
A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

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

1 SECTION 1. The legislature finds that mentally disabled
2 persons need additional protection from sexual predators. Among
3 adults who are developmentally disabled, as many as eighty-three
4 per cent of the females and thirty-two per cent of the males are
5 victims of sexual assault. Further, anywhere from fifteen
6 thousand to nineteen thousand people with developmental
7 disabilities are sexually assaulted each year in the United
8 States. Forty per cent of people with developmental
9 disabilities who are victims of sexual violence will experience
10 ten or more abusive incidents.

11 The legislature further finds that mentally disabled
12 persons and developmentally disabled persons have limited, if
13 any capacity to give knowing and willing consent to sexual acts.
14 This inability to consent closely parallels the inability of
15 certain minors and prison inmates to consent.

16 In *State v. Buch*, 83 Haw. 308, 926 P.2d 599 (1996), the
17 Hawaii supreme court, citing the Michigan supreme court in



1 *People v. Cash*, 419 Mich. 230, 351 N.W.2d 822 (1984), stated
2 that:

3 "It is well-established that the Legislature may, pursuant
4 to its police powers, define criminal offenses without requiring
5 proof of a specific criminal intent and so provide that the
6 perpetrator proceed at his [or her] own peril regardless of his
7 [or her] defense of ignorance or of an honest mistake of fact.
8 In the case of statutory rape, such legislation, in the nature
9 of 'strict liability' offenses, has been upheld as a matter of
10 public policy because of the need to protect children[.]"

11 Just as the legislature in the past extended protection
12 against sexual assault to minors under a certain age, the
13 legislature finds a similar need to extend protection to
14 mentally disabled persons who similarly lack the capacity to
15 consent to sexual acts.

16 The purpose of this Act is to amend the offenses of sexual
17 assault in the first and third degree perpetrated against a
18 person who is mentally defective to provide that a perpetrator
19 commits the offense if the perpetrator is negligent in not
20 knowing of the mental defect of the victim.



1 SECTION 2. Section 707-730, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of sexual assault in the
4 first degree if[+] the person:

- 5 (a) [~~The person knowingly~~] Knowingly subjects another
6 person to an act of sexual penetration by strong
7 compulsion;
- 8 (b) [~~The person knowingly~~] Knowingly engages in sexual
9 penetration with [~~another~~] a person who is less than
10 fourteen years old;
- 11 (c) [~~The person knowingly~~] Knowingly engages in sexual
12 penetration with a person who is at least
13 fourteen years old but less than sixteen years old;
14 provided that[+] the actor is:
 - 15 (i) [~~The person is not~~] No less than five years older
16 than the minor; and
 - 17 (ii) [~~The person is not~~] Not legally married to the
18 minor;
- 19 (d) [~~The person knowingly~~] Knowingly subjects to sexual
20 penetration [~~another~~] a person who is mentally



1 defective; provided that the actor is negligent in not
 2 knowing of the mental defect of the victim; or
 3 (e) ~~[The person knowingly]~~ Knowingly subjects to sexual
 4 penetration ~~[another]~~ a person who is mentally
 5 incapacitated or physically helpless as a result of
 6 the influence of a substance that the actor knowingly
 7 caused to be administered to the other person without
 8 the other person's consent.

9 Paragraphs (b) and (c) shall not be construed to prohibit
 10 practitioners licensed under chapter 453 or 455 from performing
 11 any act within their respective practices."

12 SECTION 3. Section 707-732, Hawaii Revised Statutes, is
 13 amended by amending subsection (1) to read as follows:

14 "(1) A person commits the offense of sexual assault in the
 15 third degree if~~[+]~~ the person:

16 (a) ~~[The person recklessly]~~ Recklessly subjects another
 17 person to an act of sexual penetration by compulsion;

18 (b) ~~[The person knowingly]~~ Knowingly subjects to sexual
 19 contact ~~[another]~~ a person who is less than
 20 fourteen years old or causes such a person to have
 21 sexual contact with the ~~[person;]~~ actor;



- 1 (c) [~~The person knowingly~~] Knowingly engages in sexual
2 contact with a person who is at least fourteen years
3 old but less than sixteen years old or causes [~~the~~
4 ~~minor~~] such a person to have sexual contact with the
5 [~~person,~~] actor; provided that[+] the actor is:
- 6 (i) [~~The person is not~~] No less than five years older
7 than the minor; and
- 8 (ii) [~~The person is not~~] Not legally married to the
9 minor;
- 10 (d) [~~The person knowingly~~] Knowingly subjects to sexual
11 contact [~~another~~] a person who is [~~mentally~~
12 ~~defective,~~] mentally incapacitated[~~7~~] or physically
13 helpless, or causes such a person to have sexual
14 contact with the actor;
- 15 (e) Knowingly subjects to sexual contact a person who is
16 mentally defective, or causes such a person to have
17 sexual contact with the actor; provided that the actor
18 is negligent in not knowing of the mental defect of
19 the victim;
- 20 [+e)] (f) [~~The person, while~~] While employed:
- 21 (i) In a state correctional facility;



- 1 (ii) By a private company providing services at a
- 2 correctional facility;
- 3 (iii) By a private company providing community-based
- 4 residential services to persons committed to the
- 5 director of public safety and having received
- 6 notice of this statute;
- 7 (iv) By a private correctional facility operating in
- 8 the State [~~of Hawaii~~]; or
- 9 (v) As a law enforcement officer as defined in
- 10 section [~~+~~]710-1000[~~+~~],
- 11 knowingly subjects to sexual contact an imprisoned
- 12 person, a person confined to a detention facility, a
- 13 person committed to the director of public safety, a
- 14 person residing in a private correctional facility
- 15 operating in the State [~~of Hawaii~~], or a person in
- 16 custody, or causes [~~the~~] such a person to have sexual
- 17 contact with the actor; or
- 18 [~~(f)~~] (g) [~~The person knowingly,~~] Knowingly, by strong
- 19 compulsion, has sexual contact with another person or
- 20 causes another person to have sexual contact with the
- 21 actor.



1 Paragraphs (b), (c), (d), [~~and~~] (e), and (f) shall not be
 2 construed to prohibit practitioners licensed under chapter 453
 3 or 455 from performing any act within their respective
 4 practices; provided [~~further~~] that paragraph [~~(e)-(v)~~] (f) (v)
 5 shall not be construed to prohibit a law enforcement officer
 6 from performing a lawful search pursuant to a warrant or an
 7 exception to the warrant clause."

8 SECTION 4. Section 846E-10, Hawaii Revised Statutes, is
 9 amended as follows:

10 1. By amending subsection (a) to read:

11 "(a) Tier 3 offenses. A covered offender whose covered
 12 offense is any of the following offenses shall register for life
 13 and, except as provided in subsection (e), may not petition the
 14 court, in a civil proceeding, for termination of registration
 15 requirements:

16 (1) Any offense set forth in section 707-730(1)(a), (b),
 17 (d), or (e) [~~]~~ ; 707-731(1)(a) or (b) [~~]~~ ;
 18 707-732(1)(a), (b), or [~~(f)]~~ (g) ; or 707-733.6;

19 (2) An offense set forth in section 707-720; provided that
 20 the offense involves kidnapping of a minor by someone
 21 other than a parent;



1 (3) An offense that is an attempt, criminal solicitation,
2 or criminal conspiracy to commit any of the offenses
3 in paragraph (1) or (2);

4 (4) Any criminal offense that is comparable to one of the
5 offenses in paragraph (1), (2), or (3); or

6 (5) Any federal, military, out-of-state, tribal, or
7 foreign offense that is comparable to one of the
8 offenses in paragraph (1), (2), or (3)."

9 2. By amending subsection (d) to read:

10 "(d) Tier 1 offenses. A covered offender who has
11 maintained a clean record for the previous ten years, excluding
12 any time the offender was in custody or civilly committed, and
13 who has substantially complied with the registration
14 requirements of this chapter for the previous ten years, or for
15 the portion of that ten years that this chapter has been
16 applicable, and who is not a repeat covered offender may
17 petition the court, in a civil proceeding, for termination of
18 registration requirements; provided that the covered offender's
19 most serious covered offense is one of the following:



- 1 (1) Any offense set forth in section 707-732(1) (d) [~~or~~],
2 (e), or (f); 707-733(1) (a) [~~τ~~]; 707-752 [~~τ~~]; 707-759 [~~τ~~];
3 711-1110.9 [~~τ~~]; 712-1203(1) [~~τ~~]; or 712-1209.1;
- 4 (2) An offense set forth in section 707-721 or 707-722;
5 provided that the offense involves unlawful
6 imprisonment of a minor by someone other than a
7 parent;
- 8 (3) An offense set forth in section 707-757 that includes
9 an intent to promote or facilitate the commission of
10 another covered offense as defined in section 846E-1;
- 11 (4) An offense that is an attempt, criminal solicitation,
12 or criminal conspiracy to commit any of the offenses
13 in paragraph (1), (2), or (3);
- 14 (5) Any criminal offense that is comparable to one of the
15 offenses in paragraph (1), (2), (3), or (4);
- 16 (6) Any federal, military, out-of-state, tribal, or
17 foreign offense that is comparable to one of the
18 offenses in paragraph (1), (2), (3), or (4); or
- 19 (7) Any other covered offense that is not specified in
20 subsection (a) or (c) or paragraph (1), (2), (3), (4),
21 (5), or (6)."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 7. This Act shall take effect upon its approval.



H.B. NO. 177
H.D. 1
S.D. 1
C.D. 1

Report Title:

Honolulu Prosecuting Attorney Package; Sexual Assault; Mentally Defective Persons; State of Mind

Description:

Amends the offenses of sexual assault in the first and third degree perpetrated against a person who is mentally defective to provide that a perpetrator commits the offense if the perpetrator is negligent in not knowing of the mental defect of the victim. (CD1)

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2021-3195 HB177 CD1 HMSO

