

JAN 17 2020

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# 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 cited the Michigan supreme court in People



1 v. Cash, 419 Mich. 230, 351 N.W.2d 822 (1984), which stated  
2 that:

3           It is well-established that the Legislature  
4           may, pursuant to its police powers, define  
5           criminal offenses without requiring proof of  
6           a specific criminal intent and so provide  
7           that the perpetrator proceed at his [or her]  
8           own peril regardless of his [or her] defense  
9           of ignorance or of an honest mistake of  
10          fact. In the case of statutory rape, such  
11          legislation, in the nature of "strict  
12          liability" offenses, has been upheld as a  
13          matter of public policy because of the need  
14          to protect children[.]

15          The legislature recognizes that it has, in the past,  
16          extended protection against sexual assault to minors under a  
17          certain age. The legislature now finds a similar need to extend  
18          protection to mentally disabled persons who similarly lack the  
19          capacity to consent to sexual acts.



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

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

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

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

10          (b) The person knowingly engages in sexual penetration  
11 with another person who is less than fourteen years  
12 old;

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

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

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

19          (d) The person knowingly subjects to sexual penetration  
20 another person who is mentally defective; provided  
21 that proof that the person knew that the other person



1           was mentally defective shall not be required in any  
2           prosecution for an offense under this subsection; or

3           (e) The person knowingly subjects to sexual penetration  
4           another person who is mentally incapacitated or  
5           physically helpless as a result of the influence of a  
6           substance that the actor knowingly caused to be  
7           administered to the other person without the other  
8           person's consent.

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

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

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

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

18          (b) The person knowingly subjects to sexual contact  
19          another person who is less than fourteen years old or  
20          causes such a person to have sexual contact with the  
21          person;



- 1 (c) The person knowingly engages in sexual contact with a  
2 person who is at least fourteen years old but less  
3 than sixteen years old or causes the minor to have  
4 sexual contact with the person; provided that:
- 5 (i) The person is not less than five years older than  
6 the minor; and
- 7 (ii) The person is not legally married to the minor;
- 8 (d) The person knowingly subjects to sexual contact  
9 another person who is [~~mentally defective,~~] mentally  
10 incapacitated[~~7~~] or physically helpless, or causes  
11 such a person to have sexual contact with the actor;
- 12 (e) The person knowingly subjects to sexual contact  
13 another person who is mentally defective, or causes  
14 another person who is mentally defective to have  
15 sexual contact with the actor; provided that proof  
16 that the person knew the other person was mentally  
17 defective shall not be required in any prosecution for  
18 an offense under this subsection;
- 19 [+e+] (f) The person, while employed:
- 20 (i) In a state correctional facility;



- 1           (ii) By a private company providing services at a
- 2                 correctional facility;
- 3           (iii) By a private company providing community-based
- 4                 residential services to persons committed to the
- 5                 director of public safety and having received
- 6                 notice of this statute;
- 7           (iv) By a private correctional facility operating in
- 8                 the State [~~of Hawaii~~]; or
- 9           (v) As a law enforcement officer as defined in
- 10                section [~~+~~]710-1000[~~+~~],
- 11                knowingly subjects to sexual contact an imprisoned
- 12                person, a person confined to a detention facility, a
- 13                person committed to the director of public safety, a
- 14                person residing in a private correctional facility
- 15                operating in the State of Hawaii, or a person in
- 16                custody, or causes the person to have sexual contact
- 17                with the actor; or
- 18           [~~(f)~~] (g) The person knowingly, by strong compulsion, has
- 19                sexual contact with another person or causes another
- 20                person to have sexual contact with the actor.



1 Paragraphs (b), (c), (d), [~~and~~] (e), and (f) shall not be  
2 construed to prohibit practitioners licensed under chapter 453  
3 or 455 from performing any act within their respective  
4 practices; provided further that paragraph [~~(e)-(v)~~] (f)(v) shall  
5 not be construed to prohibit a law enforcement officer from  
6 performing a lawful search pursuant to a warrant or an exception  
7 to the warrant clause."

8 SECTION 4. Section 846E-10, Hawaii Revised Statutes, is  
9 amended as follows:

10 1. By amending subsection (a) to read:

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

16 (1) Any offense set forth in section 707-730(1)(a), (b),  
17 (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b),  
18 or [~~(f)~~,] (g), or 707-733.6;

19 (2) An offense set forth in section 707-720; provided that  
20 the offense involves kidnapping of a minor by someone  
21 other than a parent;



1           (3) An offense that is an attempt, criminal solicitation,  
2           or criminal conspiracy to commit any of the offenses  
3           in paragraph (1) or (2);

4           (4) Any criminal offense that is comparable to one of the  
5           offenses in paragraph (1), (2), or (3); or

6           (5) Any federal, military, out-of-state, tribal, or  
7           foreign offense that is comparable to one of the  
8           offenses in paragraph (1), (2), or (3)."

9           2. By amending subsection (d) to read:

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



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



# S.B. NO. 2181

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

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

7

INTRODUCED BY:   
By Request



# S.B. NO. 2181

**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.*

