (b) The fund shall be used to provide the following  
18 support services for rehabilitation of young adult defendants:

- 19 (1) Providing regular and consistent sessions with a  
20 certified therapist for the young adult defendant,  
21 until the young adult defendant reaches the first  
22 parole hearing date;



- 1        (2) Providing appropriate services that address drug and
- 2                alcohol addiction; and
- 3        (3) Any other services deemed necessary and appropriate
- 4                for the purpose of young adult rehabilitation."

5        SECTION 3. Section 353-16, Hawaii Revised Statutes, is  
6 amended to read as follows:

7        "**§353-16 Transfer of committed felon to federal**  
8 **institution.** The director may effect the transfer of a  
9 committed felon to any federal correctional institution for  
10 imprisonment, subsistence, care, and proper employment of such a  
11 felon[-]; provided that no young adult defendant as defined  
12 under section 706-667 shall be transported out of state to serve  
13 any portion of the defendant's imprisonment for an offense  
14 committed and adjudicated in the State."

15        SECTION 4. Section 353-16.2, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17        "(a) The director may effect the transfer of a committed  
18 felon to any correctional institution located in another state  
19 regardless of whether the state is a member of the Western  
20 Interstate Corrections Compact; provided that the institution is  
21 in compliance with appropriate health, safety, and sanitation  
22 codes of the state, provides a level of program activity for the

1 inmate that is suitable, and is operated by that state, by any  
2 of its political subdivisions or by a private institution; and  
3 provided further that no young adult defendant as defined under  
4 section 706-667 shall be transported out of state to serve any  
5 portion of the defendant's imprisonment for an offense committed  
6 and adjudicated in the State; and provided further that the  
7 transfer is either:

- 8 (1) In the interest of the security, management of the  
9 correctional institution where the inmate is presently  
10 placed, or the reduction of prison overcrowding; or
- 11 (2) In the interest of the inmate."

12 SECTION 5. Section 706-656, Hawaii Revised Statutes, is  
13 amended by amending subsection (1) to read as follows:

14 "(1) [~~Persons~~] Except as provided in section 706-667,  
15 pertaining to young adult defendants, persons convicted of first  
16 degree murder or first degree attempted murder shall be  
17 sentenced to life imprisonment without possibility of parole.

18 As part of [~~such~~] the sentence the court shall order the  
19 director of public safety and the Hawaii paroling authority to  
20 prepare an application for the governor to commute the sentence  
21 to life imprisonment with parole at the end of twenty years of  
22 imprisonment; provided that persons who are repeat offenders

1 under section 706-606.5 shall serve at least the applicable  
2 mandatory minimum term of imprisonment."

3 SECTION 6. Section 706-657, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§706-657 Enhanced sentence for second degree murder.** The  
6 court may sentence a person who has been convicted of murder in  
7 the second degree to life imprisonment without possibility of  
8 parole under section 706-656 if the court finds that the murder  
9 was especially heinous, atrocious, or cruel, manifesting  
10 exceptional depravity or that the person was previously  
11 convicted of the offense of murder in the first degree or murder  
12 in the second degree in this State or was previously convicted  
13 in another jurisdiction of an offense that would constitute  
14 murder in the first degree or murder in the second degree in  
15 this State.

16 As used in this section, the phrase "especially heinous,  
17 atrocious, or cruel, manifesting exceptional depravity" means a  
18 conscienceless or pitiless crime which is unnecessarily  
19 torturous to a victim and "previously convicted" means a  
20 sentence imposed at the same time or a sentence previously  
21 imposed which has not been set aside, reversed, or vacated.



1           Hearings to determine the grounds for imposing an enhanced  
2 sentence for second degree murder may be initiated by the  
3 prosecutor or by the court on its own motion. The court shall  
4 not impose an enhanced term unless the ground therefor has been  
5 established at a hearing after the conviction of the defendant  
6 and on written notice to the defendant of the ground proposed.  
7 Subject to the provision of section 706-604, the defendant shall  
8 have the right to hear and controvert the evidence against the  
9 defendant and to offer evidence upon the issue.

10           The provisions pertaining to commutation in section 706-  
11 656(2), shall apply to persons sentenced pursuant to this  
12 section.

13           Enhanced sentences for second degree murder shall not apply  
14 to a young adult defendant, as defined in section 706-667."

15           SECTION 7. Section 706-667, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           "**§706-667 Young adult defendants.** (1) Defined. A young  
18 adult defendant is a person convicted of a crime who, at the  
19 time of the offense, is less than twenty-two years of age and  
20 who has not been previously convicted of a felony as an adult  
21 [~~or adjudicated as a juvenile for an offense that would have~~



1 ~~constituted a felony had the young adult defendant been an~~  
2 ~~adult~~].

3 (2) Specialized correctional treatment. A young adult  
4 defendant who is sentenced to a term of imprisonment exceeding  
5 thirty days may be committed by the court to the custody of the  
6 department of public safety and shall receive, as far as  
7 practicable, such special and individualized correctional and  
8 rehabilitative treatment as may be appropriate to the young  
9 adult defendant's needs.

10 (3) Special term. A young adult defendant convicted of a  
11 felony, in lieu of any other sentence of imprisonment authorized  
12 by this chapter, may be sentenced to a special indeterminate  
13 term of imprisonment if the court is of the opinion that such  
14 special term is adequate for the young adult defendant's  
15 correction and rehabilitation and will not jeopardize the  
16 protection of the public. When ordering a special indeterminate  
17 term of imprisonment, the court shall impose the maximum length  
18 of imprisonment, which shall be eight years for a class A  
19 felony, five years for a class B felony, and four years for a  
20 class C felony. The minimum length of imprisonment shall be set  
21 by the Hawaii paroling authority in accordance with section 706-  
22 669. During this special indeterminate term, the young adult





1 shall be incarcerated separately from career criminals, when  
2 practicable.

3 (4) Murder or attempted murder. A young adult defendant  
4 convicted of first degree murder or first degree attempted  
5 murder shall be sentenced to life imprisonment with possibility  
6 of parole. The minimum length of imprisonment shall be  
7 determined by the Hawaii paroling authority in accordance with  
8 section 706-669; provided that a young adult defendant who is a  
9 repeat offender under section 706-606.5 shall serve at least the  
10 applicable mandatory minimum term of imprisonment, which shall  
11 not exceed twenty-five years. During the minimum imprisonment  
12 term, the young adult defendant shall be incarcerated separately  
13 from career criminals, when practicable."

14 SECTION 8. Section 706-672, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§706-672 Place of imprisonment.** When a person is  
17 sentenced to imprisonment, the court shall commit the person to  
18 the custody of the department of public safety for the term of  
19 the person's sentence and until released in accordance with law.  
20 The director of public safety shall determine the proper program  
21 of redirection and any place of confinement of the committed  
22 person[-]; provided that no young adult defendant as defined



1 under section 706-667 shall be transported out of state to serve  
2 any portion of the defendant's imprisonment for an offense  
3 committed and adjudicated in the State."

4 SECTION 9. (a) There is established within the department  
5 of public safety for administrative purposes the temporary young  
6 adult rehabilitation advisory group. The advisory group shall  
7 advise the department of public safety on the implementation of  
8 the programs created through the young adult rehabilitation  
9 special fund.

10 (b) The following or their designated representatives  
11 shall be members of the advisory group:

- 12 (1) The director of public safety;
- 13 (2) The chief justice of the supreme court;
- 14 (3) The director of the office of youth services;
- 15 (4) The director of health;
- 16 (5) The president of the University of Hawaii system;
- 17 (6) The superintendent of education;
- 18 (7) The senior family court judge; and
- 19 (8) At least two community representatives to be selected  
20 by the governor.

21 The young adult rehabilitation advisory group shall select  
22 a chair from among its members.



1           (c) Members of the young adult rehabilitation advisory  
2 group shall serve without compensation but shall be entitled to  
3 reimbursement for necessary expenses while attending meetings  
4 and while in discharge of their duties.

5           (d) The advisory group shall submit to the legislature a  
6 report of its findings, descriptions of the programs and  
7 initiatives implemented through the young adult rehabilitation  
8 special fund, the effectiveness of those programs and  
9 initiatives, and any other matters relating to rehabilitation as  
10 determined by the director of public safety, no later than  
11 twenty days prior to the convening of the regular sessions of  
12 2015 to 2017.

13           (e) The advisory group shall cease to exist on June 30,  
14 2017.

15           SECTION 10. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$300,000 or so much  
17 thereof as may be necessary for fiscal year 2014-2015 for the  
18 implementation of this Act.

19           The sum appropriated shall be expended by the department of  
20 public safety for the purposes of this Act.



1 SECTION 11. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

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

10 SECTION 13. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect on July 1, 2014.

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INTRODUCED BY: Shannon Cronin Oakland  
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*D*



# S.B. NO. 2214

**Report Title:**

Young Adult Defendants; Department of Public Safety; Life Sentences without Parole

**Description:**

Establishes the young adult rehabilitation special fund. Exempts young adult defendants from a sentence of life sentence without the possibility of parole except where required for murder or attempted murder. Prohibits young adult defendants from being transported out of state to serve sentences. Establishes within the department of public safety the temporary young adult rehabilitation advisory group. Makes appropriation.

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

