

ACT 379

H.B. NO. 111

A Bill for an Act Relating to Sexual Assault.

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

SECTION 1. The legislature finds that sexual assault in the first, second, third, and fourth degrees, in the manner prohibited under the Hawaii penal code, are

not “continuing offenses” in that they represent distinct acts and, therefore, separate offenses. The legislature finds, however, that many young children who have been sexually abused over an extended period of time may be unable to specifically recall or identify dates, instances, or circumstances surrounding the abuse.

As discussed by Justice Nakayama in a dissenting opinion to the Hawaii Supreme Court’s recent decision in State v. Arceo, (No. 16950, November 18, 1996), the prosecution’s key witness in cases involving the sexual assault of a minor is usually a child with a limited ability to recall alleged acts with specificity. Justice Nakayama argued that this is “particularly problematical and evident in cases involving sexual assault by a parent, where the minor may be of tender years, under the exclusive control of the parent or guardian, and when the abuse has occurred on a number of occasions over a period of time.” The dissent cited the following language in support of the idea that young children subjected to a continuing pattern of abuse are not likely to clearly identify the specific instances when particular acts took place:

“Particularly when the accused resides with the victim or has virtually unchecked access to the child, and the abuse has occurred on a regular basis over a prolonged period of time, the child may have no meaningful reference point of time or detail by which to distinguish one specific act from another. The more frequent and repetitive the abuse, the more likely it becomes that the victim will be unable to recall specific dates and places. Moreover because the molestation usually occurs outside the presence of witnesses, and often leaves no permanent physical evidence, the state’s case rests on the testimony of a victim whose memory may be clouded by blur of abuse and a desire to forget.”

People v. Aldrich, 849 P.2d 821, 826 (Colo. Ct. App. 1992) (citation omitted)(quoting State v. Brown, 780 P.2d 880 (Wash. St. App. 1989).

Justice Nakayama urged the legislature to enact a “continuous sexual abuse of a minor” statute, similar to the one enacted by the State of California, to address the problems inherent in the criminal prosecution of sexual abuse cases involving young children who are unable to specify the time, places, or circumstances of each act. The legislature agrees that there is a need for such a statute, and finds that the California statute has been upheld as constitutional by that State and does not violate the right to due process.

The purpose of this Act is to set forth the parameters of the offense of continuous sexual assault of a minor under the age of fourteen years, similar to the statute enacted by California, that defines the circumstances and provides specific guidelines under which the sexual assault of a minor is deemed a continuing offense. This Act also makes the continuous sexual assault of a minor under the age of fourteen years a class A felony.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

“§707- Continuous sexual assault of a minor under the age of fourteen years. (1) Any person who:

- (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, but while the minor is under the age of fourteen years,

is guilty of the offense of continuous sexual assault of a minor 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 time frame 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 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 7, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.