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## A BILL FOR AN ACT

RELATING TO SERIOUS OFFENSES COMMITTED BY MINORS.

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

1           SECTION 1. Section 352-9, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3           "(b) ~~[In]~~ Except as provided in section 571-48(2), in  
4 those cases where the term of commitment to a youth correctional  
5 facility extends beyond the person's nineteenth birthday, the  
6 person shall be placed on juvenile parole pursuant to the  
7 original family court order for the balance of the person's term  
8 of commitment; provided that such term does not extend beyond  
9 the person's twentieth birthday unless earlier terminated."

10           SECTION 2. Section 352-28, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§352-28 Transfer to correctional facility.** Any person  
13 after the person's sixteenth birthday, who has been committed to  
14 the care of the director and disrupts the order and the  
15 discipline of any state-operated youth correctional facility or  
16 injures the staff or other person committed to the facility or  
17 for other good cause, may be transferred by the director to an



1 adult correctional facility, with the prior approval of the  
2 family court, for the balance of the term provided for by the  
3 court. If [~~such~~] the person demonstrates sufficient improvement  
4 or progress, or for other good reason, the family court may  
5 order the person's return to a youth correctional facility[~~+~~];  
6 provided that a person who has been transferred to an adult  
7 correctional facility pursuant to an order made under section  
8 571-48 shall not be returned to a youth correctional facility  
9 upon attaining the age of eighteen."

10 SECTION 3. Section 571-48, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§571-48 Decree, if informal adjustment or diversion to a**  
13 **private or community agency or program has not been effected.**

14 When a minor is found by the court to come within section  
15 571-11, the court shall so decree and in its decree shall make a  
16 finding of the facts upon which the court exercises its  
17 jurisdiction over the minor. Upon the decree the court, by  
18 order duly entered, shall proceed as follows:

19 (1) As to a child adjudicated under section 571-11(1) [~~+~~],  
20 except as provided in paragraph (2):

21 (A) The court may place the child on probation:

22 (i) In the child's own home; or



1 (ii) In the custody of a suitable person or  
2 facility elsewhere, upon conditions  
3 determined by the court.

4 When conditions of probation include custody in a  
5 youth correctional facility, the custody shall be  
6 for a term not to exceed one year, after which  
7 time the person shall be allowed to reside in the  
8 community subject to additional conditions as may  
9 be imposed by the court;

10 (B) The court may vest legal custody of the child,  
11 after prior consultation with the agency or  
12 institution, in a Hawaii youth correctional  
13 facility, in a local public agency or  
14 institution, or in any private institution or  
15 agency authorized by the court to care for  
16 children; or place the child in a private home.  
17 If legal custody of the child is vested in a  
18 private agency or institution in another state,  
19 the court shall select one that is approved by  
20 the family or juvenile court of the other state  
21 or by that state's department of social services  
22 or other appropriate department; or



1 (C) The court may fine the child for a violation  
2 which would be theft in the third degree by  
3 shoplifting if committed by an adult. The court  
4 may require the child to perform public services  
5 in lieu of the fine;

6 (2) As to a child adjudicated under section 571-11(1) for  
7 an act that would constitute an offense under section  
8 707-701, 707-701.5, or 707-730:

9 (A) The court may vest legal custody of the child in  
10 a Hawaii youth correctional facility until the  
11 child attains the age of eighteen on the  
12 condition that the person thereafter be  
13 transferred, pursuant to section 352-28, to the  
14 custody of the director of public safety to be  
15 imprisoned until the person has attained the age  
16 of twenty-six;

17 (B) The court shall retain jurisdiction after the  
18 person attains the age of eighteen; provided that  
19 the person shall otherwise be subject to the  
20 procedure for determining a minimum term of  
21 imprisonment pursuant to section 706-669 and for  
22 parole pursuant to section 706-670;



1        [~~2~~] (3) As to a child adjudicated under section

2                    571-11(2):

3                    (A) The court may place the child under protective  
4                    supervision, as hereinabove defined, in the  
5                    child's own home, or in the custody of a suitable  
6                    person or agency elsewhere, upon conditions  
7                    determined by the court; or

8                    (B) The court may vest legal custody of the child,  
9                    after prior consultation with the agency or  
10                    institution, in a local governmental agency or  
11                    institution licensed or approved by the State to  
12                    care for children, with the exception of an  
13                    institution authorized by the court to care for  
14                    children. If legal custody of the child is  
15                    vested in a private agency or institution in  
16                    another state, the court shall select one that is  
17                    approved by the family or juvenile court of the  
18                    other state or by that state's department of  
19                    social services or other appropriate department;  
20                    provided that the child may not be committed to a  
21                    public or private institution operated solely for  
22                    the treatment of law violators;



1        [~~3~~] (4) An order vesting legal custody of a minor in an  
2            individual, agency, or institution under section  
3            571-11(2) shall be for an indeterminate period but  
4            shall not remain in force or effect beyond three years  
5            from the date entered, except that the individual,  
6            institution, or agency may file with the court a  
7            petition for renewal of the order and the court may  
8            renew the order if it finds such renewal necessary to  
9            safeguard the welfare of the child or the public  
10          interest. The court, after notice to the parties, may  
11          conduct a hearing on the petition. Renewal may be  
12          periodic during minority, but no order shall have any  
13          force or effect beyond the period authorized by  
14          section 571-13. An agency granted legal custody shall  
15          be subject to prior approval of the court in any case  
16          in which the child is to reside without the  
17          territorial jurisdiction of the court and may be  
18          subject to prior approval in other cases. An  
19          individual granted legal custody shall exercise the  
20          rights and responsibilities personally unless  
21          otherwise authorized by the court;



1        [~~4~~] (5) Whenever the court commits a child to the care of  
2        the director of human services or executive director  
3        of the office of youth services, or vests legal  
4        custody of a child in an institution or agency, it  
5        shall transmit with the order copies of the clinical  
6        reports, social study, and other information pertinent  
7        to the care and treatment of the child, and the  
8        institution or agency shall give to the court any  
9        information concerning the child that the court may at  
10       any time require. [~~Am~~] Except as provided in  
11       paragraph (2), an institution or agency receiving a  
12       child under this paragraph shall inform the court  
13       whenever the status of the child is affected through  
14       temporary or permanent release, discharge, or transfer  
15       to other custody. An institution to which a child is  
16       committed under section 571-11(1) or (2) shall not  
17       transfer custody of the child to an institution for  
18       the correction of adult offenders, except as  
19       authorized in this chapter and under chapter 352;  
20       [~~5~~] (6) The court may order, for any child within its  
21       jurisdiction, whatever care or treatment is authorized  
22       by law;



1        [~~(6)~~] (7) In placing a child under the guardianship or  
2                    custody of an individual or of a private agency or  
3                    private institution, the court shall give primary  
4                    consideration to the welfare of the child;

5        [~~(7)~~] (8) In support of any order or decree under section  
6                    571-11(1) or (2), the court may require the parents or  
7                    other persons having custody of the child, or any  
8                    other person who has been found by the court to be  
9                    encouraging, causing, or contributing to the acts or  
10                   conditions which bring the child within the purview of  
11                   this chapter and who are parties to the proceeding, to  
12                   do or to omit doing any acts required or forbidden by  
13                   law, when the judge deems this requirement necessary  
14                   for the welfare of the child. The court may also make  
15                   appropriate orders concerning the parents or other  
16                   persons having custody of the child and who are  
17                   parties to the proceeding. If such persons fail to  
18                   comply with the requirement or with the court order,  
19                   the court may proceed against them for contempt of  
20                   court;

21        [~~(8)~~] (9) In support of any order or decree for custody or  
22                   support, the court may make an order of protection





1 setting forth reasonable conditions of behavior to be  
2 observed for a specified time, binding upon both  
3 parents or either of them. This order may require  
4 either parent to stay away from the home or from the  
5 other parent or children, may permit the other to  
6 visit the children at stated periods, or may require a  
7 parent to abstain from offensive conduct against the  
8 children or each other;

9 [~~+9~~] (10) The court may dismiss the petition or otherwise  
10 terminate its jurisdiction at any time;

11 [~~+10~~] (11) In any other case of which the court has  
12 jurisdiction, the court may make any order or judgment  
13 authorized by law;

14 [~~+11~~] (12) The court may order any person adjudicated  
15 pursuant to section 571-11(1) to make restitution of  
16 money or services to any victim who suffers loss as a  
17 result of the child's action, or to render community  
18 service;

19 [~~+12~~] (13) The court may order any person adjudicated  
20 pursuant to section 571-11(2) to participate in  
21 community service; and



1        [~~(13)~~] (14) The court may order the parents of an  
2                    adjudicated minor to make restitution of money or  
3                    services to any victim, person, or party who has  
4                    incurred a loss or damages as a result of the child's  
5                    action."

6            SECTION 4. Section 706-667, Hawaii Revised Statutes, is  
7 amended by amending subsection (3) to read as follows:

8            "(3) Special term. A young adult defendant convicted of a  
9 felony, in lieu of any other sentence of imprisonment authorized  
10 by this chapter, may be sentenced to a special indeterminate  
11 term of imprisonment if the court is of the opinion that such  
12 special term is adequate for the young adult defendant's  
13 correction and rehabilitation and will not jeopardize the  
14 protection of the public. When ordering a special indeterminate  
15 term of imprisonment, the court shall impose the maximum length  
16 of imprisonment, which shall be eight years for a class A  
17 felony, five years for a class B felony, and four years for a  
18 class C felony. The minimum length of imprisonment shall be set  
19 by the Hawaii paroling authority in accordance with section 706-  
20 669. During this special indeterminate term, the young adult  
21 shall be incarcerated separately from career criminals, when  
22 practicable.



1           This section shall not apply to the offenses of murder,  
 2   ~~[or]~~ attempted murder~~[or]~~, or sexual assault in the first  
 3   degree."

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

7           SECTION 6. Statutory material to be repealed is bracketed  
 8   and stricken. New statutory material is underscored.

9           SECTION 7. This Act shall take effect on July 1, 2008.

10

INTRODUCED BY: Will Ezyro  
*Clarence K. Michikawa*



**Report Title:**

Sex Assault; Murder; Disposition of Minor Accused

**Description:**

Permits family court to commit a minor, who commits an act that constitutes sexual assault or murder, to be incarcerated at a youth correctional facility until age 18 then transferred to the custody of the director of public safety until age 26.

