
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 there was an
2 incident in which a Honolulu police officer was indicted for the
3 offense of sexual assault in the third degree for knowingly
4 subjecting a teenage girl in custody to sexual contact. The
5 indictment was based on the interpretation that a person being
6 stopped by a police officer for a traffic infraction was in
7 "custody". However, the indictment was dismissed with prejudice
8 due to the court's determination that the term "custody" in the
9 Hawaii Revised Statutes did not include a traffic stop.

10 The purpose of this Act is to clarify that the offenses of
11 sexual assault in the second degree and sexual assault in the
12 third degree include, and explicitly prohibit, a law enforcement
13 officer from knowingly subjecting to sexual penetration or
14 sexual contact, a person who is being stopped by a law
15 enforcement officer or accompanied by a law enforcement officer
16 for official purposes, including during a traffic stop.



1 SECTION 2. Section 707-731, 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 second degree if[+] the person:

5 (a) [~~The person knowingly~~] Knowingly subjects another
6 person to an act of sexual penetration by compulsion;

7 (b) [~~The person knowingly~~] Knowingly subjects to sexual
8 penetration [~~another~~] a person who is mentally
9 incapacitated or physically helpless;

10 (c) [~~The person, while~~] While employed:

11 (i) In a state correctional facility;

12 (ii) By a private company providing services at a
13 correctional facility;

14 (iii) By a private company providing community-based
15 residential services to persons committed to the
16 director of public safety and having received
17 notice of this statute;

18 (iv) By a private correctional facility operating in
19 the State [~~of Hawaii~~]; or

20 (v) As a law enforcement officer as defined in
21 section 710-1000,



1 knowingly subjects to sexual penetration: an
2 imprisoned person[~~τ~~]; a person confined to a detention
3 facility[~~τ~~]; a person committed to the director of
4 public safety[~~τ~~]; a person residing in a private
5 correctional facility operating in the State [~~of~~
6 ~~Hawaii, or~~]; a person in custody; [~~provided that~~
7 ~~paragraph (b) and this paragraph shall not be~~
8 ~~construed to prohibit practitioners licensed under~~
9 ~~chapter 453 or 455 from performing any act within~~
10 ~~their respective practices; and further] a person who
11 is stopped by a law enforcement officer; or a person
12 who is being accompanied by a law enforcement officer
13 for official purposes; provided that this paragraph
14 shall not be construed to prohibit a law enforcement
15 officer from performing a lawful search pursuant to a
16 warrant or exception to the warrant clause; or
17 (d) [~~The person knowingly~~] Knowingly subjects to sexual
18 penetration a [~~minor~~] person who is at least sixteen
19 years old and the [~~person~~] actor is contemporaneously
20 acting in a professional capacity to instruct, advise,~~



1 or supervise [~~the minor;~~] such a person; provided
2 that[+] the actor is:

3 (i) [~~The person is not~~] No less than five years older
4 than the minor; and

5 (ii) [~~The person is not~~] Not legally married to the
6 minor.

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

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

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

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

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

20 (c) [~~The person knowingly~~] Knowingly engages in sexual
21 contact with a person who is at least fourteen years



- 1 old but less than sixteen years old or causes [~~the~~
2 ~~minor~~] such a person to have sexual contact with the
3 [~~person,~~] actor; provided that[+] the actor is:
- 4 (i) [~~The person is not~~] No less than five years older
5 than the minor; and
- 6 (ii) [~~The person is not~~] Not legally married to the
7 minor;
- 8 (d) [~~The person knowingly~~] Knowingly subjects to sexual
9 contact [~~another~~] a person who is mentally defective,
10 mentally incapacitated, or physically helpless, or
11 causes such a person to have sexual contact with the
12 actor;
- 13 (e) [~~The person, while~~] While employed:
- 14 (i) In a state correctional facility;
- 15 (ii) By a private company providing services at a
16 correctional facility;
- 17 (iii) By a private company providing community-based
18 residential services to persons committed to the
19 director of public safety and having received
20 notice of this statute;



- 1 (iv) By a private correctional facility operating in
2 the State [~~of Hawaii~~]; or
- 3 (v) As a law enforcement officer as defined in
4 section [~~+~~]710-1000[~~+~~],
5 knowingly subjects to sexual contact, or causes to
6 have sexual contact: an imprisoned person[~~+~~]; a person
7 confined to a detention facility[~~+~~]; a person
8 committed to the director of public safety[~~+~~]; a
9 person residing in a private correctional facility
10 operating in the State [~~of Hawaii, or~~]; a person in
11 custody[~~, or causes the person to have sexual contact~~
12 ~~with the actor~~]; a person who is stopped by a law
13 enforcement officer; or a person who is being
14 accompanied by a law enforcement officer for official
15 purposes; provided that this paragraph shall not be
16 construed to prohibit a law enforcement officer from
17 performing a lawful search pursuant to a warrant or an
18 exception to the warrant clause; or
- 19 (f) [~~The person knowingly,~~] Knowingly, by strong
20 compulsion, has sexual contact with another person or



1 causes another person to have sexual contact with the
2 actor.

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

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

14 SECTION 6. This Act shall take effect on July 1, 3021.



Report Title:

Sexual Assault; Offenses Against Persons Stopped By or
Accompanied By Law Enforcement Officers

Description:

Includes as offenses of sexual assault in the second degree and
sexual assault in the third degree, offenses against a person
who is stopped by a law enforcement officer and a person who is
accompanied by a law enforcement officer for official purposes.
Effective 07/01/3021. (HD2)

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not legislation or evidence of legislative intent.*

