

JAN 27 2021

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Sex trafficking is an ever-evolving criminal
2 enterprise in which traffickers and exploiters find various
3 means to sexually exploit the most vulnerable in our community.
4 As traffickers change tactics to avoid accountability, our
5 criminal justice system and understanding of sex trafficking
6 must continue to evolve as well.

7 Protecting victims from sexual exploitation and holding
8 offenders accountable is difficult given the disparity in power
9 between the victims and perpetrators. Therefore, amending
10 Hawaii's sex trafficking laws to better reflect the current
11 reality and challenges will improve outcomes for trafficking
12 victims and survivors.

13 Legal terminology is vital to our understanding of sex
14 trafficking in the criminal justice system and in our general
15 community. Creating a separate crime for individuals who
16 purchase people for sex, changing the name of a crime from
17 "solicitation of a minor for prostitution" to "commercial sexual

1 exploitation of a minor", and eliminating the pronoun
2 "prostitute" will further this objective.

3 Given the seriousness of the offense, the level of the
4 offense for perpetrators who purchase children for sex should be
5 increased to a class B felony. Additionally, due to the fear,
6 trauma, and psychological tactics utilized by traffickers,
7 victims are reluctant to come forward and seek justice until
8 they feel safe and free from their exploiters. Therefore,
9 eliminating the statute of limitation for sex trafficking is
10 necessary to hold these offenders accountable.

11 Perpetrators have escaped criminal culpability by
12 exploiting gaps in Hawaii's laws. Adding the rendering of
13 "anything of value" as a means of compensation, in addition to a
14 "fee", will protect those victims who are being sexually
15 exploited in exchange for drugs, housing, and other non-monetary
16 compensation, while also making our law consistent with the
17 federal definition of human trafficking. Additionally, amending
18 the law to account for situations in which a trafficker or
19 third-party is negotiating or profiting from the exploitation of
20 a minor is necessary to hold the buyer accountable.

21

1 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§712- Commercial sexual exploitation. (1) A person
5 commits the offense of commercial sexual exploitation if the
6 person provides, agrees to provide, or offers to provide a fee
7 or anything of value to another to engage in sexual conduct.

8 (2) As used in this section:

9 "Sexual conduct" has the same meaning as in section 712-
10 1200(2).

11 (3) Except as provided in subsection (4), commercial
12 sexual exploitation is a petty misdemeanor.

13 (4) Commercial sexual exploitation is a class C felony if
14 the person who commits the offense under subsection (1) does so
15 in reckless disregard of the fact that the person exploited is a
16 victim of sex trafficking.

17 (5) A person convicted of committing the offense of
18 commercial sexual exploitation as a petty misdemeanor shall be
19 sentenced as follows:

20 (a) For the first offense, a fine of not less than \$500
21 but not more than \$1,000 and the person may be
22 sentenced to a term of imprisonment of not more than
23 thirty days or probation; provided that in the event

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1 the convicted person defaults in payment of the fine,
2 and the default was not contumacious, the court may
3 make an order converting the unpaid portion of the
4 fine to community service as authorized by section
5 706-605(1).

6 (b) For any subsequent offense, a fine of not less than
7 \$500 but not more than \$1,000 and a term of
8 imprisonment of thirty days or probation, without
9 possibility of suspension of sentence.

10 (c) For the purpose of this subsection, when the court has
11 ordered a sentence of probation, the court may impose
12 as a condition of probation that the defendant
13 complete a course of exploitation intervention
14 classes; provided that the court may only impose the
15 condition for one term of probation.

16 (6) This section shall not apply to any member of a police
17 department, a sheriff, or a law enforcement officer, acting in
18 the course and scope of duties during undercover operations.
19 Under no circumstances shall sexual penetration or
20 sadomasochistic abuse be considered to fall within the course
21 and scope of duties."

22 SECTION 3. Section 701-108, Hawaii Revised Statutes, is
23 amended by amending subsection (1) to read as follows:

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1 "(1) A prosecution for murder, murder in the first and
2 second degrees, attempted murder, and attempted murder in the
3 first and second degrees, criminal conspiracy to commit murder
4 in any degree, criminal solicitation to commit murder in any
5 degree, sexual assault in the first and second degrees, sex
6 trafficking, and continuous sexual assault of a minor under the
7 age of fourteen years may be commenced at any time."

8 SECTION 4. Section 712-1200, Hawaii Revised Statutes, is
9 amended as follows:

10 (1) By amending subsection (1) to read as follows:

11 "(1) A person commits the offense of prostitution if the
12 person[÷

13 ~~(a) Engages]~~ engages in, or agrees or offers to engage in,
14 sexual conduct with another person in return for a
15 fee[÷~~or~~

16 ~~(b) Pays, agrees to pay, or offers to pay a fee to another~~
17 ~~to engage in sexual conduct.]~~ or anything of value."

18 (2) By amending subsections (3), (4), and (5) to read as
19 follows:

20 "(3) Prostitution is a petty misdemeanor; provided that[÷

21 ~~(a) If]~~ if the person who commits the offense under
22 subsection (1)[~~(a)~~] is a minor, prostitution is a
23 violation[÷~~and~~

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1 ~~(b) If the person who commits the offense under subsection~~
2 ~~(1) (b) does so in reckless disregard of the fact that~~
3 ~~the other person is a victim of sex trafficking,~~
4 ~~prostitution is a class C felony].~~

5 (4) A person convicted of committing the offense of
6 prostitution as a petty misdemeanor shall be sentenced as
7 follows:

8 (a) For the first offense, when the court has not deferred
9 further proceedings pursuant to chapter 853, a fine of
10 not less than \$500 but not more than \$1,000 and the
11 person may be sentenced to a term of imprisonment of
12 not more than thirty days or probation; provided that
13 in the event the convicted person defaults in payment
14 of the fine, and the default was not contumacious, the
15 court may ~~[sentence the person to perform services for~~
16 ~~the community]~~ make an order converting the unpaid
17 portion of the fine to community service as authorized
18 by section 706-605(1).

19 (b) For any subsequent offense, a fine of not less than
20 \$500 but not more than \$1,000 and a term of
21 imprisonment of thirty days or probation, without
22 possibility of deferral of further proceedings

1 pursuant to chapter 853 and without possibility of
2 suspension of sentence.

3 (c) For the purpose of this subsection, if the court has
4 deferred further proceedings pursuant to chapter 853,
5 and notwithstanding any provision of chapter 853 to
6 the contrary, the defendant shall not be eligible to
7 apply for expungement pursuant to section 831-3.2
8 until three years following discharge. A plea
9 previously entered by a defendant under section 853-1
10 for a violation of this section shall be considered a
11 prior offense. [~~When the court has ordered a sentence
12 of probation, the court may impose as a condition of
13 probation that the defendant complete a course of
14 prostitution intervention classes; provided that the
15 court may only impose the condition for one term of
16 probation.~~]

17 (5) This section shall not apply to any member of a police
18 department, a sheriff, or a law enforcement officer, acting in
19 the course and scope of duties[~~7~~] during undercover operations.
20 Under no circumstances shall [~~unless engaged in~~] sexual
21 penetration or sadomasochistic abuse[~~7~~] be considered to fall
22 within the course and scope of duties."

1 SECTION 5. Section 712-1201, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§712-1201 Advancing prostitution; profiting from**
4 **prostitution; definition of terms.** In sections 712-1202 and
5 712-1203:

6 (1) A person "advances prostitution" if [~~acting other~~
7 ~~than as a prostitute or a patron of a prostitute,~~] the person
8 knowingly causes or aids a person to commit or engage in
9 prostitution, procures or solicits patrons for prostitution,
10 provides persons for prostitution purposes, permits premises to
11 be regularly used for prostitution purposes, operates or assists
12 in the operation of a house of prostitution or a prostitution
13 enterprise, or engages in any other conduct designed to
14 institute, aid, or facilitate an act or enterprise of
15 prostitution.

16 (2) A person "profits from prostitution" if [~~acting~~
17 ~~other than as a prostitute receiving compensation for~~
18 ~~personally rendered prostitution services,~~] the person accepts
19 or receives money, anything of value, or other property pursuant
20 to an agreement or understanding with any person whereby the
21 person participates or is to participate in the proceeds of
22 prostitution activity.

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1 (3) The definitions in subsections (1) and (2) do not
2 include those engaged in conduct outlined in section 712-1200 as
3 the prostituted person, or in conduct outlined in section 712-
4 as the person engaged in commercial sexual exploitation."

5 SECTION 6. Section 712-1202, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§712-1202 Sex trafficking.** (1) A person commits the
8 offense of sex trafficking if the person knowingly:

9 (a) Advances prostitution or profits from prostitution by
10 compelling or inducing a person by force, threat,
11 fraud, coercion, or intimidation to engage in
12 prostitution[~~, or profits from such conduct by~~
13 another]; or

14 (b) Advances or profits from prostitution of a minor [~~+~~
15 provided that with respect to the victim's age, the
16 prosecution shall be required to prove only that the
17 person committing the offense acted negligently].

18 (2) Sex trafficking is a class A felony.

19 (3) As used in this section:

20 "Fraud" means making material false statements,
21 misstatements, or omissions.

22 "Minor" means a person who is less than eighteen years of
23 age.

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1 "Threat" means any of the actions listed in section 707-
2 764(1).

3 (4) The state of mind requirement for the offense under
4 subsection (1)(b) is not applicable to the fact that the victim
5 was a minor. A person is strictly liable with respect to the
6 attendant circumstances that the victim was a minor."

7 SECTION 7. Section 712-1207, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§712-1207 [~~Street solicitation of prostitution;~~
10 ~~designated areas.] Street prostitution and commercial sexual~~

11 exploitation; designated areas. (1) It shall be unlawful for
12 any person within the boundaries of Waikiki and while on any
13 public property to:

14 (a) Offer or agree to engage in sexual conduct with
15 another person in return for a fee[+] or anything of
16 value; or

17 (b) [~~Pay, agree to pay, or offer to pay] Provide, agree to~~

18 provide, or offer to provide a fee or anything of
19 value to another person to engage in sexual conduct.

20 (2) It shall be unlawful for any person within the
21 boundaries of other areas in this State designated by county
22 ordinance pursuant to subsection (3), and while on any public
23 property to:

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1 (a) Offer or agree to engage in sexual conduct with
2 another person in return for a fee[†] or anything of
3 value; or

4 (b) [~~Pay, agree to pay, or offer to pay~~] Provide, agree to
5 provide, or offer to provide a fee or anything of
6 value to another person to engage in sexual conduct.

7 (3) Upon a recommendation of the chief of police of a
8 county, that county may enact an ordinance that:

9 (a) Designates areas, each no larger than three square
10 miles, as zones of significant prostitution-related
11 activity that is detrimental to the health, safety, or
12 welfare of the general public; or

13 (b) Alters the boundaries of any existing area under
14 paragraph (a);

15 provided that not more than four areas may be designated within
16 the State.

17 (4) Notwithstanding any law to the contrary, any person
18 violating this section shall be guilty of a petty misdemeanor
19 and shall be sentenced to a mandatory term of thirty days
20 imprisonment. The term of imprisonment shall be imposed
21 immediately, regardless of whether the defendant appeals the
22 conviction, except as provided in subsection (5).

1 (5) As an option to the mandatory term of thirty days
2 imprisonment, if the court finds the option is warranted based
3 upon the defendant's record, the court may place the defendant
4 on probation for a period not to exceed six months, subject to
5 the mandatory condition that the defendant observe geographic
6 restrictions that prohibit the defendant from entering or
7 remaining on public property, in Waikiki and other areas in the
8 State designated by county ordinance during the hours from 6
9 p.m. to 6 a.m. Upon any violation of the geographic
10 restrictions by the defendant, the court, after hearing, shall
11 revoke the defendant's probation and immediately impose the
12 mandatory thirty-day term of imprisonment. Nothing contained in
13 this subsection shall be construed as prohibiting the imposition
14 of stricter geographic restrictions under section 706-624(2)(h).

15 (6) Any person charged under this section may be admitted
16 to bail, pursuant to section 804-4, subject to the mandatory
17 condition that the person observe geographic restrictions that
18 prohibit the defendant from entering or remaining on public
19 property, in Waikiki and other areas in the State designated by
20 county ordinance during the hours from 6 p.m. to 6 a.m.
21 Notwithstanding any other provision of law to the contrary, any
22 person who violates these bail restrictions shall have the
23 person's bail revoked after hearing and shall be imprisoned

1 forthwith. Nothing contained in this subsection shall be
2 construed as prohibiting the imposition of stricter geographic
3 restrictions under section 804-7.1.

4 (7) Notwithstanding any other law to the contrary, a
5 police officer, without warrant, may arrest any person when the
6 officer has probable cause to believe that the person has
7 committed a violation of subsection (5) or (6), and the person
8 shall be detained, without bail, until the hearing under the
9 appropriate subsection can be held, which hearing shall be held
10 as soon as reasonably practicable.

11 (8) For purposes of this section:

12 "Area" means any zone within a county that is defined with
13 specific boundaries and designated as a zone of significant
14 prostitution by this section or a county ordinance.

15 "Public property" includes any street, highway, road,
16 sidewalk, alley, lane, bridge, parking lot, park, or other
17 property owned or under the jurisdiction of any governmental
18 entity or otherwise open to the public.

19 "Sexual conduct" has the same meaning as in section 712-
20 1200(2).

21 "Waikiki" means that area of Oahu bounded by the Ala Wai
22 canal, the ocean, and Kapahulu Avenue.

1 (9) This section shall apply to all counties; provided
2 that if a county enacts an ordinance to regulate street
3 [~~solicitation for prostitution,~~] prostitution and commercial
4 sexual exploitation, other than an ordinance designating an area
5 as a zone of significant prostitution-related activity, the
6 county ordinance shall supersede this section and no person
7 shall be convicted under this section in that county."

8 SECTION 8. Section 712-1209, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§712-1209[~~]—Solicitation of prostitution near schools~~
11 ~~or public parks.~~] Commercial sexual exploitation near schools
12 or public parks. (1) A person commits the offense of
13 [~~solicitation of prostitution~~] commercial sexual exploitation
14 near schools or public parks if, within seven hundred fifty feet
15 of a school or public park, the person [~~offers or agrees to pay~~]
16 provides, agrees to provide, or offers to provide a fee or
17 anything of value to another person to engage in sexual conduct.

18 (2) [~~Solicitation of prostitution~~] Commercial sexual
19 exploitation near schools or public parks is a misdemeanor.

20 (3) For purposes of this section:

21 "School" has the same meaning as in section 712-1249.6(6).

22 "Sexual conduct" has the same meaning as in section 712-
23 1200(2)."

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1 SECTION 9. Section 712-1209.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§712-1209.1 [~~Solicitation of a minor for prostitution.~~]

4 Commercial sexual exploitation of a minor. (1) A person

5 eighteen years of age or older commits the offense of

6 [~~solicitation of a minor for prostitution~~] commercial sexual

7 exploitation of a minor if the person intentionally, knowingly,

8 or recklessly [~~offers or agrees to pay a fee to a minor or to a~~

9 ~~member of a police department, a sheriff, or a law enforcement~~

10 ~~officer who represents that person's self as a minor to engage~~

11 ~~in sexual conduct.]:~~

12 (a) Provides anything of value to a minor or third person

13 as compensation for having engaged in sexual conduct

14 with a minor;

15 (b) Agrees to provide or offers to provide anything of

16 value to a minor or third person for the purpose of

17 engaging in sexual conduct with a minor; or

18 (c) Solicits, offers, or requests to engage in sexual

19 conduct with a minor in return for anything of value.

20 (2) [~~Solicitation of a minor for prostitution~~] Commercial

21 sexual exploitation of a minor is a class [E] B felony.

22 (3) [A]In addition to any other authorized disposition, a

23 person convicted of committing the offense of [~~solicitation of a~~

1 ~~minor for prostitution]~~ commercial sexual exploitation of a
2 minor shall be [~~imposed~~] sentenced to pay a fine of not less
3 than \$5,000 [~~; provided that \$5,000 of the imposed fine shall be~~
4 ~~credited to the general fund~~].

5 (4) This section shall not apply to any member of a police
6 department, a sheriff, or a law enforcement officer [~~who offers~~
7 ~~or agrees to pay a fee to a minor~~] while acting in the course
8 and scope of duties.

9 (5) The state of mind requirement for [~~this~~] the offense
10 under subsection (1)(a) is not applicable to the fact that the
11 [~~person solicited~~] victim was a minor. A person is strictly
12 liable with respect to the attendant circumstance that the
13 [~~person solicited~~] victim was a minor.

14 (6) Consent of a minor to the sexual conduct does not
15 constitute a defense to any offense in this section.

16 [~~+6~~](7) For purposes of this section:

17 "Minor" means a person who is less than eighteen years of
18 age.

19 "Sexual conduct" has the same meaning as in section 712-
20 1200(2)."

21 SECTION 10. Section 712-1209.5, Hawaii Revised Statutes,
22 is amended to read as follows:

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1 " [~~+~~] §712-1209.5 [~~}] ~~Habitual solicitation of prostitution.~~]~~

2 Habitual commercial sexual exploitation. (1) A person commits
3 the offense of habitual [~~solicitation of prostitution~~]
4 commercial sexual exploitation if the person is a habitual
5 [~~prostitution~~] commercial sexual exploitation offender and
6 [~~pays, agrees to pay, or offers to pay~~] provides, agrees to
7 provide, or offers to provide a fee or anything of value to
8 another person to engage in sexual conduct.

9 (2) For the purposes of this section, a person has the
10 status of a "habitual [~~prostitution~~] commercial sexual
11 exploitation offender" if the person, at the time of the conduct
12 for which the person is charged, had two or more convictions
13 within ten years of the instant offense for:

14 (a) [~~Prostitution,~~] Commercial sexual exploitation, in
15 violation of section [~~712-1200(1)(b);~~] 712- ;

16 (b) Street [~~solicitation of prostitution~~] commercial
17 sexual exploitation, in violation of section 712-
18 1207(1)(b) or (2)(b);

19 (c) Habitual [~~solicitation of prostitution,~~] commercial
20 sexual exploitation, in violation of this section;

21 (d) An offense of this jurisdiction or any other
22 jurisdiction that is comparable to one of the offenses
23 in paragraph (a), (b), or (c); or

1 (e) Any combination of the offenses in paragraph (a), (b),
2 (c), or (d).

3 A conviction for purposes of this section is a judgment on the
4 verdict or a finding of guilt, or a plea of guilty or nolo
5 contendere. The convictions must have occurred on separate
6 dates and be for separate incidents on separate dates. At the
7 time of the instant offense, the conviction must not have been
8 expunged by pardon, reversed, or set aside.

9 (3) Habitual [~~solicitation of prostitution~~] commercial
10 sexual exploitation is a class C felony."

11 SECTION 11. Section 712-1209.6, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "**§712-1209.6 Prostitution; motion to vacate conviction.**

14 (1) A person convicted of committing the offense of
15 prostitution under section 712-1200[~~(1)~~], loitering for the
16 purpose of engaging in or advancing prostitution under section
17 712-1206(2), street [~~solicitation of~~] prostitution in designated
18 areas under section 712-1207(1)(a) or 712-1207(2)(a), or
19 convicted of a lesser offense when originally charged with a
20 violation of section 712-1200[~~(1)~~], 712-1206(2), or 712-
21 1207(1)(a) or 712-1207(2)(a), may file a motion to vacate the
22 conviction if the defendant is not subsequently convicted of any

1 offense under the Hawaii Penal Code within three years after the
2 date of the original conviction.

3 (2) The court shall hold a hearing on a motion filed under
4 this section to review the defendant's record over the three
5 years after the date of the original conviction under section
6 712-1200[~~(1)(a)~~], 712-1206(2), or 712-1207(1)(a) or (2)(a) or
7 conviction of a lesser offense when originally charged with a
8 violation of any of those sections, and if the court finds that
9 the defendant has not been convicted of any offense under the
10 penal code within this three year period, the court shall vacate
11 the conviction."

12 SECTION 12. Section 712A-4, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§712A-4 Covered offenses.** Offenses for which property is
15 subject to forfeiture under this chapter are:

- 16 (a) All offenses that specifically authorize forfeiture;
17 (b) Murder, kidnapping, labor trafficking, unlicensed sale
18 of liquor, unlicensed manufacture of liquor, gambling,
19 criminal property damage, robbery, bribery, extortion,
20 theft, unauthorized entry into motor vehicle,
21 burglary, money laundering, trademark counterfeiting,
22 insurance fraud, promoting a dangerous, harmful, or
23 detrimental drug, commercial promotion of marijuana,

1 methamphetamine trafficking, manufacturing of a
2 controlled substance with a child present, promoting
3 child abuse, promoting prostitution, sex trafficking,
4 [~~solicitation of a minor for prostitution,~~] commercial
5 sexual exploitation of a minor, habitual [~~solicitation~~
6 ~~of prostitution,~~] commercial sexual exploitation, or
7 electronic enticement of a child that is chargeable as
8 a felony offense under state law;

9 (c) The manufacture, sale, or distribution of a controlled
10 substance in violation of chapter 329, promoting
11 detrimental drugs or intoxicating compounds, promoting
12 pornography, promoting pornography for minors, or
13 [~~solicitation of prostitution~~] commercial sexual
14 exploitation near schools or public parks, which is
15 chargeable as a felony or misdemeanor offense, but not
16 as a petty misdemeanor, under state law; and

17 (d) The attempt, conspiracy, solicitation, coercion, or
18 intimidation of another to commit any offense for
19 which property is subject to forfeiture."

20 SECTION 13. Section 806-83, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) Criminal charges may be instituted by written
2 information for a felony when the charge is a class C felony,
3 except under:

4 (1) Section 159-28 (bribery related to the Hawaii Meat
5 Inspection Act);

6 (2) Section 161-28 (bribery related to the Hawaii Poultry
7 Inspection Act);

8 (3) Section 707-712.5 (assault against a law enforcement
9 officer in the first degree);

10 (4) Section 707-716 (terroristic threatening in the first
11 degree);

12 (5) Section 707-732 (sexual assault in the third degree);

13 (6) Section 707-741 (incest);

14 (7) Section 707-752 (promoting child abuse in the third
15 degree);

16 (8) Section 708-880 (commercial bribery);

17 (9) Section 709-904.5 (compensation by an adult of
18 juveniles for crimes);

19 (10) Section 710-1026.9 (resisting an order to stop a
20 motor vehicle in the first degree);

21 (11) Section 710-1070 (bribery of or by a witness);

22 (12) Section 710-1071 (intimidating a witness);

23 (13) Section 710-1072.2 (retaliating against a witness);

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- 1 (14) Section 710-1073 (bribery of or by a juror);
- 2 (15) Section 710-1075 (jury tampering);
- 3 (16) Section 710-1075.5 (retaliating against a juror);
- 4 (17) Section 711-1106.4 (aggravated harassment
- 5 by stalking);
- 6 (18) Section 711-1110.9 (violation of privacy in the
- 7 first degree);
- 8 (19) Section 712-1208 (promoting travel for prostitution);
- 9 [~~(20)~~] ~~Section 712-1209.1 (solicitation of a minor for~~
- 10 ~~prostitution);~~
- 11 ~~(21)~~ (20) Section 712-1209.5 (habitual [~~solicitation~~
- 12 ~~of prostitution];~~ commercial sexual exploitation);
- 13 [~~(22)~~] (21) Section 712-1215 (promoting pornography
- 14 for minors);
- 15 [~~(23)~~] (22) Section 712-1218 (failure to maintain age
- 16 verification records of sexual performers);
- 17 [~~(24)~~] (23) Section 712-1218.5 (failure to maintain age
- 18 verification records of sexually exploited
- 19 individuals); and
- 20 [~~(25)~~] (24) Section 712-1219 (failure to affix information
- 21 disclosing location of age verification records of
- 22 sexual performers)."

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1 SECTION 14. Section 846E-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "sexual offense" to read
3 as follows:

4 "Sexual offense" means an offense that is:

- 5 (1) Set forth in section 707-730(1), 707-731(1),
6 707-732(1), 707-733(1)(a), 707-733.6, 712- (4), 712-
7 1202(1), or 712-1203(1), but excludes conduct that is
8 criminal only because of the age of the victim, as
9 provided in section 707-730(1)(b), or section 707-
10 732(1)(b) if the perpetrator is under the age of
11 eighteen;
- 12 (2) An act defined in section 707-720 if the charging
13 document for the offense for which there has been a
14 conviction alleged intent to subject the victim to a
15 sexual offense;
- 16 (3) An act that consists of:
- 17 (A) Criminal sexual conduct toward a minor, including
18 but not limited to an offense set forth in
19 section 707-759;
- 20 (B) Solicitation of a minor who is less than fourteen
21 years old to engage in sexual conduct;
- 22 (C) Use of a minor in a sexual performance;

1 (D) Production, distribution, or possession of child
2 pornography chargeable as a felony under section
3 707-750, 707-751, or 707-752;

4 (E) Electronic enticement of a child chargeable under
5 section 707-756 or 707-757 if the offense was
6 committed with the intent to promote or
7 facilitate the commission of another covered
8 offense as defined in this section; or

9 (F) [~~Solicitation of a minor for prostitution~~]

10 Commercial sexual exploitation of a minor in
11 violation of section 712-1209.1;

12 (4) A violation of privacy under section 711-1110.9;

13 (5) An act, as described in chapter 705, that is an
14 attempt, criminal solicitation, or criminal conspiracy
15 to commit one of the offenses designated in paragraphs
16 (1) through (4);

17 (6) A criminal offense that is comparable to or that
18 exceeds a sexual offense as defined in paragraphs (1)
19 through (5); or

20 (7) Any federal, military, out-of-state, tribal, or
21 foreign conviction for any offense that under the laws
22 of this State would be a sexual offense as defined in
23 paragraphs (1) through (6)."

1 SECTION 15. Section 853-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) This chapter shall not apply when:

4 (1) The offense charged involves the intentional, knowing,
5 reckless, or negligent killing of another person;

6 (2) The offense charged is:

7 (A) A felony that involves the intentional, knowing,
8 or reckless bodily injury, substantial bodily
9 injury, or serious bodily injury of another
10 person; or

11 (B) A misdemeanor or petty misdemeanor that carries a
12 mandatory minimum sentence and that involves the
13 intentional, knowing, or reckless bodily injury,
14 substantial bodily injury, or serious bodily
15 injury of another person;

16 provided that the prohibition in this paragraph shall
17 not apply to offenses described in section 709-
18 906(18);

19 (3) The offense charged involves a conspiracy or
20 solicitation to intentionally, knowingly, or
21 recklessly kill another person or to cause serious
22 bodily injury to another person;

23 (4) The offense charged is a class A felony;

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- 1 (5) The offense charged is nonprobationable;
- 2 (6) The defendant has been convicted of any offense
- 3 defined as a felony by the Hawaii Penal Code or has
- 4 been convicted for any conduct that if perpetrated in
- 5 this State would be punishable as a felony;
- 6 (7) The defendant is found to be a law violator or
- 7 delinquent child for the commission of any offense
- 8 defined as a felony by the Hawaii Penal Code or for
- 9 any conduct that if perpetrated in this State would
- 10 constitute a felony;
- 11 (8) The defendant has a prior conviction for a felony
- 12 committed in any state, federal, or foreign
- 13 jurisdiction;
- 14 (9) A firearm was used in the commission of the offense
- 15 charged;
- 16 (10) The defendant is charged with the distribution of a
- 17 dangerous, harmful, or detrimental drug to a minor;
- 18 (11) The defendant has been charged with a felony offense
- 19 and has been previously granted deferred acceptance of
- 20 guilty plea or no contest plea for a prior offense,
- 21 regardless of whether the period of deferral has
- 22 already expired;

- 1 (12) The defendant has been charged with a misdemeanor
2 offense and has been previously granted deferred
3 acceptance of guilty plea or no contest plea for a
4 prior felony, misdemeanor, or petty misdemeanor for
5 which the period of deferral has not yet expired;
- 6 (13) The offense charged is:
- 7 (A) Escape in the first degree;
- 8 (B) Escape in the second degree;
- 9 (C) Promoting prison contraband in the first degree;
- 10 (D) Promoting prison contraband in the second degree;
- 11 (E) Bail jumping in the first degree;
- 12 (F) Bail jumping in the second degree;
- 13 (G) Bribery;
- 14 (H) Bribery of or by a witness;
- 15 (I) Intimidating a witness;
- 16 (J) Bribery of or by a juror;
- 17 (K) Intimidating a juror;
- 18 (L) Jury tampering;
- 19 (M) Promoting prostitution;
- 20 (N) Abuse of family or household member except as
21 provided in paragraph (2) and section 709-
22 906(18);
- 23 (O) Sexual assault in the second degree;

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- 1 (P) Sexual assault in the third degree;
- 2 (Q) A violation of an order issued pursuant to
- 3 chapter 586;
- 4 (R) Promoting child abuse in the second degree;
- 5 (S) Promoting child abuse in the third degree;
- 6 (T) Electronic enticement of a child in the first
- 7 degree;
- 8 (U) Electronic enticement of a child in the second
- 9 degree;
- 10 (V) [~~Prostitution~~] Commercial sexual exploitation
- 11 pursuant to section [~~712-1200(1)(b)~~] 712-_____ ;
- 12 (W) Street [~~solicitation of~~] prostitution and
- 13 commercial sexual exploitation under section 712-
- 14 1207(1)(b) or (2)(b);
- 15 (X) [~~Solicitation of prostitution~~] Commercial sexual
- 16 exploitation near schools or public parks under
- 17 section 712-1209;
- 18 (Y) Habitual [~~solicitation of prostitution~~]
- 19 commercial sexual exploitation under section 712-
- 20 1209.5; or
- 21 (Z) [~~Solicitation of a minor for prostitution~~]
- 22 Commercial sexual exploitation of a minor under
- 23 section 712-1209.1;

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- 1 (14) The defendant has been charged with:
2 (A) Knowingly or intentionally falsifying any report
3 required under chapter 11, part XIII with the
4 intent to circumvent the law or deceive the
5 campaign spending commission; or
6 (B) Violating section 11-352 or 11-353; or
7 (15) The defendant holds a commercial driver's license and
8 has been charged with violating a traffic control law,
9 other than a parking law, in connection with the
10 operation of any type of motor vehicle."

11 SECTION 16. This Act does not affect rights and duties
12 that matured, penalties that were incurred, and proceedings that
13 were begun, before the effective date of this Act.

14 SECTION 17. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 18. This Act shall take effect upon its approval.

17
18 INTRODUCED BY: *M. D. W.*

19 BY REQUEST

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1 **Report Title:**

2 Crime; Sex Trafficking, Prostitution, and Related Offenses

3

4 **Description:**

5 Creates a separate offense for those who provide anything of
6 value to engage in sexual conduct with another; adds sex
7 trafficking to offenses that can be prosecuted at any time;
8 makes a person strictly liable for sex trafficking of a minor in
9 terms of the victim's age; changes the name of the crime of
10 solicitation of a minor for prostitution to commercial sexual
11 exploitation of a minor while closing loopholes in the law that
12 allow offenders to escape liability, and increases the grade of
13 offense to a class B felony; adds "anything of value" to reflect
14 the reality of non-monetary compensation used in commercial
15 sexual exploitation.

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The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIME.

PURPOSE: To amend Hawaii's sex trafficking laws in order to address evolving challenges, better reflect the current understanding of trafficking, and improve outcomes for trafficking victims and survivors.

MEANS: Add a new section 712-___; and amend sections 701-108(1), 712-1200(1), (3), (4), and (5), 712-1201, 712-1202, 712-1207, 712-1209, 712-1209.1, 712.1209.5, 712-1209.6, 712A-4, 806-83(a), 846E-1, 853-4(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Hawaii's sex trafficking laws must be amended in order to better reflect the current challenges created by the criminal enterprise involved in commercial sexual exploitation. The current penal code does not account for all of the methods and forms of sexual exploitation and human trafficking. Similarly, as our terminology and understanding of the issue evolve, so must the language in the Hawaii penal code. Modifying names and terms used in these statutes makes a significant impact on our ability to effectively address the problem in Hawaii.

Section 2 of the bill creates a new and separate crime for commercial sex buyers rather than keeping it as a prostitution offense under section 712-1200. Creating a separate offense for buyers is important from a policy standpoint and enables the collecting of separate arrest data. It is also important to separate the criminal culpability between the distinct criminal acts. The demand market drives commercial sexual exploitation, and buyers are inherently in a position of power over the prostituted person. "Commercial sexual

exploitation" appropriately describes the harm caused by the criminal act.

Section 3 of the bill amends section 701-108, HRS, to add the class A felony offense of sex trafficking to those offenses without a statute of limitations. In addition to the serious nature of the offense, sex trafficking victims are subjected to psychological and physical trauma and are often terrified and unwilling to cooperate in a prosecution against their trafficker. Many sex trafficking victims, whether adults or children, do not identify themselves as victims or are unable to disclose the victimization until much later, when they have been removed from the life of the trafficker, and have received extensive counseling or other trauma services.

Section 5 of the bill amends section 712-1201, HRS, to remove the reference to the victim experiencing sexual exploitation as the "prostitute". "Prostitute" connotes criminal culpability, and the crime of advancing or profiting from prostitution is the criminal act of an individual exploiting that prostituted person for profit. Additionally, the use of the term as a pronoun does not otherwise appear in the criminal penal code to describe individuals engaged in criminal conduct (e.g., "rapist", "burglar").

Section 6 of the bill amends section 712-1202, HRS, to clarify that a person who profits from prostitution commits the offense of sex trafficking, and makes subsection (1)(a) structurally consistent with subsection (1)(b). Like the offense of sexual assault of a minor, a defendant should be strictly liable in regard to the victim's age. Thus, the proposed amendment subsection (1)(b) eliminates the burden on the state to prove the defendant's knowledge of the victim's age.

Section 9 of the bill amends section 712-1209.1, HRS, to change the name of the offense to appropriately characterize the nature of the crime. "Commercial sexual exploitation of a minor (or child)" is the common term used by many jurisdictions and by experts in the anti-trafficking community. Because a minor cannot consent, adding subsection (6) makes it clear that consent is not a defense.

Amendments to this section also close a gap in the law which currently does not penalize an offender if the offender negotiates/pays a trafficker or other third party. Commonly, a sex buyer is not negotiating with or paying the child directly, whether knowingly or unknowingly.

Section 9 of the bill also changes the offense of commercial exploitation of a minor from a class C to a class B felony. In many jurisdictions, and in federal law, this conduct is covered under the sex trafficking law and is a class A felony.

The other sections in this bill amend the language and names of offenses to make them consistent with the proposed amendments in the sex trafficking statute discussed above.

Finally, numerous statutes only criminalize the prostitution transaction for "a fee", a monetary value. In reality, buyers and traffickers also sexually exploit victims in exchange for other "things of value," including drugs, goods, food, and housing. Adding "things of value" is consistent with the federal definition and most state jurisdictions.

Impact on the public: The public will benefit from a safety standpoint because more offenders will be held accountable. The changes in the terminology also help with a general awareness and understanding of the

nature of the crimes involving commercial sexual exploitation and sex trafficking.

Impact on the department and other agencies:

Approval will improve the department's efforts in leading a statewide anti-trafficking response. It will lead to greater accountability for those offenders who are most culpability.

These changes may also assist law enforcement agencies and the criminal justice system in holding offenders accountable for trafficking and sexual exploitation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: All state and county law enforcement agencies, the judiciary, and other criminal justice entities.

EFFECTIVE DATE: Upon approval.