

PROPOSED

A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

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

1 SECTION 1. Chapter 707, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§707- Continuous sexual assault of a minor under the
5 age of fourteen years. (1) A person commits the offense of
6 continuous sexual assault of a minor under the age of fourteen
7 years if the person:

8 (a) Either resides in the same home with a minor under the
9 age of fourteen years or has recurring access to the
10 minor; and

11 (b) Engages in three or more acts of sexual penetration or
12 sexual contact with the minor over a period of time,
13 while the minor is under the age of fourteen years.

14 (2) To convict under this section, the trier of fact, if a
15 jury, need unanimously agree only that the requisite number of
16 acts have occurred; the jury need not agree on which acts
17 constitute the requisite number.



1 (3) No other felony sex offense involving the same victim
 2 may be charged in the same proceeding with a charge under this
 3 section, unless the other charged offense occurred outside the
 4 period of the offense charged under this section, or the other
 5 offense is charged in the alternative. A defendant may be
 6 charged with only one count under this section, unless more than
 7 one victim is involved, in which case a separate count may be
 8 charged for each victim.

9 (4) Continuous sexual assault of a minor under the age of
 10 fourteen years is a class A felony."

11 SECTION 2. Section 325-16, Hawaii Revised Statutes, is
 12 amended by amending subsection (b) to read as follows:

13 "(b) Consent to testing is not required for any of the
 14 following:

15 (1) A health care provider or organ donor center that
 16 procures, processes, distributes, or uses human body
 17 parts donated for scientific purposes, without
 18 obtaining consent, may test for the presence of HIV in
 19 order to assure medical acceptability of the gift for
 20 the purpose intended;

21 (2) The department, laboratories and research facilities,
 22 health care providers, blood banks, plasma centers,

1 and educational institutions may subject any body
2 fluids or tissue to be used in research to a test for
3 HIV infection if the test is performed in a manner by
4 which the identity of the test subject is not known
5 and may not be retrieved by the researcher;

6 (3) Anonymous testing carried out at HIV test sites
7 established by the department; provided that informed
8 oral consent is obtained;

9 (4) Testing of body fluids or tissue ordered by a third
10 party, so long as that third party, including but not
11 limited to an insurance company, employer, or school,
12 obtains the informed written consent of the person to
13 be tested authorizing the release of the test results
14 to the third party, and transmits a signed copy of the
15 written informed consent to the health provider prior
16 to any release of the requested test results to the
17 third party;

18 (5) Informed consent is not required where the patient is
19 unable to give consent and it is determined by the
20 patient's treating physician that the patient's HIV
21 status is necessary to make a diagnosis or determine
22 an appropriate course of treatment for the patient.



1 The patient shall be informed in a timely manner that
2 a test for the presence of HIV has been performed
3 pursuant to this paragraph, and the patient shall be
4 provided the opportunity to obtain the test results
5 and appropriate counseling;

- 6 (6) A treating physician may order an HIV test without the
7 patient's informed consent if the physician has
8 determined that the patient is incapable of giving
9 consent prior to the rendering of treatment and when
10 there is reason to believe that the safety of a health
11 care worker may be affected due to exposure to the
12 blood or bodily fluids of a patient suspected of
13 possible HIV infection. The availability and quality
14 of health care services shall not be compromised based
15 on the findings and testing performed pursuant to this
16 paragraph. The costs of any testing performed shall
17 be borne by the health care provider and may not be
18 claimed against the patient or the patient's health
19 care insurer. The patient and the health care worker
20 shall be informed in a timely manner that a test for
21 the presence of HIV has been performed pursuant to the
22 provisions of this paragraph, and the patient and the



1 health care worker shall be provided the opportunity
2 to obtain the test results and appropriate counseling;

3 (7) A person who has been charged, or a juvenile who has
4 been charged, pursuant to section 707-730, 707-731,
5 707-732(1)(a), [~~707-733.5,~~] 707-_____, or 707-741 shall
6 be tested to determine the person's HIV status upon
7 court order issued pursuant to section 325-16.5. The
8 test shall be performed according to the protocols set
9 forth in section 325-17; and

10 (8) A person who has been convicted, or a juvenile who has
11 been adjudicated, pursuant to section 707-730,
12 707-731, 707-732(1)(a), [~~707-733.5,~~] 707-_____, or
13 707-741 shall be tested to determine the person's HIV
14 status upon court order issued pursuant to section
15 325-16.5. The test shall be performed according to
16 the protocols set forth in section 325-17."

17 SECTION 3. Section 325-16.5, Hawaii Revised Statutes, is
18 amended by amending subsection (f) to read as follows:

19 "(f) As used in this section, unless the context requires
20 otherwise:

21 "Charged person" means a person who has been charged with
22 an offense under section 707-730, 707-731, 707-732(1)(a), [~~707-~~



1 ~~733.5,~~] 707- , or 707-741, including a juvenile charged of such
2 an offense. A person is charged when a formal complaint,
3 information, or indictment has been accepted by the court.

4 "Convicted person" means a person who has been convicted of
5 an offense under section 707-730, 707-731, 707-732(1)(a),
6 [~~707-733.5,~~] 707- , or 707-741, including a juvenile
7 adjudicated of such an offense. A person is convicted when a
8 verdict or adjudication has been rendered by a judge or jury, or
9 a plea of guilty or nolo contendere has been accepted by the
10 court.

11 "HIV counseling" means HIV counseling which conforms to the
12 guidelines of the department of health or the Centers for
13 Disease Control and Prevention, and includes referral for
14 appropriate health care and support services.

15 "HIV counselor" means any person who has been trained and
16 certified in HIV counseling by the department of health or the
17 Centers for Disease Control and Prevention and who is not a
18 victim counselor employed by or a volunteer with any law
19 enforcement agency."

20 SECTION 4. Section 706-606.6, Hawaii Revised Statutes, is
21 amended to read as follows:



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1 "~~[†]~~§706-606.6~~[†]~~ Repeat violent and sexual offender;
2 **enhanced sentence.** (1) Notwithstanding any other provision of
3 law to the contrary, any person who is convicted of an offense
4 under section 707-701.5, 707-702, 707-730, 707-731, 707-732,
5 ~~[707-733.5,]~~ 707-_____, 707-750, or 708-840, after having been
6 convicted on at least three prior and separate occasions of an
7 offense under section 707-701.5, 707-702, 707-710, 707-711,
8 707-730, 707-731, 707-732, ~~[707-733.5,]~~ 707-_____, 707-750, or
9 708-840, or of an offense under federal law or the laws of
10 another state that is comparable to an offense under section
11 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732,
12 ~~[707-733.5,]~~ 707-_____, 707-750, or 708-840, shall be sentenced to
13 an extended term of imprisonment as provided in section 706-661.

14 (2) A conviction shall not be considered a prior offense
15 unless the conviction occurred within the following time
16 periods:

17 (a) For an offense under section 707-701.5, 707-702,
18 707-730, ~~[707-733.5,]~~ 707-_____, 707-750, or 708-840,
19 within the past twenty years from the date of the
20 instant offense;



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1 (b) For an offense under section 707-710 or 707-731,
2 within the past ten years from the date of the instant
3 offense;

4 (c) For an offense under section 707-711 or 707-732,
5 within the past five years from the date of the
6 instant offense; or

7 (d) For an offense under federal law or the laws of
8 another state that is comparable to an offense under
9 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
10 707-731, 707-732, [~~707-733.5,~~] 707-_____, 707-750, or
11 708-840, within the maximum term of imprisonment
12 possible under the appropriate jurisdiction."

13 SECTION 5. Section 846E-1, Hawaii Revised Statutes, is
14 amended by amending the definitions of "aggravated sexual
15 offense" and "sexual offense" to read as follows:

16 "Aggravated sexual offense" means:

17 (1) A criminal offense described in section 707-730(1)(a),
18 707-730(1)(b), 707-731(1)(b), 707-732(1)(b),
19 707-732(1)(f), and [~~707-733.5,~~] 707-_____, but excludes
20 conduct that is criminal only because of the age of
21 the victim, if the perpetrator is under the age of
22 eighteen;

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1 (2) A criminal offense that is comparable to one of the
2 offenses designated in paragraph (1) or any federal,
3 military, or out-of-state offense that, under the laws
4 of this State would be an aggravated sexual offense as
5 designated in paragraph (1); or

6 (3) An act, as described in chapter 705, that is an
7 attempt, criminal solicitation, or criminal conspiracy
8 to commit one of the offenses designated in paragraphs
9 (1) or (2).

10 "Sexual offense" means an offense that is:

11 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),
12 707-730(1)(c), 707-731(1)(a), 707-731(1)(b),
13 707-731(1)(c), 707-732(1)(a), 707-732(1)(b),
14 707-732(1)(c), 707-732(1)(d), 707-732(1)(e),
15 707-732(1)(f), 707-733(1)(a), [~~707-733.5,~~] 707- , or
16 [~~+~~]712-1202(1)(b) [~~+~~], but excludes conduct that is
17 criminal only because of the age of the victim, as
18 provided in section 707-730(1)(b), or section
19 707-732(1)(b) if the perpetrator is under the age of
20 eighteen;

21 (2) An act defined in section 707-720 if the charging
22 document for the offense for which there has been a

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1 conviction alleged intent to subject the victim to a
2 sexual offense;

3 (3) An act that consists of:

4 (A) Criminal sexual conduct toward a minor;

5 (B) Solicitation of a minor who is less than fourteen
6 years old to engage in sexual conduct;

7 (C) Use of a minor in a sexual performance;

8 (D) Production, distribution, or possession of child
9 pornography chargeable as a felony under section
10 707-750, 707-751, or 707-752;

11 (E) Electronic enticement of a child chargeable as a
12 felony under section 707-756 or 707-757, if the
13 act involves:

14 (i) Sexual conduct;

15 (ii) Attempted sexual conduct; or

16 (iii) A proposal to engage in sexual conduct; or

17 (F) Solicitation of a minor to practice prostitution;

18 (4) A criminal offense that is comparable to or that
19 exceeds a sexual offense as defined in paragraphs (1)
20 through (3) or any federal, military, or out-of-state
21 conviction for any offense that under the laws of this

1 State would be a sexual offense as defined in
 2 paragraphs (1) through (3); or
 3 (5) An act, as described in chapter 705, that is an
 4 attempt, criminal solicitation, or criminal conspiracy
 5 to commit one of the offenses designated in paragraphs
 6 (1) through (4)."

7 SECTION 6. Section 707-733.5, Hawaii Revised Statutes, is
 8 repealed.

9 ~~["~~[§707-733.5] Continuous sexual assault of a minor under~~~~
 10 ~~the age of fourteen years. (1) Any person who:~~

11 ~~(a) Either resides in the same home with a minor under the~~
 12 ~~age of fourteen years or has recurring access to the~~
 13 ~~minor; and~~

14 ~~(b) Engages in three or more acts of sexual penetration or~~
 15 ~~sexual contact with the minor over a period of time,~~
 16 ~~but while the minor is under the age of fourteen~~
 17 ~~years,~~

18 ~~is guilty of the offense of continuous sexual assault of a minor~~
 19 ~~under the age of fourteen years.~~

20 ~~(2) To convict under this section, the trier of fact, if a~~
 21 ~~jury, need unanimously agree only that the requisite number of~~

1 ~~acts have occurred; the jury need not agree on which acts~~
2 ~~constitute the requisite number.~~

3 ~~(3) No other felony sex offense involving the same victim~~
4 ~~may be charged in the same proceeding with a charge under this~~
5 ~~section, unless the other charged offense occurred outside the~~
6 ~~time frame of the offense charged under this section or the~~
7 ~~other offense is charged in the alternative. A defendant may be~~
8 ~~charged with only one count under this section unless more than~~
9 ~~one victim is involved, in which case a separate count may be~~
10 ~~charged for each victim.~~

11 ~~(4) Continuous sexual assault of a minor under the age of~~
12 ~~fourteen years is a class A felony."]~~

13 SECTION 7. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun, before its effective date.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon ratification of
19 constitutional amendments authorizing the legislature to define
20 what behavior constitutes a continuing course of conduct in
21 sexual assault crimes committed against minors under the age of
22 fourteen.

Report Title:

Crimes; Sexual Assault of a Minor

PROPOSED

Description:

Amends the law defining continuous sexual assault of a minor to permit the jury to convict if it is unanimous in finding that defendant committed at least three prohibited acts, even if it can not unanimously agree which 3 acts constitute the offense.
(SD1)

