
A BILL FOR AN ACT

RELATING TO SEX TRAFFICKING.

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

1 SECTION 1. Section 28-101, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) The attorney general shall establish a statewide
4 witness program through which the attorney general may fund or
5 provide for the security and protection of a government witness
6 or a potential government witness in an official proceeding or
7 investigation where the attorney general determines that an
8 offense such as those described in section 710-1071
9 (intimidating a witness), 710-1072 (tampering with a witness),
10 or 710-1072.2 (retaliating against a witness) is likely to be
11 committed or which involves great public interest. The attorney
12 general may also fund or provide for the security and protection
13 of the immediate family of, or a person otherwise closely
14 associated with, ~~[such]~~ the witness or potential witness if the
15 family or person may also be endangered. In determining whether
16 the funds or security and protection are to be provided, the
17 attorney general shall give greatest priority to official



1 proceedings or investigations involving pending or potential
2 organized crime, racketeering activity, promoting prostitution,
3 sex trafficking, or career criminal prosecutions."

4 SECTION 2. Section 351-32, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§351-32 Violent crimes. The crimes to which part III of
7 this chapter applies are the following and no other:

- 8 (1) Murder in the first degree (section 707-701);
- 9 (2) Murder in the second degree (section 707-701.5);
- 10 (3) Manslaughter (section 707-702);
- 11 (4) Negligent homicide in the first degree (section 707-
12 702.5);
- 13 (5) Negligent homicide in the second degree (section 707-
14 703);
- 15 (6) Negligent injury in the first degree (section 707-
16 705);
- 17 (7) Negligent injury in the second degree (section 707-
18 706);
- 19 (8) Assault in the first degree (section 707-710);
- 20 (9) Assault in the second degree (section 707-711);
- 21 (10) Assault in the third degree (section 707-712);



- 1 (11) Kidnapping (section 707-720);
2 (12) Sexual assault in the first degree (section 707-730);
3 (13) Sexual assault in the second degree (section 707-731);
4 (14) Sexual assault in the third degree (section 707-732);
5 (15) Sexual assault in the fourth degree (section 707-733);
6 (16) Abuse of family [f]or[t] household member (section
7 709-906); [and]
8 (17) Terrorism, as defined in title 18 United States Code
9 section 2331[-]; and
10 (18) Sex trafficking (section 712-1202)."

11 SECTION 3. Section 663J-1, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[f]§663J-1[t] Title. This [f]chapter[t] may be cited as
14 the Sex Trafficking and Prostitution Coercion Liability Act."

15 SECTION 4. Section 663J-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[f]§663J-2[t] Definitions. As used in this chapter:
18 "Coerce" means to use or threaten to use any form of
19 domination, restraint, or control for the purpose of causing an
20 individual to engage in or remain in prostitution or to
21 relinquish earnings derived from prostitution. Coercion exists



1 if the totality of the circumstances establish the existence of
2 domination, restraint, or control that would have the reasonably
3 foreseeable effect of causing an individual to engage in or
4 remain in prostitution or to relinquish earnings derived from
5 prostitution.

6 "Promoting prostitution" means promoting prostitution [~~in~~
7 ~~the first or second degree,~~] as provided in [~~sections 712-1202~~
8 ~~and~~] section 712-1203 [~~, respectively~~].

9 "Prostitution" has the same meaning as provided in section
10 712-1200.

11 "Sex trafficking" means sex trafficking as provided in
12 section 712-1202."

13 SECTION 5. Section 663J-3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+] §663J-3 [+] Cause of action for coercion into
16 prostitution[+] or subsection to sex trafficking. An individual
17 has a cause of action against a person who:

18 (1) Coerced the individual into prostitution[+] or
19 subjected the individual to sex trafficking;

20 (2) Coerced the individual to remain in prostitution[+] or
21 in sex trafficking;



(3) Used coercion to collect or receive any of the individual's earnings derived from prostitution[+] or being sex trafficked; or

(4) Hired, or attempted to hire the individual to engage in prostitution, when a reasonable person would believe that the individual was coerced into prostitution by another person[-] or was being subjected to sex trafficking.

Paragraph (3) shall not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual's earnings derived from prostitution[-] or being sex trafficked."

SECTION 6. Section 663J-5, Hawaii Revised Statutes, is amended to read as follows:

"[+] §663J-5 [+] **Damages.** A person entitled to bring an action under section 663J-3 may recover all of the following damages:

(1) Economic damages proximately caused by coercion into prostitution[+] or being sex trafficked;

(2) Noneconomic damages proximately caused by coercion into prostitution[+] or being sex trafficked;



1 (3) Exemplary damages;

2 (4) Reasonable attorney's fees; and

3 (5) Costs of suit, including reasonable expenses for
4 expert testimony."

5 SECTION 7. Section 663J-6, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In the discretion of the court, two or more persons
8 may join in one action under this chapter as plaintiffs if their
9 respective actions involve an individual who engages in
10 promoting prostitution by coercion[-] or sex trafficking."

11 SECTION 8. Section 663J-7, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A claim under this chapter may not be brought against
14 a person more than six years after an act of promoting
15 prostitution by coercion or sex trafficking by that person."

16 SECTION 9. Section 663J-8, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§663J-8[+] Stay of action. On motion by a
19 governmental agency involved in an investigation or prosecution
20 for promoting prostitution[-] or sex trafficking, an action
21 brought under this chapter shall be stayed until the completion



1 of the criminal investigation or prosecution that gave rise to
2 the motion for a stay of the action."

3 SECTION 10. Section 663J-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§663J-9[+] Other remedies preserved. The remedies
6 provided under this chapter do not restrict the right of any
7 person to bring an action under other law, including common law,
8 to recover damages arising out of the use of the individual in
9 prostitution or sex trafficking or the coercion incident to the
10 individual being used in prostitution[+] or sex trafficking; nor
11 does this chapter limit or restrict the liability of any person
12 under other law."

13 SECTION 11. Section 701-108, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

15 "(1) A prosecution for murder, murder in the first and
16 second degrees, attempted murder, and attempted murder in the
17 first and second degrees, criminal conspiracy to commit murder
18 in any degree, criminal solicitation to commit murder in any
19 degree, sexual assault in the first and second degrees, [and]
20 continuous sexual assault of a minor under the age of fourteen
21 years, and sex trafficking may be commenced at any time."



1 SECTION 12. Chapter 712, Hawaii Revised Statutes, is
2 amended by amending the title of part I to read as follows:

3 "PART I. PROSTITUTION ~~[AND]~~, PROMOTING PROSTITUTION, AND
4 SEX TRAFFICKING"

5 SECTION 13. Section 712-1200, Hawaii Revised Statutes, is
6 amended by amending subsection (3) to read as follows:

7 "(3) Prostitution is a petty misdemeanor~~[-]~~; provided
8 that:

9 (a) It is a class C felony if the person who paid, agreed
10 to pay, or offered to pay a fee to engage in sexual
11 conduct with another person did so in reckless
12 disregard of the fact that the other person was or is
13 a victim of sex trafficking; and

14 (b) It is a violation if the person who engaged in, or
15 agreed or offered to engage in, sexual conduct with
16 another person for a fee was less than eighteen years
17 of age at the time of the offense."

18 SECTION 14. Section 712-1202, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~§712-1202 [Promoting prostitution in the first degree.]~~
21 Sex trafficking. (1) A person commits the offense of



1 ~~[promoting prostitution in the first degree]~~ sex trafficking if
2 the person knowingly:

3 (a) Advances prostitution by compelling or inducing a
4 person ~~[by force, threat, fraud, or intimidation]~~ to
5 engage in prostitution, or profits from such conduct
6 by another~~[, or]~~, by any of the following means:

7 (i) Acts of force, deadly force, or unlawful force as
8 defined in section 703-300;

9 (ii) Threat including any of the actions listed in
10 section 707-764(1);

11 (iii) Fraud including making material false statements,
12 misstatements, or omissions;

13 (iv) Intimidation;

14 (v) Any of the acts described in section 707-710
15 relating to assault in the first degree, section
16 707-711 relating to assault in the second degree,
17 and section 707-712 relating to assault in the
18 third degree;

19 (vi) Any of the acts constituting kidnapping as
20 described in section 707-720(1)(a) through (e);



- 1 (vii) Any of the acts described in section 707-721(1)
2 relating to unlawful imprisonment in the first
3 degree or 707-722(1) relating to unlawful
4 imprisonment in the second degree;
- 5 (viii) Any of the acts described in section 707-730
6 relating to sexual assault in the first degree,
7 section 707-731 relating to sexual assault in the
8 second degree, and section 707-732 relating to
9 sexual assault in the third degree;
- 10 (ix) Any of the acts constituting extortion as
11 described in section 707-764 except that for
12 purposes of this paragraph, "labor" or
13 "services", as used in section 707-764, shall be
14 limited to "sexual conduct";
- 15 (x) Any of the acts described in the definition of
16 "deception" under section 708-800;
- 17 (xi) Any act that requires sexual conduct to retire,
18 repay, or service a real or purported debt;
- 19 (xii) Any act that uses any scheme, plan, or pattern
20 intended to cause another person to believe that
21 if that person did not engage in sexual conduct,



1 then a friend or member of that person's family
2 would suffer serious harm, serious financial
3 loss, or physical restraint; or
4 (xiii) Any act that uses or threatens to use any form of
5 domination, restraint, or control over the other
6 person, which given the totality of the
7 circumstances, would have the foreseeable effect
8 of causing another person to engage in or remain
9 engaged in the sexual conduct; or
10 (b) Advances or profits from prostitution of a person less
11 than eighteen years old.
12 (2) ~~[Promoting prostitution in the first degree]~~ Sex
13 trafficking is a class A felony.
14 (3) As used in this section:
15 ~~["Fraud" means making material false statements,~~
16 ~~misstatements, or omissions.~~
17 ~~"Threat" means any of the actions listed in section 707-~~
18 ~~764(1)-.]~~
19 "Sexual conduct" has the same meaning as used in section
20 712-1200."



1 SECTION 15. Section 712-1203, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§712-1203 Promoting prostitution [~~in the second degree~~].

4 (1) A person commits the offense of promoting prostitution [~~in~~
5 ~~the second degree~~] if the person knowingly advances or profits
6 from prostitution[-] of a person eighteen years of age or older.

7 (2) Promoting prostitution [~~in the second degree~~] is a
8 class B felony."

9 SECTION 16. Section 712-1209.6, Hawaii Revised Statutes,
10 is amended to read as follows:

11 "[+]§712-1209.6[+] Prostitution; motion to vacate

12 conviction. (1) A person convicted of committing the offense
13 of prostitution under section 712-1200, loitering for the
14 purpose of engaging in or advancing prostitution under section
15 712-1206, street solicitation of prostitution in designated
16 areas under section 712-1207, or convicted of a lesser offense
17 when originally charged with a violation of section 712-1200,
18 712-1206, or 712-1207, may file a motion to vacate the
19 conviction if the defendant's participation in the offense was
20 the result of the person having been a victim of:



1 (a) [~~Promoting prostitution in the first degree~~] Sex
2 trafficking under section 712-1202; or

3 (b) A severe form of trafficking as defined in title 22
4 United States Code section 7102(13).

5 (2) A motion filed under this section shall:

6 (a) Be in writing;

7 (b) Be signed and sworn to by the petitioner;

8 (c) Be made within six years after the date that the
9 person ceases to be a victim as described in
10 subsection (1), subject to reasonable concerns for the
11 safety of the defendant, family members of the
12 defendant, or other victims of the trafficking that
13 may be jeopardized by the bringing of a motion, or for
14 other reasons consistent with the purpose of this
15 section;

16 (d) Describe all the grounds and evidence for vacation of
17 a conviction which are available to the petitioner and
18 of which the petitioner has or by the exercise of
19 reasonable diligence should have knowledge, and
20 provide copies of any official documents showing that



1 the defendant is entitled to relief under this
2 section; and

3 (e) Be subject to the review and written approval of the
4 state agency or county prosecutor responsible for
5 prosecuting the offense that is the subject of the
6 motion to vacate conviction.

7 (3) The court shall hold a hearing on a motion filed under
8 this section if the motion satisfies the requirements of
9 subsection (2); provided that the court may dismiss a motion
10 without a hearing if the court finds that the motion fails to
11 assert grounds on which relief may be granted.

12 (4) If the court grants a motion filed under this section,
13 the court shall vacate the conviction.

14 (5) A person making a motion to vacate pursuant to this
15 section has the burden of proof by a preponderance of the
16 evidence.

17 (6) This section shall not apply to a motion to vacate a
18 conviction under this chapter for:

19 (a) Sex trafficking under section 712-1202;

20 (b) Promoting prostitution under section [~~712-1202 or~~]

21 712-1203; or



1 ~~[(b)]~~ (c) A person who pays, agrees to pay or offers a fee
2 to another person to engage in sexual conduct.

3 (7) For the purposes of this section:

4 "Victim ~~[of trafficking] and [victim]~~ of a severe form of
5 trafficking" shall have the same meaning as in title 22 United
6 States Code section 7102.

7 "Victim of trafficking" shall mean a victim of trafficking
8 as defined in title 22 United States Code section 7102 or a
9 victim of sex trafficking under section 712-1202, as
10 applicable."

11 SECTION 17. Section 712A-4, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§712A-4 Covered offenses. Offenses for which property is
14 subject to forfeiture under this chapter are:

- 15 (a) All offenses that specifically authorize forfeiture;
16 (b) Murder, kidnapping, labor trafficking, gambling,
17 criminal property damage, robbery, bribery, extortion,
18 theft, unauthorized entry into motor vehicle,
19 burglary, money laundering, trademark counterfeiting,
20 insurance fraud, promoting a dangerous, harmful, or
21 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, habitual
5 solicitation of prostitution, or electronic enticement
6 of a child that is chargeable as a felony offense
7 under state law;

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

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

19 SECTION 18. Section 803-44, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§803-44 Application for court order to intercept wire,
2 oral, or electronic communications. The attorney general of
3 this State, or a designated deputy attorney general in the
4 attorney general's absence or incapacity, or the prosecuting
5 attorney of each county, or a designated deputy prosecuting
6 attorney in the prosecuting attorney's absence or incapacity,
7 may make application to a designated judge or any other circuit
8 court judge or district court judge, if a circuit court judge
9 has not been designated by the chief justice of the Hawaii
10 supreme court, or is otherwise unavailable, in the county where
11 the interception is to take place, for an order authorizing or
12 approving the interception of wire, oral, or electronic
13 communications, and such court may grant in conformity with
14 section 803-46 an order authorizing or approving the
15 interception of wire, oral, or electronic communications by
16 investigative or law enforcement officers having responsibility
17 for the investigation of the offense as to which the application
18 is made, if the interception might provide or has provided
19 evidence of:

20 (1) Murder;

21 (2) Kidnapping;



- 1 (3) Labor trafficking in the first degree;
- 2 (4) Labor trafficking in the second degree;
- 3 (5) Felony criminal property damage involving the danger
- 4 of bodily injury as defined in section 707-700;
- 5 (6) Distribution of dangerous, harmful, or detrimental
- 6 drugs;
- 7 (7) Conspiracy to commit one or more of the above; or
- 8 (8) Involvement of organized crime and any of the
- 9 following felony offenses:
- 10 (A) Extortion;
- 11 (B) Bribery of a juror, witness, or police officer;
- 12 (C) Receiving stolen property;
- 13 (D) Gambling; ~~and~~
- 14 (E) Money laundering[-]; and
- 15 (F) Sex trafficking."

16 SECTION 19. Section 846E-10, Hawaii Revised Statutes, is

17 amended by amending subsection (c) to read as follows:

18 "(c) Tier 2 offenses. A covered offender who has

19 maintained a clean record for the previous twenty-five years,

20 excluding any time the offender was in custody or civilly

21 committed, and who has substantially complied with the



1 registration requirements of this chapter for the previous
2 twenty-five years, or for the portion of that twenty-five years
3 that this chapter has been applicable, and who is not a repeat
4 covered offender may petition the court, in a civil proceeding,
5 for termination of registration requirements; provided that the
6 covered offender's most serious covered offense is one of the
7 following:

- 8 (1) Any offense set forth in section 707-730(1)(c),
9 707-731(1)(c), 707-732(1)(c), 707-750, 707-751,
10 712-1202[~~(1)(b)~~], or 712-1203(1)(b), as section
11 712-1203(1)(b) read prior to its amendment pursuant to
12 section 9 of Act 147, Session Laws of Hawaii 2008;
- 13 (2) An offense set forth in section 707-720; provided that
14 the charging document for the offense for which there
15 has been a conviction alleged intent to subject the
16 victim to a sexual offense;
- 17 (3) An offense set forth in section 707-756 that includes
18 an intent to promote or facilitate the commission of
19 another felony covered offense as defined in section
20 846E-1;



1 (4) An offense that is an attempt, criminal solicitation,
2 or criminal conspiracy to commit any of the offenses
3 in paragraph (1), (2), or (3);

4 (5) Any criminal offense that is comparable to one of the
5 offenses in paragraph (1), (2), (3), or (4); or

6 (6) Any federal, military, out-of-state, tribal, or
7 foreign offense that is comparable to one of the
8 offenses in paragraph (1), (2), (3), or (4)."

9 SECTION 20. Section 853-4, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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

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

14 (2) The offense charged is:

15 (A) A felony that involves the intentional, knowing,
16 or reckless bodily injury, substantial bodily
17 injury, or serious bodily injury of another
18 person; or

19 (B) A misdemeanor or petty misdemeanor that carries a
20 mandatory minimum sentence and that involves the
21 intentional, knowing, or reckless bodily injury,



1 substantial bodily injury, or serious bodily
2 injury of another person;

3 (3) The offense charged involves a conspiracy or
4 solicitation to intentionally, knowingly, or
5 recklessly kill another person or to cause serious
6 bodily injury to another person;

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

8 (5) The offense charged is nonprobationable;

9 (6) The defendant has been convicted of any offense
10 defined as a felony by the Hawaii Penal Code or has
11 been convicted for any conduct that if perpetrated in
12 this State would be punishable as a felony;

13 (7) The defendant is found to be a law violator or
14 delinquent child for the commission of any offense
15 defined as a felony by the Hawaii Penal Code or for
16 any conduct that if perpetrated in this State would
17 constitute a felony;

18 (8) The defendant has a prior conviction for a felony
19 committed in any state, federal, or foreign
20 jurisdiction;



(9) A firearm was used in the commission of the offense charged;

(10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;

(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;

(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;

(13) The offense charged is:

(A) Escape in the first degree;

(B) Escape in the second degree;

(C) Promoting prison contraband in the first degree;

(D) Promoting prison contraband in the second degree;

(E) Bail jumping in the first degree;

(F) Bail jumping in the second degree;

(G) Bribery;



- 1 (H) Bribery of or by a witness;
- 2 (I) Intimidating a witness;
- 3 (J) Bribery of or by a juror;
- 4 (K) Intimidating a juror;
- 5 (L) Jury tampering;
- 6 (M) Promoting prostitution [~~in the second degree~~];
- 7 (N) Abuse of family or household member;
- 8 (O) Sexual assault in the second degree;
- 9 (P) Sexual assault in the third degree;
- 10 (Q) A violation of an order issued pursuant to
- 11 chapter 586;
- 12 (R) Promoting child abuse in the second degree;
- 13 (S) Promoting child abuse in the third degree;
- 14 (T) Electronic enticement of a child in the first
- 15 degree;
- 16 (U) Electronic enticement of a child in the second
- 17 degree;
- 18 (V) Prostitution pursuant to section 712-1200(1)(b);
- 19 (W) Street solicitation of prostitution under section
- 20 712-1207(1)(b);



1 (X) Solicitation of prostitution near schools or
2 public parks under section 712-1209;

3 (Y) Habitual solicitation of prostitution under
4 section 712-1209.5; [~~e~~]

5 (Z) Solicitation of a minor for prostitution under
6 section 712-1209.1; or

7 (AA) Sex trafficking under section 712-1202;

8 (14) The defendant has been charged with:

9 (A) Knowingly or intentionally falsifying any report
10 required under chapter 11, part XIII with the
11 intent to circumvent the law or deceive the
12 campaign spending commission; or

13 (B) Violating section 11-352 or 11-353; or

14 (15) The defendant holds a commercial driver's license and
15 has been charged with violating a traffic control law,
16 other than a parking law, in connection with the
17 operation of any type of motor vehicle."

18 SECTION 21. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.



1 SECTION 22. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 23. This Act shall take effect upon its approval.



Report Title:
Sex Trafficking

Description:

Replaces the term "promoting prostitution" with the term "sex trafficking," a class A felony. Includes the offense of sex trafficking in the department of the attorney general's statewide witness program. Includes the offense of sex trafficking in the list of violent crimes for which victims may be eligible for criminal injury compensation. Establishes a class C felony for the act of paying for sex in "reckless disregard" of the fact that the other person is a victim of sex trafficking. Adds the offense of sex trafficking to the list of crimes for which an order to intercept wire, oral, or electronic communications is permitted. (SB265 HD1)

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