

## ACT 202

H.B. NO. 2116

A Bill for an Act Relating to Sentencing for Juvenile Offenders.

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

SECTION 1. The legislature acknowledges and recognizes that children are constitutionally different from adults and that these differences must be taken into account when children are sentenced for adult crimes. As stated by the United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), “only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior, and developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds, for example, in parts of the brain involved in behavior control.” Children are more vulnerable to negative influences and outside pressures, including from family and peers, they have limited control over their own environment, and they may lack the ability to extricate themselves from horrific, crime-producing settings. The Supreme Court has emphasized through its decisions in *Roper v. Simmons*, 125 S. Ct. 1183 (2005), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Miller v. Alabama* that “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” Youthfulness both lessens a juvenile’s moral culpability and enhances the prospect that, as the youth

matures into an adult and neurological development occurs, the individual can become a contributing member of society.

The legislature further acknowledges that the United States is the only nation in the world that allows children to be sentenced to life imprisonment without parole, in violation of Article 37 of the United Nations Convention on the Rights of the Child, which categorically bars the imposition of "capital punishment [or] life imprisonment without the possibility of release . . . for offenses committed by persons below eighteen years of age."

Therefore, the purpose of this Act is to abolish life imprisonment without the possibility of parole as a sentencing option for those convicted for offenses committed while under the age of eighteen.

SECTION 2. Section 706-656, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Persons eighteen years of age or over at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without the possibility of parole.

As part of such sentence, the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment.

Persons under the age of eighteen years at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment with the possibility of parole."

SECTION 3. Section 706-657, Hawaii Revised Statutes, is amended to read as follows:

**"§706-657 Enhanced sentence for second degree murder.** The court may sentence a person who was eighteen years of age or over at the time of the offense and who has been convicted of murder in the second degree to life imprisonment without the possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity or that the person was previously convicted of the offense of murder in the first degree or murder in the second degree in this State or was previously convicted in another jurisdiction of an offense that would constitute murder in the first degree or murder in the second degree in this State. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime which is unnecessarily torturous to a victim and "previously convicted" means a sentence imposed at the same time or a sentence previously imposed which has not been set aside, reversed, or vacated.

Hearings to determine the grounds for imposing an enhanced sentence for second degree murder may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an enhanced term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the ground proposed. Subject to the provision of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue.

The provisions pertaining to commutation in section 706-656(2), shall apply to persons sentenced pursuant to this section."

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

**SECTION 5.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 6.** This Act shall take effect upon its approval, and shall apply to proceedings arising on or after its effective date and to proceedings that were begun but not concluded before its effective date.

(Approved July 2, 2014.)