

STAND. COM. REP. NO.

2353

Honolulu, Hawaii

FEB 05 2020

RE: S.B. No. 2181

Honorable Ronald D. Kouchi  
President of the Senate  
Thirtieth State Legislature  
Regular Session of 2020  
State of Hawaii

Sir:

Your Committee on Human Services, to which was referred S.B. No. 2181 entitled:

"A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT,"

begs leave to report as follows:

The purpose and intent of this measure is to amend 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.

Your Committee received testimony in support of this measure from the Office of the Public Defender, Department of the Prosecuting Attorney of the City and County of Honolulu, Honolulu Police Department, and two individuals.

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



Your Committee additionally 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.

Your Committee notes, in *State v. Buch*, 83 Hawaii 308, 926 P2d. 599 (1996), the Hawaii Supreme Court cited the Michigan Supreme Court in *People v. Cash*, 419 Mich. 230, 351 N.W.2d 822 (1984), which 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[.]

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


This measure therefore is to hold perpetrators strictly liable for sexual assault against persons who are mentally defective.

Your Committee has heard the testimony of an individual expressing concerns regarding the implication of the phrase "mentally defective" and suggests that "mentally disabled" would be a palatable and effective substitution. Your Committee finds that this issue raises concerns that merits further consideration and requests that your Committee on the Judiciary further examine the issue and concerns raised by the testifier on this measure.



As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2181 and recommends that it pass Second Reading and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Human Services,



---

RUSSELL E. RUDERMAN, Chair



The Senate  
Thirtieth Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Human Services**  
**HMS**

Bill / Resolution No.:* <b>SB 2181</b>	Committee Referral: <b>HMS, JDC</b>	Date: <b>1/29/20</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RUDERMAN, Russell E. (C)	✓			
RHOADS, Karl (VC)	✓			
IHARA, Jr., Les	✓			
RIVIERE, Gil	✓			
FEVELLA, Kurt	✓			
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Karl Rhoads</i>				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes