

ACT 83

H.B. NO. 106

A Bill for an Act Relating to Evidence in Rape Trials.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 7, Part V, Hawaii Penal Code, Title 37, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 707- Evidence of sexual conduct; credibility. (a) In any prosecution under sections 707-730, 707-731, and 707-732, Hawaii Revised Statutes, or for attempt to commit, or conspiracy to commit any crime defined in any such section, if evidence of sexual conduct of the complaining witness is of-

ferred to attack the credibility of the complaining witness, the following procedure shall be followed:

- (1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.
- (2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.
- (3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at such hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.
- (4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant and is not inadmissible for any reason, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section."

SECTION 2. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 3. This Act shall take effect upon its approval; but shall not affect rights and duties that mature, penalties that were incurred, and proceedings that were begun, before its effective date.

(Approved May 14, 1975.)

*Edited accordingly.