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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. The legislature finds that the United States is  
2 the only country in the world that has not fully established a  
3 minimum age for juvenile delinquency adjudication, in violation  
4 of Article 40 of the United Nations Convention of the Rights of  
5 the Child, which requires nations to set a minimum age below  
6 which children are deemed incapable of transgressing the  
7 criminal law. In the United States, only a bare majority of  
8 states have established any minimum age of delinquency  
9 adjudication, and most states that have set a minimum age have  
10 set it at the low age of ten years old.

11       The legislature further finds that young children under the  
12 age of twelve do not have the ability to form mens rea or  
13 criminal intent, but should still receive services and treatment  
14 when they engage in what would otherwise be delinquent or  
15 criminal behavior. These children lack the intellectual  
16 capability and maturity to fully understand the consequences of  
17 their actions, as well as the proceedings in juvenile court.



1       Therefore, the purpose of this Act is to establish a  
2       minimum age of twelve before a child may be adjudicated for any  
3       alleged or attempted violation of law.

4       SECTION 2. Section 571-11, Hawaii Revised Statutes, is  
5       amended to read as follows:

6       "**§571-11 Jurisdiction; children.** Except as otherwise  
7       provided in this chapter, the court shall have exclusive  
8       original jurisdiction in proceedings:

9       (1) Concerning any person who is at least twelve years old  
10       and is alleged to have committed an act before  
11       achieving eighteen years of age that would constitute  
12       a violation or attempted violation of any federal,  
13       state, or local law or county ordinance. Regardless  
14       of where the violation occurred, jurisdiction may be  
15       taken by the court of the circuit where the person  
16       resides, is living, or is found, or in which the  
17       offense is alleged to have occurred;

18       (2) Concerning any child living or found within the  
19       circuit who is:

20       (A) Neglected as to or deprived of educational  
21       services because of the failure of any person or



1 agency to exercise that degree of care for which  
2 it is legally responsible;

3 (B) Beyond the control of the child's parent or other  
4 custodian or whose behavior is injurious to the  
5 child's own or others' welfare;

6 (C) Neither attending school nor receiving  
7 educational services required by law whether  
8 through the child's own misbehavior or  
9 nonattendance or otherwise; or

10 (D) In violation of curfew;

11 (3) To determine the custody of any child or appoint a  
12 guardian of any child;

13 (4) For the adoption of a person under chapter 578;

14 (5) For the termination of parental rights under sections  
15 571-61 through 571-63;

16 (6) For judicial consent to the marriage, employment, or  
17 enlistment of a child, when consent is required by  
18 law;

19 (7) For the treatment or commitment of a mentally  
20 defective or mentally ill child, or a child with an  
21 intellectual disability;



- 1 (8) Under the Interstate Compact on Juveniles under  
2 chapter 582 or the Interstate Compact for Juveniles  
3 under chapter 582D;  
4 (9) For the protection of any child under chapter 587A;  
5 (10) For a change of name as provided in section  
6 574-5(a)(2)(C);  
7 (11) Concerning custody or guardianship of an immigrant  
8 child pursuant to a motion for special immigrant  
9 juvenile factual findings requesting a determination  
10 that the child was abused, neglected, or abandoned  
11 before the age of eighteen years for purposes of  
12 section 101(a)(27)(J) of the federal Immigration and  
13 Nationality Act. For the purposes of this paragraph,  
14 "child" means an unmarried individual under the age of  
15 twenty-one years; and  
16 (12) Concerning emancipation of a minor pursuant to section  
17 577-25."

18 SECTION 3. Section 571-21, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§571-21 Complaint; investigation; petition.** (a) Except  
21 as provided in subsection (b), whenever the court is informed by



1 any person that a minor is within the purview of section  
2 571-11(1) or (2), the intake officer shall make a preliminary  
3 investigation to determine whether informal adjustment is  
4 suitable under section 571-31.4 or 571-31.5. The court may  
5 authorize the filing of a petition, may make whatever  
6 arrangement for informal adjustment that is suitable under  
7 section 571-31.4, 571-31.5, or 571-31.6; or may take [~~such~~]  
8 action [~~as~~] that is otherwise allowed under this chapter.  
9 Efforts to effect informal adjustment may be continued [~~not~~] no  
10 longer than three months without review by the judge.

11 (b) In cases of violation of a law or ordinance by a  
12 child, the issuance of a citation or summons, when provided for  
13 by law or ordinance, shall be sufficient to invoke the  
14 jurisdiction of the court, which may proceed to dispose of [~~such~~]  
15 a] the case with or without preliminary investigation and the  
16 filing of a petition.

17 (c) When a complaint or petition is made or sought to be  
18 filed against a member of the complainant's family, the court's  
19 staff may, when required by the judge or if requested by either  
20 party, process the matter under section 571-31.3.



1 (d) In children's cases under section 571-11(1) and (2),  
2 the petition and all subsequent court documents shall be  
3 suitably entitled so as to indicate that the proceeding is in  
4 the interest of, rather than against, the child or minor  
5 involved. The petition shall be verified and statements may be  
6 made upon information and belief. The petition shall set forth  
7 plainly the:

8 (1) Facts that bring the child within the purview of this  
9 chapter;

10 (2) Name, age, and residence of the child;

11 (3) Names and residences of the child's parents; and

12 (4) Name and residence of the child's legal guardian if  
13 there is one, of the person or persons having custody  
14 or control of the child, or of the nearest known  
15 relative if no parent or guardian can be found.

16 If any of the facts required are not known by the petitioner,  
17 the petition shall so state. In cases brought pursuant to  
18 section 571-11(2)(A) and (C), a certified copy of the child's  
19 school attendance records shall constitute prima facie evidence  
20 of the child's nonattendance at school or nonreceipt of  
21 educational services. [~~"Certified"~~] For the purposes of this



1 subsection, "certified copy" means a copy signed by the  
2 principal and educator of the child whose class the child did  
3 not attend.

4 (e) The family courts may, by suitable orders, provide  
5 regulations concerning the titles, filing, investigation, and  
6 the form and content of petitions and other pleadings in cases  
7 under this chapter, or these matters may be governed by the  
8 rules of court.

9 (f) A petition alleging violation or attempted violation  
10 of any federal, state, or local law or county ordinance pursuant  
11 to section 571-11(1) shall not be filed in a case involving a  
12 child under the age of twelve."

13 SECTION 4. Section 571-44, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§571-44 Physical or mental examination and treatment.**

16 The court may order that a child or minor [~~concerning~~] for whom  
17 a petition has been filed [~~shall~~], be examined by a physician,  
18 surgeon, psychiatrist, or psychologist[~~, and it~~]. The court may  
19 order treatment[~~r~~] by [~~them~~,] a physician, surgeon,  
20 psychiatrist, or psychologist of a child or minor who has been  
21 adjudicated by the court. For either the examination or



1 treatment, the court may place the child or minor in a hospital  
2 or other suitable facility. [The] After a hearing, the court[7  
3 ~~after hearing,]~~ may order an examination by a physician,  
4 surgeon, psychiatrist, or psychologist[7] of a parent or  
5 guardian whose ability to care for a child before the court is  
6 at issue.

7 ~~[No child under the age of twelve shall be adjudged to come~~  
8 ~~within section 571-11(1) without the written recommendation of a~~  
9 ~~licensed psychologist or of a psychiatrist or other physician~~  
10 ~~duly qualified by special training and experience in the~~  
11 ~~practice of child psychiatry.] "~~

12 SECTION 5. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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





**Report Title:**

Family Court; Jurisdiction; Juvenile Adjudication; Children

**Description:**

Establishes a minimum age of twelve for adjudication for any alleged or attempted violation of law. (HD1)

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

