

# Sex Crimes: Definitions and Penalties Hawaii

*Last Updated: April 2023*

## Sexual Assault in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• A person commits the offense of sexual assault in the first degree if the person:               <ul style="list-style-type: none"> <li>• knowingly subjects another person to an act of sexual penetration by strong compulsion;</li> <li>• knowingly engages in sexual penetration with a person who is less than 14 years old;</li> <li>• knowingly engages in sexual penetration with a person who is at least 14 years old but less than 16 years old; provided that the actor is i) no less than five years older than the minor; and ii) not legally married to the minor;</li> <li>• knowingly subjects to sexual penetration a person who is mentally defective; provided that the actor is negligent in not knowing of the mental defect of the victim; or</li> <li>• knowingly subjects to sexual penetration a person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.</li> </ul> </li> </ul> <p>(<b>Note:</b> This section does not prohibit medical personnel from performing any act within their respective practices for purposes of bullet 2 and 3).</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Sexual Assault (1st degree) is a class A felony.</li> <li>• A person who has been convicted of a class A felony shall be sentenced to an indeterminate term of imprisonment of 20 years without the possibility of suspension of sentence or probation.</li> <li>• If not subjected to an extended term of imprisonment pursuant to § 706.662 (Criteria for extended terms of imprisonment), a person convicted of a class A felony shall be sentenced to a mandatory term of imprisonment of six years and eight months without possibility of parole for offenses against children, elder persons, or handicapped persons.</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>“Person”</b> means a human being who has been born and is alive.</li> <li>• <b>“Physically helpless”</b> means a person who is unconscious or for any other reason physically unable to</li> </ul>

	<p>communicate unwillingness to act.</p> <ul style="list-style-type: none"> <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. As used in this definition, “genital opening” includes the anterior surface of the vulva or labia majora; or Cunnilingus or anilingus, whether or not actual penetration has occurred. <ul style="list-style-type: none"> <li>• <b>Note:</b> Each act of sexual penetration constitutes a separate offense.</li> </ul> </li> <li>• <b>“Strong Compulsion”</b> means the use or attempt to use one or more of the following to overcome a person: <ul style="list-style-type: none"> <li>• A threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;</li> <li>• A dangerous instrument; or</li> <li>• Physical force.</li> </ul> </li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § <a href="#">707-730</a></li> <li>• Definitions, Haw. Rev. Stat. Ann. § <a href="#">707-700</a></li> <li>• Sentence of imprisonment for class A felony, Haw. Rev. Stat. Ann. § <a href="#">706-659</a></li> <li>• Sentence of imprisonment for offenses against children, elder persons, or handicapped persons, Haw. Rev. Stat. Ann. § <a href="#">706-660.2</a></li> </ul>

## Sexual Assault in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• A person commits the offense of sexual assault in the second degree if the person: <ul style="list-style-type: none"> <li>• knowingly subjects another person to an act of sexual penetration by compulsion;</li> <li>• knowingly subjects to sexual penetration a person who is mentally incapacitated or physically helpless;</li> <li>• 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> </ul> </li> </ul> <p>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</p>

	<p>in the State [of Hawaii]; a person in custody; a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes. <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.); or</p> <ul style="list-style-type: none"> <li>• knowingly subjects to sexual penetration a person who is at least 16 years old and the actor is contemporaneously acting in a professional capacity to instruct, advise, or supervise such a person; provided that the actor is: not less than 5 years older than the minor and is not legally married to the minor.</li> </ul>
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> <li>• Sexual Assault (2d) is a class B felony.</li> <li>• A person convicted of a class B felony may be sentenced to an indeterminate term of imprisonment, except as provided for in §§706-660.1 relating to the use of firearms in certain felony offenses and 706.-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which is 10 years for a class B felony.</li> <li>• The court may impose a term of imprisonment of 5 to 10 years on a person who has been convicted of a class B felony for offenses related to drugs and intoxicating compounds under part IV of chapter 712.</li> <li>• If not subjected to an extended term of imprisonment pursuant to § 706.662 (Criteria for extended terms of imprisonment), a person convicted of a class B felony shall be sentenced to a mandatory term of imprisonment of three years and four months without possibility of parole for offenses against children, elder persons, or handicapped persons.</li> </ul>
<p>Anything else I should know?</p>	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• <b>“Compulsion”</b> means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.</li> <li>• See Sexual Assault (1st Degree) for relevant definitions.</li> </ul>
<p>Statutory citation(s):</p>	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § <a href="#">707-731</a></li> <li>• Definitions, Haw. Rev. Stat. Ann. § <a href="#">707-700</a></li> <li>• Sentence of imprisonment for class B felony., Haw. Rev. Stat. Ann. § <a href="#">706-660</a></li> <li>• Sentence of imprisonment for offenses against children, elder persons, or handicapped persons, Haw. Rev. Stat. Ann. § <a href="#">706-660.2</a></li> </ul>

## Sexual Assault in the Third Degree

Question	Answer
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<p>How is it defined?</p>	<ul style="list-style-type: none"> <li>• A person commits the offense of sexual assault in the third degree if: the person: <ul style="list-style-type: none"> <li>• recklessly subjects another person to an act of sexual penetration by compulsion;</li> <li>• knowingly subjects to sexual contact a person who is less than 14 years old or causes such a person to have sexual contact with the actor;</li> <li>• knowingly engages in sexual contact with a person who is at least 14 years old but less than 16 years old or causes such a person to have sexual contact with the actor; provided that the actor is i) not less than 5 years older than the minor; and ii) not legally married to the minor;</li> <li>• knowingly subjects to sexual contact a person who is mentally incapacitated or physically helpless, or causes such a person to have sexual contact with the actor;</li> <li>• knowingly subjects to sexual contact a person who is mentally defective, or causes such a person to have sexual contact with the actor; provided that the actor is negligent in not knowing of the mental defect of the victim;</li> <li>• 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> </ul> </li> </ul> <p>knowingly subjects to sexual contact, or causes to have 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]; a person in custody; a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes; or</p> <ul style="list-style-type: none"> <li>• 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 for purposes of bullets 2-5; nor does it prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause for purposes of bullet 5, sub-bullet 5.)</p>
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> <li>• Sexual Assault (3d degree) is a class C felony.</li> <li>• A person convicted of a class C felony may be sentenced to an indeterminate term of imprisonment, except as provided for in §§706-660.1 relating to the use of firearms in certain felony offenses and 706.-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which is 5 years for a class C felony.</li> <li>• If not subjected to an extended term of imprisonment pursuant to § 706.662 (Criteria for extended terms of imprisonment), a person convicted of a class C felony shall be sentenced to a mandatory term of imprisonment of one year and eight months without possibility of parole for offenses against children, elder persons, or handicapped persons.</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 another, or of the sexual or other intimate parts of the actor by another, 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):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § <a href="#">707-732</a></li> <li>• Definitions., Haw. Rev. Stat. Ann. § <a href="#">707-700</a></li> <li>• Sentence of imprisonment for class C felony, Haw. Rev. Stat. Ann. § <a href="#">706-660</a></li> <li>• Sentence of imprisonment for offenses against children, elder persons, or handicapped persons, Haw. Rev. Stat. Ann. § <a href="#">706-660.2</a></li> </ul>

## Sexual Assault in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• A person commits the offense of sexual assault in the fourth degree if the person:</li> <li>• knowingly subjects another person, not married to the actor, to sexual contact by compulsion or causes another person, not married to the actor, to have sexual contact with the actor by compulsion;</li> <li>• knowingly exposes the person’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;</li> <li>• knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor; or</li> <li>• knowingly engages in or causes sexual contact with a minor who is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, if the person is i) at least five years older than the minor; and ii) 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>• The court may sentence a person convicted of a misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed 1 year.</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 another, or of the sexual or other intimate parts of the actor by another, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.</li> </ul>

	<ul style="list-style-type: none"> <li>• See Sexual Assault (1st, 2d, and 3d degree) for additional relevant definitions.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § <a href="#">707-733</a></li> <li>• Haw. Rev. Stat. Ann. § <a href="#">706-663</a></li> </ul>

## Continuous sexual assault of a minor under the age of fourteen years

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• A person commits the offense of continuous sexual assault of a minor under the age of 14 years if the person: <ul style="list-style-type: none"> <li>• either resides in the same home with a minor under the age of 14 years or has recurring access to the minor; and</li> <li>• 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 14 years.</li> </ul> </li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Continuous sexual assault of a minor under the age of 14 years is a class A felony, punishable by an indeterminate term of imprisonment of 20 years without the possibility of suspension of sentence or probation.</li> <li>• If not subjected to an extended term of imprisonment pursuant to § 706.662 (Criteria for extended terms of imprisonment), a person convicted of a class A felony shall be sentenced to a mandatory term of imprisonment of six years and eight months without possibility of parole for offenses against children, elder persons, or handicapped persons.</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, 2nd, and 3rd degree) for relevant definitions.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• Haw. Rev. Stat. § <a href="#">707-733.6</a></li> <li>• Sentence of imprisonment for class A felony, Haw. Rev. Stat. Ann. § <a href="#">706-659</a></li> <li>• Definitions., Haw. Rev. Stat. Ann. § <a href="#">707-700</a></li> <li>• Sentence of imprisonment for offenses against children, elder persons, or handicapped persons, Haw. Rev. Stat. Ann. § <a href="#">706-660.2</a></li> </ul>

## Statutory Rape

Question	Answer
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 the person: <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 i) the person is not less than five years older than the minor; and ii) 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, punishable by an indeterminate term of imprisonment of 20 years without the possibility of suspension of sentence or probation.</li> <li>• If not subjected to an extended term of imprisonment pursuant to § 706.662 (Criteria for extended terms of imprisonment), a person convicted of a class A felony shall be sentenced to a mandatory term of imprisonment of six years and eight months without possibility of parole for offenses against children, elder persons, or handicapped persons.</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>• Relevant Notes of Decisions., Haw. Rev. Stat. § 707-730</li> <li>• Sentence of imprisonment for offenses against children, elder persons, or handicapped persons, Haw. Rev. Stat. Ann. § <a href="#">706-660.2</a></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>

