

## ACT 60

H.B. NO. 2207

A Bill for an Act Relating to Sexual Assault.

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

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

**“§707- Continuous sexual assault of a minor under the age of fourteen years.** (1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:

- (a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and
- (b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

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

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

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

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

- “(b) Consent to testing is not required for any of the following:
- (1) A health care provider or organ donor center that procures, processes, distributes, or uses human body parts donated for scientific purposes, without obtaining consent, may test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended;
  - (2) The department, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for HIV infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
  - (3) Anonymous testing carried out at HIV test sites established by the department; provided that informed oral consent is obtained;
  - (4) Testing of body fluids or tissue ordered by a third party, so long as that third party, including but not limited to an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health provider prior to any release of the requested test results to the third party;
  - (5) Informed consent is not required where the patient is unable to give consent and it is determined by the patient’s treating physician that the patient’s HIV status is necessary to make a diagnosis or determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to this paragraph, and the patient shall be provided the opportunity to obtain the test results and appropriate counseling;
  - (6) A treating physician may order an HIV test without the patient’s informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient’s health care insurer. The patient and the health care worker shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph, and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling;
  - (7) A person who has been charged, or a juvenile who has been charged, pursuant to section 707-730, 707-731, 707-732(1)(a), [707-733.5,] 707-\_\_\_, or 707-741 shall be tested to determine the person’s HIV status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17; and
  - (8) A person who has been convicted, or a juvenile who has been adjudicated, pursuant to section 707-730, 707-731, 707-732(1)(a), [707-733.5,] 707-\_\_\_, or 707-741 shall be tested to determine the person’s HIV status upon court order issued pursuant to section

325-16.5. The test shall be performed according to the protocols set forth in section 325-17.”

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

“(f) As used in this section, unless the context requires otherwise:

“Charged person” means a person who has been charged with an offense under section 707-730, 707-731, 707-732(1)(a), [~~707-733.5;~~] ~~707-~~, or 707-741, including a juvenile charged of such an offense. A person is charged when a formal complaint, information, or indictment has been accepted by the court.

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

“HIV counseling” means HIV counseling which conforms to the guidelines of the department of health or the Centers for Disease Control and Prevention, and includes referral for appropriate health care and support services.

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

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

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

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

- (a) For an offense under section 707-701.5, 707-702, 707-730, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, within the past twenty years from the date of the instant offense;
- (b) For an offense under section 707-710 or 707-731, within the past ten years from the date of the instant offense;
- (c) For an offense under section 707-711 or 707-732, within the past five years from the date of the instant offense; or
- (d) For an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, within the maximum term of imprisonment possible under the appropriate jurisdiction.”

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

““Aggravated sexual offense” means:

- (1) A criminal offense described in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(b), 707-732(1)(b), 707-732(1)(f), and ~~[707-733.5.] 707-~~ but excludes conduct that is criminal only because of the age of the victim, if the perpetrator is under the age of eighteen;
- (2) A criminal offense that is comparable to one of the offenses designated in paragraph (1) or any federal, military, or out-of-state offense that, under the laws of this State would be an aggravated sexual offense as designated in paragraph (1); or
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) or (2).

“Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), ~~[707-733.5.] 707-~~ or ~~[712-1202(1)(b)[]]~~, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
  - (A) Criminal sexual conduct toward a minor;
  - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
  - (C) Use of a minor in a sexual performance;
  - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
  - (E) Electronic enticement of a child chargeable as a felony under section 707-756 or 707-757, if the act involves:
    - (i) Sexual conduct;
    - (ii) Attempted sexual conduct; or
    - (iii) A proposal to engage in sexual conduct; or
  - (F) Solicitation of a minor to practice prostitution;
- (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
- (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4).”

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

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

**SECTION 8.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved May 1, 2006.)

**Note**

1. Edited pursuant to HRS §23G-16.5.