

JAN 22 2016

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there was a recent
2 incident in which a Honolulu police officer was indicted on a
3 third-degree sexual assault charge for knowingly subjecting a
4 teenage girl in custody, as a result of a traffic stop, to
5 sexual contact. However, the indictment against the officer was
6 dismissed with prejudice due to the court's interpretation of
7 "custody" in the Hawaii Revised Statutes.

8 The purpose of this Act is to define "person in custody" as
9 used in the offense of sexual assault in the second degree and
10 third degree to explicitly prohibit a law enforcement officer
11 from knowingly subjecting to sexual contact a person who is
12 stopped by or under the control of a law enforcement officer for
13 official purposes, including a traffic stop.

14 SECTION 2. Section 707-731, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) A person commits the offense of sexual assault in the
17 second degree if:



- 1 (a) The person knowingly subjects another person to an act
- 2 of sexual penetration by compulsion;
- 3 (b) The person knowingly subjects to sexual penetration
- 4 another person who is mentally incapacitated or
- 5 physically helpless; or
- 6 (c) The person, while employed:
 - 7 (i) In a state correctional facility;
 - 8 (ii) By a private company providing services at a
 - 9 correctional facility;
 - 10 (iii) By a private company providing community-based
 - 11 residential services to persons committed to the
 - 12 director of public safety and having received
 - 13 notice of this statute;
 - 14 (iv) By a private correctional facility operating in
 - 15 the State of Hawaii; or
 - 16 (v) As a law enforcement officer as defined in
 - 17 section [§]710-1000[§],
 - 18 knowingly subjects to sexual penetration an imprisoned
 - 19 person, a person confined to a detention facility, a
 - 20 person committed to the director of public safety, a
 - 21 person residing in a private correctional facility



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1 operating in the State of Hawaii, or a person in
2 custody; provided that paragraph (b) and this
3 paragraph shall not be construed to prohibit
4 practitioners licensed under chapter 453 or 455 from
5 performing any act within their respective practices;
6 and further provided that this paragraph shall not be
7 construed to prohibit a law enforcement officer from
8 performing a lawful search pursuant to a warrant or
9 exception to the warrant clause.

10 For purposes of this subsection, "person in
11 custody" means a person who is stopped by or under the
12 control of a law enforcement officer for official
13 purposes. "Person in custody" includes but is not
14 limited to a person who is stopped by a law
15 enforcement officer for a traffic stop or is in the
16 process of providing any identification, license, or
17 registration pursuant to a traffic stop."

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

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



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- 1 (a) The person recklessly subjects another person to an
2 act of sexual penetration by compulsion;
- 3 (b) The person knowingly subjects to sexual contact
4 another person who is less than fourteen years old or
5 causes such a person to have sexual contact with the
6 person;
- 7 (c) The person knowingly engages in sexual contact with a
8 person who is at least fourteen years old but less
9 than sixteen years old or causes the minor to have
10 sexual contact with the person; provided that:
- 11 (i) The person is not less than five years older than
12 the minor; and
- 13 (ii) The person is not legally married to the minor;
- 14 (d) The person knowingly subjects to sexual contact
15 another person who is mentally defective, mentally
16 incapacitated, or physically helpless, or causes such
17 a person to have sexual contact with the actor;
- 18 (e) The person, while employed:
- 19 (i) In a state correctional facility;
- 20 (ii) By a private company providing services at a
21 correctional facility;



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1 (iii) By a private company providing community-based
2 residential services to persons committed to the
3 director of public safety and having received
4 notice of this statute;

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

7 (v) As a law enforcement officer as defined in
8 section [§] 710-1000 [§],

9 knowingly subjects to sexual contact an imprisoned
10 person, a person confined to a detention facility, a
11 person committed to the director of public safety, a
12 person residing in a private correctional facility
13 operating in the State of Hawaii, or a person in
14 custody, or causes the person to have sexual contact
15 with the actor; or

16 (f) The person knowingly, by strong compulsion, has sexual
17 contact with another person or causes another person
18 to have sexual contact with the actor.

19 For the purposes of this subsection, "person in custody"
20 means a person who is stopped by or under the control of a law
21 enforcement officer for official purposes. "Person in custody"



1 includes but is not limited to a person who is stopped by a law
2 enforcement officer for a traffic stop or is in the process of
3 providing any identification, license, or registration pursuant
4 to a traffic stop.

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

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

13 SECTION 5. This Act shall take effect upon its approval.
14

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Report Title:

Public Safety; Law Enforcement Officers; Custody; Sexual Assault
in the Second Degree and Third Degree

Description:

Defines "person in custody" as used in the offense of sexual assault in the second degree and third degree to mean a person who is stopped by or under the control of a law enforcement officer for official purposes.

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