

JAN 23 2009

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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. Section 707-731, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§707-731 Sexual assault in the second degree.** (1) A  
4 person commits the offense of sexual assault in the second  
5 degree if:

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

8           (b) The person knowingly subjects to sexual penetration  
9 another person who is mentally incapacitated or  
10 physically helpless; [~~or~~]

11           (c) The person, while employed:

12               (i) In a state correctional facility;

13               (ii) By a private company providing services at a  
14 correctional facility;

15               (iii) By a private company providing community-based  
16 residential services to persons committed to the



1 director of public safety and having received  
2 notice of this statute;

3 (iv) By a private correctional facility operating in  
4 the State of Hawaii; or

5 (v) As a law enforcement officer as defined in  
6 section 710-1000(13),  
7 knowingly subjects to sexual penetration an imprisoned  
8 person, a person confined to a detention facility, a  
9 person committed to the director of public safety, a  
10 person residing in a private correctional facility  
11 operating in the State of Hawaii, or a person in  
12 custody; provided that paragraph (b) and this  
13 paragraph shall not be construed to prohibit  
14 practitioners licensed under chapter 453, 455, or 460,  
15 from performing any act within their respective  
16 practices; and further provided that this paragraph  
17 shall not be construed to prohibit a law enforcement  
18 officer from performing a lawful search pursuant to a  
19 warrant or exception to the warrant clause[-]; or

20 (d) A psychotherapist knowingly subjects to sexual  
21 penetration a patient or former patient. For  
22 purposes of this paragraph:



1                    (i)        "Former patient" means a person who was  
2    given psychotherapy within two years prior  
3    to sexual contact with the  
4    psychotherapist;

5                    (ii)        "Patient" means a person who seeks or  
6    obtains psychotherapy;

7                    (iii)       "Psychotherapist" means a physician,  
8    psychologist, nurse, chemical dependency  
9    counselor, social worker, member of the  
10    clergy, marriage and family therapist,  
11    mental health service provider, licensed  
12    professional counselor, or other person,  
13    regardless of whether licensed by the  
14    State, who performs or purports to perform  
15    psychotherapy; and

16                    (iv)        "Psychotherapy" means the professional  
17    treatment, assessment, or counseling of a  
18    mental or emotional illness, symptom, or  
19    condition.

20                    (2)        Sexual assault in the second degree is a class B  
21 felony."

1 SECTION 2. Section 707-732, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§707-732 Sexual assault in the third degree. (1) A  
4 person commits the offense of sexual assault in the third degree  
5 if:

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

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

12 (c) The person knowingly engages in sexual contact with a  
13 person who is at least fourteen years old but less  
14 than sixteen years old or causes the minor to have  
15 sexual contact with the person; 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 contact  
20 another person who is mentally defective, mentally  
21 incapacitated, or physically helpless, or causes such  
22 a person to have sexual contact with the actor;



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



1        (g) A psychotherapist knowingly subjects to sexual contact  
2            a patient or former patient. For purposes of this  
3            paragraph:

4            (i) "Former patient" means a person who was given  
5            psychotherapy within two years prior to sexual  
6            contact with the psychotherapist;

7            (ii) "Patient" means a person who seeks or obtains  
8            psychotherapy;

9            (iii) "Psychotherapist" means a physician, psychologist,  
10           nurse, chemical dependency counselor, social  
11           worker, member of the clergy, marriage and family  
12           therapist, mental health service provider,  
13           licensed professional counselor, or other person,  
14           regardless of whether licensed by the State, who  
15           performs or purports to perform psychotherapy;  
16           and

17           (iv) "Psychotherapy" means the professional treatment,  
18           assessment, or counseling of a mental or  
19           emotional illness, symptom, or condition.

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



1 provided further that paragraph (e)(v) shall not be construed to  
2 prohibit a law enforcement officer from performing a lawful  
3 search pursuant to a warrant or an exception to the warrant  
4 clause.

5 (2) Sexual assault in the third degree is a class C  
6 felony."

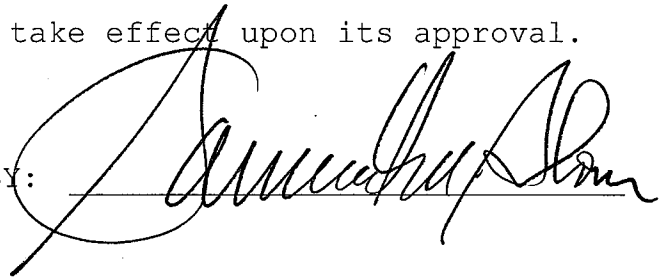
7 SECTION 3. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun, before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



**Report Title:**

Sexual Assault; Psychologist; Patient

**Description:**

Makes it a class B felony for a psychotherapist to subject a patient to sexual penetration, and a class C felony for a psychotherapist to subject a patient to sexual contact.

