

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 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 Hawaii 308, 926 P2d. 599 (1996), the
17 Hawaii supreme court, citing the Michigan supreme court in



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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 children
11 [.]"

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. The purpose of this Act is to hold
17 perpetrators strictly liable for sexual assault against persons
18 who are mentally defective.

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



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1 "(1) A person commits the offense of sexual assault in the
2 first degree if:

3 (a) The person knowingly subjects another person to an act
4 of sexual penetration by strong compulsion;

5 (b) The person knowingly engages in sexual penetration
6 with another person who is less than fourteen years
7 old;

8 (c) The person knowingly engages in sexual penetration
9 with a person who is at least fourteen years old but
10 less than sixteen years old; provided that:

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

13 (ii) The person is not legally married to the minor;

14 (d) The person knowingly subjects to sexual penetration
15 another person who is mentally defective; provided
16 that proof that the person knew that the other person
17 was mentally defective shall not be required in any
18 prosecution for an offense under this subsection; or

19 (e) The person knowingly subjects to sexual penetration
20 another person who is mentally incapacitated or
21 physically helpless as a result of the influence of a



1 substance that the actor knowingly caused to be
2 administered to the other person without the other
3 person's consent.

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:



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- 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[~~7~~] or physically helpless, or causes
- 7 such a person to have sexual contact with the actor;
- 8 (e) The person knowingly subjects to sexual contact
- 9 another person who is mentally defective, or causes a
- 10 person who is mentally defective to have sexual
- 11 contact with the actor; provided that proof that the
- 12 person knew the other person was mentally defective
- 13 shall not be required in any prosecution for an
- 14 offense under this subsection;
- 15 [~~(e)~~] (f) The person, while employed:
- 16 (i) In a state correctional facility;
- 17 (ii) By a private company providing services at a
- 18 correctional facility;
- 19 (iii) By a private company providing community-based
- 20 residential services to persons committed to the



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1 director of public safety and having received
2 notice of this statute;

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

5 (v) As a law enforcement officer as defined in
6 section [~~+~~]710-1000[~~-~~],

7 knowingly subjects to sexual contact an imprisoned
8 person, a person confined to a detention facility, a
9 person committed to the director of public safety, a
10 person residing in a private correctional facility
11 operating in the State [~~of Hawaii~~], or a person in
12 custody, or causes the person to have sexual contact
13 with the actor; or

14 [~~+~~] (g) The person knowingly, by strong compulsion, has
15 sexual contact with another person or causes another
16 person to have sexual contact with the actor.

17 Paragraphs (b), (c), (d), [~~and~~] (e), and (f) shall not be
18 construed to prohibit practitioners licensed under chapter 453
19 or 455 from performing any act within their respective
20 practices; provided further that paragraph [~~+~~](v) (f)(v) shall
21 not be construed to prohibit a law enforcement officer from



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1 performing a lawful search pursuant to a warrant or an exception
2 to the warrant clause."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

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

9

INTRODUCED BY: *Mark A. ...*
By Request



S.B. NO. 41

Report Title:

Honolulu Prosecuting Attorney Package; Sexual Assault; Mentally Defective Persons

Description:

Amends the offenses of sexual assault in the first and third degree, when perpetrated against someone who is mentally defective, to remove the standard of proof regarding knowledge that the other person was mentally defective, as that term is defined in section 707-700, Hawaii Revised Statutes.

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

