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## A BILL FOR AN ACT

RELATING TO FAMILY COURTS.

**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 571-  
6 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~~] minor adjudicated under section 571-  
11 11(1):

12           (A) The court may place the [~~child~~] minor on  
13 probation:

14           (i) In the [~~child's~~] minor's own home; or

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



1                   When conditions of probation include  
2                   incarceration in a youth correctional facility,  
3                   the incarceration shall be for a term not to  
4                   exceed one year, after which time the [~~person~~]  
5                   minor shall be allowed to reside in the community  
6                   subject to additional conditions as may be  
7                   imposed by the court;

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



1 (C) The court may fine the [~~child~~] minor for a  
2 violation [~~which~~] that would be theft in the  
3 third degree by shoplifting if committed by an  
4 adult. The court may require the [~~child~~] minor  
5 to perform public services in lieu of the fine;  
6 or

7 (D) If the minor is adjudicated to have committed an  
8 act that would constitute the offense of  
9 promoting a dangerous, harmful, or detrimental  
10 drug, or of any other controlled substance, under  
11 chapter 712, part IV, or a violation of section  
12 712-1240.7, 712-1240.8 or 712-1249.6, the minor  
13 shall choose to either:

14 (i) Be detained in a youth correctional facility  
15 for no fewer than \_\_\_\_\_ days but not more  
16 than \_\_\_\_\_ days detention, of which at least  
17 \_\_\_\_\_ hours shall be served consecutively,  
18 without possibility of probation or  
19 suspension of sentence; or

20 (ii) Attend a \_\_\_\_\_-hour minimum substance abuse  
21 education and counseling program, or other  
22 comparable family education and counseling



1                   program deemed appropriate by the court,  
2                   accompanied by the minor's parents,  
3                   guardians, or legal custodians;

4           (2) As to a [~~child~~] minor adjudicated under section  
5           571-11(2):

6           (A) The court may place the [~~child~~] minor under  
7           protective supervision, as hereinabove defined,  
8           in the [~~child's~~] minor's own home, or in the  
9           custody of a suitable person or agency elsewhere,  
10          upon conditions determined by the court; or

11          (B) The court may vest legal custody of the [~~child,~~  
12          minor, after prior consultation with the agency  
13          or institution, in a local governmental agency or  
14          institution licensed or approved by the State to  
15          care for children, with the exception of an  
16          institution authorized by the court to care for  
17          children. If legal custody of the [~~child~~] minor  
18          is vested in a private agency or institution in  
19          another state, the court shall select one that is  
20          approved by the family or juvenile court of the  
21          other state or by that state's department of  
22          social services or other appropriate department;



1 provided that the [~~child~~] minor may not be  
2 committed to a public or private institution  
3 operated solely for the treatment of law  
4 violators;

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



1 cases. An individual granted legal custody shall  
2 exercise the rights and responsibilities personally  
3 unless otherwise authorized by the court;

- 4 (4) Whenever the court commits a [~~child~~] minor to the care  
5 of the director of human services or executive  
6 director of the office of youth services, or vests  
7 legal custody of a [~~child~~] minor in an institution or  
8 agency, it shall transmit with the order copies of the  
9 clinical reports, social study, and other information  
10 pertinent to the care and treatment of the [~~child~~],  
11 minor, and the institution or agency shall give to the  
12 court any information concerning the [~~child~~] minor  
13 that the court may at any time require. An  
14 institution or agency receiving a [~~child~~] minor under  
15 this paragraph shall inform the court whenever the  
16 status of the [~~child~~] minor is affected through  
17 temporary or permanent release, discharge, or transfer  
18 to other custody. An institution to which a [~~child~~]  
19 minor is committed under section 571-11(1) or (2)  
20 shall not transfer custody of the [~~child~~] minor to an  
21 institution for the correction of adult offenders,



1           except as authorized in this chapter and under chapter  
2           352;

3           (5) The court may order, for any [~~child~~] minor within its  
4           jurisdiction, whatever care or treatment is authorized  
5           by law;

6           (6) In placing a [~~child~~] minor under the guardianship or  
7           custody of an individual or of a private agency or  
8           private institution, the court shall give primary  
9           consideration to the welfare of the [~~child;~~] minor;

10          (7) In support of any order or decree under section 571-  
11          11(1) or (2), the court may require the parents or  
12          other persons having custody of the [~~child;~~] minor, or  
13          any other person who has been found by the court to be  
14          encouraging, causing, or contributing to the acts or  
15          conditions [~~which~~] that bring the [~~child~~] minor within  
16          the purview of this chapter and who are parties to the  
17          proceeding, to do or to omit doing any acts required  
18          or forbidden by law, when the judge deems this  
19          requirement necessary for the welfare of the [~~child;~~]  
20          minor. The court may also make appropriate orders  
21          concerning the parents or other persons having custody  
22          of the [~~child~~] minor and who are parties to the



1 proceeding. If [~~such~~] these persons fail to comply  
2 with the requirement or with the court order, the  
3 court may proceed against them for contempt of court;

4 (8) In support of any order or decree for custody or  
5 support, the court may make an order of protection  
6 setting forth reasonable conditions of behavior to be  
7 observed for a specified time, binding upon both  
8 parents or either of them. This order may require  
9 either parent to stay away from the home or from the  
10 other parent or children, may permit the other to  
11 visit the children at stated periods, or may require a  
12 parent to abstain from offensive conduct against the  
13 children or each other;

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

16 (10) In any other case of which the court has jurisdiction,  
17 the court may make any order or judgment authorized by  
18 law;

19 (11) The court may order any person adjudicated pursuant to  
20 section 571-11(1) to make restitution of money or  
21 services to any victim who suffers loss as a result of



1 the [~~child's~~] minor's action[7] or to render community  
2 service;

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

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

10 SECTION 2. There is appropriated out of the general  
11 revenues of the State of Hawaii the sum of \$ , or so  
12 much thereof as may be necessary for fiscal year 2007-2008, and  
13 the sum of \$ , or so much thereof as may be necessary  
14 for fiscal year 2008-2009, to carry out the purposes of this  
15 Act.

16 The sums appropriated shall be expended by the judiciary  
17 for the purposes of this Act.

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

21 SECTION 4. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval,  
2 provided that section 2 of this Act shall take effect on July 1,  
3 2007.

4

INTRODUCED BY:

*Cathy Evans*  
*Wynn Wynn*  
*Att*

JAN 17 2007



**Report Title:**

Family Court; Decree for Minor Promoting Controlled Substances

**Description:**

Requires a minor adjudicated of actions that would constitute distribution of drugs to choose detention in a youth correctional facility or drug counseling in the company of the minor's parents or guardians.

