

# Sex Crimes: Definitions and Penalties Hawaii

*Last Updated: March 2020*

## Sexual Assault in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Defendant knowingly subjects another person to an act of sexual penetration by strong compulsion; or</li> <li>• Defendant knowingly engages in sexual penetration with another person who is less than 14 years old;</li> <li>• Defendant knowingly engages in sexual penetration with a person who is at least 14 years old but less than 16 years old, and:               <ul style="list-style-type: none"> <li>• Defendant is not less than five years older than the minor; and</li> <li>• Defendant is not legally married to the minor;</li> </ul> </li> <li>• Defendant knowingly subjects to sexual penetration another person who is mentally defective; or</li> <li>• Defendant knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the defendant knowingly caused to be administered to the other person without such person's consent.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Sexual Assault (1st degree) is a Class A felony.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• <b>“Mentally defective”</b> means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct.</li> <li>• <b>“Mentally incapacitated”</b> means a person rendered temporarily incapable of appraising or controlling the person's conduct as a result of the influence of a substance administered to the person without the person's consent.</li> <li>• <b>“Physically helpless”</b> means a person who is unconscious or for any other reason physically unable to communicate unwillingness to act.</li> <li>• <b>“Sexual penetration”</b> means: Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required; or Cunnilingus or analingus, whether or not actual penetration has occurred.</li> <li>• <b>Note:</b> Each act of sexual penetration constitutes a separate offense.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § 707-730</li> </ul>

## Sexual Assault in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Defendant knowingly subjects another person to an act of sexual penetration by compulsion; or</li> <li>• Defendant knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or</li> <li>• Defendant, while employed:               <ul style="list-style-type: none"> <li>• In a state correctional facility;</li> <li>• By a private company providing services at a correctional facility;</li> <li>• By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;</li> <li>• By a private correctional facility operating in the State of Hawaii; or</li> <li>• As a law enforcement officer,</li> </ul> </li> <li>• knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody. (<b>Note:</b> This section does not prohibit medical personnel from performing any act within their respective practices; nor does it prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.)</li> <li>• Defendant knowingly subjects to sexual penetration a minor who is at least sixteen years old while Defendant is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, if Defendant is at least five years older than the minor and is not legally married to the minor.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Sexual Assault (2d) is a Class B felony.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• See Sexual Assault (1st Degree) for relevant definitions.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § 707-731</li> </ul>

## Sexual Assault in the Third Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Defendant recklessly subjects another person to an act of sexual penetration by compulsion; or</li> <li>• Defendant knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;</li> <li>• Defendant knowingly engages in sexual contact with a person who is at least 14 years old but less than 16 years old or causes the minor to have sexual contact with defendant; provided that:               <ul style="list-style-type: none"> <li>• Defendant is not less than 5 years older than the minor; and</li> <li>• Defendant is not legally married to the minor;</li> </ul> </li> <li>• Defendant knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;</li> <li>• Defendant, while employed:               <ul style="list-style-type: none"> <li>• In a state correctional facility;</li> <li>• By a private company providing services at a correctional facility;</li> <li>• By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;</li> <li>• By a private correctional facility operating in the State of Hawaii; or</li> <li>• As a law enforcement officer,</li> </ul> </li> <li>• knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or</li> <li>• Defendant knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.</li> </ul> <p><b>Note:</b> This section does not prohibit medical personnel from performing any act within their respective practices; nor does it prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Sexual Assault (3d degree) is a Class C felony.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• <b>“Sexual contact”</b> means any touching, other than acts of “Sexual penetration”, of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.</li> <li>• See Sexual Assault (1st and 2d degree) for additional relevant definitions.</li> </ul>

Statutory citation(s):	• Haw. Rev. Stat. § 707-732
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## Sexual Assault in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Defendant knowingly subjects another person, not married to Defendant, to sexual contact by compulsion or causes another person, not married to defendant, to have sexual contact with the actor by compulsion; or</li> <li>• Defendant knowingly exposes Defendant's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or</li> <li>• Defendant knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the defendant; or</li> <li>• Defendant knowingly subjects to sexual contact a minor who is at least sixteen years old while Defendant is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, if Defendant is at least five years older than the minor and is not legally married to the minor.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Sexual Assault (4th degree) is a misdemeanor.</li> <li>• <b>Note:</b> Whenever a court sentences a defendant for Sexual Assault (4th degree), the court may order defendant to submit to a pre-sentence mental and medical examination.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• <b>“Sexual contact”</b> means any touching, other than acts of “Sexual penetration”, of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.</li> <li>• See Sexual Assault (1st, 2d, and 3d degree) for additional relevant definitions.</li> </ul>
Statutory citation(s):	• Haw. Rev. Stat. § 707-733

## Statutory Rape

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> <li>• “Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth and consent is immaterial. While Hawaii does not expressly penalize statutory rape, the offense of sexual assault in the first degrees targets this conduct.</li> <li>• Statutory rape is sexual assault (1st degree) if defendant: <ul style="list-style-type: none"> <li>• Knowingly engages in sexual penetration with another person who is less than 14 years old; or</li> <li>• Knowingly engages in sexual penetration with a person who is at least 14 years old but less than 16 years old, and:</li> <li>• Defendant is not less than five years older than the minor; and</li> <li>• Defendant is not legally married to the minor.</li> </ul> </li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Sexual Assault (1st degree) is a Class A felony.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• See Sexual Assault (1st degree) for relevant definitions</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § 707-730</li> </ul>

## Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Hawaii does not penalize sodomy.</li> <li>• Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N/A</li> </ul>