

ACT 36

H.B. NO. 2560

A Bill for an Act Relating to Sexual Offenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-731, Hawaii Revised Statutes, is amended to read as follows:

“§707-731 Sexual assault in the second degree. (1) A person commits the offense of sexual assault in the second degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or

- (c) The person, while employed ~~in~~:
- (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the state of Hawaii; or ~~while employed as~~
 - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person residing in a private correctional facility operating in the state of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.
- (2) Sexual assault in the second degree is a class B felony.”

SECTION 2. Section 707-732, Hawaii Revised Statutes, is amended to read:

“**§707-732 Sexual assault in the third degree.** (1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
 - (i) The person is not less than five years older than the minor; and
 - (ii) The person is not legally married to the minor.
- (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;
- (e) The person, while employed in a state correctional facility~~;~~:
 - (i) By a private company providing services at a correctional facility;
 - (ii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute; or
 - (iii) By a private correctional facility operating in the state of Hawaii, knowingly subjects to sexual contact an imprisoned person, a person committed to the director of public safety, or a person residing in a private correctional facility operating in the state of Hawaii or causes the person to have sexual contact with the actor; or
- (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

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Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.

(2) Sexual assault in the third degree is a class C felony.”

SECTION 3. Act 1, Second Special Session Laws of Hawaii 2001, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on June 30, 2003; provided that [sections]:

- (1) Section 707-730(1) [~~and 707-732(1)~~], Hawaii Revised Statutes, [are] is reenacted in the form in which [they] it read on the day before the approval of this Act[-]; and
- (2) Section 707-732(1), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act, as further amended by section 2 of Act 36, Session Laws of Hawaii 2002.”

SECTION 4. In printing this Act, the revisor of statutes shall insert the appropriate number of this Act in section 3.

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

SECTION 6. This Act shall take effect July 1, 2002.

(Approved April 23, 2002.)