

State of Hawaii
Department of the Attorney General



**REPORT OF THE AGE OF CONSENT
TASK FORCE**

Submitted to
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Executive Summary

THE AGE OF CONSENT IN THE 50 UNITED STATES AND THE DISTRICT OF COLUMBIA

“Age of consent” is the age at which a child is deemed mature enough to consent to sexual activity with another person above the age of consent. The motivation for establishing an age of consent is to protect children from sexual exploitation by their elders.

Each state and the District of Columbia legislate their age of consent. These state laws are part of the criminal code. A person over the age of consent (generally an adult) who engages in sexual activity with a child under the age of consent has violated the law. A person violating the age of consent is subject to criminal sanctions in every state. In no instance is the child under the age of consent penalized.

This Report addresses only criminal sanctions for:

- sexual penetration with a child below the age of consent, and
- when the child is not extraordinarily young, and
- when there is no extraordinary relationship between the child and the adult.

The reason for this limitation is due to the fact that each of the 50 states and the District of Columbia have differing statutory sentences for each of these circumstances. Comparing over 75 statutory schemes is too confusing and will not assist Hawaii’s public policy debate on this issue. Accordingly, this Report focuses on sanctions for consensual sexual relations between adults and teens who are below the statutory age of consent.

In 2001 the Hawaii State Legislature enacted Act 1, House Bill 236, raising the age of consent in Hawaii from age 14 to age 16 years. The Legislature included a “sunset” provision. If the Legislature does not act upon the age of consent by the end of the 2003 legislative session, the law will revert to the pre-Act 1 status wherein a person of any age may legally engage in consensual sexual intercourse or sexual contact with a child aged 14-15.

Immediately prior to Act 1, Hawaii was the only state in the union in which it was legal to engage in consensual sexual penetration or sexual contact with a child age 14 or 15. Since at least the year 2000:

- Twenty-nine states and the District of Columbia prohibit some or all forms of sexual penetration with a child under age 16;
- Nine states prohibit some or all forms of sexual penetration with a child under age 17; and
- Eleven states prohibit some forms of sexual penetration with a child under age 18.

Immediately prior to Act 1, Hawaii was one of 17 states that criminalized sexual activity between teens (teen/teen sex) when one teen was above the age of consent. The majority of states exclude teen/teen sexual activity from criminal sanction. Since at least the year 2000:

- Thirty-three states and the District of Columbia employ a form of “age gap” statute which prohibits *only* teen/adult sexual activity. The criminal statutes only apply when one party is below the age of consent and the other party is a minimum number of years older than the child.

ACT 1: HAWAII’S NEW AGE OF CONSENT LAW

Act 1 raised the age at which a minor is deemed mature enough to consent to sexual activity with an adult. This was accomplished using two steps. First, the age of consent was raised from 14 to 16 years.

Second, an age gap provision was included which sanctions *only* adults engaging in sexual activity with 14 or 15 year olds. Teen/teen sexual activity is no longer criminalized under Act 1.¹

Act 1’s age gap provision prohibits:

- An adult 19 or older from engaging in sexual penetration or contact with a child age 14; and

¹ Act 1 does criminalize consensual sexual relations between a 19-year old and a 14-year old. This Report states that Act 1 does not criminalize “teen/teen” sexual activity because 19-year olds are legally adults.

- An adult 20 or older from engaging in sexual penetration or contact with a child age 15.²
-

TASK FORCE FINDING ONE Act One brings Hawaii into conformance with the majority of states regarding the age adults may legally have sexual relations with a child.

TASK FORCE FINDING TWO Act One brings Hawaii into conformance with the majority of states regarding the “age gap.”

AGE OF CONSENT TASK FORCE Due to concerns about the impacts of raising the age of consent, the Legislature also included a provision in Act 1 instructing the Attorney General to convene a multi-discipline, comprehensive task force to assist the Legislature in developing social policy on the age of consent.

LACK OF DATA ON THE NUMBER OF HAWAII ADOLESCENTS WITH ADULT SEXUAL PARTNERS PREVENTED THE TASK FORCE FROM EVALUATING THE EFFECTIVENESS OF ACT 1

The changes brought about by Act 1 focus exclusively upon adult sexual relations with 14 and 15 year olds. The intention behind Act 1 is to protect children from adult sexual exploitation. The Task Force was charged with determining whether Act 1 is an effective means of achieving this intent.

The Task Force found that no entity systematically collects data on the age of Hawaii teens’ sexual partners or the number of teens who engage in sexual activity with adults.

Without knowing the scope of the adult/teen sexual activity in the state, the Task Force was unable to conclude whether Act 1 is or will be effective at reducing teen sexual exploitation.

Policy decisions of this nature should be based on reliable data collected systematically. Hawaii should begin gathering data on the age and frequency of teens’

² Both before and after Act 1 Hawaii law prohibits any person of any age engaging in sexual penetration or contact with a child under age 14.

sexual partners.

**TASK FORCE FINDINGS
THREE, FOUR AND FIVE**

The Task Force did not find a “Best Practices” model which it could recommend to the Legislature for Hawaii to follow.

There is no formal, scientifically valid, systematic information collected on the age of teens’ sexual partners, (teen or adult partners) in the State of Hawaii.

Without baseline data, the Task Force finds it difficult to make a comprehensive determination of effectiveness and impact of the change in law. It was found to be an effective tool for law enforcement.

**TASK FORCE
RECOMMENDATIONS
ONE, TWO, THREE AND
SIX**

Require the Department of Education and the Department of Health to add a question regarding age of partner to their Youth Risk Behavior Survey.

Require the Department of Health and the Department of Human Services track age of both parents in their review of infant mortality.

Request the University of Hawaii include age of both parents in their Kids Count survey.

Service providers should collect data on the age of adult partners.

THE IMPACTS OF ACT 1

Age of consent laws have a variety of impacts. The Task Force separated four main impacts due exclusively to Hawaii raising the age of consent from 14 to 16 and adding an age gap provision. Specifically, Act 1 may

generate an:

- Increase in criminal liability for sexual activity with 14 & 15 year olds;
- Increase in reluctant witnesses;
- Increase in statistics reported as sexual assault;
- Some increase in workload for social services; child protective agency; justice system, child support enforcement agency; law enforcement agencies.

The increase in criminal liability for sexual activity with a 14 or 15 year old is partly due to the fact that Act 1 makes it easier to prove non-consensual sexual assault cases, both by family and non-family members. Under Act 1 the prosecution no longer must prove lack of consent. Act 1 criminalizes sexual relations between an adult and a 14 or 15 year old regardless of consent.

While the members of the Task Force agreed that preventing sexual exploitation of 14 and 15 year olds is necessary, there was consensus that raising the age of consent by itself would not achieve that goal.

Given the possible impacts caused by Act 1, the Task Force agreed that Act 1 should be supplemented with other actions in order to achieve the stated goal.

TASK FORCE FINDING SIX

Act 1 raises the level of charge for non-consensual sexual assault cases for 14 and 15 year olds.

TASK FORCE FINDING SEVEN

Act 1 makes it easier to prove non-consensual sexual assault of 14 and 15 year olds. This applies to both family related and non-family related non-consensual relationships.

TASK FORCE FINDING ELEVEN

Laws specifying the legal age minors may consent to sexual intercourse with adults,

and the enforcement of those laws on perpetrators, are not sufficient to significantly reduce the incidence of sexual exploitation of youths by adults. Educating youths and the general community of the possibly serious consequences of consensual sexual relationships between minors and adults is also necessary.

**TASK FORCE
RECOMMENDATIONS
FOUR AND FIVE**

Legislature should appropriate monies to provide additional education regarding effects of adult sexual conduct with minors.

Service providers should be reminded of their statutory obligation to report illegal sexual conduct between adults and minors.

**TASK FORCE ULTIMATE
RECOMMENDATION
REGARDING ACT 1**

If the Legislature does not act to extend or make Act 1 permanent, the law will expire and revert back to the former status as of June 30, 2003.

Task Force members were divided on this topic. At the final meeting, the nineteen present members voted on the issue. The three choices and votes were as follows:

- 11 Members: Eliminate the sunset provision and make Act 1 permanent;
- 7 Members: Extend Act 1, with a new, extended sunset provision, for another year; and
- 1 Members: Reduce the charge for an Act 1 offense and raise the age gap provision.

**TASK FORCE
RECOMMENDATION
SEVEN**

The majority of the Task Force recommends removing the Act 1 sunset provision to make permanent the criminalization of sexual conduct with 14 and 15 year olds for partners who are more than five (5) years older.

However, the Task Force recognizes that a substantial minority of the members prefer that the law be continued for at least one (1) year to enable the mechanism to collect the data (as recommended by the Task Force) to be implemented and fully realized.

Chapter 1

INTRODUCTION

**THE 2001 LEGISLATURE
ADDRESSES THE ISSUE
OF WHEN ADULTS MAY
HAVE CONSENSUAL
INTERCOURSE OR
SEXUAL CONTACT WITH
MINORS
(ALSO KNOWN AS THE
AGE MINORS MAY
LEGALLY CONSENT TO
SEXUAL INTERCOURSE
AND SEXUAL RELATIONS)**

From 1986 to 2001 the law in Hawaii prohibited any person from having sexual intercourse or sexual contact with a minor under the age of 14. Hawaii was the only state in the nation, since at least the year 2000, wherein it was legal to have intercourse with a child aged 14 or 15.

In 2001 the Hawaii State Legislature enacted Act 1, House Bill 236, which amended the laws relating to sexual assault (hereinafter Act 1). Act 1 became law on July 10, 2001 when the State House and Senate overrode the Governor’s veto. Act 1 is attached as Appendix “A.”

Act 1 raised the so-called “age of consent,” or the age at which a minor may legally consent to sexual intercourse or sexual contact. Due to concerns about criminalizing consenting sexual relations between minors (teen/teen sex), Act 1 included an “age gap” provision.

Hawaii law now prohibits:

1. Any person of any age having sexual intercourse or sexual contact with a child under age 14; and
2. An adult 19³ or older having sexual intercourse or sexual contact with a child aged 14; and
3. An adult 20 or older having sexual intercourse or sexual contact with a child aged 15.

The changes brought about by Act One focus exclusively upon adults’ sexual relations with minors aged 14 and 15. Only the behavior of the adult is criminalized. Fourteen- and 15-year olds are legally deemed too young to consent to sexual intercourse or sexual contact with a person 5 or more years older than themselves.

³ While a 19-year old is a teenager, Hawaii’s laws classify persons 18 and older as adults.

**CONCERNS ABOUT
RAISING THE AGE OF
CONSENT**

Testimony against raising the age of consent was submitted by a number of social service providers. The primary concern raised was that girls aged 14-15 would not seek services for fear that their adult boyfriends would be prosecuted.

Concerns were also raised about imposing a felony sentence with a maximum of 20 years upon a 19-year old for engaging in sexual penetration with a 14-year old.

As a result, the Legislature included a provision in Act 1 instructing the Attorney General to convene a task force to assist the Legislature in developing social policy on the age of consent.

**THE AGE OF CONSENT
TASK FORCE: A
COMPREHENSIVE
REVIEW OF THE AGE OF
CONSENT**

The Legislature instructed the Task Force to focus on two matters.

First, to provide the Legislature with factual information on the national experience and “best practices” regarding the age of consent, including:

- A compilation of state statutes;
- A compilation of sentencing practices in other jurisdictions;
- An evaluation of the impacts of these laws on adolescents; and
- Hawaii data on incidents of adolescent sexual activity.

Second, to assess the effectiveness and impact of Act 1 based partly on data provided by the Department of the Prosecuting Attorney for the City and County of Honolulu.

(The Prosecuting Attorneys for all counties are required to maintain a record of all cases received and prosecuted under Act 1 and submit those statistics to the Legislature prior to the convening of the 2003 regular session.)

**THE AGE OF CONSENT
TASK FORCE:**

The Task Force hired a researcher and report writer to research and summarize the age of consent statutes and

**RESEARCH, MEETINGS
AND AGENDA**

sentencing practices in all 50 states and the District of Columbia. In addition, the Task Force instructed the researcher to gather data on Hawaii teen sexual behavior and best practice examples in California.

Task Force members also searched for best practices information from Prosecutors Associations to National Sex Assault organizations to local agencies.

Due to the lack of local data regarding the age of teens' sexual partners, the Task Force conducted two informal surveys to obtain relevant information for the group to consider.

The first was a survey by the Department of Education (DOE) representative to determine the number of aged 14-15 pregnant and parenting teens participating in the DOE Graduation Reality and Dual Role Skill (GRADS) program.

The second was an informal and unscientific statewide survey of high school teens. The survey was developed by the Teen Perspective Subcommittee of the Task Force. Surveys were distributed via the teens' teachers.

The Task Force met five times for half-day working meetings, and distributed materials and worked on assignments during the interims. Meetings were facilitated by the Center for Alternative Dispute Resolution of the Judiciary.

**THE AGE OF CONSENT
TASK FORCE:
COMPOSITION**

Act 1 instructed the Task Force to be composed of, but not limited to, a representative or designate from the following organizations:

- Each county Chief of Police
- Each county Prosecutor
- Judiciary, Family Court, First Circuit
- Department of Public Safety
- Department of Health
- Sex Abuse Treatment Center
- Sex Assault Coalition
- Catholic Charities, Child Sex Abuse Treatment Program
- Children's Justice Center
- Office of Youth Services

- An immigrant service provider
- House Committee on Judiciary and Hawaiian Affairs
- Senate Committee on Judiciary
- Hawaii Family Forum
- Sisters Offering Support
- League of Women Voters
- Hawaii State Commission on the Status of Women
- Military

The Task Force broadened its membership beyond the legislative guidelines to ensure that the full spectrum of opinions and views were included in this Report. Additional groups included representatives from:

- the State Department of Education; and
- the Oahu Public Defender’s Office.

A SUNSET PROVISION

Act 1 automatically “sunset” on June 30, 2003. If the Legislature does not act upon the age of consent by the end of the 2003 Legislature, the law will revert to the pre-Act 1 status wherein a person of any age may legally engage in sexual intercourse or sexual contact with a child aged 14-15.

OVERVIEW OF THE AGE OF CONSENT TASK FORCE REPORT

This Report reviews:

- Hawaii’s age of consent laws, including statutory definitions;
- the age of consent laws in all 50 of the United States and the District of Columbia, including statutory sentences for persons violating the age of consent; and
- Hawaii data regarding adolescent sexual activity.

In addition, this Report provides the Task Force’s evaluation of the impact that age of consent laws have on adolescents, and the findings and recommendations the Task Force provides to the Legislature.

Chapter 2

HAWAII'S AGE OF CONSENT LAW

LEGISLATIVE HISTORY OF THE AGE OF CONSENT IN HAWAII

The Task Force felt it would be instructive to review how Hawaii has treated the age of consent issue from before statehood to the present time. These older laws may reflect some of the cultural considerations in our present society.

A detailed legislative history is presented in Appendix B to this Report. A brief summary of that history is presented here, along with the statutory definitions and judicial interpretation pertaining to the age of consent.

AGE OF CONSENT IN 1869

Between 1869 and 1912 the Kingdom of Hawaii prohibited males from having sexual contact with a girl under 10 or sexual intercourse with a girl under 14.

STATUS IN 1925

Between 1925 and 1973 the Territory, and later the State, of Hawaii prohibited males from having sexual contact with a girl under 12 or sexual intercourse with a girl under 16.

STATUS IN 1974

Between 1974 and 1985 the law included an age gap in the statute prohibiting sexual contact, but not in the statute prohibiting sexual intercourse. Moreover, the law only prohibited sexual intercourse when there was a reckless infliction of serious bodily injury.

Specifically, the law prohibited males from having:

- (1) Sexual intercourse with a female less than 14 years old AND recklessly inflicting serious bodily injury upon the female; or
- (2) Sexual contact with a girl who is under 16 years old and at least 14 years old and at least four years younger than him.

STATUS IN 1986

Between 1986 and 2001 the law prohibited any person from sexually penetrating or having sexual contact with any child below the age of 14.

The Legislature eliminated the requirement of reckless infliction of serious bodily injury in 1986.

**STATUS IN 2001 –
PRESENT**

The current law includes an age gap provision in both statutes prohibiting sexual intercourse and sexual contact.

Specifically, the law prohibits any person from having:

- (1) Sexual contact or sexual penetration with a child under age 14; or
- (2) Sexual contact or sexual penetration with a child between the ages of 14 and 16 IF the actor is 5 or more years older than the child.

**STATUTORY
DEFINITIONS**

Sexual penetration is defined as

“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.”

Sexual contact is defined as 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.”

**JUDICIAL
INTERPRETATION OF
THE AGE OF CONSENT**

Both the 1986 and 2001 statutes prohibit “knowing” penetration or contact. The element of knowledge does not require that the actor “know” the child was below the statutory age of consent.

The Hawaii Supreme Court has ruled that a defendant is not required to have actual knowledge of the child's age, and that mistake of fact is not a defense to the crime of sexual assault. The term "knowingly" refers to the act of intercourse, not the age. Hawaii v. Buch, 84 H. 308 (1996).

Chapter 3

THE NATIONAL EXPERIENCE REGARDING THE AGE OF CONSENT

REVIEW OF AGE OF CONSENT LAWS IN THE UNITED STATES

Act 1 charged the Task Force with presenting the Legislature with a report containing national experiences in order to assist the Legislature in developing social policy in this matter.

Accordingly, this Report will next summarize the national history regarding the age of consent, the legislative age minors may consent to sexual relations in each of the 50 states and the District of Columbia and the statutory sentences for violating the age of consent.

INTRODUCTION AND HISTORY OF AGE OF CONSENT IN THE UNITED STATES

The authority to determine when sexual intercourse with a minor is a crime rests with the individual states. Historically each state enacted “statutory rape” laws, which criminalized any intercourse with “chaste” young females below a certain age, even if the act was consensual.

These laws still exist today, although they are rarely called ‘statutory rape,’ and frequently are not limited to special laws that protect only minors. Instead modern restrictions on sexual activity with minors are often codified in broader statutes defining sexual crimes against the person. For example, many states’ statutes include sex with a minor in a list of activities that constitute sexual assault, rape, criminal sexual abuse or criminal sexual conduct.

Another modern variation is that states no longer protect only girls from sexual relations with older men. Almost every state has specifically extended equal protection to all youth from any sexual relations, heterosexual and

homosexual.⁴ Furthermore, with one exception, no state requires that the child be "chaste."⁵

**AGE OF CONSENT IN THE
50 STATES AND THE
DISTRICT OF COLUMBIA**

Every state has established an age at which a minor may legally consent to sexual relations, known as the "age of consent."

**DEFINITION OF
"SEXUAL RELATIONS"**

Each state defines sexual relations differently, but these definitions generally fall into two categories:

- States that only prohibit sexual intercourse or penetration, however slight and by any object, with a child; and
- States that prohibit any type of sexual activity with a child.

States which prohibit any type of sexual contact typically impose stricter sentences upon actors engaging in sexual penetration with a child as opposed to other types of sexual contact. States that prohibit only sexual penetration tend to have only strict sentences and no misdemeanor classifications (except in some cases where the child is older).

For example:

Arizona

"Sexual conduct" with a child is prohibited, and is defined as sexual intercourse or oral sexual contact. Sexual conduct with a child under 15 is a class 2 felony. Sexual conduct with a child 15-17 is a class 4 felony.

Idaho

Sexual intercourse or deviate sexual conduct with a child under 14 constitutes a class A or B felony, depending upon the age of the actor.

Sexual contact with a child under 14 years of age is a

⁴ Most states include males and females in the protected category of children. Other states simply use gender neutral terms when describing the offense. Idaho has different rape statutes for females and males; intercourse with a girl under 16 is considered rape. The statute for males does not list an age.

⁵ Massachusetts states that intercourse with a chaste 16-year old is a misdemeanor.

class C felony. Sexual contact is defined as any fondling or touching with the intent to arouse or satisfy sexual desires.

The Sentencing section in this Report focuses solely on statutory sentences for:

- sexual penetration with a child below the age of consent, and
- when the child is not extraordinarily young, and
- when there is no extraordinary relationship between the child and the adult.

The reason for this limitation is due to the fact that each of the 50 states and the District of Columbia have differing statutory sentences for

- sexual penetration vs. sexual contact, and
- sexual activity with extraordinarily young children (most states have separate statutes penalizing sexual relations with younger children. As a general rule, states impose stricter penalties for sexual activity with children below 8-10 years.) and
- sexual activity when there is a familial or other relationship of trust between the adult and child.

Comparing over 75 statutory schemes is too confusing and will not assist Hawaii’s public policy debate on this issue. Accordingly, this Report focuses on sanctions for consensual sexual relations between adults and teens who are below the statutory age of consent.

**THE AGE A MINOR
MAY LEGALLY
CONSENT TO SEXUAL
RELATIONS IN THE 50
STATES AND THE
DISTRICT OF COLUMBIA**

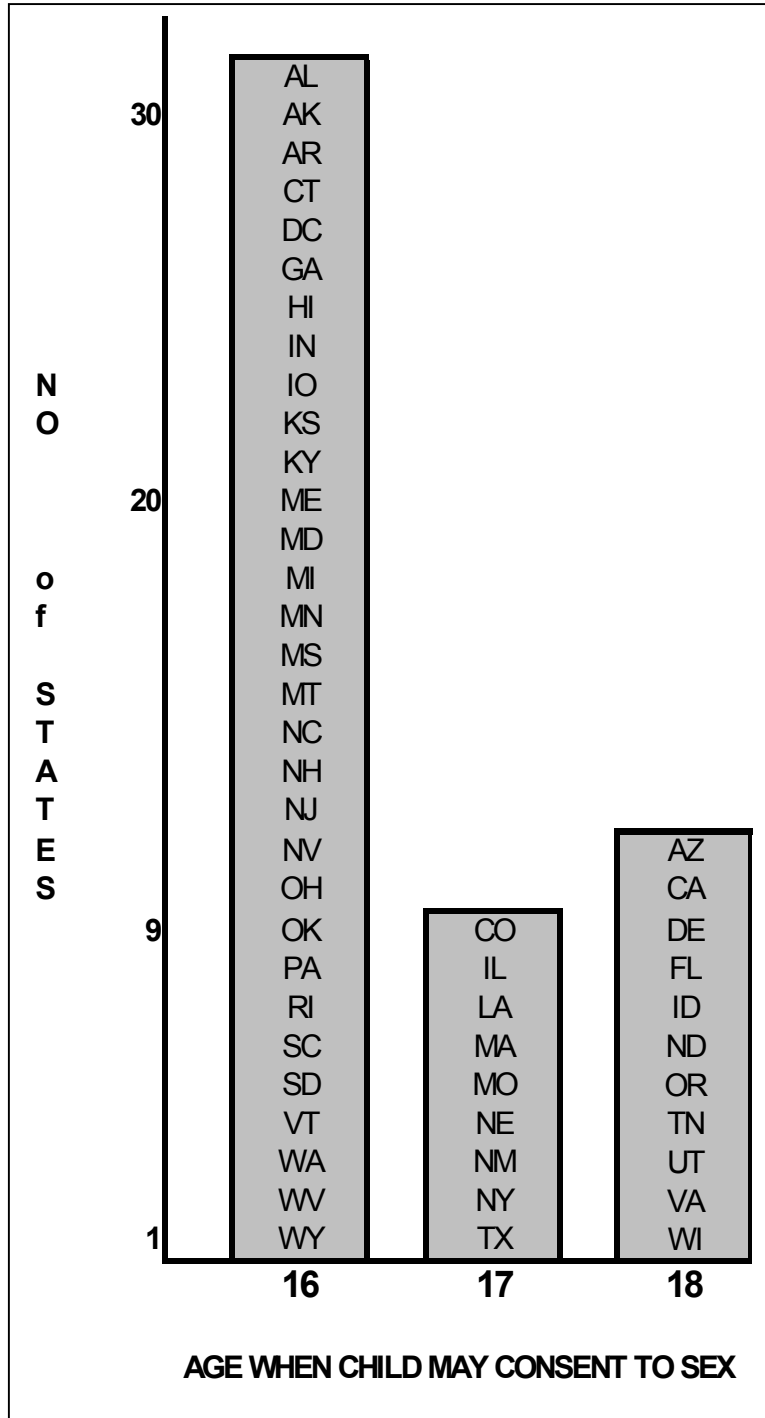
In general, the age of consent is broken into two categories:

1. Extraordinarily Young Children: An age below which any sexual intercourse with the child is a felony act regardless of the age of the actor.⁶ This age varies across the nation, but is usually 10 – 13. Sexual relations with children below this base age are treated as a greater felony, and receive the strictest punishment.
2. Teenagers Below the Age of Consent: An age below

⁶ There is a common-law presumption, which some states have eliminated, that a boy under 14 is unable to perform sexual intercourse. Laws prohibiting intercourse with a child under 12 presume a 2-year age gap.

which sexual intercourse with the child is a criminal act depending upon the actor's age. Again, this age varies, but is usually 14-17. Sexual relations with children of these median and upper ages are treated differently, depending upon the state.

In every state a violation of the age of consent is a felony offense when the child is at the younger age range. Most states impose a lesser penalty when the child is in the upper age range, or when both parties are minors and/or close to the same age. This is discussed in greater detail in the sentencing section.



Comparison of States' Views on the Age when a Minor May Legally Consent to Intercourse with an Adult

- Thirty-one states (including Hawaii, until June 30, 2003) and the District of Columbia prohibit all or some sexual intercourse with children under the age of 16.
- Nine states also prohibit some sexual intercourse with children under the age of 17.
- Eleven states also prohibit some sexual intercourse with children under the age of 18.

THE "AGE GAP" STATUTES

The majority of states penalize sexual intercourse between a child and an adult or older minor only when there is a minimum gap between the ages of the two parties. This "age gap" may be specified in one of three different ways:

- as a set number of years between the ages of the child and the actor;
- as a minimum age of the actor which changes given the child's age; or
- as a combination of both.

For example:

Pennsylvania

Persons four or more years older are prohibited from having intercourse with children 13-15.

North Dakota

Persons 18 or older are prohibited from intercourse with children 14 or younger, and persons 22 or older are prohibited from having intercourse with children 15-17.⁷

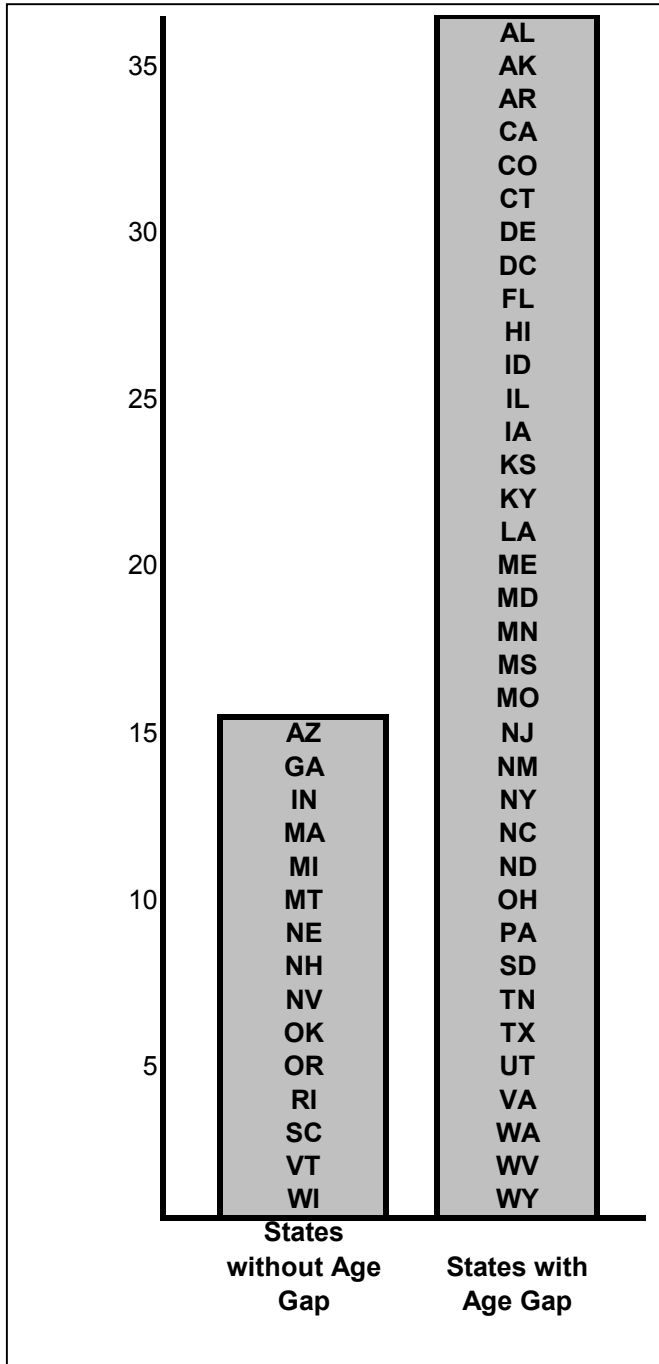
New Mexico

Persons 18 or older *and* four or more years older are prohibited from having intercourse with children 13-16.

In Pennsylvania, intercourse between a 13-year old and a 19-year old is illegal. Intercourse between a 15-year old and a 19-year old is also illegal.

In North Dakota and New Mexico, intercourse between a 13-year old and a 19-year old is illegal. However, intercourse between a 15-year old and a 19-year old is legal in both states.

⁷ States like North Dakota, where the minimum age of the actor changes with the age of the child, are included in the chart as a state with an age gap. States without an age gap either do not specify the actor's age, or merely require the actor to be one age, usually 18 or older, regardless of the age of the child.



Comparison of States' Views on "Age Gap" Statutes

- Thirty-five states (including Hawaii until June 30, 2003) and the District of Columbia prohibit sexual penetration between a minor and a person a minimum number of years older than the child. These "age gap" statutes criminalize only adult/child sexual intercourse.
- Fifteen states prohibit any person, regardless of his/her age, from sexually penetrating a child under the age of consent.

Appendix C is a table summarizing each state and the District of Columbia's age of consent laws. The table includes the age requirements for both the actor and the child, and notes if the offense is a felony or a misdemeanor.

MISTAKE OF AGE AS A DEFENSE

In order to convict a person for sexual intercourse with a child of a certain age, prosecutors must show that the child actually was at or below the age at the time the event occurred. Persons defending themselves from criminal liability frequently claim that they reasonably

believed the child was above the minimum age. This is commonly known as the “mistake of age” defense.

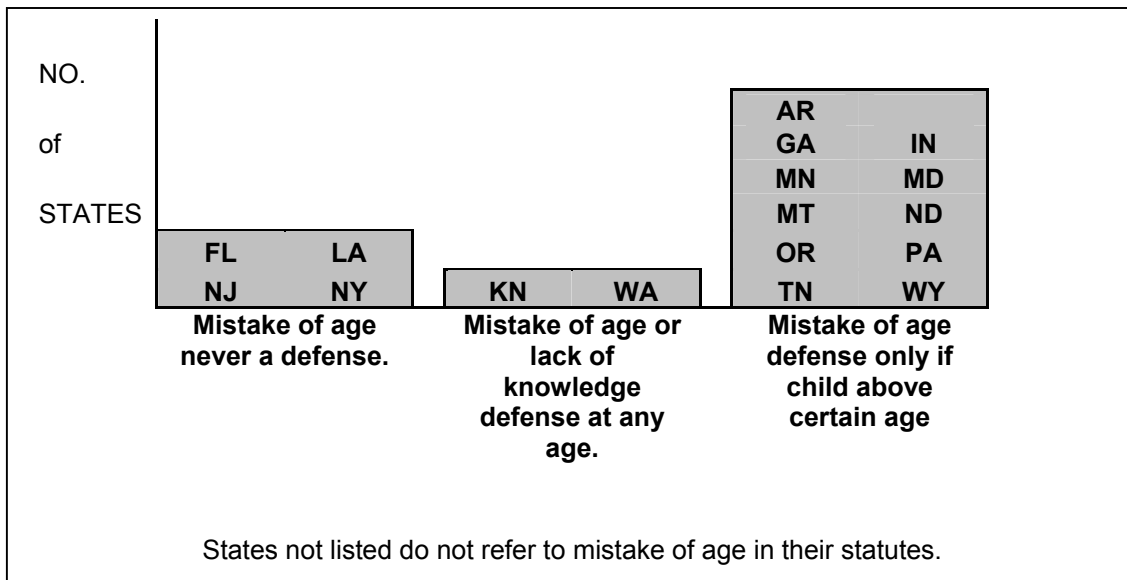
Thirty-three states do not specifically address the mistake of age defense in the *statutes* prohibiting sexual relations with children.

Seventeen states have specific statutory provisions on mistake of age. Four states hold that mistake of age is never a defense to criminal charges for sex with a child. Two states provide that lack of knowledge of the age of consent is a defense at any age.

Eleven states adopt a compromise position. Mistake of age is not allowed as a defense when the child is below a minimum age (usually 12 – 14). Mistake of age is allowed as a defense above the minimum age, but the actor is usually required to show that s/he reasonably believed that the child was above the age of consent.

For the record, the Supreme Court of Hawaii has ruled that mistake of age is not a defense to a charge of violating the age of consent.

Comparison of States’ Views of Mistake of Age as a Defense (Statutory Law Only – Does Not Include Case Law)



STATUTORY SENTENCES
(DISCUSSION LIMITED TO
SENTENCES FOR SEXUAL
PENETRATION – DOES
NOT INCLUDE SEPARATE
SENTENCES FOR SEXUAL
CONTACT)

Sentencing a person convicted of a crime is a complex procedure that is guided by statutes, judicial precedent, regulatory guidelines and administrative policy.

There is a myriad of age of consent sentences between the 50 states and D.C.. In order to simplify matters, *this Report focuses exclusively upon statutory sentences for:*

- *sexual penetration with a child*
- *who is not extraordinarily young, and*
- *when there is no extraordinary relationship between the adult and the child.*

Hawaii, and many other states, impose shorter statutory sentences for adults having sexual *contact* with a child.

In addition, most states impose longer statutory sentences when the child is extraordinarily young (usually below 8-10), or when there is an extraordinary relationship between the adult and the child (a familial relationship or a person in a position of trust, such as a teacher or social worker).

Sentences listed in statutes generally represent maximum sentences or the potential range of sentences. The statutory sentence does not necessarily reflect the actual sentence imposed in specific cases.⁸ However, legislative sentences are an indication of the level of seriousness a society attaches to particular crimes.

Statutory sentences for sexual penetration with a child vary depending upon the age of the child, and upon the gap between the child and actor's age. The most severe statutory sentences are reserved for penetration with children below the base minimum age (usually 10-13). However, even in those circumstances, the legislative sentence frequently mandates imprisonment "up to" a set amount of years.

It must be kept in mind that a statute imposing a sentence of "up to 60 years" includes sentences for 30 days, 5 years and 60 years. The high upper end allows for long sentences in egregious cases, and shorter or even no sentence in situations involving two minors close in age.

⁸ Sentencing practices vary between determinant and indeterminate states. Hawaii is an indeterminate state.

CATEGORY OF CRIME

It is difficult to meaningfully categorize state statutory sentences because the sentencing range is so broad and the legislative maximum may not reflect the actual sentences imposed in non-egregious cases. However, two broad categorizations provide some insight into states' attitudes about sexual relations with children:

1. The category of crime; and
2. How the sentence varies across the age range of the child.

Crimes are either felonies or misdemeanors. Felonies are usually broken into classes, which may be broadly categorized as greater felonies and lesser felonies.

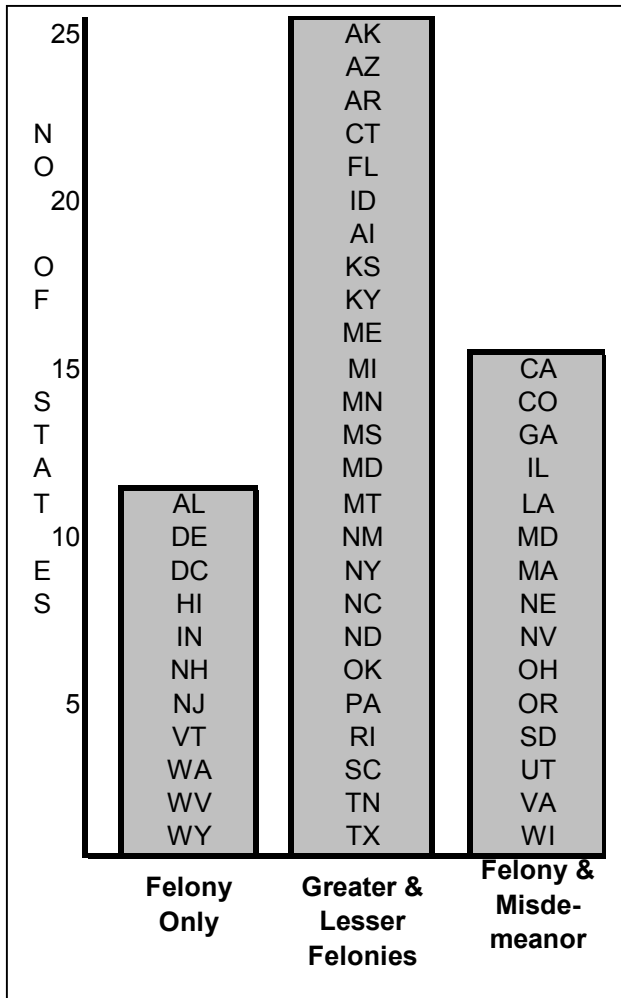
The sentence imposed for a lesser felony may be similar to a sentence for the highest category of misdemeanor.⁹ However, the conviction of a felony carries greater stigma, and is accompanied by the loss of other rights, such as the right to vote.

The following graph illustrates how states categorize the crime of violating the age of consent. The Report then addresses how sentences vary based on the age range of the child.

⁹ This is not the case in Hawaii.

Comparison of States' Views of Punishing an Adult for Violating the Age of Consent

(Statutory Sentences for Sexual Penetration, Child not Extraordinarily Young and No Extraordinary Relationship Between the Adult and Child)



- Thirty-six states, including Hawaii, mandate that any violation of the age of consent is always a felony crime, regardless of the age of the child or actor.
- Twenty-five of those thirty-six states classify violations of the age of consent as greater or lesser felonies. The class of felony varies given the age of the child and/or the age of the actor. Lesser charges are levied if the child is older and/or the actor is a minor or close in age to the child.
- Eleven of those thirty-six states, including Hawaii, do not provide for different levels of felonies within the age of consent statutes.
- The remaining fifteen states classify violations of the age of consent as either a felony or a misdemeanor. In general, felony charges are imposed when the child is younger and/or when there is a large age gap between the actor and child. Misdemeanor charges are imposed when the child is older and/or when there is a smaller age gap between the actor and child

Interestingly, the states that impose misdemeanor violations are not necessarily the same states that have a higher age of consent.

- Five states where the age of consent is 16-years old (statutes prohibit penetration with children below 16) include misdemeanor categories of the crime.¹⁰
 - Ten states that impose a 17- or 18-year old age of consent (statutes prohibit some penetration with children under 17 or 18) do not have misdemeanor categories of the crime.¹¹
-

VARIATIONS IN SENTENCE BASED ON AGE OF CHILD

There is a tremendous variation in the statutory sentences for violations of the age of consent between the 50 states and the District of Columbia. Many states also vary their sentences based upon the age of the child and in some cases the age of the actor.

Most states' statutory sentences are separated into two or three categories:

First Tier Sentences

Most states adopt separate statutes penalizing sexual activity with extraordinarily young children (usually below 8-10). Again, these statutory sentences are not included in this Report for reasons detailed earlier.

In addition, many states also adopt stricter statutory penalties for sexual activity with children in a lower age range, usually between 10-14 years of age. These latter sentences for "lower aged" children basically apply a distinction between sexual activity with a pre-teen and sexual activity with a teen, both of whom are below the age of consent.

First tier, or the strictest sentences may also be imposed when there is an extraordinarily large age gap between the adult and the child below the age of consent. Some states apply this stricter sentence even when the child is in the mid- to upper-age range.

Again, the age range varies by how each state defines the age of consent. For example, California's age of consent is 18; Hawaii's age of consent is 16 at present. Therefore

¹⁰ Georgia, Maryland, Nevada, Ohio and South Dakota.

¹¹ Arizona, Delaware, Florida, Idaho, Maryland, New Mexico, New York, North Dakota, Tennessee and Texas.

an “upper age” child is 17 in California, and is 15 in Hawaii. In general, the states break down as follows:

“Lower age” child is between 10-14 years of age;
“Median age” child is between 14-16 years of age;
“Upper age” child is between 15-17.

Sixteen states impose up to life sentences for sexual penetration with lower aged children.¹²

Three of the sixteen allow the death sentence for sexual penetration with lower aged children.¹³

Two of the sixteen impose up to life sentences for sexual penetration with median aged children.¹⁴

Second Tier Sentences

Forty-three states and the District of Columbia impose less, but still strict sentences for sexual penetration when the child is in the median age range (usually 14-16) and the actor falls outside the broader age gap.

Seven states, including Hawaii, impose the same sentence for sexual penetration when the child is in the lower or median age range.¹⁵

Third Tier, or “Minimal” Sentences

Twenty-two states have adopted a third-tier or minimal sentence for certain violations of the age of consent. In these states misdemeanor or lesser felony sentences may be imposed for sexual penetration when the child is in the upper age range, and the actor is narrowly outside the age gap.

These third tier sentences are imposed when the child is in the upper age range for the *state’s* age of consent. Therefore the child may be 16-17 in a state with a 16- or 17-year old age of consent, or 15-16 in a state with a 16-year old age of consent.

¹² AZ, DE, DC, GA, ID, LA, MA, MI, MO, MT, OK, RI, SD, UT, VA and VT.

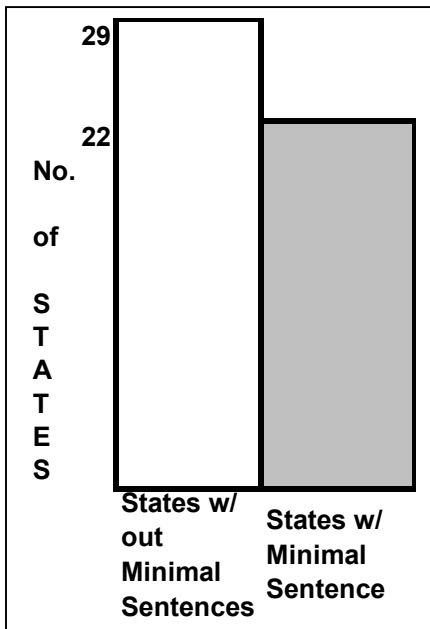
¹³ Georgia, Louisiana and Oklahoma.

¹⁴ Massachusetts and Montana.

¹⁵ Colorado, Hawaii, Massachusetts, Nevada, Pennsylvania, Texas and Wyoming.

Comparison of States' Views on Minimal Sentences

(Statutory Sentences for Sexual Penetration, Child not Extraordinarily Young and No Extraordinary Relationship Between the Adult and Child)



- Twenty-nine states, including Hawaii, have no minimal sentences for sexual penetration with a child.
- Twenty-two states impose misdemeanor or minimal felony sentences for sexual penetration when the child is in the upper age range.
- Sentences for sexual penetration with a younger or median aged child vary between these twenty-two states. But the minimal sentences for the upper age children are fairly consistent:
 - Seventeen of the twenty-two states impose minimal sentences of one year or less;
 - Four impose minimal sentences of 1.5 years or less; and
 - One imposes a minimal sentence of three years or less.

Exhibit D provides the 50 states and DC statutory sentences for sexual penetration with a child organized by state. This table illustrates how each state varies its sentences across the three age categories.

Exhibit C provides the 50 state and DC statutory sentences for sexual penetration with a child organized by length of sentence. This table illustrates how the length of sentence for each age category varies across the nation.

INCREASED PENALTIES

Almost every state imposes increased penalties if any of the following circumstances occur during sexual penetration with a minor:

- If there is a relationship of trust between the actor and the minor. Statutes cite teacher/student, step-parent or parent's significant other/child, church leader/member, counselor or physician/patient as examples of special relationships;
- If the act is aggravated and/or the child injured;
- If the actor has been convicted previously for violating the age of consent;

The statutory sentences contained in this report *do not* include the stricter sentences for actors with special relationships with the child or for repeat offenders.

The statutory sentences contained in this Report are the sentences the legislatures have imposed for:

- Sexual penetration with a child;
 - By first time offenders;
 - Who have no special relationship with the child;
AND
 - Who have not committed aggravated sexual relations.
-

FINES

At least twenty-seven states, including Hawaii, permit fines to be imposed upon a party convicted of violating the age of consent.¹⁶ In some instances, the punishment for misdemeanor violations may be a sentence up to a certain amount of time AND/OR a fine.

Every state provides that the fine may be up to or equal a maximum amount. Four states allow a fine of \$100,000 or more.¹⁷ The remaining twenty-three states allow fines ranging from up to \$1,000 to \$50,000, with an average of \$17,500. Hawaii's statute allows a fine of up to \$50,000.

¹⁶ CA, CO, CT, D.C., FL, HI, ID, LA, MD, MI, MN, MS, MT, NE, NH, NM, NY, NC, ND, OH, OR, SD, TN, TX, VT, VA, WV, WS.

¹⁷ District of Columbia, Michigan, Oregon and Virginia.

Chapter 4

HAWAII DATA ON INCIDENTS OF ADOLESCENT SEXUAL ACTIVITY

INTRODUCTION

Unfortunately, there is no data available regarding the age of Hawaii adolescents' *consensual* sexual partners. There is some data available regarding non-consensual sexual relations, specifically statistics on sexual assault. This data includes whether the perpetrator is an adult or juvenile, but not their specific ages.

Data regarding the amount of sexual activity of Hawaii high school students is available for certain years. While this data provides some insight into the percentage of adolescents aged 14-18 engaging in sexual activity, again, no data is provided on the age of their sexual partners.

NATIONAL YOUTH RISK BEHAVIOR SURVEY

A national survey is conducted every two years by the Centers for Disease Control and Prevention and participating states. The survey is administered locally through the State Department of Education.

There are approximately 60 questions on the confidential survey. The questions focus on priority health-risk behaviors affecting youth. Hawaii has participated in these surveys in 1993, 1995, 1997 and 1999, and the results are posted on the CDC Website. A 2001 survey was done, but the results have not yet been posted.

In 1999 the national survey selected a random sample of high school students (grades 9-12, ages 14-18), and a second sample from high schools with racial demographics that were proportional to the nation's population. The survey predicts the behavior of high school students (grades 9-12, ages 14-18) within a 95% confidence interval.

Survey results are broken down by state. The information regarding sexual activity for the State of Hawaii is broken down into females and males, but does not provide the age of the student's partner.

The survey provides statistics, broken into gender and year, regarding the percentage of high school students in Hawaii who:

- are sexually active;
- have had sexual intercourse with 4 or more people;
- have had intercourse in the last 3 months;
- had intercourse for the first time before they were 13 years old;
- drank alcohol or used drugs before intercourse;
- used a condom;
- used birth control; and
- have been or gotten someone pregnant 1 or more times.

Because the survey is conducted every two years, trends in teen sexual activity may be observed. The following chart provides an example.

Level of Sexual Activity of Hawaii's Teens (14-18)

Sexual Activity	Male 1997	Male 1999	Female 1997	Female 1999
% Ever Had Sexual Intercourse	35.8	41.7	44.8	40.1
% Had Sexual Intercourse in Past 3 Months	19.3	26.3	32.6	30.0
% Had Sexual Intercourse with 4 or more Partners in their Life	9.7	13.8	8.2	10.6
% Had Intercourse Before Age 13	9.1	8.6	4.9	5.1

**ASSORTED OTHER
STATE STATISTICS**

Statistics related to certain sexual behaviors are kept by a variety of departments and organizations. None of these statistics routinely include the age of teens' consensual sexual partners.

Moreover, most of these statistics are limited to adolescents who become pregnant or who are sexually assaulted. No one gathers data on teens' consensual sexual activity that does not result in pregnancy.

**THE CHILDREN'S
JUSTICE CENTER**

The Children's Justice Center tracks all reports of inter- and intra-familial sex assault to the police and/or child protective services and/or the military of child sex assault. The Center has gathered this information since 1988. Between 1988 and 2002 the Center noted whether the perpetrator was an adult or a juvenile. Recently they are asking the police to collect the exact age of the perpetrator.

HAWAII KIDS COUNT

The most recent Kids Count was published in 1997. The Kids Count Report was published in 1985, 1990, 1995 and 1997. Each Report contains data regarding the teen pregnancy rate:

- by county;
- by age 15-17;
- by age 15-19;
- the percentage of total births in the State that are attributable to teens; and
- the percentages of pregnancies with live birth outcomes.

**THE STATE
DEPARTMENT OF
HEALTH**

The Department of Health also maintains the same statistics found in the Kids Count data, as well as statistics on live births to teens aged 15-17. The DOH statistics are current up to the year 2000.

Candice Calhoun of the DOH Community Adolescent Program informed the Task Force that the only data regarding age of sexual partner she is aware of is on the birth certificates. However, there are two problems with this data:

1. Birth certificates only survey teen girls who give live birth. It does not include girls who abort or who do not get pregnant or boys; and

2. A high percentage of birth certificates list the father's age as "unknown." Ms. Calhoun recently surveyed over 500 birth certificates to check the age of teen mothers' partners.
 - 23% of the 15-year olds listed the father's age as unknown.
 - 64% of the 16-year olds listed the father's age as unknown.
 - 68% of the 17-year olds listed the father's age as unknown.

The Department of Health also maintains statistics regarding sexually transmitted diseases. However, the information posted on their Websites does not break these statistics down into age categories, nor do they provide any information regarding the age of the sexual partner(s).

**CENSUS DATA ON THE
NUMBER OF
ADOLESCENTS
AFFECTED BY ACT ONE**

Information regarding the number of adolescents in Hawaii, broken down by gender and by county, is available from the 2000 census.

A table attached as Appendix F provides statewide and county numbers of females and males in the following age categories:

- Under 5 years old and 5-9 years old (provides the size and gender makeup of the next cohort of youth affected by the age of consent);
- 10-14 year olds (size of cohort affected by Act 1's change in the age of consent);
- 14-19 year olds (persons in "age gap" group as well as potential partners affected by age of consent); and
- 20-24 and 25-34 year olds (size of cohorts that may engage in sexual relations with minors).

**UNSCIENTIFIC
SAMPLES OBTAINED BY
THE AGE OF CONSENT
TASK FORCE**

The Age of Consent Task Force felt it would be useful to understand the teen perspective regarding adult/minor sexual relations. Accordingly the Task Force created a subcommittee, which developed a survey for teens, aged 14-18.

The survey was delivered to teachers in seven (7) public school districts. Because the teachers copied and distributed the surveys to the students, it is unknown how many surveys were distributed. 350 surveys were completed. The majorities of students were 16-17 years old and were female.

It must be stressed that this was an unscientific and non-random survey. The results may not necessarily apply to Hawaii's teen population as a whole. Furthermore, the results listed here only include the top four responding ethnic groups. Views of ethnic groups that comprise large segments of the population are not included.

- Do you agree that a person five or more years older should be sentenced to prison for 5-20 years for having consensual sex with a 14 or 15 year old?
 - 53.8% agreed
 - 46.5% disagreed

- In order to protect 14 and 15 year olds, what should the age difference be?
 - 2-3 years (48%)
 - 3 years (32%)
 - 4-5 years (20%)

- Are you or your friends involved with a partner five or more years older than yourself?
 - 30% yes
 - 68.5 % no
 - 1.5% no answer

- Of 141 students who were sexually active
 - 89 had sexual partners who were aged 14-18
 - 52 had sexual partners who were aged 19 or older
 - The oldest sexual partner was aged 41

NATIONAL STATISTICS

"Sex and America's Teenagers," a 1994 report by the Alan Guttmacher Institute, showed that six of 10 girls who had sex before age 15 had male partners who were an average of six years older.

The Population Reference Bureau found that two-thirds of

births to teenage mothers are fathered by adult men ages 20 or older.

A California study that looked at the state's 1990 vital statistics found that:

- 77 percent of the children born to teenage mothers aged 16-18 were sired by fathers older than high school age;
- Men older than high school age were also responsible for 51 percent of the teenage births to girls 15 and younger (the materials did not define “high school age”);
- Men over age 25 fathered twice as many teenagers' children as did boys under the age of 18; and
- Men over age 20 fathered five times more births to junior high school-aged girls than did junior high school-aged boys.

Chapter 5

AN EVALUATION OF THE IMPACT OF AGE OF CONSENT LAWS ON ADOLESCENTS

SEPARATING IMPACTS OF ALL AGE OF CONSENT LAWS FROM IMPACTS THAT EXIST EXCLUSIVELY DUE TO THE CHANGE IN LAW CREATED BY ACT ONE

The Age of Consent Task Force identified the impacts on adolescents caused by adult sexual relations with under age children. Because the focus of the Task Force was on Act One, the group sorted these impacts into two categories:

1. Impacts caused by adult-adolescent sexual relations that existed under Hawaii's former Age of Consent law; and
2. Impacts caused by the new Act One which raises the Age of Consent and imposes an "age gap" requirement.

POTENTIAL IMPACTS THAT MAY ARISE UNDER ANY AGE OF CONSENT LAW (PRE- AND POST- ACT 1 IMPACTS)

- Increased Physical Health problems because teens will not seek treatment for fear of exposure and criminal charges, including:
 - Transmittal of STD's; and
 - Increase in illicit drug use.
- Increase in domestic violence including parents.
- Strained relations in family.
- Increased mental health problems in 14 & 15 year olds including:
 - Serious & long-term emotional difficulties;
 - Insecurities;
 - Abandonment;
 - Depression; and
 - Post Stress Trauma.

- Childbirth (teenage pregnancy):
 - Leads to feeling of abandonment if adult partner leaves;
 - Poor care for children born of these teen mothers including child abuse or abandonment;
 - Dropping out of school;
 - Low level of employable skilled workers;
 - Lack of parental and family support of teen;
 - Increased welfare rolls because teen and infant cannot support themselves;
 - Children given up for adoption;
 - Alley abortions; and
 - Infanticide.

- Teens' sexual contact with adults can result in serious and long-term emotional difficulties and insecurities if they feel exploited. Especially if there is childbirth resulting from sexual contact and abandonment by their adult partner.

POTENTIAL IMPACTS THAT MAY ARISE DUE TO ACT 1 (POST-ACT 1 IMPACTS)

- Increase in criminal liability for consensual sexual activity with 14 & 15 year olds.
- Increase in reluctant witnesses.
- Increase in statistics reported as sexual assault.
- Some increase in workload for social services; child protective agency; justice system, child support enforcement agency; law enforcement agencies.

CRITERIA FOR EVALUATING ACT ONE

The task force generated the following list of criteria (objective measures) to be used to evaluate the increased Age of Consent and imposition of an “age gap” requirement caused by Act One.

These same criteria should also be used to evaluate the effectiveness of Hawaii’s sentencing practices for adults who violate the Age of Consent laws.

- Does it solve the problem?
- In comparison to “before” has the statute or sentencing practice decreased the problems compared to the “after” statistics?
- Will the statute or sentencing practice reduce court cases of sexual assault of minors?
- Will the statute or sentencing practice decrease reported cases of teen pregnancies?
- Do the statistics that include age of offender and age of youth support the decrease in problems?
- Have other states used that statute or sentencing practice?
- Has the statute or sentencing practice worked to address the problems for others?
- In comparison to other states in United States do these statutes get the same (results/decrease in problems) as in Hawaii?
- Is the statute or sentencing practice consistent with public opinion, tempered with reason?
- Does the level of offense/type of conduct (contact vs. penetration vs. touching) reflect the length of sentence?
- Does the language of the statute or sentencing practice correlate with damage to the victim?

**TASK FORCE
RECOMMENDATION ON
MAKING ACT 1
PERMANENT**

If the Legislature does not act to extend or make Act 1 permanent, the law will expire and revert back to the former status as of June 30, 2003.

Task Force members were divided on this topic. At the final meeting, the nineteen present members voted on the issue. The three choices and votes were as follows:

- 11 Members: Remove Act 1 sunset provisions to make permanent the criminalization of sexual conduct with 14 and 15 year olds for partners who are more than five (5) years older.
 - 7 Members: As very little data on age of sexual partners with adolescents 14 and 15 years old is available in Hawaii, before and after Act 1, it is recommended that the law be continued for at least one (1) year to enable the mechanism to collect the data (as recommended by the Task Force) to be implemented and fully realized.
 - 1 Member: Reducing the 1st degree offense (Class A Felony) to a 2nd degree (Class B Felony); and Amending the age gap provision to prohibit adults 20 years and older from engaging in sexual contact with minors (14 and 15 year olds).
-

Chapter 6

SUMMARY OF CASES CHARGED UNDER ACT 1 BETWEEN JULY 10, 2001 AND NOVEMBER 30, 2002

CITY AND COUNTY OF HONOLULU ACT 1 STATISTICS

The City and County of Honolulu and each of the three other Hawaii Counties will be submitting official statistics directly to the Legislature in accordance with Act 1. However, the Honolulu Prosecutor who attended the Task Force meetings provided the group with a summary of cases charged in Honolulu under Act 1.

A total of 16 persons in Honolulu were charged with violating Act 1 between July 10, 2001 and November 30, 2002.

Four (25%) of those cases could *only* be charged under Act 1 as:

- the children were 14 or 15 years of age;
- there was no familial relationship between the child and adult; and
- the sexual activity was consensual.

The children in the remaining 12 (75%) of those cases were also 14 or 15 years old. While the former age of consent law legally allowed teens 14 and 15 to consent to sexual relations, the adults in those 12 cases may have been charged with a criminal act prior to Act 1 under different criminal statutes because:

- there was a family relationship between the adult and the child; or¹⁸
- the sexual activity between non-family adult and child was non-consensual.

¹⁸ When the sexual activity is between an adult and a child, and there is a familial relationship, there can be no “consent.” A child cannot legally consent to incest.

The Task Force recognized that Act 1 provides a higher charge for both inter-family and non-family sexual activity when there is no strong compulsion. “Strong compulsion” is defined as use of physical force, threats or weapons.

Act 1 provides a Class A felony charge for any sexual activity between an adult and 14 or 15 year old, even without any compulsion.

The 12 cases that could have been charged under the criminal laws existing prior to Act 1 would only be Class A felony charges if there were *strong* compulsion. Those prior laws state that interfamily or non-family sexual activity between an adult and a 14 or 15 year old by compulsion is a Class B felony.

Several law enforcement members of the Task Force also pointed out that Act 1 makes it easier to prove non-consensual cases, both inter-family and non-family, because consent is not an issue under Act 1. The act of sexual activity between an adult and a child by itself violates the law.

There was a healthy and vigorous debate among Task Force members concerning whether the intent of Act 1 was to impact charges for inter-family sexual activity.

Counselors agreed that a law that helps prosecute offenders is a good thing. Some felt that the significance of the Honolulu statistics was the information provided about the seven cases in which there was no blood relationship. Others held that the intent of Act 1 was to address non-family sexual activity, and that at least for the first year, the majority of Act 1 cases charged in Honolulu are inter-family.

The actual case breakdown for Honolulu was as follows:

RELATIONSHIP

Stranger	2
No Blood Relation (but not a stranger)	5 (3 of which could not have been charged prior to Act 1)
TOTAL UNRELATED CASES	7

Natural Father	2
Stepfather	2
<u>Grandfather</u>	<u>2</u>
TOTAL RELATED CASES	6
Cousin	2 (1 of which could not have been charged prior to Act 1)
<u>Mother's Boyfriend</u>	<u>1</u>
TOTAL MIXED CASES	3

The Honolulu statistics included a breakdown of the age of the adults charged under Act 1.

<u>AGE</u>		
19	0	
20-25	2	Both of which could not have been charged prior to Act 1
26-30	2	
31-35	2	1 of which could not have been charged prior to Act 1
36-40	3	1 of which could not have been charged prior to Act 1
41-45	3	
46-50	0	
51-55	2	
56-60	0	
60+	2	

**HAWAII, MAUI AND
KAUAI COUNTY
STATISTICS**

Hawaii, Maui and Kauai Counties are submitting their case statistics directly to the Legislature as provided by Act 1. The law enforcement representatives from those counties did not have comprehensive statistics to present to the Task Force before the last meeting. However, the members were able to provide some information regarding cases with which they were familiar.

Hawaii County (Incomplete Statistics)

Four non-consensual cases have been charged under Act 1. Three of those cases could not have been charged prior to Act 1. The fourth case could have been charged prior to Act 1 because there was a family relationship between the adult and child.

<u>AGE</u>	
20	1
30	1
<u>50's</u>	<u>2</u>

TOTAL CASES 4

Maui County (Incomplete Statistics)

Two cases have been charged under Act 1. In both cases the child states that the sexual activity was consensual, but the law enforcement representative did not know if there was a familial relationship between the parties that would legally negate any "consent."

<u>AGE</u>	
20	1
<u>34</u>	<u>1</u>

TOTAL CASES 2

Kauai County (Incomplete Statistics)

Two cases have been charged under Act 1. Both were non-family cases. One case could have been charged prior to Act 1 due to the use of compulsion. However the law enforcement representative alleged that there was no strong compulsion, and therefore Act 1 would make this an easier case to prove.

In the second case the adult had allegedly started having sexual relations with the child when she was 13, and continued to the current time when the child is 14. The official stated that while charges could have been brought prior to Act 1 for the alleged acts that took place when the child was 13, Act 1 also permits charges for the sexual activity that allegedly occurred after the child turned 14.

<u>AGE</u>	
20-25	1
<u>36-40</u>	<u>1</u>

TOTAL CASES 2

**TASK FORCE FINDINGS
BASED ON THE**

Based on this discussion of the statistics, the Task Force made an additional finding that prosecutors consider Act 1

**BASED ON THE
STATISTICS**

a useful tool in the following ways:

- It raises the level of charge for non-consensual sexual assault cases for 14 and 15 year olds; and
 - It is easier to prove non-consensual sexual assault of 14 and 15 year olds. This applies to both family related and non-family related non-consensual relationships.
-

Chapter 7

AGE OF CONSENT TASK FORCE FINDINGS AND RECOMMENDATIONS

TASK FORCE FINDINGS The Task Force is providing the Legislature with a number of findings and recommendations.

The Findings address two matters:

1. The undisputed impacts of Act One; and
2. The problems raised by the lack of local data on the matter of adult/teen sexual relations.

The Recommendations are actions the majority of the Task Force encourage the Legislature to take prior to the sunset of Act One.

FINDING ONE

ACT ONE BRINGS HAWAII INTO CONFORMANCE WITH THE MAJORITY OF STATES REGARDING THE AGE ADULTS MAY LEGALLY HAVE SEXUAL RELATIONS WITH A CHILD.

Prior to Act One, Hawaii was the only state in the United States that did not criminalize sexual penetration with 14 and 15 year olds.

One of the impacts of Act One is to bring Hawaii's criminal code and age of consent into conformity with the majority of states in regards to the age adults may legally engage in sexual relations with a child. Currently:

- Thirty-one states (including Hawaii) and the District of Columbia prohibit all or some sexual penetration with children under age 16;

- Nine states prohibit some sexual penetration with children under age 17; and
- Eleven states prohibit some sexual penetration with children under age 18.

FINDING TWO

ACT ONE BRINGS HAWAII INTO CONFORMANCE WITH THE MAJORITY OF STATES REGARDING THE “AGE GAP.”

Another impact of Act One is to bring Hawaii’s criminal code and age of consent into conformity with the majority of the nation, which does not criminalize consensual sexual relations between teens (“age gap,” with the exception of 19-year olds and 14-year olds).¹⁹ Currently:

- Thirty-six states (including Hawaii) and the District of Columbia do not criminalize teen/teen sexual relations. The age of consent statutes only prohibit sexual relations between a child and a person a minimum number of years older (the “age gap”); and
- Fifteen states do not have an age gap in their age of consent statutes.

FINDING THREE

THE TASK FORCE DID NOT FIND A “BEST PRACTICES” MODEL WHICH IT COULD RECOMMEND TO THE LEGISLATURE FOR HAWAII TO FOLLOW.

The Task Force did not reach consensus on a “Best Practices” model that could be adopted by Hawaii.

The group looked at the comprehensive system implemented by the state of California when it raised the age of consent. The Task Force determined that the differences in ethnicity and the motivation behind raising the age of consent (California was attempting to lower the highest teen pregnancy rate in the nation) meant the model may not apply locally.

¹⁹ Again, Act 1 prohibits a 19-year old from having sexual contact or penetration with a 14-year old. Other states may also criminalize consensual sexual contact by a 19-year old as well. However, as 19-year olds are legally adults, this Report does not include them in the “teen/teen” category.

The Task Force also looked to other groups, such as prosecutors and social service providers, but did not find “best practices” that it could recommend to the Legislature.

The inability to find a best practices model was partly due to the utter lack of data in Hawaii regarding the scope of adult/minor sexual relations. Best practices are driven by attempts to resolve certain problems. For example, California was motivated to raise the age of consent due to high teen pregnancy rates.

Without local data, the Task Force could not identify the scope and source of adult/teen sexual relations. Consequently the group was unable to reach consensus on the issue of best practices regarding adult/teen sexual relations.

FINDING FOUR

There is no formal, scientifically valid, systematic information collected on the age of teens’ sexual partners, (teen or adult partners) in the State of Hawaii.

FINDING FIVE

Without baseline data, the Task Force finds it difficult to make a comprehensive determination of effectiveness and impact of the change in law. It was found to be an effective tool for law enforcement.

FINDING SIX

Act 1 raises the level of charge for non-consensual sexual assault cases for 14 and 15 year olds.

FINDING SEVEN

Act 1 makes it easier to prove non-consensual sexual assault of 14 and 15 year olds. This applies to both family related and non-family related non-consensual relationships.

FINDING EIGHT There is confusion on the mandatory reporting requirements of Chapter 350 HRS.

FINDING NINE Inclusion of the teen perspective when making policy decisions regarding the age of consent is valuable and useful.

FINDING TEN Inclusion of the teens’ parents’ perspective when making policy decisions regarding the age of consent is valuable and useful.

FINDING ELEVEN Laws specifying the legal age minors may consent to sexual intercourse with adults, and the enforcement of those laws on perpetrators, are not sufficient to significantly reduce the incidence of sexual exploitation of youths by adults. Educating youths and the general community of the possibly serious consequences of consensual sexual relationships between minors and adults is also necessary.

FINDING TWELVE In the work of the Task Force, a persistent problem with defining the age of consent is whether a person looks at “the problem” as adult sexual exploitation of minors or whether it is identified as a prohibition of adult sexual conduct with minors.

**TASK FORCE
RECOMMENDATIONS**

The majority of the Task Force members agreed with the following statements. The Age of Consent Task Force recommends that the Legislature take the following actions prior to the sunset of Act 1 on June 30, 2003.

**RECOMMENDATION
ONE**

Require the Department of Education and the Department of Health to add a question regarding age of partner to their Youth Risk Behavior Survey.

**RECOMMENDATION
TWO**

Require that the Department of Health and the Department of Human Services track age of both parents in their review of infant mortality.

**RECOMMENDATION
THREE**

Request that the University of Hawaii include age of both parents in their Kids Count survey.

**RECOMMENDATION
FOUR**

Legislature should appropriate monies to provide additional education regarding effects of adult sexual conduct with minors.

**RECOMMENDATION
FIVE**

Service providers should be reminded of their statutory obligation to report illegal sexual conduct between adults and minors.

RECOMMENDATION SIX

Service providers should collect data on the age of adult partners.

**RECOMMENDATION
SEVEN**

The majority of the Task Force recommends removing the Act 1 sunset provision to make

permanent the criminalization of sexual conduct with 14 and 15 year olds for partners who are more than five (5) years older.

However, the Task Force recognizes that a substantial minority of the members prefer that the law be continued for at least one (1) year to enable the mechanism to collect the data (as recommended by the Task Force) to be implemented and fully realized.

Appendix A

ACT 1 (HOUSE BILL 236)

A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 707-730, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(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]~~ engages in sexual penetration with another person who is less than fourteen years old; or

(c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; 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.

~~[provided this paragraph]~~ Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under

chapter 453, 455, or 460, from performing any act within their respective practices."

SECTION 2. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(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;

~~[(e)]~~ (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; ~~[or~~

~~-(d)]~~ (e) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes ~~[such]~~ the person to have sexual contact with the actor; or

~~[(e)]~~ (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another

person to have sexual contact with the actor[†

~~provided that paragraphs].~~ Paragraphs (b), (c), [and] (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."

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. The prosecuting attorney of each county shall maintain a record of all cases received and prosecuted under sections 707-730(1) and 707-732(1), Hawaii Revised Statutes, between the effective date of this Act and November 30, 2002. The department of the prosecuting attorney of the city and county of Honolulu shall submit its statistics to the department of the attorney general no later than December 6, 2002, for the purposes of section 6 of this Act. A report from the prosecuting attorney of each county, containing a record of the above statistics, shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.

SECTION 5. The attorney general shall convene a task force to engage in a comprehensive review of the effectiveness and impact of this Act, based partly on data provided by the department of the prosecuting attorney of the city and county of Honolulu. The attorney general shall request the Coalition for the Prevention of Sex Assault to assist in the development and work of the task force. In addition to its review of this Act, the task force shall also review differing viewpoints concerning the age of consent for consensual sex conduct, particularly as it relates to minors in sexual relationships with adult partners.

Findings should provide the legislature with factual information, the national experience, and "best practices" for the purpose of assisting the legislature in developing social policy on the issue of "age of consent", which shall specifically include but is not limited to:

- (1) A compilation of relevant state statutes;
- (2) A compilation of sentencing practices in other jurisdictions;

(3) An evaluation of statutes and sentencing practices and their impacts on adolescents; and

(4) Hawaii data on incidents of adolescent sexual activity.

The composition of the task force shall be as follows, but not limited to:

(1) Each county chief of police, or designate;

(2) Each county prosecutor, or designate;

(3) A representative from the judiciary;

(4) A department of public safety representative;

(5) A department of health representative;

(6) A Sex Abuse Treatment Center representative;

(7) A Sex Assault Coalition representative;

(8) A Catholic Charities-Child Sex Abuse Treatment Program representative;

(9) A Children's Advocacy Center representative;

(10) An office of youth services representative;

(11) An immigrant service provider representative;

(12) The chair of the house committee on judiciary and Hawaiian affairs, or designate;

(13) The chair of the senate committee on judiciary, or designate;

(14) A Hawaii Family Forum
representative;

(15) A Sisters Offering Support
representative;

(16) A League of Women Voters
representative;

(17) A Hawaii state commission on the
status of women representative; and

(18) A military community
representative.

The task force shall report its findings and
recommendations to the legislature no later than twenty
days before the convening of the regular session of 2003.

SECTION 6. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and
shall be repealed on June 30, 2003; provided that sections
707-730(1) and 707-732(1), Hawaii Revised Statutes, are
reenacted in the form in which they read on the day before
the approval of this Act.

Appendix B

DETAILED HISTORY OF HAWAII'S AGE OF CONSENT LAW

STATUS IN 1869

Between 1869 and 1912 the law prohibited males from having sexual contact with a girl under 10 or sexual intercourse with a girl under 14.

A. 1848 - 1925

In 1848 the House of Nobles and Representatives of the Hawaiian Islands passed “An Act to Establish the Penal Code of the Hawaiian Islands.”²⁰ Chapter XI stated that “whoever *ravishes or carnally abuses and knows* any female child under the age of 10 years” shall be punished by death or life at hard labor. This Act essentially stated that a girl under the age of 10 could not consent to sexual contact.

In 1869 the Penal Code was amended to also prohibit having “*sexual or carnal intercourse* with any female of this Kingdom under the age of 14 years.” The punishment for sexual contact with a girl under 10 remained the same. The punishment for sexual intercourse with a girl under 14 was hard labor for three to 18 months.

STATUS IN 1925

Between 1925 and 1973 the law prohibited males from having sexual contact with a girl under 12 or sexual intercourse with a girl under 16.

In 1909 the age of consent for sexual contact was raised from 10 to 12. In 1913 the age of consent for sexual intercourse was raised from 14 to 15. In 1925 the age of consent for sexual intercourse was again raised from 15 to 16.

STATUS IN 1974

Between 1974 and 1985 the law prohibited males from having:

B. 1974 – 1985

In 1974, as part of an overhaul of the Penal Code, the Legislature changed the age of consent laws to create a category for misdemeanor offense, HRS 707-737 Sexual

²⁰ The Researcher was unable to determine the status of the age of consent prior to 1848. However, it was clear from the complexity of the 1848 Penal Code that most of the laws existed prior to that date.

(3) Sexual intercourse with a female less than 14 years old AND recklessly inflicting serious bodily injury upon the female; or

(4) Sexual contact with a girl who is under 16 years old and at least 14 years old and at least four years younger than him.

Abuse in the Second Degree. The misdemeanor category prohibited:

- Sexual contact
- With a girl between 14 and 16 years of age,
- When the actor is at least four years older.

The Legislature also limited felonious acts to ones where:

- The actor had sexual intercourse AND
- Inflicted serious bodily injury
- Upon a girl under 14.²¹

HRS 707-736 Sexual Abuse in the First Degree (Class C Felony).

STATUS IN 1986

Between 1986 and 2001 the law prohibited any person from sexually penetrating or having sexual contact with any child below the age of 14.

C. 1986 - 2000

In 1986 the Legislature repealed all the existing sex crimes and enacted the statutory versions of Sexual Assault that remained up to Act 1. The 1986 revisions:

- Raised the penalty for sexual contact from a misdemeanor to a felony and eliminated the gap group requirement for the misdemeanor offense. HRS 707-732 Sexual Assault in the Third Degree;
- Lowered the age of consent for both intercourse and sexual contact to 14 and eliminated the element of reckless infliction of serious bodily injury. HRS 707-730 Sexual Assault in the First Degree;
- Made the law gender neutral, so that sexual contact and intercourse with boys, as well as girls, below a certain age was prohibited; and
- Defined sexual contact and sexual penetration.

²¹ The Conference Committee stated that it was raising the age of consent from 12 to 14 despite the “fact that puberty comes earlier in today’s youth, the most important consideration is maturity rather than chronological age.” There was no statement explaining the additional element of recklessly inflicting serious bodily injury.

These definitions have remained in effect up to the present time.

D. 2001 - Present

STATUS IN 2001 – PRESENT

The law prohibits any person from having:

- (3) Sexual contact or sexual penetration with a child under age 14; or**
- (4) Sexual contact or sexual penetration with a child between the ages of 14 and 16 IF the actor is 5 or more years older than the child.**

In 2001 the Legislature enacted Act 1 over the Governor’s veto. Act 1 revised the penal code to raise the age of consent and to include an “age gap” requirement between the actor and the child. Act 1 prohibits the:

- Knowing sexual penetration of or sexual contact with a person less than 14 years old, and
- Knowing “sexual penetration of or sexual contact with a person who is at least fourteen years old but less than sixteen years old; provided that the [actor] is not less than five years older than the [child].”

Act 1 did not change the penalty provisions. Both types of prohibited acts, sexual contact and sexual penetration, remain felony offenses.

Appendix C

A CHART PROVIDING AN ALPHABETICAL COMPARISON OF THE AGE OF CONSENT IN THE 50 STATES AND THE DISTRICT OF COLUMBIA

LEGEND

≥ 18 Actor is 18 or older.

> 18 Actor is over 18 years of age.

≤ 16 Child is 16 or younger

< 16 Child is younger than 16 years of age.

12	13	14	15	16	17
Actor ≥ 4 yrs.					
Actor ≥ 18					

- In the first state, a person 4 or more years older than the child is prohibited from having intercourse with than any child younger than 15.
- In the second state, a person 18 or older is prohibited from having sexual intercourse with a child younger than 17.

All violations are felonies,
unless otherwise noted.

Statutes Prohibit Sex With Child At or Below Listed Age

	12	13	14	15	16	17	
AL	Actor \geq 16 & 2 yrs. older						
AK	Actor > 16 or 2 yrs. older	Actor \geq 16 & 3 yrs. older					
AZ	Actor \geq 18			Actor \geq 18 (lesser felony)			
AR	Actor \geq 3 yrs. older		Actor \geq 20				
CA	Actor's age unspecified		Actor \geq 21		Actor \geq 18 & 3 yrs. older (misdemeanor)		
CO	Actor \geq 4 yrs. older			Actor \geq 10 yrs. older (misdemeanor)			
CT	Actor > 2 yrs. older	Actor > 2 yrs. older (lesser felony)					
DE	Actor > 4 yrs. older				Actor \geq 30		
DC	Actor \geq 4 yrs. older						
FL	Actor's age unspecified				Actor \geq 24		
GA	Actor's age unspecified (felony) Actor \leq 3 yrs. older (misdemeanor)						
HI	Actor's age unspecified		Actor \geq 5 yrs. older (Sunsets 6/30/03)				
ID	Actor \geq 18				Actor \geq 5 yrs. older		
IL	Actor \geq 17 (f) Actor < 17 (m)	Actor > 5 yrs. older (felony) or Actor < 17 or < 5 yrs. older (misdemeanor)					
IN	Actor \geq 18						
IA	Actor's age unspecified		Actor \geq 4 yrs. older				
KS	Actor \geq 19 or \geq 4 yrs. older (greater felony) Actor < 19 or < 4 yrs. older (lesser felony)						
KY	Age unspecified & Child < 12 or Actor \geq 18 & Child < 14		Actor \geq 21				
LA	Actor's age unspecified	Actor \geq 17 & Child 12-15; Actor \geq 19 & Child 12-16 (f) or Actor 17-18 & Child 15-16 (m)					
ME	Actor's age unspecified		Actor \geq 5 yrs. older				
MD	Actor \geq 4 yrs. older		Actor \geq 21 (felony) or Actor \geq 4 yrs. older (misd.)				

Appendix C: A Chart Providing an Alphabetical Comparison of the Age of Consent in the 50 States and the District of Columbia

	12	13	14	15	16	17
MA	Actor's age unspecified				A's age ?; Child is "chaste"	
MI	Actor's age unspecified	Actor's age unspecified (lesser felony)				
MN	Actor \geq 3 yrs. older	Actor > 2 yrs. older (lesser felony)				
MS	Actor > 2 yrs. older		Actor \geq 17 & \geq 3 yrs. older			
MO	Actor's age unspecified		Actor \geq 21			
MT	Actor \geq 3 yrs. older (greater felony) or Actor's age unspecified (lesser felony)					
NE	Actor \geq 19				Actor > 18 (misdemeanor)	
NV	Actor \geq 21 (felony) or Actor \geq 18 (misdemeanor)					
NH	Actor's age unspecified					
NJ	Actor \geq 4 yrs. older					
NM	Actor's age unspecified	Actor \geq 18 & \geq 4 yrs. Older				
NY	Actor \geq 18			Actor \geq 21		
NC	Actor \geq 4 yrs. older	Actor \geq 6 yrs. older (greater felony) or Actor 4-6 yrs. older (lesser felony)				
ND	Actor \geq 18			Actor \geq 22		
OH	Actor's age unspecified	Actor \geq 18 & \geq 4 yrs. older (f) or Actor \geq 18 & < 4 yrs. older (m)				
OK	Actor any age		Actor > 18			
OR	Actor's age unspecified				Actor \geq 18 (misdemeanor)	
PA	Actor's age unspecified	Actor \geq 4 yrs. older				
RI	Actor's age unspecified		Actor > 18			
SC	Actor's age unspecified			Actor > 14		
SD	Actor \geq 3 yrs. older	Actor \geq 16 & \geq 3 yrs. older (f) or Actor \geq 16 & < 3 yrs. older (m)				
TN	Actor's age unspecified	Actor \geq 4 yrs. Older				
TX	Actor's age unspecified		Actor > 3 yrs. Older			

Appendix C: A Chart Providing an Alphabetical Comparison of the Age of Consent in the 50 States and
the District of Columbia

	12	13	14	15	16	17
UT	Actor's age unspecified		Actor \geq 4 yrs. older (f) or Actor < 4 yrs. older (m)		Actor \geq 10 yrs. older	
VT	Actor's age unspecified					
VA	Actor's age unspecified	Actor \geq 18 or \geq 3 yrs. older (f) or Actor < 3 yrs. older (m)		Actor \geq 18 (misdemeanor)		
WA	Actor \geq 4 yrs. older					
WV	Actor \geq 16 & \geq 4 yrs. older					
WI	Actor's age unspecified (felony)				Actor's age unspecified (m)	
WY	Actor \geq 4 yrs. older					

Appendix D

A CHART PROVIDING A COMPARISON OF THE STATUTORY SENTENCES FOR ADULTS VIOLATING THE AGE OF CONSENT IN THE 50 STATES AND THE DISTRICT OF COLUMBIA

(Sexual Penetrations Violations Only)

ORGANIZED ALPHABETICALLY

Legend	
≤ 20	Sentence is less than or equal to 20 years.
$\leq 5-20$	Sentence less than or equal to 5 years OR less than or equal to 20 years. The longer sentence is usually imposed when there is a wider age gap between child and actor.
2-20	Minimum statutory sentence is 2 years, maximum is 20.
≥ 20	Mississippi is the only state with just a statutory minimum sentence, which is greater than or equal to 20 years.

Appendix D: A Chart Providing an Comparison of the Statutory Sentences for Adults Violating the Age of Consent in the 50 States and the District of Columbia (Sexual Penetration Only): Organized Alphabetically

	Lower Age Child (Usually 12-14)	Child &/or Actor in Age Gap	Upper Age Child (Usually 16-17)
AK	≤ 30	≤ 1-10	
AL	10-99	≤ 2-20	
AZ	20-life	≤ 20	0.5-1.5
CA	3-8	≤ 1-4	≤ 1
CO	2-6	2-6	0.5-1.5
CT	2-20	≤ 0.9-10	≤ 1
DE	2-life	2-20	
DC	≤ life	≤ 10	
FL	≤ 30	≤ 15	
GA	10-life/death	≤ 1-20	≤ 1
HI	≤ 20	≤ 20	
IA	≤ 25	≤ 5-10	
ID	≤ 15-life	≤ 15	
IL	6-30	3-7	≤ 1
IN	6-10	2-4	≤ 1.5
KY	20-50	1-10	
LA	≤ life or death	≤ 10	≤ 0.5
MA	≤ life	≤ life	≤ 3
MD	< 20	≤ 10	< 1
ME	< 40	≤ 5-10	

- States with the longest sentences usually have only one statute that punishes persons having sexual penetration with any child – from a very young child up through children in the age gap group. Hawaii falls into this category.
- States with the shortest sentences usually have separate statutes with separate sentencing for persons having sexual penetration with very young children.

Appendix D: A Chart Providing an Comparison of the Statutory Sentences for Adults Violating the Age of Consent in the 50 States and the District of Columbia (Sexual Penetration Only): Organized Alphabetically

	Lower Age Child (Usually 12-14)	Child &/or Actor in Age Gap	Upper Age Child (Usually 16-17)
MI	≤ life	≤ 2-15	≤ 2
MN	≤ 25-30	≤ 5-15	
MO	5-life	≤ 7	
MS	≥ 20	≤ 5-30	Judicial discretion
MT	2-life	≤ 2-life	
ND	≤ 20	≤ 5-10	≤ 1
NE	1-50	≤ 0-5	≤ 1
NH	≤ 15	≤ 7	≤ 1
NJ	10-20	3-10	
NM	≤ 18	≤ 1.5	
NY	≤ 25	≤ 4-7	≤ 1
NV	≤ 1-5	≤ 1-5	≤ 1
OH	4-25	≤ 0.5-5	≤ 0.5-1.5
OK	≤ life or death	1-15	
OR	≤ 20	≤ 5-10	≤ 30 days-1
PA	≤ 8	≤ 8	
RI	20-life	≤ 5	
SC	≤ 30	≤ 20	
SD	10-life	≤ 15	≤ 1
TN	8-30	1-6	
TX	2-20	2-20	

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	Lower Age Child (Usually 12-14)	Child &/or Actor in Age Gap	Upper Age Child (Usually 16-17)
UT	6-life	≤ 5	≤ 0.5
VA	5-life	≤ 1-10	Fine only
VT	≤ life	≤ 20	
WI	≤ 60	≤ 30	≤ 0.75
WV	15-35	≤ 1-5	
WY	≤ 15	≤ 15	

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Appendix E

A CHART PROVIDING A COMPARISON OF THE STATUTORY SENTENCES FOR ADULTS VIOLATING THE AGE OF CONSENT IN THE 50 STATES AND THE DISTRICT OF COLUMBIA

(Sexual Penetrations Violations Only)

ORGANIZED BY LENGTH OF SENTENCE

Legend	
≤ 20	Sentence is less than or equal to 20 years.
$\leq 5-20$	Sentence less than or equal to 5 years OR less than or equal to 20 years. The longer sentence is usually imposed when there is a wider age gap between child and actor.
2-21	Minimum statutory sentence is 2 years, maximum is 20.
≥ 20	Mississippi is the only state with just a statutory minimum sentence, which is greater than or equal to 20 years.

Appendix E: A Chart Providing an Comparison of the Statutory Sentences for Adults Violating the Age of Consent in the 50 States and the District of Columbia (Sexual Penetration Only)
Organized by Length of Sentence

	Lower Age Child (Usually 12-14)		Child &/or Actor in Age Gap		Upper Age Child (Usually 16-17)
NV	≤ 1-5	NE	≤ 0-5		
NE	1-5	OH	≤0.5-5		
NE	1-50	CT	≤ 0.9-10		
CO	2-6	CA	≤ 1-4		
CT	2-20	WV	≤ 1-5		
TX	2-20	NV	≤ 1-5		
DE	2-life	TN	≤ 1-6		
MT	2-life	VA	≤ 1-10		
CA	3-8	AK	≤ 1-10		
OH	4-25	KY	1-10		
MO	5-life	OK	1-15		
VA	5-life	GA	≤ 1-20		
IN	6-10	MA	1-life		
IL	6-30	NM	≤ 1.5		
UT	6-life	IN	< 2-4		
PA	≤ 8	MI	≤ 2-15		
TN	8-30	AL	≤ 2-20		
NJ	10-20	CO	2-6		
AL	10-99	DE	2-20		
SD	10-life	TX	2-20		
GA	10-life/death	MT	≤ 2-life		

- States with the longest sentences usually have only one statute that punishes persons having sexual penetration with any child – from a very young child up through children in the age gap group. Hawaii falls into this category.
- States with the shortest sentences usually have separate statutes with separate sentencing for persons having sexual penetration with very young children.

Appendix E: A Chart Providing an Comparison of the Statutory Sentences for Adults Violating the Age of Consent in the 50 States and the District of Columbia (Sexual Penetration Only)
Organized by Length of Sentence

	Lower Age Child (Usually 12-14)		Child &/or Actor in Age Gap		Upper Age Child (Usually 16-17)
NH	≤ 15	IL	3-7		
WY	≤ 15	NJ	3-10		
WV	15-35	NY	≤ 4-7		
ID	≤ 15-life	UT	≤ 5		
NM	≤ 18	RI	≤ 5		
MD	< 20	IA	≤ 5-10	VA	Fine only
HI	≤ 20	ME	≤ 5-10	MS	Judicial discretion
OR	≤ 20	ND	≤ 5-10	OR	≤ 30 days-1
ND	≤ 20	OR	≤ 5-10	WI	≤ 0.75
KN	20-50	MN	≤ 5-15	LA	≤ 0.5
RI	20-life	MS	≤ 5-30	UT	≤ 0.5
AZ	20-life	MO	≤ 7	OH	≤ 0.5-1.5
MS	≥ 20	NH	≤ 7	AZ	0.5-1.5
IA	≤ 25	PA	≤ 8	CO	0.5-1.5
NY	≤ 25	DC	≤ 10	CT	≤ 1
MN	25-30	LA	≤ 10	IL	≤ 1
AK	≤ 30	MD	≤ 10	CA	≤ 1
FL	≤ 30	ID	≤ 15	GA	≤ 1
SC	≤ 30	SD	≤ 15	MD	≤ 1
ME	< 40	FL	≤ 15	NH	≤ 1
WI	≤ 60	WY	≤ 15	NE	≤ 1

- States with the longest sentences usually have only one statute that punishes persons having sexual penetration with any child – from a very young child up through children in the age gap group. Hawaii falls into this category.
- States with the shortest sentences usually have separate statutes with separate sentencing for persons having sexual penetration with very young children.

Appendix E: A Chart Providing an Comparison of the Statutory Sentences for Adults Violating the Age of Consent in the 50 States and the District of Columbia (Sexual Penetration Only)
 Organized by Length of Sentence

	Lower Age Child (Usually 12-14)		Child &/or Actor in Age Gap		Upper Age Child (Usually 16-17)
DC	≤ life	SC	≤ 20	ND	≤ 1
MA	≤ life	AZ	≤ 20	NV	≤ 1
MI	≤ life	HI	≤ 20	SD	≤ 1
VT	≤ life	VT	≤ 20	NY	≤ 1
LA	≤ life or death	WS	≤ 30	IN	≤ 1.5
OK	≤ life or death	MA	≤ life	MA	≤ 3

- States with the longest sentences usually have only one statute that punishes persons having sexual penetration with any child – from a very young child up through children in the age gap group. Hawaii falls into this category.
- States with the shortest sentences usually have separate statutes with separate sentencing for persons having sexual penetration with very young children.

Appendix F

A TABLE PROVIDING THE STATEWIDE NUMBERS OF ADOLESCENTS AND ADULTS AFFECTED BY ACT ONE

**DEMOGRAPHIC INFORMATION ON HAWAII'S ADOLESCENTS AND
AGE GROUP OF POTENTIAL ADULT SEXUAL PARTNERS ²²**

	STATE	% OF STATE	OAHU	% OF OAHU	HAWAII	% OF HAWAII	MAUI	% OF MAUI	KAUAI	% OF KAUAI
TOTAL	1,211,537		876,156		148,677		128,094		58,463	
Persons under 5 years old	78,163	6.5%	56,849	6.5%	9,130	6.1%	8,579	6.7%	3,605	6.2%
Persons 5-9 years old	84,980	7.0%	60,425	6.9%	11,033	7.4%	9,079	7.1%	4,443	7.6%
Persons 10-14 years old	83,106	6.9%	57,574	6.6%	11,568	7.8%	9,336	7.3%	4,625	7.9%
Persons 15-19 years old	81,002	6.7%	57,156	6.5%	11,089	7.5%	8,658	6.8%	4,074	7%
Male persons over 18	456,446	37.7%	33,139	38%	54,271	36.5%	47,728	37.3%	21,235	36.3%
Female persons over 18	459,324	37.9%	334,259	38.2%	55,554	37.4%	47,655	37.2%	21,785	37.3%
Persons 20-24 years old	83,401	6.9%	65,376	7.5%	8,232	5.5%	6,970	5.4%	2,829	4.8%
Persons 25-34 years old	171,159	14.1%	130,624	14.9%	16,050	10.8%	17,723	13.8%	6,753	11.6%
Total Males		50.2%		50.3%		50.1%		50.2%		50%
Total Females		49.8%		49.7%		49.9%		49.8%		50%

²² All data from 2000 Census

- States with the longest sentences usually have only one statute that punishes persons having sexual penetration with any child – from a very young child up through children in the age gap group. Hawaii falls into this category.
- States with the shortest sentences usually have separate statutes with separate sentencing for persons having sexual penetration with very young children.

LIST OF AGE OF CONSENT TASK FORCE MEMBERS

NAME	COMPANY
Annelle Amaral	Hawaii Coalition Against Sexual Assault
Susan Arnett	Office of the Public Defender
Det. Randall Ishii	Hawaii County Police Department
Gwendolyn Costello	HQ USPACOM
Dr. Barry Coyne	Department of Public Safety
Lt. Glenn Cuomo	Maui County Police Department
Russell K. Goo	Kauai Office of the Prosecuting Attorney
Craig A. DeCosta	Kauai Office of the Prosecuting Attorney
Dee Helber	DOE-Student Support Services
Senator Brian Kanno	Senate Committee on Judiciary
Wendell Kikuchi	Family Court of the First Circuit
Jay T. Kimura, Esq.	Hawaii County Office of the Prosecuting Attorney
Marlene Lee, B.S.N., R.N.	DOE-Child Health Services Section
Judy Lind	Children's Justice Centers, the Judiciary
Bert Matsuoka	Office of Youth Services
Mark McConnell, Esq.	Department of the Attorney General
James Miura, Esq.	House Committee on Judiciary & Hawaiian Affairs
Thalia Murphy	Department of the Prosecuting Attorney
Jeanne Ohta	Hawaii State Commission on the Status of Women
Lt. Dean A. Piago	Kauai County Police Department
Adriana Ramelli, ACSW	The Sex Abuse Treatment Center
Kelly Rosati	Hawaii Family Forum
Ken Sentner	Catholic Charities Family Services
Det. Eric Shibuya	Kauai County Police Department
Dr. Tin Myaing Thein	Pacific Gateway Center
Rose Marie Vergara	DOH-Child Health Services Section
B. RESEARCHER AND REPORT WRITER:	
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