

**ACT 31**

S.B. NO. 343

A Bill for an Act Relating to Sexual Assault of an Animal.

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

SECTION 1. The legislature finds that the sexual assault of an animal, or bestiality, is prohibited in forty-six states. While Hawaii has strong animal cruelty laws, the sexual molestation of animals by humans is not adequately addressed. Animal cruelty laws require proof of specific actions such as torture, actions that inflict bodily injury to the animal, or actions that cause the animal's death. Some sexual assaults of animals cannot be prosecuted under animal cruelty laws because they do not cause bodily injury. Additionally, many acts of animal sexual abuse are discovered long after the incident occurs, limiting the available evidence.

The legislature further finds that the sexual assault of an animal has been significantly linked to the sexual abuse of children, as well as interpersonal violence and other forms of animal cruelty. In addition, sexual abusers of animals have been shown to collect and share child pornography and express interest in other aberrant behavior involving sexual violence and fetish behaviors.

The legislature additionally finds that establishing the sexual assault of an animal as a separate crime will allow state law enforcement officers to better identify potentially dangerous and violent sexual predators in their communities.

Accordingly, the purpose of this Act is to prohibit the sexual assault of an animal in the State.

SECTION 2. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§711- Sexual assault of an animal.** (1) A person commits the offense of sexual assault of an animal if the person knowingly:

- (a) Subjects an animal to sexual contact;
  - (b) Possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent to subject the animal to sexual contact;
  - (c) Organizes, promotes, conducts, or participates as an observer in an act where an animal is subject to sexual contact;
  - (d) Causes, coerces, aids, or abets another person to subject an animal to sexual contact;
  - (e) Permits sexual contact with an animal to be conducted on any premises under the person’s charge or control;
  - (f) Advertises, solicits, offers, or accepts the offer of an animal with the intent that it be subjected to sexual contact in the State; or
  - (g) Creates, distributes, publishes, or transmits, whether for commercial or recreational purposes, a pornographic image or material depicting a person subjecting an animal to sexual contact.
- (2) This section shall not apply to the following practices:
- (a) Veterinary medicine;
  - (b) Artificial insemination of animals for the purpose of procreation;
  - (c) Animal husbandry;
  - (d) Conformation judging; or
  - (e) Customary care of an animal by its owner.
- (3) Unless otherwise provided by any other law:
- (a) Sexual assault of an animal is a misdemeanor for the first offense and a class C felony for the second or subsequent offense; or
  - (b) If the offense subjected a minor to sexual contact with an animal or was committed in the presence of a minor as defined in section 706-606.4, sexual assault of an animal is a class B felony.
- (4) Each violation of this section shall constitute a separate offense.
- (5) Upon conviction, guilty plea, or plea of nolo contendere for any violation of this section, in addition to any other penalty, the defendant shall be:
- (a) Ordered to:
    - (i) Surrender or forfeit the animal whose sexual assault was the basis of the conviction or plea to the custody of the animal service contractor in the county in which the offense took place for the time and under the conditions ordered by the court;
    - (ii) Surrender or forfeit any other animals in the defendant’s possession, custody, or control to the animal service contractor in the county in which the offense took place for the time and under the conditions ordered by the court; provided that there is substantial evidence that the animals are being abused in violation of this section;
    - (iii) Reimburse the animal service contractor in the county in which the offense took place for reasonable costs incurred to care for, feed, house, and medically treat any animal sexually assaulted under this section;

- (iv) Attend an appropriate treatment program or obtain psychiatric or psychological counseling, at the defendant's expense; and
  - (v) Make restitution to the owner of the animal, including reimbursement for any expenses incurred for medical treatment or rehabilitation; provided that the defendant is not the owner of the animal whose sexual assault was the basis of the conviction or plea; and
- (b) Prohibited from:
- (i) Harboring, owning, possessing, or exercising control over any animal;
  - (ii) Residing in any household where animals are present; and
  - (iii) Engaging in any occupation, whether paid or unpaid, or participating in a volunteer position at any establishment at which animals are present, for the length of time that the court deems reasonable for the protection of all animals but no less than five years after the person's release from imprisonment or court supervision.

(6) Prosecution under this section does not preclude prosecution under any other law. Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(7) As used in this section:

“Animal” includes every living or dead creature, except a human being.

“Pornographic” has the same meaning as defined in section 712-1210.

“Sexual contact” means:

- (a) The intentional touching or penetration, however slight, of the sex organs, genitalia, mouth, or anus of an animal by a person or of a person by an animal; or
- (b) The insertion of a person's body part or object into the sex organs, genitalia, mouth, or anus of an animal.

(8) Violations of this section shall be subject to the search, impound, and forfeiture provisions in sections 711-1109.1 and 711-1109.2.”

SECTION 3. Section 706-606.4, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) As used in this section:

“In the presence of a minor” means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense.

“Offense” means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), [ø] 709-906 (abuse of family or household members)[-], or 711- (sexual assault of an animal).”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 7, 2021.)

**Note**

1. Edited pursuant to HRS §23G-16.5.