

JAN 18 2013

A BILL FOR AN ACT

RELATING TO THE PAYMENT OF RESTITUTION BY MINORS.

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

1 SECTION 1. Section 571-48, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§571-48 Decree, if informal adjustment or diversion to a
4 private or community agency or program has not been effected.

5 When a minor is found by the court to come within section
6 571-11, the court shall so decree and in its decree shall make a
7 finding of the facts upon which the court exercises its
8 jurisdiction over the minor. Upon the decree the court, by
9 order duly entered, shall proceed as follows:

10 (1) As to a child adjudicated under section 571-11(1):

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

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

13 (ii) In the custody of a suitable person or

14 facility elsewhere, upon conditions

15 determined by the court.

16 When conditions of probation include custody in a
17 youth correctional facility, the custody shall be

18 for a term not to exceed one year, after which



1 time the person shall be allowed to reside in the
2 community subject to additional conditions as may
3 be imposed by the court;

4 (B) The court may vest legal custody of the child,
5 after prior consultation with the agency or
6 institution, in a Hawaii youth correctional
7 facility, in a local public agency or
8 institution, or in any private institution or
9 agency authorized by the court to care for
10 children; or place the child in a private home.
11 If legal custody of the child is vested in a
12 private agency or institution in another state,
13 the court shall select one that is approved by
14 the family or juvenile court of the other state
15 or by that state's department of social services
16 or other appropriate department; or

17 (C) The court may fine the child for a violation
18 which would be theft in the third degree by
19 shoplifting if committed by an adult. The court
20 may require the child to perform public services
21 in lieu of the fine;

22 (2) As to a child adjudicated under section 571-11(2):



1 (A) The court may place the child under protective
2 supervision, as hereinabove defined, in the
3 child's own home, or in the custody of a suitable
4 person or agency elsewhere, upon conditions
5 determined by the court; or

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

21 (3) An order vesting legal custody of a minor in an
22 individual, agency, or institution under section



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

20 (4) Whenever the court commits a child to the care of the
21 director of human services or executive director of
22 the office of youth services, or vests legal custody



1 of a child in an institution or agency, it shall
2 transmit with the order copies of the clinical
3 reports, social study, and other information pertinent
4 to the care and treatment of the child, and the
5 institution or agency shall give to the court any
6 information concerning the child that the court may at
7 any time require. An institution or agency receiving
8 a child under this paragraph shall inform the court
9 whenever the status of the child is affected through
10 temporary or permanent release, discharge, or transfer
11 to other custody. An institution to which a child is
12 committed under section 571-11(1) or (2) shall not
13 transfer custody of the child to an institution for
14 the correction of adult offenders, except as
15 authorized in this chapter and under chapter 352;

16 (5) The court may order, for any child within its
17 jurisdiction, whatever care or treatment is authorized
18 by law;

19 (6) In placing a child under the guardianship or custody
20 of an individual or of a private agency or private
21 institution, the court shall give primary
22 consideration to the welfare of the child;

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

17 (8) In support of any order or decree for custody or
18 support, the court may make an order of protection
19 setting forth reasonable conditions of behavior to be
20 observed for a specified time, binding upon both
21 parents or either of them. This order may require
22 either parent to stay away from the home or from the



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1 other parent or children, may permit the other to
2 visit the children at stated periods, or may require a
3 parent to abstain from offensive conduct against the
4 children or each other;

5 (9) The court may dismiss the petition or otherwise
6 terminate its jurisdiction at any time;

7 (10) In any other case of which the court has jurisdiction,
8 the court may make any order or judgment authorized by
9 law;

10 (11) [The] When requested by the victim, the court [may]
11 shall order [any person adjudicated pursuant to
12 section 571-11(1) to make] restitution of money or
13 services to any victim who suffers loss as a result of
14 [the child's action, or] actions taken by a minor
15 adjudicated pursuant to section 571-11(1), to be paid
16 in whole or part by the minor, even when the minor
17 becomes an adult; if in part, the court shall order
18 the parents of the adjudicated minor to pay the
19 remainder of the restitution. The court may further
20 any minor adjudicated pursuant to section 571-11(1) to
21 render community service; and



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

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

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 2013.

14

INTRODUCED BY: *James Mercedes K.*

By Request

S.B. NO. 420

Report Title:

Honolulu Prosecutor's Package; Restitution; Minors

Description:

Requires the family court, when requested by the victim, to order the adjudicated minor to make restitution to the victim. Requires the family court to order the parents of the adjudicated minor to pay the remainder of the restitution, if any.

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