

ACT 318

H.B. NO. 106

A Bill for an Act Relating to Youthful Offenders.

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

SECTION 1. Section 352-10, Hawaii Revised Statutes, is amended to read as follows:

“§352-10 Circuit court disposition of offenders under eighteen years.

The circuit court may commit all offenders under eighteen years of age, duly convicted before the court, to the Hawaii youth correctional facilities in all cases where the court deems the sentence to be more suitable than the punishment otherwise authorized by law. In such a case, when the term of confinement ordered by the court extends beyond the offender’s eighteenth birthday, the offender shall, upon reaching the age of eighteen, be committed to the custody of the department of public safety for completion of the sentence. Persons [so] committed to the Hawaii youth correctional facilities under this section may be furloughed or paroled by the director[.], unless the commitment order issued by the court requires prior approval by the court or unless the offender is subject to a mandatory term of imprisonment which term has not yet expired.”

SECTION 2. 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] that would constitute a felony if committed by an adult, and the court finds [there] that:

- (1) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill[.];
- (2) The person is not treatable in any available institution or facility within the State designed for the care and treatment of children[.]; or [that the]
- (3) The safety of the community requires that the person [continue under] be subject to judicial restraint for a period extending beyond the person’s minority.

(b) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, incident to a hearing, the court finds that:

- (1) The person during the person’s minority, but on or after the person’s fourteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult and either:
 - (A) The act resulted in serious bodily injury to a victim;
 - (B) The act would constitute a class A felony if committed by an adult; or
 - (C) The person has more than one prior adjudication for acts which would constitute felonies if committed by an adult;

and

- (2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

[(b)] (c) The factors to be considered in deciding whether jurisdiction should be waived under [this section] subsection (a) or (b) are as follows:

- (1) The seriousness of the alleged offense[.];
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, 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] the family 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[.]; and
- (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 murder in the first degree or attempted murder in the first degree, murder in the second degree or attempted murder in the second degree, or 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 murder in the first degree, attempted murder in the first degree, murder in the second degree, attempted murder in the second degree, or 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) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, incident to a hearing, the court finds that:

- (1) The person during the person's minority is alleged to have committed an act that would constitute murder in the first degree or second degree or attempted murder in the first degree or second degree if committed by an adult; and
- (2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

[(d)] (e) Transfer of a minor for criminal proceedings terminates the jurisdiction of the court over the minor with respect to any subsequent acts [which] that 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)] (f) If criminal proceedings instituted under [subsections] subsection (a) [and], (b), or (d) [of this section] result in an acquittal or other discharge of the minor involved, no petition shall [thereafter] be filed thereafter in any family court based on the same facts as were alleged in the criminal proceeding.

[(f)] (g) 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)] (h) Where the petition has been filed in a circuit other than the minor's residence, the judge [may], in the judge's discretion, may transfer the case to the family court of the circuit of the minor's residence.

[(h)] (i) 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, may certify

the case for disposition to the family court having jurisdiction where the minor resides. Thereupon, [such] the 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 3. Section 571-84, Hawaii Revised Statutes, is amended to read as follows:

“**§571-84 Records.** (a) The court shall maintain records of all cases brought before it. 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.

(b) Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection, except that information from [the] these reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.

(c) No information obtained or social records prepared in the discharge of official duty by an employee of the court shall be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive the information, unless and until otherwise ordered by the judge.

(d) Any photograph or fingerprint taken of any [child] minor may be used or circulated only as permitted by [the rules and standards provided for in] section 571-74.

(e) The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection and use only by persons whose official duties are concerned with [the provisions of] this chapter, except as provided in subsections (d) [and], (f), and (j) or as otherwise ordered by the court.

(f) Any police records concerning traffic accidents in which a [child or] minor coming within section 571-11(1) is involved, after the termination of any proceeding under section 571-11(1) arising out of any [such] accident, or in any event after six months from the date of the accident, shall be available for inspection by the parties directly concerned in the accident[,] or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any [such] traffic accident shall be deemed a party concerned.

(g) In all proceedings concerning violations other than traffic violations, in which a minor coming within section 571-11(1) is involved and after the termination of any proceeding under section 571-11(1) arising out of [any such] the violation, the court may disclose to a party directly concerned the disposition of a case involving an offense against a person or property. This disclosure shall be made only upon

written request of the party directly concerned. If the minor has been adjudicated a law violator, the name and address of the minor, and, when practicable, the name of the parent or guardian shall be disclosed, pursuant to the order of the court or the Hawaii [Family Court Rules,] family court rules, to the parties directly concerned with the alleged violation[,] or their duly licensed attorneys acting under written authority signed by either party. For the purpose of this section, “parties directly concerned” means any person who may sue because of death, injury, or damage resulting from any violation, other than a traffic violation, in which a minor coming within section 571-11(1) is involved.

The minor, and, when practicable, the minor’s parents or custodian, and the attorney of the minor shall be notified when the minor’s name and address have been released.

(h) Evidence given in proceedings under section 571-11(1) or (2) shall not in any civil, criminal, or other cause be lawful or proper evidence against the [child or] minor therein involved for any purpose whatever, except in subsequent proceedings involving the same [child] minor under section 571-11(1) or (2).

(i) All information in the records except reports of social studies and clinical studies or examinations shall be recorded in the juvenile justice information system. Information about the dates, length, preparer, and subject of social studies may be included in the juvenile justice information system.”

SECTION 4. Section 706-667, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Defined. A young adult defendant is a person convicted of a crime who, at the time of sentencing, is [sixteen years of age or older but] less than twenty-two years of age[,] and who has not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense [committed at age sixteen or older which] that would have [been] constituted a felony had the young adult defendant been an adult.”

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.)