

JAN 18 2008

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 the mentally
2 handicapped are in need of additional protection from sexual
3 predators. Among adults who are developmentally disabled, as
4 many as eighty-three per cent of the females and thirty-two per
5 cent of the males are victims of sexual assault. Further,
6 anywhere from fifteen thousand to nineteen thousand people with
7 developmental disabilities are sexually assaulted each year in
8 the United 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 the mentally handicapped
12 and developmentally disabled have limited, if any, capacity to
13 give knowing and willing consent to sexual acts. This inability
14 to consent closely parallels the inability of certain minors and
15 prison inmates to consent.

16 In *State v. Buch*, 83 Hawaii 308, 926 P2d. 599 (1996), the
17 Hawaii supreme court, citing the Michigan supreme court in



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

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

12 Just as the legislature in the past has chosen to extend
13 protection against sexual assault to minors under a certain age,
14 the legislature finds a similar need to extend protection to the
15 mentally handicapped who similarly lack the capacity to consent
16 to sexual acts. The purpose of this Act is to hold perpetrators
17 strictly liable for sexual assault against persons who are
18 mentally defective.

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

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



- 1 (a) The person knowingly subjects another person to an act
- 2 of sexual penetration by strong compulsion;
- 3 (b) The person knowingly engages in sexual penetration
- 4 with another person who is less than fourteen years
- 5 old;
- 6 (c) The person knowingly engages in sexual penetration
- 7 with a person who is at least fourteen years old but
- 8 less than sixteen years old; provided that:
- 9 (i) The person is not less than five years older than
- 10 the minor; and
- 11 (ii) The person is not legally married to the minor;
- 12 (d) The person [~~knowingly~~] subjects to sexual penetration
- 13 another person who is mentally defective; or
- 14 (e) The person knowingly subjects to sexual penetration
- 15 another person who is mentally incapacitated or
- 16 physically helpless as a result of the influence of a
- 17 substance that the actor knowingly caused to be
- 18 administered to the other person without the other
- 19 person's consent.

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



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

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

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

7 (b) The person knowingly subjects to sexual contact
8 another person who is less than fourteen years old or
9 causes such a person to have sexual contact with the
10 person;

11 (c) The person knowingly engages in sexual contact with a
12 person who is at least fourteen years old but less
13 than sixteen years old or causes the minor to have
14 sexual contact with the person; provided that:

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

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

18 (d) The person knowingly subjects to sexual contact
19 another person who is [~~mentally defective,~~] mentally
20 incapacitated [~~7~~] or physically helpless, or causes
21 such a person to have sexual contact with the actor;



1 (e) The person subjects to sexual contact another person
2 who is mentally defective, or causes such as person to
3 have sexual contact with the actor;

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



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

4 Paragraphs (b), (c), (d), [~~and~~] (e), and (f) shall not be
 5 construed to prohibit practitioners licensed under chapter 453,
 6 455, or 460, from performing any act within their respective
 7 practices; provided further that paragraph [~~e~~](v) (f)(v) shall
 8 not be construed to prohibit a law enforcement officer from
 9 performing a lawful search pursuant to a warrant or an exception
 10 to the warrant clause."

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

14 SECTION 5. Statutory material to be repealed is bracketed
 15 and stricken.

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

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INTRODUCED BY:

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Report Title:
Sexual Assault

Description:
Amends Hawaii Penal Code to make sexual assault against a person who is mentally defective a "strict liability" offense.

