
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
14 acts. This inability to consent closely parallels the inability
15 of certain minors and prison inmates to consent.

16 In *State v. Buch*, 83 Haw. 308, 926 P2d. 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 proceeded at his [or her] own peril regardless of
7 his [or her] defense of ignorance or of an honest mistake of
8 fact. In the case of statutory rape, such legislation, in the
9 nature of 'strict liability' offenses, has been upheld as a
10 matter of public policy because of the need to protect
11 children[.]"

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

17 The purpose of this Act is to amend the offenses of sexual
18 assault in the first and third degree perpetrated against a
19 person who is mentally defective to provide that there is a
20 rebuttable presumption that the person assaulted was mentally
21 defective.



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 fourteen
13 years old but less than sixteen years old; provided
14 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 there shall be a rebuttable
 2 presumption that the victim was mentally defective; 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 fourteen
 20 years old or causes such a person to have sexual
 21 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[~~,~~] 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 there
18 shall be a rebuttable presumption that the victim was
19 mentally defective;
- 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 by amending subsection (a) to read as follows:

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

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

18 (2) An offense set forth in section 707-720; provided that
19 the offense involves kidnapping of a minor by someone
20 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 SECTION 5. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

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

14 SECTION 7. This Act shall take effect on July 1, 3021.



H.B. NO. 177 H.D. 1

Report Title:

Honolulu Prosecuting Attorney Package; Sexual Assault; Mentally Defective Persons; Rebuttable Presumption

Description:

Amends the offenses of sexual assault in the first and third degree perpetrated against a person who is mentally defective to provide that there is a rebuttable presumption that the person assaulted was mentally defective. Effective 7/1/3021. (HD1)

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