

ACT 22

H.B. NO. 250

A Bill for an Act Relating to Sexual Assault.

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

SECTION 1. The legislature finds that there was an incident in which a Honolulu police officer was indicted for the offense of sexual assault in the third degree for knowingly subjecting a teenage girl in custody to sexual contact. The indictment was based on the interpretation that a person being stopped by a police officer for a traffic infraction was in “custody”. However, the indictment was dismissed with prejudice due to the court’s determination that the term “custody” in the Hawaii Revised Statutes did not include a traffic stop.

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

SECTION 2. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the second degree if[;] the person:

- (a) [~~The person knowingly~~] Knowingly subjects another person to an act of sexual penetration by compulsion;
- (b) [~~The person knowingly~~] Knowingly subjects to sexual penetration [~~another~~] a person who is mentally incapacitated or physically helpless;
- (c) [~~The person, while~~] While employed:
 - (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
 - (v) As a law enforcement officer as defined in section 710-1000, knowingly subjects to sexual penetration; an imprisoned person[;]; a person confined to a detention facility[;]; a person committed to the director of public safety[;]; a person residing in a private cor-

rectional 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 or 455 from performing any act within their respective practices; and further~~] a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes; 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; or

- (d) [~~The person knowingly~~] Knowingly subjects to sexual penetration a [~~minor~~] person who is at least sixteen years old and the [~~person~~] actor is contemporaneously acting in a professional capacity to instruct, advise, or supervise [~~the minor;~~] such a person; provided that~~[:]~~ the actor is:
- (i) [~~The person is not~~] No less than five years older than the minor; and
 - (ii) [~~The person is not~~] Not legally married to the minor.

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

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

“(1) A person commits the offense of sexual assault in the third degree if~~[:]~~ the person:

- (a) [~~The person recklessly~~] Recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) [~~The person knowingly~~] Knowingly subjects to sexual contact [~~another~~] a person who is less than fourteen years old or causes such a person to have sexual contact with the [~~person;~~] actor;
- (c) [~~The person knowingly~~] 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~~] such a person to have sexual contact with the [~~person;~~] actor; provided that~~[:]~~ the actor is:
 - (i) [~~The person is not~~] No less than five years older than the minor; and
 - (ii) [~~The person is not~~] Not legally married to the minor;
- (d) [~~The person knowingly~~] Knowingly subjects to sexual contact [~~another~~] a 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~~] While employed:
 - (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

(v) As a law enforcement officer as defined in section ~~[[710-1000]]~~, knowingly subjects to sexual contact, ~~or causes to have sexual contact~~; ~~an imprisoned person~~; a person confined to a detention facility; a person committed to the director of public safety; a person residing in a private correctional facility operating in the State ~~[of Hawaii, or]~~; a person in custody; ~~or causes the person to have sexual contact with the actor~~; a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes; provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause; or

- (f) ~~[The person knowingly,]~~ Knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

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

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

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

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

(Approved May 28, 2021.)