

ACT 109

H.B. NO. 1305

A Bill for an Act Relating to Evidence of Sexual Conduct.

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

SECTION 1. Section 707-742, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In any prosecution under sections 707-730, 707-731, and 707-732, 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 offered 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 all other persons, except for court personnel, the parties, their attorneys, and such other persons whose presence is determined by the court to be necessary for the hearing, 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."

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.

(Approved May 14, 1977.)

*Edited accordingly.