

JAN 19 2007

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 by amending subsection (1) to read as follows:

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

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

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

10 (c) The person, while employed:

11 (i) In a state correctional facility;

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

14 (iii) By a private company providing community-based
15 residential services to persons committed to the
16 director of public safety and having received
17 notice of this statute;



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



- 1 (i) "Former patient" means a person who was given
- 2 psychotherapy within two years prior to sexual
- 3 contact with the psychotherapist;
- 4 (ii) "Patient" means a person who seeks or obtains
- 5 psychotherapy;
- 6 (iii) "Psychotherapist" means a physician,
- 7 psychologist, nurse, chemical dependency
- 8 counselor, social worker, member of the clergy,
- 9 marriage and family therapist, mental health
- 10 service provider, licensed professional
- 11 counselor, or other person, regardless of whether
- 12 licensed by the State, who performs or purports
- 13 to perform psychotherapy; and
- 14 (iv) "Psychotherapy" means the professional treatment,
- 15 assessment, or counseling of a mental or
- 16 emotional illness, symptom, or condition."

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

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

- 21 (a) The person recklessly subjects another person to an
- 22 act of sexual penetration by compulsion;



1 (b) The person knowingly subjects to sexual contact
2 another person who is less than fourteen years old or
3 causes such a person to have sexual contact with the
4 person;

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

16 (e) The person, while employed:

17 (i) In a state correctional facility;

18 (ii) By a private company providing services at a
19 correctional facility;

20 (iii) By a private company providing community-based
21 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 contact 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, or causes the person to have sexual contact
13 with the actor; [~~or~~]
- 14 (f) The person knowingly, by strong compulsion, has sexual
15 contact with another person or causes another person
16 to have sexual contact with the actor[~~or~~]; or
- 17 (g) A psychotherapist knowingly subjects to sexual contact
18 a patient or former patient. For purposes of this
19 paragraph:
- 20 (i) "Former patient" means a person who was given
21 psychotherapy within two years prior to sexual
22 contact with the psychotherapist;



- 1 (ii) "Patient" means a person who seeks or obtains
- 2 psychotherapy;
- 3 (iii) "Psychotherapist" means a physician,
- 4 psychologist, nurse, chemical dependency
- 5 counselor, social worker, member of the clergy,
- 6 marriage and family therapist, mental health
- 7 service provider, licensed professional
- 8 counselor, or other person, regardless of whether
- 9 licensed by the State, who performs or purports
- 10 to perform psychotherapy; and
- 11 (iv) "Psychotherapy" means the professional treatment,
- 12 assessment, or counseling of a mental or
- 13 emotional illness, symptom, or condition.

14 Paragraphs (b), (c), (d), and (e) shall not be construed to
15 prohibit practitioners licensed under chapter 453, 455, or 460,
16 from performing any act within their respective practices;
17 provided further that paragraph (e)(v) shall not be construed to
18 prohibit a law enforcement officer from performing a lawful
19 search pursuant to a warrant or an exception to the warrant
20 clause."



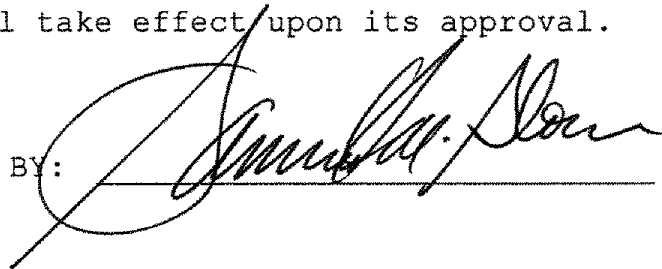
1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

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

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

7

INTRODUCED BY: _____

A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read "Michael J. Dow".

Report Title:

Sexual Assault; Psychotherapist; 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.

