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CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

February 21, 2020

RE: S.B. 2181; RELATING TO SEXUAL ASSAULT.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 2181. This bill is part of the Department's 2020 legislative package.

The purpose of this bill is to amend the offenses of Sexual Assault in the First Degree, Section 707-730, Hawaii Revised Statutes ("HRS"), and Sexual Assault in the Third Degree, HRS §707-732 to make persons who engage in sexual penetration or sexual contact with mentally defective persons strictly liable for knowledge that the person was mentally defective. We support this bill as it recognizes the need to protect a vulnerable segment of our community, the developmentally disabled, from sexual predation.

As stated in HRS §707-700, "'Mentally defective' means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct." Clearly, when an individual's disability is of such great severity, they need and deserve all of the protection that the law can provide.

Currently, under our penal code, a person is strictly liable for the sexual penetration of, or sexual contact with, minors under a certain age. The Hawaii Supreme Court, in State v. Buch, 83 Hawaii 308, 926 P.2d 599 (1996) has upheld strict liability in this context. Citing language by the Michigan Supreme Court, the Buch court stated:

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 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[.]

And in holding that this legislature had intended strict liability for sexual contact with minors, the Buch court held:

Certainly HRS section 707-732(1)(b) gives reasonable notice to the person of ordinary intelligence that sexual contact with children under fourteen years of age is prohibited and subjects the actor to criminal liability. Because the legislature apparently believed that children are "fragile organism[s] that [are] subject to abuse and require [] vigilant protect," it placed the risk of a mistake regarding the age of the child squarely on the adult "who deliberately goes perilously close to an area of proscribed conduct."

We believe these same policy concerns are applicable to those in our community who are so developmentally disabled that they are unable to effectively consent to sexual activity. By their nature, these individuals are vulnerable to sexual predations, and thus deserve the same level of protection presently given to minors in our penal code. This measure goes a long way in achieving that goal.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 2181. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney



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Second Deputy

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First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE JARRET KEOHOKALOLE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
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The purpose of this bill is to amend the offenses of Sexual Assault in the First Degree, Section 707-730, Hawaii Revised Statutes ("HRS"), and Sexual Assault in the Third Degree, HRS §707-732, to make those who engage in sexual penetration or sexual contact with mentally defective persons strictly liable for knowledge that the person was mentally defective. We support this bill as it recognizes the need to protect a vulnerable segment of our community, the developmentally disabled, from sexual predation.

As stated in HRS §707-700, "Mentally defective" means a person suffering from a disease, disorder, or defect which renders the person *incapable of appraising the nature of the person's conduct.*" (Emphasis added.) Clearly, when an individual's disability is of such great severity, they need and deserve all of the protection that the law can provide.

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SB-2181

Submitted on: 2/16/2020 12:41:51 PM

Testimony for JDC on 2/21/2020 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments: