
A BILL FOR AN ACT

RELATING TO JUVENILE OFFENDERS.

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

1 SECTION 1. The legislature acknowledges and recognizes
2 that children are different from adults and that these
3 differences must be taken into account when children are being
4 sentenced for adult crimes. As noted by the United States
5 Supreme Court in *Miller v. Alabama*, 567 U.S. 460, 471 (2012),
6 "only a relatively small proportion of adolescents who engage in
7 illegal activity develop entrenched patterns of problem
8 behavior," and "developments in psychology and brain science
9 continue to show fundamental differences between juvenile and
10 adult minds," including "parts of the brain involved in behavior
11 control".

12 The legislature further finds that children are more
13 vulnerable to negative influences and outside pressures,
14 including from their family and peers, have limited control over
15 their own environment, and lack the ability to extricate
16 themselves from horrific, crime-producing settings. The United
17 States Supreme Court emphasized in *Roper, Graham, Miller, and*



1 *Montgomery* that the distinctive attributes of youth diminish the
2 penological justifications for imposing the harshest sentences
3 on juvenile offenders, even when they commit terrible crimes.

4 The legislature further acknowledges recent research
5 demonstrating high rates of adverse childhood experiences and
6 childhood trauma among children tried as adults. Specifically,
7 children tried as adults have often been victims of physical,
8 emotional, and sexual abuse and come from broken homes where
9 domestic violence, substance abuse, mental illness, and
10 incarceration are common.

11 Accordingly, the purpose of this Act is to allow courts to
12 modify the sentences of juvenile offenders if the court finds
13 that the defendant is not a danger to the safety of any person
14 or the community and the modification is in the interests of
15 justice after considering certain factors.

16 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
17 amended by adding a new section to part IV to be appropriately
18 designated and to read as follows:

19 "§706- Sentence modification for juvenile offenders.

20 (1) Notwithstanding any other law to the contrary, the court
21 may reduce a term of imprisonment imposed upon a defendant



1 convicted as an adult for offenses committed and completed
2 before the defendant attained eighteen years of age if:

3 (a) The defendant has served no less than twelve years in
4 custody for the offenses; and

5 (b) The court finds, after considering the factors set
6 forth in subsection (3), that the defendant is not a
7 danger to the safety of any person or the community
8 and that the interests of justice warrant a sentence
9 modification.

10 (2) Any defendant whose sentence is reduced pursuant to
11 subsection (1) shall be ordered to serve a period of supervised
12 release of no less than three years following release from
13 imprisonment. The period of supervised release shall be
14 administered in the manner of parole supervision under this
15 part, and conditions of supervised release and responses to
16 violations shall be governed by the applicable parole
17 provisions.

18 (3) The court, in determining whether to reduce a term of
19 imprisonment pursuant to subsection (1), shall consider:

20 (a) The nature of the offense and the history and
21 characteristics of the defendant;



- 1 (b) The age of the defendant at the time of the offense;
- 2 (c) A report and recommendation from the department of
- 3 corrections and rehabilitation, including information
- 4 on whether the defendant has substantially complied
- 5 with the rules of each institution in which the
- 6 defendant has been confined and whether the defendant
- 7 has completed any educational, vocational, or other
- 8 prison program, where available;
- 9 (d) The recommendation of the prosecuting attorney from
- 10 the county in which the defendant was prosecuted;
- 11 (e) Whether the defendant has demonstrated maturity,
- 12 rehabilitation, and a fitness to reenter society
- 13 sufficient to justify a sentence reduction;
- 14 (f) Any statement, which may be presented orally or
- 15 otherwise, by any victim of an offense for which the
- 16 defendant is imprisoned or by a family member of the
- 17 victim if the victim is deceased;
- 18 (g) Any report from a physical, mental, or psychiatric
- 19 examination of the defendant conducted by a licensed
- 20 health care professional;



- 1 (h) The family and community circumstances of the
- 2 defendant at the time of the offense, including any
- 3 history of abuse, trauma, or involvement in the child
- 4 welfare system;
- 5 (i) The extent of the role of the defendant in the offense
- 6 and whether, and to what extent, an adult was involved
- 7 in the offense;
- 8 (j) The diminished culpability of juveniles as compared to
- 9 that of adults, and the hallmark features of youth,
- 10 including immaturity, impetuosity, and failure to
- 11 appreciate risks and consequences, which counsel
- 12 against sentencing children to the otherwise
- 13 applicable term of imprisonment; and
- 14 (k) Any other information the court determines relevant to
- 15 the decision of the court.
- 16 (4) If the court denies or grants, in part, a motion to
- 17 reduce a sentence under this section, the defendant shall not:
- 18 (a) File a second motion to reduce a sentence for at least
- 19 three years;
- 20 (b) File a third motion to reduce a sentence for at least
- 21 three years; or



1 (c) File a fourth motion to reduce a sentence.

2 (5) The department of corrections and rehabilitation shall
3 provide written notice of this section to any defendant who has
4 served no less than twelve years in prison for offenses
5 committed and completed before the defendant attained eighteen
6 years of age for which the defendant was convicted as an adult.

7 (6) A request for sentence modification under this section
8 shall:

9 (a) Be filed as a motion to reduce the sentence of the
10 defendant and may include affidavits or other written
11 material; and

12 (b) Be filed with the sentencing court and a copy shall be
13 served on the prosecuting attorney in the county in
14 which the sentence was imposed.

15 (7) After the filing of a motion to reduce a sentence
16 pursuant to this section:

17 (a) The court may direct the parties to expand the record
18 by submitting additional written materials relating to
19 the motion;



- 1 (b) The court shall conduct a hearing on the motion, at
2 which the defendant and counsel for the defendant
3 shall be given the opportunity to be heard;
- 4 (c) The court may allow parties to present evidence;
- 5 (d) The defendant shall be present unless the defendant
6 waives the right to be present; provided that the
7 presence requirement may be satisfied by the defendant
8 appearing by video teleconference;
- 9 (e) A defendant who is unable to obtain counsel shall be
10 entitled to have counsel appointed to represent the
11 defendant for proceedings under this section,
12 including any appeal, unless the defendant waives the
13 right to counsel; and
- 14 (f) The court shall state in open court, and file in
15 writing, the reasons for granting or denying a motion
16 under this section.
- 17 (8) The prosecuting attorney or the defendant may file a
18 notice of appeal for review of a final order under this
19 section."



1 SECTION 3. This Act shall have retroactive application and
2 apply to any sentences imposed on juvenile offenders entered
3 before, on, or after the effective date of this Act.

4 SECTION 4. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 5. New statutory material is underscored.

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



Report Title:

Sentencing; Juvenile Offenders; Sentence Modification; Interest of Justice

Description:

Authorizes a court to modify sentences imposed on juvenile offenders if certain conditions are met and the court finds that, after considering certain factors, the defendant is not a danger to the safety of any person or the community and the modification is in the interests of justice. Establishes procedures, provides for hearings and representation by counsel, and authorizes appellate review. (HD1)

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