

JAN 25 2006

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 amended
2 by adding a new section to be appropriately designated and to
3 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 time frame of the offense charged under this section or the
5 other 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 5. Section 707-733.5, Hawaii Revised Statutes, is
12 repealed.

13 [~~§707-733.5~~] ~~Continuous sexual assault of a minor under~~
14 ~~the age of fourteen years. (1) Any person who:~~

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

18 ~~(b) Engages in three or more acts of sexual penetration or~~
19 ~~sexual contact with the minor over a period of time,~~
20 ~~but while the minor is under the age of fourteen~~
21 ~~years,~~

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

3 ~~(2) To convict under this section, the trier of fact, if a~~
4 ~~jury, need unanimously agree only that the requisite number of~~
5 ~~acts have occurred; the jury need not agree on which acts~~
6 ~~constitute the requisite number.~~

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

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

17 SECTION 6. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

S.B. NO. 2264

1 SECTION 6. This Act shall take effect upon the date the
2 chief election officer issues a certificate of election under
3 section 11-156, Hawaii Revised Statutes, certifying that the
4 State Constitution has been amended to allow the legislature to
5 define in sexual assault crimes against minors: (1) what
6 behavior constitutes a continuing course of conduct; and (2)
7 what constitutes the jury unanimity that is required for a
8 conviction.

9
10
11

INTRODUCED BY: 

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT.

PURPOSE: To define what behavior constitutes a continuing course of conduct in sexual assault crimes, and what constitutes the unanimity that is required for a conviction in sexual assault crimes.

MEANS: Add a new section to chapter 707, Hawaii Revised Statutes, and repeal section 707-733.5, Hawaii Revised Statutes.

JUSTIFICATION: This bill, along with the companion proposal for a constitutional amendment, is intended to reverse the effect of State v. Rabago, 103 Haw. 263 (2003). The bill would define what behavior constitutes a continuing course of conduct in sexual assault crimes, and define what constitutes the unanimity that is required for a conviction in sexual assault crimes.

Act 60, Regular Session of 2004, proposed a constitutional amendment and the new crime of Continuous Sexual Assault of a Minor (codified as section 707-733.5, Hawaii revised Statutes). Act 60 was intended to reverse the effect of the Rabago case. In the November 4, 2004 general election, Hawaii's voters approved the proposed constitutional amendment. However, the Hawaii Supreme Court, in Taomae v. Lingle, 108 Haw. 245 (2005), held that the constitutional amendment portion of Act 60 was not valid because its title was insufficient and because the constitutional amendment did not receive three readings in each house of the legislature. Consequently, because of the invalidation of the constitutional amendment portion of Act 60, the new crime created by Act 60 remains

unconstitutional and unenforceable until another amendment to the constitution is made.

It is important that the goals of Act 60 be achieved. In cases when an adult sexually assaults a child over the course of months or years, it is very difficult for the child to remember dates with particularity.

Section 707-733.5, Hawaii Revised Statutes, was intended to address this situation and enable a jury to render a guilty verdict if the jury unanimously agrees that the child was sexually assaulted at least three times, even if the jury is not unanimous regarding which three incidents form the basis of their verdict. In the case of State v. Rabago, 103 Haw. 263 (2003), the Hawaii Supreme Court held that section 707-733.5, Hawaii revised Statutes, is unconstitutional. This bill, along with the companion proposal for a constitutional amendment, would accomplish the goal that section 707-733.5, Hawaii Revised Statutes, was intended to accomplish.

Impact on the public: This bill will be beneficial to the public interest because dangerous criminals will not be released due a jury's inability to reach a unanimous decision as to which particular sexual assault a defendant committed, even when the jury unanimously agrees that the perpetrator committed at least three sexual assaults against a victim in a continuing course of conduct.

Impact on the department and other agencies: This bill will help the department and other agencies because sexual assault cases involving a continuing course of conduct will be able to be more effectively prosecuted.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

None.

OTHER AFFECTED
AGENCIES:

County police, county prosecutors, and the
Office of the Public Defender.

EFFECTIVE DATE:

Upon approval.