

ACT 317

H.B. NO. 107

A Bill for an Act Relating to Juveniles.

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

SECTION 1. The legislature finds that the crime rate in Hawaii among juveniles is steadily increasing, despite concerted efforts by state and county law enforcement personnel to prevent juvenile crime. Of particular concern are significantly higher rates of burglary and other property crime, as more juveniles turn to theft to obtain money to buy illegal drugs. In addition, the violent crime rate for juveniles has steadily risen during the past decade.

The legislature further finds that the juvenile justice system in Hawaii and other states was originally designed to shield children from publicity, out of concern for the welfare of the child. This insistence on confidentiality, according to the United States Supreme Court, was “designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with

juvenile affairs serves as a rehabilitative and protective agency of the state.” Smith v. Daily Mail Publishing Co., 443 U.S. 97, 105 (1979).

While continuing to support the rehabilitative approach to juvenile justice, the legislature also recognizes that public safety and waning public confidence in the juvenile justice system necessitate the development of a legislative policy which balances these concerns with the principles of protection and rehabilitation. Therefore, the purpose of this Act is to eliminate the confidentiality of certain records and proceedings of juvenile law violators adjudicated for serious, repeat, or violent offenses in order to maintain public safety, to restore public confidence in the juvenile justice system, and to send a message to certain juvenile law violators that their actions will be treated seriously.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§571- Juvenile law violators; proceedings and records not confidential. (a) As used in this section:

“Legal record” means petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers and adjudication data, other than social records, filed in proceedings before the court.

“Social record” means those social and clinical studies, reports, or examinations prepared in any case pursuant to this chapter.

(b) Notwithstanding any other law to the contrary, in any proceeding in which a minor age fourteen years of age or older has been adjudicated by the court under section 571-11(1) for an act that, if committed by an adult would:

- (1) Be murder in the first degree or second degree or attempted murder in the first degree;
- (2) Result in serious bodily injury to a victim;
- (3) Be a class A felony; or
- (4) Be a felony and the minor has more than one prior adjudication for acts which would constitute felonies if committed by an adult;

all legal records related to the above stated proceeding shall be open for public inspection, unless the administrative judge of the family court or the judge’s designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that public inspection would be inconsistent with or defeat the express purpose of this section. All social records shall be kept confidential except as provided in section 571-84.

(c) Notwithstanding any other law to the contrary, in any case in which a minor age sixteen years of age or older comes within section 571-11(1) is taken into custody for an act that, if committed by an adult would:

- (1) Be murder in the first degree or second degree or attempted murder in the first degree;
- (2) Result in serious bodily injury to a victim;
- (3) Be a class A felony and the minor has one or more prior adjudications for an act which would constitute a felony if committed by an adult; and
- (4) Be a class B or C felony and the minor has more than one prior adjudication for acts which would constitute felonies if committed by an adult;

all legal proceedings related to the above stated case shall be open to the public unless the administrative judge of the family court or the judge’s designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that an open proceeding would be inconsistent with or defeat the express purpose of this section.”

SECTION 3. Section 571-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [The] Except as provided in section 571-_____, the general public shall be excluded and only such persons admitted whose presence is requested by the parent or guardian or as the judge or district family judge finds to have a direct interest in the case, from the standpoint of the best interests of the child involved, or in the work of the court; provided that the victim of the alleged violation and all other witnesses who are less than eighteen years of age, shall be entitled to have parents, guardians, or one other adult and may have an attorney present while testifying at or otherwise attending a hearing initiated pursuant to section 571-11(1) or 571-11(2). Prior to the start of a hearing, the parents, guardian, or legal custodian, and, when appropriate, the child victim or witness shall be notified of the right to be represented by counsel and the right to remain silent.”

SECTION 4. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court shall maintain records of all cases brought before it. [In] Except as provided in section 571-_____, in proceedings under section 571-11[,] and in paternity proceedings under chapter 584, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection: by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, and by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 30, 1997.)