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# A BILL FOR AN ACT

RELATING TO CRIME.

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

- 1           SECTION 1. Section 571-22, Hawaii Revised Statutes, is  
2 amended to read as follows:
- 3           "**§571-22 Waiver of jurisdiction; transfer to other courts.**
- 4 (a) The court may waive jurisdiction and order a minor or adult  
5 held for criminal proceedings after full investigation and  
6 hearing where the person during the person's minority, but on or  
7 after the person's sixteenth birthday, is alleged to have  
8 committed an act that would constitute a felony if committed by  
9 an adult, and the court finds that:
- 10           (1) There is no evidence the person is committable to an  
11 institution for the mentally defective or retarded or  
12 the mentally ill;
- 13           (2) The person is not treatable in any available  
14 institution or facility within the State designed for  
15 the care and treatment of children; or
- 16           (3) The safety of the community requires that the person  
17 be subject to judicial restraint for a period  
18 extending beyond the person's minority.



1 (b) The court may waive jurisdiction and order a minor or  
2 adult held for criminal proceedings if, after a full  
3 investigation and hearing, the court finds that:

4 (1) The person during the person's minority, but on or  
5 after the person's fourteenth birthday, is alleged to  
6 have committed an act that would constitute a felony  
7 if committed by an adult and either:

8 (A) The act resulted in serious bodily injury to a  
9 victim;

10 (B) The act would constitute a class A felony if  
11 committed by an adult; or

12 (C) The person has more than one prior adjudication  
13 for acts that would constitute felonies if  
14 committed by an adult; and

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

18 (c) The factors to be considered in deciding whether  
19 jurisdiction should be waived under subsection (a) or (b) are as  
20 follows:

21 (1) The seriousness of the alleged offense;



- 1 (2) Whether the alleged offense was committed in an  
2 aggressive, violent, premeditated, or wilful manner;
- 3 (3) Whether the alleged offense was against persons or  
4 against property, greater weight being given to  
5 offenses against persons, especially if personal  
6 injury resulted;
- 7 (4) The desirability of trial and disposition of the  
8 entire offense in one court when the minor's  
9 associates in the alleged offense are adults who will  
10 be charged with a crime;
- 11 (5) The sophistication and maturity of the minor as  
12 determined by consideration of the minor's home,  
13 environmental situation, emotional attitude, and  
14 pattern of living;
- 15 (6) The record and previous history of the minor,  
16 including previous contacts with the family court,  
17 other law enforcement agencies, courts in other  
18 jurisdictions, prior periods of probation to the  
19 family court, or prior commitments to juvenile  
20 institutions;
- 21 (7) The prospects for adequate protection of the public  
22 and the likelihood of reasonable rehabilitation of the



1 minor (if the minor is found to have committed the  
2 alleged offense) by the use of procedures, services,  
3 and facilities currently available to the family  
4 court; and

5 (8) All other relevant matters.

6 (d) The court may waive jurisdiction and order a minor or  
7 adult held for criminal proceedings if, after a full  
8 investigation and hearing, the court finds that:

9 (1) The person during the person's minority is alleged to  
10 have committed an act that would constitute murder in  
11 the first degree or second degree or attempted murder  
12 in the first degree or second degree if committed by  
13 an adult; and

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

17 (e) If, incident to a hearing at which the court's  
18 jurisdiction under section 571-11(1) is established, the court  
19 determines that a minor of at least fifteen years of age, but  
20 less than eighteen years of age, has been charged with an act  
21 that would constitute a violation of sections 707-701 or 707-  
22 701.5, if committed by an adult, the court shall waive

1 jurisdiction and order the minor held for criminal proceedings  
2 in a youth correctional facility.

3       ~~(e)~~ (f) Transfer of a minor for criminal proceedings  
4 terminates the jurisdiction of the court over the minor with  
5 respect to any subsequent acts that would otherwise be within  
6 the court's jurisdiction under section 571-11(1) and thereby  
7 confers jurisdiction over the minor to a court of competent  
8 criminal jurisdiction.

9       ~~(f)~~ (g) If criminal proceedings instituted under  
10 subsection (a), (b), or (d) result in an acquittal or other  
11 discharge of the minor involved, no petition shall be filed  
12 thereafter in any family court based on the same facts as were  
13 alleged in the criminal proceeding.

14       ~~(g)~~ (h) A minor shall not be subject to criminal  
15 prosecution based on the facts giving rise to a petition filed  
16 under this chapter, except as otherwise provided in this  
17 chapter.

18       ~~(h)~~ (i) Where the petition has been filed in a circuit  
19 other than the minor's residence, the judge, in the judge's  
20 discretion, may transfer the case to the family court of the  
21 circuit of the minor's residence.



1        [~~(i)~~](j) When a petition is filed bringing a minor before  
2 the court under section 571-11(1) and (2), and the minor resides  
3 outside of the circuit, but within the State, the court, after a  
4 finding as to the allegations in the petition, may certify the  
5 case for disposition to the family court having jurisdiction  
6 where the minor resides. Thereupon, the court shall accept the  
7 case and may dispose of the case as if the petition was  
8 originally filed in that court. Whenever a case is so  
9 certified, the certifying court shall forward to the receiving  
10 court certified copies of all pertinent legal and social  
11 records.

12        [~~(j)~~](k) If the court waives jurisdiction pursuant to  
13 subsection (b) or (d), the court also may waive its jurisdiction  
14 with respect to any other felony charges arising from the same  
15 episode to the charge for which the minor was waived."

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

19        SECTION 3. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21        SECTION 4. This Act shall take effect on January 1, 2009.



**Report Title:**

Crime; Minors Tried as Adults

**Description:**

Mandates minors be tried as adults in cases of first and second degree murder. (HB3362 HD1)

