
A BILL FOR AN ACT

RELATING TO SENTENCING FOR JUVENILE OFFENDERS.

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

1 SECTION 1. The legislature acknowledges and recognizes
2 that children are constitutionally different from adults and
3 that these differences must be taken into account when children
4 are sentenced for adult crimes. As stated by the United States
5 Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012),
6 "only a relatively small proportion of adolescents who engage in
7 illegal activity develop entrenched patterns of problem
8 behavior, and developments in psychology and brain science
9 continue to show fundamental differences between juvenile and
10 adult minds, for example, in parts of the brain involved in
11 behavior control." Children are more vulnerable to negative
12 influences and outside pressures, including from family and
13 peers, they have limited control over their own environment, and
14 they may lack the ability to extricate themselves from horrific,
15 crime-producing settings. The Supreme Court has emphasized
16 through its decisions in *Roper v. Simmons*, 125 S. Ct. 1183
17 (2005), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Miller v.*
18 *Alabama* that "the distinctive attributes of youth diminish the



1 penological justifications for imposing the harshest sentences
2 on juvenile offenders, even when they commit terrible crimes."
3 Youthfulness both lessens a juvenile's moral culpability and
4 enhances the prospect that, as the youth matures into an adult
5 and neurological development occurs, the individual can become a
6 contributing member of society.

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

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

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

21 "(1) Persons eighteen years of age or over at the time of
22 the offense who are convicted of first degree murder or first



1 degree attempted murder shall be sentenced to life imprisonment
2 without the possibility of parole.

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

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

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

16 **"§706-657 Enhanced sentence for second degree murder.** The
17 court may sentence a person who was eighteen years of age or
18 over at the time of the offense and who has been convicted of
19 murder in the second degree to life imprisonment without the
20 possibility of parole under section 706-656 if the court finds
21 that the murder was especially heinous, atrocious, or cruel,
22 manifesting exceptional depravity or that the person was



1 previously convicted of the offense of murder in the first
2 degree or murder in the second degree in this State or was
3 previously convicted in another jurisdiction of an offense that
4 would constitute murder in the first degree or murder in the
5 second degree in this State. As used in this section, the
6 phrase "especially heinous, atrocious, or cruel, manifesting
7 exceptional depravity" means a conscienceless or pitiless crime
8 which is unnecessarily torturous to a victim and "previously
9 convicted" means a sentence imposed at the same time or a
10 sentence previously imposed which has not been set aside,
11 reversed, or vacated.

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



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

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

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

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



Report Title:

Juvenile Offenders; Sentencing

Description:

Eliminates sentences of life imprisonment without the possibility of parole for juvenile offenders. (HB2116 CD1)

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