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# A BILL FOR AN ACT

RELATING TO JURISDICTION.

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

1           SECTION 1. The legislature finds that children who are  
2 prosecuted as adults often come from traumatic home and  
3 community environments. Research has shown that more than  
4 seventy per cent of children tried as adults experienced both  
5 emotional and physical abuse, while another forty-five per cent  
6 were sexually abused before their involvement in the justice  
7 system. Approximately one third of these minors were also  
8 victims of human trafficking, with one in ten reporting that  
9 they committed their offense alongside a co-defendant or victim  
10 in the case who previously abused them.

11           The legislature further finds that more than eighty per  
12 cent of minors who enter the adult criminal justice system come  
13 from homes where one or both parents are absent and more than  
14 twenty-five per cent had previous involvement in the foster care  
15 or child welfare system. Additionally, research has  
16 demonstrated that early childhood trauma is significantly



1 associated with early onset post traumatic stress disorder,  
2 which has been linked to adverse brain development in children.

3 Accordingly, the purpose of this Act is to:

- 4 (1) Amend the factors a family court is required to  
5 consider in deciding whether the court may waive  
6 jurisdiction over a minor or adult held for criminal  
7 proceedings;
- 8 (2) Preserve the family court's jurisdiction over a minor  
9 transferred for criminal proceedings for subsequent  
10 acts that would otherwise be within the family court's  
11 jurisdiction; and
- 12 (3) Require the court to retain jurisdiction over a minor  
13 if the court finds by clear and convincing evidence  
14 that the minor was trafficked, sexually abused, or  
15 raped by the alleged victim in the case before or  
16 during the commission of the alleged offense.

17 SECTION 2. Section 571-22, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§571-22 Waiver of jurisdiction; transfer to other courts.**

20 (a) The court may waive jurisdiction and order a minor or adult  
21 held for criminal proceedings after full investigation and



1 hearing where the person during the person's minority, but on or  
2 after the person's sixteenth birthday, is alleged to have  
3 committed an act that would constitute a felony if committed by  
4 an adult, and the court finds that:

5 (1) There is no evidence the person is committable to an  
6 institution for individuals with intellectual  
7 disabilities or the mentally ill;

8 (2) The person is not treatable in any available  
9 institution or facility within the State designed for  
10 the care and treatment of children; or

11 (3) The safety of the community requires that the person  
12 be subject to judicial restraint for a period  
13 extending beyond the person's minority.

14 (b) The court may waive jurisdiction and order a minor or  
15 adult held for criminal proceedings if, after a full  
16 investigation and hearing, the court finds that:

17 (1) The person during the person's minority, but on or  
18 after the person's fourteenth birthday, is alleged to  
19 have committed an act that would constitute a felony  
20 if committed by an adult and either:



- 1 (A) The act resulted in serious bodily injury to a  
2 victim;
- 3 (B) The act would constitute a class A felony if  
4 committed by an adult; or
- 5 (C) The person has more than one prior adjudication  
6 for acts that would constitute felonies if  
7 committed by an adult; and
- 8 (2) There is no evidence the person is committable to an  
9 institution for individuals with intellectual  
10 disabilities or the mentally ill.
- 11 (c) The factors to be considered in deciding whether  
12 jurisdiction should be waived under subsection (a) or (b) are as  
13 follows:
- 14 (1) The seriousness of the alleged offense;
- 15 (2) Whether the alleged offense was committed in an  
16 aggressive, violent, premeditated, or wilful manner;
- 17 (3) Whether the alleged offense was against persons or  
18 against property, greater weight being given to  
19 offenses against persons, especially if personal  
20 injury resulted;



- 1           (4) ~~[The desirability of trial and disposition of the~~  
2           ~~entire offense in one court when the minor's~~  
3           ~~associates in the alleged offense are adults who will~~  
4           ~~be charged with a crime;]~~ Whether and to what extent  
5           adult co-defendants were involved and exerted undue  
6           influence or peer pressure on the minor's  
7           participation in the offense;
- 8           (5) The sophistication and maturity of the minor as  
9           determined by consideration of the minor's home,  
10          environmental situation, emotional attitude, and  
11          pattern of living;
- 12          (6) The record and previous history of the minor,  
13          including previous contacts with the family court,  
14          other law enforcement agencies, courts in other  
15          jurisdictions, prior periods of probation to the  
16          family court, or prior commitments to juvenile  
17          institutions;
- 18          (7) The prospects for adequate protection of the public  
19          and the likelihood of reasonable rehabilitation of the  
20          minor (if the minor is found to have committed the  
21          alleged offense) by the use of procedures, services,



- 1 and facilities currently available to the family  
2 court; ~~and~~
- 3 (8) The minor's exposure to adverse childhood experiences,  
4 childhood trauma, involvement in the child welfare or  
5 foster care systems, and status as a victim of human  
6 trafficking, sexual abuse, or rape;
- 7 (9) Whether the minor has any diagnosable mental,  
8 emotional, or physical disability that would best be  
9 treated through the family court; and
- 10 ~~(8)~~ (10) All other relevant matters.
- 11 (d) The court may waive jurisdiction and order a minor or  
12 adult held for criminal proceedings if, after a full  
13 investigation and hearing, the court finds that:
- 14 (1) The person during the person's minority is alleged to  
15 have committed an act that would constitute murder in  
16 the first degree or second degree or attempted murder  
17 in the first degree or second degree if committed by  
18 an adult; and
- 19 (2) There is no evidence the person is committable to an  
20 institution for individuals with intellectual  
21 disabilities or the mentally ill.



1       ~~[(e) Transfer of a minor for criminal proceedings~~  
2 ~~terminates the jurisdiction of the court over the minor with~~  
3 ~~respect to any subsequent acts that would otherwise be within~~  
4 ~~the court's jurisdiction under section 571-11(1) and thereby~~  
5 ~~confers jurisdiction over the minor to a court of competent~~  
6 ~~criminal jurisdiction.~~

7       ~~+(f)]~~ (e) If criminal proceedings instituted under  
8 subsection (a), (b), or (d) result in an acquittal or other  
9 discharge of the minor involved, no petition shall be filed  
10 thereafter in any family court based on the same facts as were  
11 alleged in the criminal proceeding.

12       ~~+(g)]~~ (f) A minor shall not be subject to criminal  
13 prosecution based on the facts giving rise to a petition filed  
14 under this chapter, except as otherwise provided in this  
15 chapter.

16       ~~+(h)]~~ (g) Where the petition has been filed in a circuit  
17 other than the minor's residence, the judge, in the judge's  
18 discretion, may transfer the case to the family court of the  
19 circuit of the minor's residence.

20       ~~+(i)]~~ (h) When a petition is filed bringing a minor before  
21 the court under section 571-11(1) and (2), and the minor resides



1 outside of the circuit, but within the State, the court, after a  
2 finding as to the allegations in the petition, may certify the  
3 case for disposition to the family court having jurisdiction  
4 where the minor resides. Thereupon, the court shall accept the  
5 case and may dispose of the case as if the petition was  
6 originally filed in that court. Whenever a case is so  
7 certified, the certifying court shall forward to the receiving  
8 court certified copies of all pertinent legal and social  
9 records.

10 ~~[(j)]~~ (i) If the court waives jurisdiction pursuant to  
11 subsection (b) or (d), the court also may waive its jurisdiction  
12 with respect to any other felony charges arising from the same  
13 episode to the charge for which the minor was waived.

14 (j) If the court finds by clear and convincing evidence  
15 that the minor was trafficked, sexually abused, or raped by the  
16 alleged victim in the case before or during the commission of  
17 the alleged offense, the court shall retain jurisdiction and not  
18 waive jurisdiction."

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



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

Family Court; Jurisdiction; Criminal Offenses; Minor Defendants;  
Abuse; Trauma

**Description:**

Amends the factors a family court is required to consider in deciding whether the court may waive jurisdiction over a minor or adult held for criminal proceedings. Preserves the family court's jurisdiction over a minor transferred for criminal proceedings for subsequent acts that would otherwise be within the family court's jurisdiction. Requires the family court to retain jurisdiction over a minor if the court finds by clear and convincing evidence that the minor was trafficked, sexually abused, or raped by the alleged victim in the case before or during the commission of the alleged offense. (SD1)

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

