

JAN 22 2021

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 upon 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 and third degree include, and
12 explicitly prohibit, a law enforcement officer from knowingly
13 subjecting to sexual penetration or sexual contact, a person who
14 is being stopped by a law enforcement officer or accompanied by
15 a law enforcement officer for official purposes, including
16 during a traffic stop.



S.B. NO. 197

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:

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

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

10 (c) The person, 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[~~7~~]; a person confined to a detention
3 facility[~~7~~]; a person committed to the director of
4 public safety[~~7~~]; a person residing in a private
5 correctional facility operating in the State of
6 Hawaii [~~7 or~~]; a person in custody; a person who is
7 stopped by a law enforcement officer; or a person who
8 is being accompanied by a law enforcement officer for
9 official purposes; [~~provided that paragraph (b) and~~
10 this paragraph shall not be construed to prohibit
11 practitioners licensed under chapter 453 or 455 from
12 performing any act within their respective practices,
13 and further] provided that this paragraph shall not be
14 construed to prohibit a law enforcement officer from
15 performing a lawful search pursuant to a warrant or
16 exception to the warrant clause; or

- 17 (d) The person knowingly subjects to sexual penetration a
18 minor who is at least sixteen years old and the person
19 is contemporaneously acting in a professional capacity
20 to instruct, advise, or supervise the minor; provided
21 that:



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

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

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

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

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

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

13 (b) The person knowingly subjects to sexual contact
14 another person who is less than fourteen years old or
15 causes such a person to have sexual contact with the
16 person;

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



- 1 (i) The person is not less than five years older than
2 the minor; and
- 3 (ii) The person is not legally married to the minor;
- 4 (d) The person knowingly subjects to sexual contact
5 another person who is mentally defective, mentally
6 incapacitated, or physically helpless, or causes such
7 a person to have sexual contact with the actor;
- 8 (e) The person, while employed:
- 9 (i) In a state correctional facility;
- 10 (ii) By a private company providing services at a
11 correctional facility;
- 12 (iii) By a private company providing community-based
13 residential services to persons committed to the
14 director of public safety and having received
15 notice of this statute;
- 16 (iv) By a private correctional facility operating in
17 the State of Hawaii; or
- 18 (v) As a law enforcement officer as defined in
19 section [†]710-1000 [†],
20 knowingly subjects to sexual contact, or causes to
21 have sexual contact: an imprisoned person[‡]; a person



1 confined to a detention facility~~[,]~~; a person
2 committed to the director of public safety~~[,]~~; a
3 person residing in a private correctional facility
4 operating in the State of Hawaii~~[, or]~~; a person in
5 custody~~[, or causes the person to have sexual contact~~
6 ~~with the actor]~~; a person who is stopped by a law
7 enforcement officer; or a person who is being
8 accompanied by a law enforcement officer for official
9 purposes; provided that this paragraph shall not be
10 construed to prohibit a law enforcement officer from
11 performing a lawful search pursuant to a warrant or an
12 exception to the warrant clause; or

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

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



S.B. NO. 197

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

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

7

INTRODUCED BY: _____

Kal Nhoak



S.B. NO. 197

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 and third degrees, 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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

