

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 mentally disabled persons need additional protection from sexual predators. Among adults who are developmentally disabled, as many as eighty-three per cent of the females and thirty-two per cent of the males are victims of sexual assault. Further, anywhere from fifteen thousand to nineteen thousand people with developmental disabilities are sexually assaulted each year in the United States. Forty per cent of people with developmental disabilities who are victims of sexual violence will experience ten or more abusive incidents.

The legislature further finds that mentally disabled persons and developmentally disabled persons have limited, if any capacity to give knowing and willing consent to sexual acts. This inability to consent closely parallels the inability of certain minors and prison inmates to consent.

In *State v. Buch*, 83 Haw. 308, 926 P.2d 599 (1996), the Hawaii supreme court, citing the Michigan supreme court in *People v. Cash*, 419 Mich. 230, 351 N.W.2d 822 (1984), stated that:

“It is well-established that the Legislature may, pursuant to its police powers, define criminal offenses without requiring proof of a specific criminal intent and so provide that the perpetrator proceed at his [or her] own peril regardless of his [or her] defense of ignorance or of an honest mistake of fact. In the case of statutory rape, such legislation, in the nature of ‘strict liability’ offenses, has been upheld as a matter of public policy because of the need to protect children[.]”

Just as the legislature in the past extended protection against sexual assault to minors under a certain age, the legislature finds a similar need to extend protection to mentally disabled persons who similarly lack the capacity to consent to sexual acts.

The purpose of this Act is to amend the offenses of sexual assault in the first and third degree perpetrated against a person who is mentally defective to provide that a perpetrator commits the offense if the perpetrator is negligent in not knowing of the mental defect of the victim.

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

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

- (a) ~~[The person knowingly]~~ Knowingly subjects another person to an act of sexual penetration by strong compulsion;
- (b) ~~[The person knowingly]~~ Knowingly engages in sexual penetration with ~~[another]~~ a person who is less than fourteen years old;
- (c) ~~[The person knowingly]~~ Knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; 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 penetration ~~[another]~~ a person who is mentally defective; provided that the actor is negligent in not knowing of the mental defect of the victim; or

- (e) ~~[The person knowingly]~~ Knowingly subjects to sexual penetration ~~[another]~~ a person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

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) Knowingly subjects to sexual contact a person who is mentally defective, or causes such a person to have sexual contact with the actor; provided that the actor is negligent in not knowing of the mental defect of the victim;<sup>1</sup>
- ~~[(e)]~~ (f) ~~[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 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]~~ such a person to have sexual contact with the actor; or
- ~~[(f)]~~ (g) ~~[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), and (f) 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)~~ (f)(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. Section 846E-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Tier 3 offenses. A covered offender whose covered offense is any of the following offenses shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements:

- (1) Any offense set forth in section 707-730(1)(a), (b), (d), or (e)~~;~~; 707-731(1)(a) or (b)~~;~~; 707-732(1)(a), (b), or ~~(f);~~ (g); or 707-733.6;
- (2) An offense set forth in section 707-720; provided that the offense involves kidnapping of a minor by someone other than a parent;
- (3) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1) or (2);
- (4) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), or (3); or
- (5) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), or (3).”

2. By amending subsection (d) to read:

“(d) Tier 1 offenses. A covered offender who has maintained a clean record for the previous ten years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous ten years, or for the portion of that ten years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender’s most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-732(1)(d) ~~(e);~~ (e), or (f); 707-733(1)(a)~~;~~; 707-752~~;~~; 707-759~~;~~; 711-1110.9~~;~~; 712-1203(1)~~;~~; or 712-1209.1;
- (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
- (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4);
- (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (7) Any other covered offense that is not specified in subsection (a) or (c) or paragraph (1), (2), (3), (4), (5), or (6).”

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

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

**SECTION 7.** This Act shall take effect upon its approval.

(Became law on July 6, 2021, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. So in original.