

## ACT 222

H.B. NO. 541

A Bill for an Act Relating to Minors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-22, Hawaii Revised Statutes, is amended to read as follows:

**“§571-22 Waiver of jurisdiction; transfer to other courts.** (a) The court may waive jurisdiction and order a minor or adult held for criminal proceedings after full investigation and hearing where the person during the person’s minority, but on or after the person’s sixteenth birthday, is alleged to have committed an act which would constitute a felony if committed by an adult, and the court finds there is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill, is not treatable in any available institution or facility within the State designed for the care and treatment of children, or that the safety of the community requires that the person continue under judicial restraint for a period extending beyond the person’s minority.

(b) The factors to be considered in deciding whether jurisdiction should be waived under this section are as follows:

- (1) The seriousness of the alleged offense.
- (2) Whether the alleged offense was committed in an aggressive, violent, pre-

meditated, or wilful manner.

- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
  - (4) The desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime.
  - (5) The sophistication and maturity of the minor as determined by consideration of the minor's home, environmental situation, emotional attitude, and pattern of living.
  - (6) The record and previous history of the minor, including previous contacts with the family court, other law enforcement agencies, courts in other jurisdictions, prior periods of probation to this court, or prior commitments to juvenile institutions.
  - (7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the minor (if the minor is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the family court.
  - (8) All other relevant matters.
- (c) If, incident to a hearing at which the person's prior court record under section 571-11(1) is established, the court determines that a minor of at least the age of sixteen has been charged with an act which would constitute a class A felony if committed by an adult and that the person is not committable to an institution for the mentally defective or retarded or the mentally ill, the court shall waive jurisdiction and order the minor held for criminal proceedings, if such minor has been previously determined by a court to be a law violator by:
- (1) Committing any act involving force or violence or the threat of force or violence and which is prohibited by law as being a class A felony; or
  - (2) Committing two or more acts within the two years preceding the date of the offense for which the person is presently charged which are each prohibited by law as being a felony.
- (d) Transfer of a minor for criminal proceedings terminates the jurisdiction of the court over the minor with respect to any subsequent acts which would otherwise be within the court's jurisdiction under section 571-11(1) and thereby confers jurisdiction over the minor to a court of competent criminal jurisdiction.
- (e) If criminal proceedings instituted under subsections (a) and (d) of this section result in an acquittal or other discharge of the minor involved, no petition shall thereafter be filed in any family court based on the same facts as were alleged in the criminal proceeding.
- (f) A minor shall not be subject to criminal prosecution based on the facts giving rise to a petition filed under this chapter except as otherwise provided in this chapter.
- (g) Where the petition has been filed in a circuit other than the minor's residence, the judge may in the judge's discretion transfer the case to the family court of the circuit of the minor's residence.
- (h) When a petition is filed bringing a minor before the court under section 571-11(1) and (2), and the minor resides outside of the circuit, but within the State,

the court may after a finding as to the allegations in the petition certify the case for disposition to the family court having jurisdiction where the minor resides. Thereupon, such court shall accept the case and may dispose of the case as if the petition was originally filed in that court. Whenever a case is so certified, the certifying court shall forward to the receiving court certified copies of all pertinent legal and social records.”

SECTION 2. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.\*

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

(Approved June 20, 1981.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.