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# A BILL FOR AN ACT

RELATING TO SENTENCING OF MINOR DEFENDANTS.

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

1       SECTION 1. The legislature finds that children are  
2 different from adults and that these differences must be taken  
3 into account when children are being sentenced for adult crimes.  
4 As stated by the United States Supreme Court in *Miller v.*  
5 *Alabama*, 567 U.S. 460 (2012), "only a relatively small  
6 proportion of adolescents" who engage in illegal activity  
7 "develop entrenched patterns of problem behavior", and  
8 "developments in psychology and brain science continue to show  
9 fundamental differences between juvenile and adult minds",  
10 including "parts of the brain involved in behavior control".  
11 Children are more vulnerable to negative influences and outside  
12 pressures, including from their family and peers, and they have  
13 limited control over their own environment and lack the ability  
14 to extricate themselves from horrific, crime-producing settings.  
15 The United States Supreme Court has also emphasized that "the  
16 distinctive attributes of youth diminish the penological  
17 justifications of imposing the harshest sentences on juvenile



1 offenders, even when they commit terrible crimes". The  
2 legislature further acknowledges recent research demonstrating  
3 high rates of adverse childhood experiences and childhood trauma  
4 among children tried as adults. Specifically, children tried as  
5 adults have often been victims of physical, emotional, and  
6 sexual abuse, and come from broken homes where domestic  
7 violence, substance abuse, mental illness, and incarceration are  
8 common.

9 Accordingly, the purpose of this Act is to allow courts to  
10 depart from mandatory minimum and sentencing enhancements when  
11 sentencing minor defendants if the court believes the reduction  
12 is warranted given certain factors.

13 SECTION 2. Chapter 706, Hawaii Revised Statutes, is  
14 amended by adding a new section to part I to be appropriately  
15 designated and to read as follows:

16 **"§706- Discretion when sentencing a defendant for an**  
17 **offense committed while a minor.** (1) If a person is convicted  
18 as an adult for an offense that the person committed when the  
19 person was a minor, in addition to any other factor that the  
20 court is required to consider before sentencing the person, the  
21 court shall consider the following factors:



- 1        (a) The person's exposure to an adverse childhood  
2        experience or early childhood trauma, including  
3        involvement in the child welfare or foster care  
4        systems;
- 5        (b) The person's status as a victim of human trafficking  
6        or abuse at the time of the offense;
- 7        (c) The differences between minor and adult offenders,  
8        including but not limited to the diminished  
9        culpability of minors as compared to that of adults  
10       and the typical characteristics of youth;
- 11       (d) The level of participation in the offense and the  
12       impact of peer or familial pressure;
- 13       (e) The person's intellectual capacity and any underlying  
14       mental health conditions; and
- 15       (f) Any other factors the court deems relevant.

16       (2) Notwithstanding any other provision of law, after  
17       considering the factors set forth in subsection (1), the court  
18       may, in its discretion, reduce any mandatory minimum period of  
19       incarceration or depart from any mandatory sentencing  
20       enhancement that the person is required to serve if the court  
21       determines that the reduction or departure is warranted given



1 the person's age, trauma history, and prospects for  
2 rehabilitation.

3 (3) For the purposes of this section, "minor" means any  
4 person under the age of eighteen years."

5 SECTION 3. New statutory material is underscored.

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



**Report Title:**

Minor Defendants; Criminal Law; Sentencing

**Description:**

Requires courts to consider certain factors when sentencing a person convicted as an adult for an offense that the person committed when the person was a minor. Allows courts to reduce a mandatory minimum period of incarceration or depart from a mandatory sentencing enhancement if the court determines that the reduction or departure is warranted given certain factors.  
(HD1)

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