A BILL FOR AN ACT

RELATING TO CRIME.

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

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . SEXUAL HUMAN TRAFFICKING

§707-A Sexual human trafficking in the first degree. (1)

A person commits the offense of sexual human trafficking in the first degree if the person, with the intent to advance prostitution or a sexually-explicit activity, transports, or aids, assists, or causes to be transported, any person into, through, within, across, or out of the State, or recruits, entices, or harbors:

(a) Any person for the purpose of engaging in prostitution or a sexually-explicit activity that will be obtained, maintained, or advanced by any of the following means:

(i) Extortion as described in section 707-764;

(ii) Kidnapping as described in section 707-720;

(iii) Unlawful imprisonment as described in section 707-721 or 707-722;
(iv) Force, threat, or intimidation;
(v) Deception, as defined in section 708-800, or fraud, which means making material false statements, misstatements, or omissions to induce or maintain the person to engage or continue to engage in prostitution or a sexually-explicit activity;
(vi) Requiring that prostitution or a sexually-explicit activity be performed to retire, repay, or service a real or purported debt, as in a debt bondage situation;
(vii) Causing or threatening to cause financial harm to any person;
(viii) Facilitating or controlling the trafficked person's access to an addictive controlled substance;
(ix) Withholding any of the trafficked person's government-issued identification document with the intent to impede the movement of the trafficked person; or
(x) Using any scheme, plan, or pattern intended to cause the trafficked person to believe that if
the trafficked person did not perform the
prostitution, then the trafficked person or
another person would suffer serious harm or
physical restraint; or
(b) Any person under the age of eighteen for the purpose
of engaging in prostitution or in a sexually-explicit
activity.

(2) Sexual human trafficking in the first degree is a
class A felony.

§707-B  Sexual human trafficking in the second degree.  (1)
A person commits the offense of sexual human trafficking in the
second degree if the person manages, supervises, controls, or
owns, either alone or in association with others, a business or
enterprise that recruits, entices, or maintains a person who,
having been transported into, through, within, across, or out of
the State:
(a) Is engaging or will engage in prostitution that has
been or will be obtained, maintained, or advanced by
any of the means specified in section 707-A(1)(a); or
(b) Is engaging or will engage in prostitution or in a
sexually-explicit activity; provided that this
paragraph shall apply only where the trafficked person is under the age of eighteen;
knowing, or in reckless disregard of the risk, that the person has been transported into, through, within, across, or out of the State, and that the person has been subject to any of the means set forth in section 707-A(1)(a), for a violation under paragraph (a), or is under the age of eighteen, for a violation under paragraph (b).

(2) Sexual human trafficking in the second degree is a class B felony.

§707-C Definitions; defenses; multiple sentences. (1)

For purposes of this part:

"Enticement" includes the use of a computer or any other electronic device to intentionally or knowingly communicate with another person, with the intent to promote or facilitate the trafficking of the other person under this part.

"Maintain" means, in relation to prostitution or sexually-explicit activity, to secure continued performance thereof, regardless of any initial agreement on the part of the trafficked person to perform such prostitution or sexually-explicit activity.
"Nude" shall have the same meaning as defined in section 712-1210.

"Sexually-explicit activity" means engaging in activity as an erotic or nude massager or exotic or nude dancer, as defined by section 712-1210, or in the production of child pornography, as defined in section 707-750.

"Trafficked person" or "trafficking victim" means a person who is transported for the purposes described in this part.

"Transported" means moved any distance, however slight, and shall not require proof of any specific minimum distance.

(2) It shall not be a defense to a charge under this part that, notwithstanding sections 702-204, 702-212, 702-213, and 702-218, the actor was mistaken as to or unaware of the age of the trafficked person, or that the trafficked person or another person reassured the actor regarding the trafficked person's majority. For purposes of this part, an actor's negligence or recklessness as to the age of the trafficked person shall be sufficient to prove the requisite state of mind.

(3) It shall be a complete defense to a charge under this part that the actor is the victim of the very conduct that is the basis of the criminal charge. For purposes of this part, a
trafficked person shall not be deemed to have aided or assisted
in the trafficked person's own trafficking.

(4) Any means specified in section 707A-(1)(a) that is a
separate criminal offense shall not constitute a lesser included
offense of the sexual human trafficking offense, and the
defendant may be charged and prosecuted for each offense.

Notwithstanding section 701-109(1)(a), a conviction and sentence
for sexual human trafficking shall be in addition to, and not in
lieu of, a conviction and sentence for any of the means
specified in section 707-A(1)(a) that constitute a separate
offense; provided that the sentence imposed under this part may
run concurrently with or consecutive to the sentence for the
means specified in section 707-A(1)(a).

§707-D Rights of alleged trafficking victims. (1) An
alleged trafficking victim under this part:

(a) May not be detained in a facility that is
inappropriate to the trafficking victim's status as a
crime victim;

(b) May not be jailed, fined, or otherwise penalized due
to having been the victim of the trafficking offense;

and
(c) Shall be provided protection if the trafficking victim's safety is at risk or if there is danger of additional harm by recapture of the trafficking victim by the person who allegedly committed the offense, including:

(i) Taking measures to protect the alleged victim and the victim's family members from intimidation and threats of reprisals and reprisals from the person who allegedly committed the offense or the person's agent; and

(ii) Ensuring that the names and identifying information of the alleged trafficking victim and the victim's family members are not disclosed to the public.

(2) Not more than fifteen days after the date a law enforcement agency first reasonably becomes aware of an alleged trafficking victim under this part, the law enforcement agency shall provide the alleged trafficking victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, form I-914 Supplement B) in accordance with 8 C.F.R. 214.11(f)(1). However, if the law enforcement agency finds that the grant of an LEA Declaration is
not appropriate for the alleged victim, then not more than fifteen days after the date the agency makes the finding, the law enforcement agency shall provide the alleged trafficking victim with a letter explaining the grounds for denial of the LEA Declaration. After receiving a denial letter, the alleged trafficking victim may submit additional evidence to the law enforcement agency. If the alleged victim submits additional evidence, the law enforcement agency shall reconsider the denial of the LEA Declaration not more than seven days after the date the agency receives the additional evidence."

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

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

(1) Murder in the first degree (section 707-701);
(2) Murder in the second degree (section 707-701.5);
(3) Manslaughter (section 707-702);
(4) Negligent homicide in the first degree (section 707-702.5);
(5) Negligent homicide in the second degree (section 707-703);
(6) Negligent injury in the first degree (section 707-705);
(7) Negligent injury in the second degree (section 707-706);
(8) Assault in the first degree (section 707-710);
(9) Assault in the second degree (section 707-711);
(10) Assault in the third degree (section 707-712);
(11) Kidnapping (section 707-720);
(12) Sexual assault in the first degree (section 707-730);
(13) Sexual assault in the second degree (section 707-731);
(14) Sexual assault in the third degree (section 707-732);
(15) Sexual assault in the fourth degree (section 707-733);
(16) Sexual human trafficking in the first degree (section 707-A);
(17) Sexual human trafficking in the second degree (section 707-B);
(18) Abuse of family [±]or[±] household member (section 709-906); and
(19) Terrorism, as defined in Title 18 United States Code section 2331."

SECTION 3. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

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

(a) All offenses which specifically authorize forfeiture;

(b) Murder, kidnapping, sexual human trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, unlawful methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, or electronic enticement of a child which is chargeable as a felony offense under state law;

(c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture."

SECTION 4. Section 803-44, Hawaii Revised Statutes, is amended to read as follows:

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

(1) Murder;

(2) Sexual human trafficking;

(3) Kidnapping;

(4) Felony criminal property damage involving the
danger of bodily injury as defined in section 707-700;

(5) Distribution of dangerous, harmful, or
detrimental drugs; or

(6) Conspiracy to commit one or more of the above;
or involving

(7) Organized crime and any of the following felony
offenses:

(A) Extortion;

(B) Bribery of a juror, of a witness, or of a police officer;

(C) Receiving stolen property; [and]

(D) Gambling; and

(E) Money laundering."

SECTION 5. Section 842-1, Hawaii Revised Statutes, is amended by amending the definitions of "organized crime" and "racketeering activity" to read as follows:
"Organized crime" means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, sexual human trafficking, or corruption of law enforcement officers or other public officers or employers.

"Racketeering activity" means any act or threat involving, but not limited to, murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, sexual human trafficking, theft, or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year."

SECTION 6. Section 846E-1, Hawaii Revised Statutes, is amended to read as follows:

1. By amending the definition of "crime against minors" to read:

"Crime against minors" excludes "sexual offenses" as defined in this section and means a criminal offense that consists of:

(1) Kidnapping of a minor, by someone other than a parent;
(2) Unlawful imprisonment in the first or second degree that involves the unlawful imprisonment of a minor by someone other than a parent;

(3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (1) or (2); or

(4) A criminal offense that is comparable to or which exceeds one of the offenses designated in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that, under the laws of this State would be a crime against minors as designated in paragraphs (1) through (3)."

2. By amending the definition of "sexual offense" to read:

""Sexual offense" means an offense that is:

(1) Set forth in section 707-A(1), 707-B(1),

707-730(1)(a), 707-730(1)(b), 707-730(1)(c),

707-730(1)(d) or (e), 707-731(1)(a), 707-731(1)(b),

707-731(1)(c), 707-732(1)(a), 707-732(1)(b),

707-732(1)(c), 707-732(1)(d), 707-732(1)(e),

707-732(1)(f), 707-733(1)(a), 707-733.6,

712-1202(1)(b), or 712-1203(1)(b), but excludes
conduct that is criminal only because of the age of
the victim, as provided in section 707-730(1)(b), or
section 707-732(1)(b) if the perpetrator is under the
age of eighteen;

(2) An act defined in section 707-720 if the charging
document for the offense for which there has been a
conviction alleged intent to subject the victim to a
sexual offense;

(3) An act that consists of:

(A) Criminal sexual conduct toward a minor, including
but not limited to an offense set forth in
section 707-759;

(B) Solicitation of a minor who is less than fourteen
years old to engage in sexual conduct;

(C) Use of a minor in a sexual performance;

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

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

(F) Solicitation of a minor to practice prostitution;

(4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or

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

SECTION 7. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

"§853-4 Chapter not applicable; when. This chapter shall not apply when:

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

(2) The offense charged is:

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

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

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

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

(5) The offense charged is nonprobationable;

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

(7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
(8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign 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;
(H) Bribery of or by a witness;
(I) Intimidating a witness;
(J) Bribery of or by a juror;
(K) Intimidating a juror;
(L) Jury tampering;
(M) Promoting prostitution in the first degree;
(N) Promoting prostitution in the second degree;
(O) Promoting prostitution in the third degree;
(P) Abuse of family or household members;
(Q) Sexual human trafficking in the second degree;
(R) Sexual assault in the second degree;
(S) Sexual assault in the third degree;
(T) A violation of an order issued pursuant to
   chapter 586;
(U) Promoting child abuse in the second degree;
(V) Promoting child abuse in the third degree;
(W) Electronic enticement of a child in the
   first degree; or
(X) Electronic enticement of a child in the
   second degree;
(14) The defendant has been charged with:

(A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or

(B) Violating section 11-201 or 11-202; or

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

The court may adopt by rule other criteria in this area.

SECTION 8. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

"§853-4 Chapter not applicable; when. This chapter shall not apply when:

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

(2) The offense charged is:

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

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

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

(5) The offense charged is nonprobationable;

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

(7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
(8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign 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;
(H) Bribery of or by a witness;
(I) Intimidating a witness;
(J) Bribery of or by a juror;
(K) Intimidating a juror;
(L) Jury tampering;
(M) Promoting prostitution in the first degree;
(N) Promoting prostitution in the second degree;
(O) Promoting prostitution in the third degree;
(P) Abuse of family or household members;
(Q) Sexual human trafficking in the second degree;
(R) Sexual assault in the second degree;
(S) Sexual assault in the third degree;
(T) A violation of an order issued pursuant to chapter 586;
(U) Promoting child abuse in the second degree;
(V) Promoting child abuse in the third degree;
(W) Electronic enticement of a child in the first degree;
(X) Electronic enticement of a child in the second degree; or
[(X)] (Y) An offense under part IV, chapter 291E;

(14) The defendant has been charged with:

(A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or

(B) Violating section 11-201 or 11-202; or

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

The court may adopt by rule other criteria in this area."

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.
SECTION 11. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 13. This Act shall take effect on July 1, 2050; provided that section 8 shall take effect on January 1, 2011.
Report Title:
Human Trafficking Offenses; Crime

Description:
Establishes class A and B felony sexual human trafficking offenses, and provisions related to prosecution of the offenses. Effective July 1, 2050. (SD1)

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