

CRIMINAL LAW, FALL, 2009 - HANDOUT # 6
CRIMES AGAINST PERSONS

HOMICIDE, ASSAULT, KIDNAPING

§ 707-701 Murder in the first degree.

(1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

- (a) More than one person in the same or separate incident;
- (b) A peace officer, judge, or prosecutor arising out of the performance of official duties;
- (c) A person known by the defendant to be a witness in a criminal prosecution;
- (d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section; or
- (e) A person while the defendant was imprisoned. ...

§ 707-701.5 Murder in the second degree.

(1) Except as provided in § 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person. ...

§ 707-702 Manslaughter.

(1) A person commits the offense of manslaughter if:

- (a) He recklessly causes the death of another person; or
- (b) He intentionally causes another person to commit suicide.

(2) In a prosecution for murder in the first and second degrees it is a defense, which reduces the offense to manslaughter, that the defendant was, at the time he caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believed them to be. ...

§ 707-713 Reckless endangering in the first degree.

(1) A person commits the offense of reckless endangering in the first degree if he employs widely dangerous means in a manner which recklessly places another person in danger of death or serious bodily injury or intentionally fires a firearm in a manner which recklessly places another person in danger of death or serious bodily injury. ...

§ 707-710 Assault in the first degree.

(1) A person commits the offense of assault in the first degree if he intentionally or knowingly causes serious bodily injury to another person. ...

§ 707-711 Assault in the second degree.

(1) A person commits the offense of assault in the second degree if:

- (a) The person intentionally or knowingly causes substantial bodily injury to

another;

(b) The person recklessly causes serious bodily injury to another person;

(c) The person intentionally or knowingly causes bodily injury to a correctional worker ... who is engaged in the performance of duty or who is within a correctional facility;

(d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or

(e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this section, "educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education, or a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function....

§ 707-712 Assault in the third degree.

(1) A person commits the offense of assault in the third degree if he:

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or

(b) Negligently causes bodily injury to another person with a dangerous instrument.

§ 327D-14 Suicide.

Death resulting from the withholding or withdrawal of life-sustaining procedures from a patient under this chapter does not, for any purpose, constitute suicide. ...

§ 707-720 Kidnaping.

(1) A person commits the offense of kidnaping if he intentionally or knowingly restrains another person with intent to:

(a) Hold him for ransom or reward;

(b) Use him as a shield or hostage;

(c) Facilitate the commission of a felony or flight thereafter;

(d) Inflict bodily injury upon him or subject him to a sexual offense;

(e) Terrorize him or a third person; or

(f) Interfere with the performance of any governmental or political function.

(2) Except as provided in subsection (3), kidnaping is a class A felony.

(3) In a prosecution for kidnaping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.

§ 707-700 Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Compulsion" means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

"Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

"Deviate sexual intercourse" means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

"Married" includes persons legally married, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

"Mentally defective" means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct.

"Mentally incapacitated" means a person rendered temporarily incapable of appraising or controlling the person's conduct owing to the influence of a substance administered to the person without the person's consent.

"Person" means a human being who has been born and is alive.

"Physically helpless" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

"Relative" means parent, ancestor, brother, sister, uncle, aunt, or legal guardian.

"Restrain" means to restrict a person's movement in such a manner as to interfere substantially with the person's liberty:

(1) By means of force, threat, or deception; or

(2) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Sexual contact" means any touching 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.

"Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, 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. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

"Strong compulsion" means the use of or attempt to use one or more of the following to overcome a person:

- (1) 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;
- (2) A dangerous instrument; or
- (3) Physical force.

"Substantial bodily injury" means bodily injury which causes:

- (1) A major avulsion, laceration, or penetration of the skin;
- (2) A burn of at least second degree severity;
- (3) A bone fracture;
- (4) A serious concussion; or
- (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other

internal organs.

§ 712-1200 Prostitution.

(1) A person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person for a fee.

(2) As used in subsection (1), "sexual conduct" means "sexual penetration," "deviate sexual intercourse," or "sexual contact," as those terms are defined in section 707-700.

(3) Prostitution is a petty misdemeanor. . . .

(5) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties.

§ 712-1202 Promoting prostitution in the first degree.

(1) A person commits the offense of promoting prostitution in the first degree if the person knowingly:

(a) Advances prostitution by compelling a person by criminal coercion to engage in prostitution, or profits from such coercive conduct by another; or

(b) Advances or profits from prostitution of a person less than sixteen years old.

(2) Promoting prostitution in the first degree is a class B felony.

§ 712-1203 Promoting prostitution in the second degree.

(1) A person commits the offense of promoting prostitution in the second degree if the person knowingly:

(a) Advances or profits from prostitution by managing, supervising, controlling, or

owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or

(b) Advances or profits from prostitution of a person less than eighteen years old.

(2) Promoting prostitution in the second degree is a class C felony.

§ 712-1201 Promoting prostitution; definition of terms.

In sections 712-1202, 712-1203 and 712-1204:

1) A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

Defendant's right to question victim of sexual assault on issue of consent. -- Defendant had a right to reasonable cross-examination of a complaining witness in a sexual assault case when the State, on direct examination, elicited the response "I had never been in that situation before" in an attempt to bolster its claim of compulsion and negate the defense of consent. *State v. Calbero*, 71 Haw. 115, 785 P.2d 157 (1989).

§ 707-730 Sexual assault in the first degree.

(1) A person commits the offense of sexual assault in the first degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;

(b) The person knowingly subjects to sexual penetration another person who is less than fourteen years old; provided this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.

§ 707-731 Sexual assault in the second degree.

(1) A person commits the offense of sexual assault in the second degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by compulsion;

(b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or

(c) The person, while employed:

- (i) In a state correctional facility;
- (ii) By a private company providing services at a correctional facility;
- (iii) 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;
- (iv) By a private correctional facility operating in the state of Hawaii; or
- (v) As a law enforcement officer as defined in section 710-1000(13),

knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person residing in a private correctional facility operating in the state of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

(2) Sexual assault in the second degree is a class B felony.

§ 707-732 Sexual assault in the third degree.

(1) A person commits the offense of sexual assault in the third degree if:

(a) The person recklessly subjects another person to an act of sexual penetration by compulsion;

(b) The person 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;

(c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:

(i) The person is not less than five years older than the minor; and

(ii) The person is not legally married to the minor.

(d) The person 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;

(e) The person, while employed in a state correctional facility;

(i) By a private company providing services at a correctional facility;

(ii) 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; or

(iii) By a private correctional facility operating in the state of Hawaii, knowingly subjects to sexual contact an imprisoned person, a person committed to the

director of public safety, or a person residing in a private correctional facility operating in the state of Hawaii or causes the person to have sexual contact with the actor; or

(f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.

(2) Sexual assault in the third degree is a class C felony.

Rape Shield Law -- Where complaining witness' statements to defendant concerning her past sexual experience, made in the course of the encounter between them which gave rise to the charges, were relevant to the issue of consent, the defendant had a constitutional right to testify as to what the complaining witness told him. *State v. Calbero*, 71 Haw. 115, 785 P.2d 157 (1989).

Proving compulsion. -- The element of "compulsion" under §§ 707-731 and 707- 733 may be proved by evidence of the absence of consent under this section. *State v. Jackson*, 81 Haw. 39, 912 P.2d 71 (1996).

Physical or verbal resistance not an element of the offense. -- The presence or absence of physical or verbal resistance is not an essential element of the offense and the State was not required to prove it. *State v. Adams*, 10 Haw. App. 593, 880 P.2d 226, cert. denied, 77 Haw. 373, 884 P.2d 1149 (1994).

Although physical or verbal resistance is not an element that needs to be proven, evidence of its absence is probative of the defendant's state of mind and its absence may be considered by the jury in determining whether the alleged victim impliedly consented. *State v. Adams*, 10 Haw. App. 593, 880 P.2d 226, cert. denied, 77 Haw. 373, 884 P.2d 1149 (1994).

Evidence of pain sufficient. -- Testimony that the witness was "sore" after being struck by appellant was sufficient to establish "physical pain" and thus, the element of "bodily injury" in a charge of assault. *In re Doe*, 79 Haw. 265, 900 P.2d 1332 (Ct. App. 1995).

Where the defendant's purpose in seeking to probe into the complaining witness's past sexual behavior was not to attack her character but to explore whether she had a basic understanding of the physiological elements, social and moral implications and medical consequences of sexual activity, in order to establish whether she was mentally defective and whether the defendant knew she was, the defendant was entitled, under the due process and confrontation clauses, to elicit such evidence. *In re Doe*, 81 Haw. 447, 918 P.2d 254 (Ct. App. 1996).

Accompaniment of sexual assault victim at trial by counselor. -- Where 15-year old victim of an alleged sexual assault was accompanied during her trial testimony by a victim/witness counselor, and where during the course of said victim's testimony her counselor sat with her and placed her hands on the youth's shoulders, defendant was denied the right to a fair trial, since the counselor's presence could have had the effect of conveying to the jury said counselor's belief that

the complainant was telling the truth. *State v. Suka*, 70 Haw. 472, 777 P.2d 240 (1989), overruled on other grounds, *State v. Holbron*, 80 Haw. 27, 904 P.2d 912 (1995).