

JAN 19 2022

A BILL FOR AN ACT

RELATING TO JUVENILE RESTITUTION.

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

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

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

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

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

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

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

(ii) In the custody of a suitable person or facility elsewhere, upon conditions determined by the court.

An order by the court placing a child on probation under this subparagraph shall include a



1 definite term of probation stated in months or
2 years, subject to extension or modification by
3 the court pursuant to section 571-50. When
4 conditions of probation include custody in a
5 youth correctional facility, the custody shall be
6 for a term not to exceed one year, after which
7 time the child shall be allowed to reside in the
8 community subject to additional conditions as may
9 be imposed by the court;

10 (B) The court may vest legal custody of the child,
11 after prior consultation with the agency or
12 institution:

13 (i) In a Hawaii youth correctional facility if
14 the child has been adjudicated for a felony-
15 level offense or a violation or revocation
16 of probation, or is committed to the
17 facility from juvenile drug court or girls
18 court on a court order. For a child
19 eligible for placement in a Hawaii youth
20 correctional facility, the court shall enter
21 a finding of fact in the record stating the



1 reasons the child is a public safety risk
2 warranting placement in the correctional
3 facility. No such finding of fact shall be
4 required if the child is adjudicated for a
5 felony against a person or a sex offense;

6 (ii) In a local public agency or institution;

7 (iii) In any private institution or agency
8 authorized by the court to care for
9 children; or

10 (iv) 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;

17 (C) The court may place a child on administrative
18 monitoring, as defined in section 571-2, pending
19 completion of conditions as may be imposed by the
20 court, to preempt the need for disposition to a
21 full probation term, and to afford the child the



1 opportunity to demonstrate behavior adjustments.
2 Upon completion of the court-ordered conditions,
3 the court shall discharge the child pursuant to
4 section 571-50. If a child fails to complete the
5 court-ordered conditions, the court may extend or
6 modify the order pursuant to section 571-50, or
7 dispose the child to probation status under
8 paragraph (1)(A); or

9 (D) The court may fine the child for a violation
10 which would be theft in the third degree by
11 shoplifting if committed by an adult. The court
12 may require the child to perform public services
13 in lieu of the fine;

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

15 (A) The court may place the child under protective
16 supervision, as hereinabove defined, in the
17 child's own home, or in the custody of a suitable
18 person or agency elsewhere, upon conditions
19 determined by the court; or

20 (B) The court may vest legal custody of the child,
21 after prior consultation with the agency or



1 institution, in a local governmental agency or
2 institution licensed or approved by the State to
3 care for children, with the exception of an
4 institution authorized by the court to care for
5 children. If legal custody of the child is
6 vested in a private agency or institution in
7 another state, the court shall select one that is
8 approved by the family or juvenile court of the
9 other state or by that state's department of
10 social services or other appropriate department;
11 provided that the child may not be committed to a
12 public or private institution operated solely for
13 the treatment of law violators;

14 (3) An order vesting legal custody of a minor in an
15 individual, agency, or institution under section
16 571-11(2) shall be for an indeterminate period but
17 shall not remain in force or effect beyond three years
18 from the date entered, except that the individual,
19 institution, or agency may file with the court a
20 petition for renewal of the order and the court may
21 renew the order if it finds such renewal necessary to



1 safeguard the welfare of the child or the public
2 interest. The court, after notice to the parties, may
3 conduct a hearing on the petition. Renewal may be
4 periodic during minority, but no order shall have any
5 force or effect beyond the period authorized by
6 section 571-13. An agency granted legal custody shall
7 be subject to prior approval of the court in any case
8 in which the child is to reside without the
9 territorial jurisdiction of the court and may be
10 subject to prior approval in other cases. An
11 individual granted legal custody shall exercise the
12 rights and responsibilities personally unless
13 otherwise authorized by the court;

14 (4) Whenever the court commits a child to the care of the
15 director of human services or executive director of
16 the office of youth services, or vests legal custody
17 of a child in an institution or agency, it shall
18 transmit with the order copies of the clinical
19 reports, social study, results of the risk and needs
20 assessment conducted by the court, and other
21 information pertinent to the care and treatment of the



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

13 (5) The court may order, for any child within its
14 jurisdiction, whatever care or treatment is authorized
15 by law;

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

20 (7) In support of any order or decree under section
21 571-11(1) or (2), the court may require the parents or



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

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



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

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

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

9 (11) The court [~~may~~] shall order any person adjudicated
10 pursuant to section 571-11(1) to make restitution of
11 money or services to any victim who suffers loss as a
12 result of the child's action[~~, or to render community~~
13 ~~service~~];

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

17 (13) The court may order the parents of an adjudicated
18 child to make restitution of money or services to any
19 victim, person, or party who has incurred a loss or
20 damages as a result of the child's action."



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

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

7

INTRODUCED BY: _____

Jim N. Hill

By Request



S.B. NO. 2086

Report Title:

Honolulu Prosecuting Attorney's Office Package; Juvenile
Restitution

Description:

Amends section 571-48, HRS, to, upon request, mandate victim
restitution in juvenile cases.

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

