

JAN 22 2010

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# A BILL FOR AN ACT

RELATING TO PAROLE HEARINGS.

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

1           SECTION 1. The legislature finds that the statutes  
2 prohibiting the violation of privacy, sections 711-1110.9 and  
3 711-1111, Hawaii Revised Statutes, do not protect the offenders'  
4 victims and do not provide for a way to get offenders the help  
5 they need to avoid escalation of behavior from voyeuristic to  
6 more serious, contact sexual offenses.

7           Offenders of these privacy statutes are often called  
8 "peeping Toms", are depicted as cartoonish figures, and are  
9 commonly believed to be more of a nuisance than dangerous.  
10 However, this characterization minimizes the effect of the  
11 offenders' actions on their victims. Voyeur victims' lives are  
12 frequently disrupted, stripping them of security in their homes  
13 or other areas previously considered safe by the victim.  
14 Emotional symptoms following the act may be identical to those  
15 of rape victims.

16           Currently, the penalty for violation of privacy in the  
17 first degree is a maximum prison term of five years and those  
18 convicted of this offense usually serve only two years in prison



1 after being paroled. Voyeurs convicted of violation of privacy  
2 in the second degree face even less time in prison, because that  
3 offense is classified as only a misdemeanor, subject to a  
4 maximum of one year in prison. Neither offense requires the  
5 convicted offender to register as a sex offender or even to be  
6 evaluated to determine if there is a need for treatment as part  
7 of the initial sentence or as a condition of parole.

8 The resulting "slap on the wrist" for violations of these  
9 offenses will likely not deter a voyeur in the future.

10 According to experts who specialize in the treatment of sex  
11 offenders, a voyeur generally is manifesting a chronic problem  
12 that cannot be addressed by a slap on the wrist, because the  
13 behavior is compulsive and the voyeur enjoys the risk inherent  
14 in his or her actions. Voyeurs cannot control their need to do  
15 these things and will commit these acts even though they know  
16 they risk arrest and scandal.

17 Additionally, voyeurism has been shown to be a "gateway"  
18 act that often leads to more serious or violent acts. Voyeurism  
19 can be a prelude to breaking and entering, harassment, stalking,  
20 and rape. One study by the Federal Bureau of Investigation  
21 shows that, of forty-one incarcerated serial rapists (who  
22 committed a minimum of ten rapes each), sixty-eight per cent of



1 them engaged in "peeping". Another study concluded that some  
2 rapists use peeping and prowling as a means of selecting their  
3 victims. Other studies also conclude that a voyeur's "peeping"  
4 may only be one type of illegal sexual conduct in which the  
5 offender engages. Other types of illegal conduct may include  
6 molestation of children and rape.

7 Although it is difficult to determine whether any single  
8 voyeur offender is likely to commit more dangerous or violent  
9 acts based on these statistics, the results of a psychosexual  
10 evaluation may help to provide these answers for a specific  
11 offender. A psychosexual evaluation is designed to, among other  
12 things, identify the level of risk for sexual and non-sexual  
13 recidivism and to recommend types and intensity of interventions  
14 that will be most beneficial, including the appropriate level of  
15 care (for example, community versus more secure placement). By  
16 requiring an offender to complete a psychosexual evaluation  
17 prior to parole, a voyeur in need of treatment can be identified  
18 and helped.

19 The purpose of this Act is to:

- 20 (1) Give persons convicted of the offenses of violation of  
21 privacy in the first and second degree an opportunity



1 to be evaluated for appropriate treatment prior to  
2 being released from imprisonment; and

3 (2) Give security to the victims of these offenders,  
4 by requiring a psychosexual evaluation of these offenders to be  
5 conducted for and considered at the offender's parole hearing.

6 SECTION 2. Section 711-1100, Hawaii Revised Statutes, is  
7 amended by adding a new definition to be appropriately inserted  
8 and to read as follows:

9 "Psychosexual evaluation" means an evaluation that focuses  
10 on an individual's sexual development, sexual history,  
11 paraphilic interests, sexual adjustment, risk level, and  
12 victimology. It also includes a full social history, familial  
13 history, employment/school history, case formulation, and  
14 specific treatment recommendations."

15 SECTION 3. Section 706-670, Hawaii Revised Statutes, is  
16 amended as follows:

17 1. By amending subsection (1) to read:

18 "(1) Parole hearing. A person sentenced to an  
19 indeterminate term of imprisonment shall receive an initial  
20 parole hearing at least one month before the expiration of the  
21 minimum term of imprisonment determined by the Hawaii paroling  
22 authority pursuant to section 706-669. If parole is not granted



1 at that time, additional hearings shall be held at twelve-month  
2 intervals or less until parole is granted or the maximum period  
3 of imprisonment expires. No later than two months prior to a  
4 prisoner's hearing, the authority shall prepare, or cause to be  
5 prepared, a psychosexual evaluation of the prisoner, if the  
6 prisoner has been convicted pursuant to section 711-1110.9 or  
7 711-1111. The authority shall provide a copy of the evaluation  
8 to the prisoner and the prosecuting attorney no later than one  
9 month before the parole hearing. The State shall have the right  
10 to be represented at the initial parole hearing and all  
11 subsequent parole hearings by the prosecuting attorney, who may  
12 present written testimony and, make oral comments, and the  
13 authority shall consider the testimony [~~and~~], comments, and  
14 psychosexual evaluation, if any, in reaching its decision. The  
15 authority shall notify the appropriate prosecuting attorney of  
16 the hearing at the time the prisoner is given notice of the  
17 hearing."

18 2. By amending subsection (3) to read:

19 "(3) Prisoner's plan and participation. Each prisoner  
20 shall be given reasonable notice of the prisoner's parole  
21 hearing and shall prepare a parole plan, setting forth the  
22 manner of life the prisoner intends to lead if released on



1 parole, including specific information as to where and with whom  
2 the prisoner will reside and what occupation or employment the  
3 prisoner will follow. The prisoner shall be paroled in the  
4 county where the prisoner had a permanent residence or  
5 occupation or employment prior to the prisoner's incarceration,  
6 unless the prisoner will: reside in a county in which the  
7 population exceeds eight-hundred thousand persons; reside in a  
8 county in the State in which the committed person has the  
9 greatest family or community support, opportunities for  
10 employment, job training, education, treatment, and other social  
11 services, as determined by the Hawaii paroling authority; or be  
12 released for immediate departure from the State. The  
13 institutional parole staff shall render reasonable aid to the  
14 prisoner in the preparation of the prisoner's plan and in  
15 securing information for submission to the authority. In  
16 addition, the prisoner shall:

- 17 (a) Be permitted to consult with any persons whose  
18 assistance the prisoner reasonably desires, including  
19 the prisoner's own legal counsel [7] and if the  
20 prisoner has been convicted pursuant to section  
21 711-1110.9 or 711-1111, any appropriate consultant to  
22 refute or address items in the psychosexual evaluation



- 1           of the prisoner, in preparing for a hearing before the
- 2           authority;
- 3           (b) Be permitted to be represented and assisted by counsel
- 4           at the hearing;
- 5           (c) Have counsel appointed to represent and assist the
- 6           prisoner if the prisoner so requests and cannot afford
- 7           to retain counsel; and
- 8           (d) Be informed of the prisoner's rights as set forth in
- 9           this subsection."

10           SECTION 4. This Act does not affect rights and duties that

11           matured, penalties that were incurred, and proceedings that were

12           begun before its effective date.

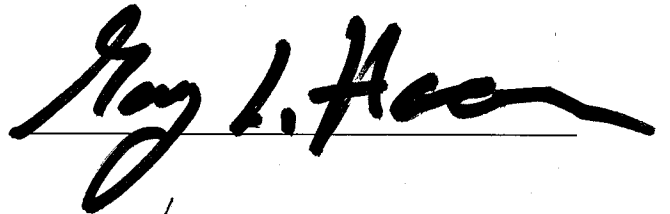
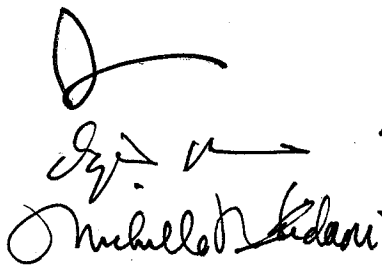
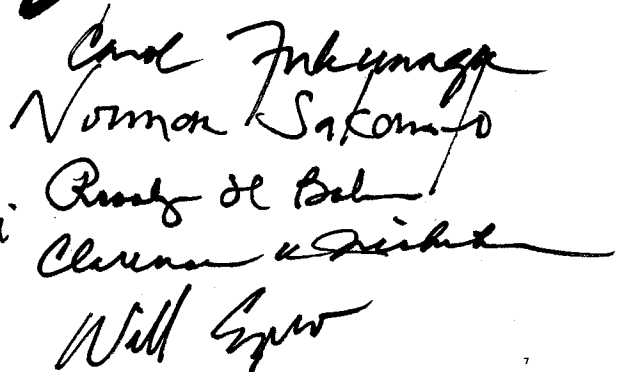
13           SECTION 5. Statutory material to be repealed is bracketed

14           and stricken. New statutory material is underscored.

15           SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:


**Report Title:**

Parole Hearings; Violation of Privacy; Psychosexual Evaluation

**Description:**

Requires a psychosexual evaluation to be prepared for a prisoner convicted of violation of privacy in the first or second degree prior to the prisoner's parole hearing. Authorizes the Hawaii paroling authority to consider the evaluation when considering parole for the prisoner.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

