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# A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

1 **PART I**

2 SECTION 1. This part shall be known as the "Protect  
3 Victims of Domestic Violence Act."

4 SECTION 2. Section 707-701, Hawaii Revised Statutes, is  
5 amended by amending subsection (1) to read as follows:

6 "(1) A person commits the offense of murder in the first  
7 degree if the person intentionally or knowingly causes the death  
8 of:

- 9 (a) More than one person in the same or separate incident;  
10 (b) A law enforcement officer, judge, or prosecutor  
11 arising out of the performance of official duties;  
12 (c) A person known by the defendant to be a witness in a  
13 criminal prosecution and the killing is related to the  
14 person's status as a witness;  
15 (d) A person by a hired killer, in which event both the  
16 person hired and the person responsible for hiring the  
17 killer shall be punished under this section; [~~or~~]  
18 (e) A person while the defendant was imprisoned[~~-~~];



- 1        (f) A person from whom the defendant has been restrained,
- 2                by order of any court, including an ex parte order,
- 3                from contacting, threatening, or physically abusing
- 4                pursuant to chapter 586;
- 5        (g) A person who is being protected by a police officer
- 6                ordering the defendant to leave the premises of that
- 7                protected person pursuant to section 709-906(4),
- 8                during the effective period of that order; or
- 9        (h) A person known by the defendant to be a witness in a
- 10                family court case and the killing is related to the
- 11                person's status as a witness."

12                SECTION 3. Section 707-701.5, Hawaii Revised Statutes, is

13 amended by amending subsection (1) to read as follows:

14                "(1) Except as provided in section 707-701, a person

15 commits the offense of murder in the second degree if [~~the~~]:

16                (a) The person intentionally or knowingly causes the death

17                of another person[-]; or

18                (b) The person recklessly causes the death of:

19                (i) A person from whom the defendant has been

20                restrained, by order of any court, including an

21                ex parte order, from contacting, threatening, or

22                physically abusing pursuant to chapter 586; or



1           (ii) A person who is being protected by a police  
2                   officer ordering the defendant to leave the  
3                   premises of that protected person pursuant to  
4                   section 709-906(4), during the effective period  
5                   of that order."

6           SECTION 4. Section 707-711, Hawaii Revised Statutes, is  
7 amended by amending subsection (1) to read as follows:

8           "(1) A person commits the offense of assault in the second  
9 degree if:

- 10           (a) The person intentionally or knowingly causes  
11                   substantial bodily injury to another;
- 12           (b) The person recklessly causes serious or substantial  
13                   bodily injury to another;
- 14           (c) The person intentionally or knowingly causes bodily  
15                   injury to a correctional worker, as defined in section  
16                   710-1031(2), who is engaged in the performance of duty  
17                   or who is within a correctional facility;
- 18           (d) The person intentionally or knowingly causes bodily  
19                   injury to another with a dangerous instrument;
- 20           (e) The person intentionally or knowingly causes bodily  
21                   injury to an educational worker who is engaged in the  
22                   performance of duty or who is within an educational



1 facility. For the purposes of this paragraph,  
2 "educational worker" means: any administrator,  
3 specialist, counselor, teacher, or employee of the  
4 department of education or an employee of a charter  
5 school; a person who is a volunteer, as defined in  
6 section 90-1, in a school program, activity, or  
7 function that is established, sanctioned, or approved  
8 by the department of education; or a person hired by  
9 the department of education on a contractual basis and  
10 engaged in carrying out an educational function;

11 (f) The person intentionally or knowingly causes bodily  
12 injury to any emergency medical services provider who  
13 is engaged in the performance of duty. For the  
14 purposes of this paragraph, "emergency medical  
15 services provider" means emergency medical services  
16 personnel, as defined in section 321-222, and  
17 physicians, physician's assistants, nurses, nurse  
18 practitioners, certified registered nurse  
19 anesthetists, respiratory therapists, laboratory  
20 technicians, radiology technicians, and social  
21 workers, providing services in the emergency room of a  
22 hospital; [e]



1 (g) The person intentionally or knowingly causes bodily  
2 injury to a person employed at a state-operated or  
3 -contracted mental health facility. For the purposes  
4 of this paragraph, "a person employed at a state-  
5 operated or -contracted mental health facility"  
6 includes health care professionals as defined in  
7 section 451D-2, administrators, orderlies, security  
8 personnel, volunteers, and any other person who is  
9 engaged in the performance of a duty at a state-  
10 operated or -contracted mental health facility[-]; or

11 (h) The person intentionally, knowingly, or recklessly  
12 causes bodily injury to:

13 (i) A person from whom the defendant has been  
14 restrained, by order of any court, including an  
15 ex parte order, from contacting, threatening, or  
16 physically abusing pursuant to chapter 586; or

17 (ii) A person who is being protected by a police  
18 officer ordering the defendant to leave the  
19 premises of that protected person pursuant to  
20 section 709-906(4), during the effective period  
21 of that order."



1 SECTION 5. Section 707-716, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of terroristic  
4 threatening in the first degree if the person commits  
5 terroristic threatening:

6 (a) By threatening another person on more than one  
7 occasion for the same or a similar purpose;

8 (b) By threats made in a common scheme against different  
9 persons;

10 (c) Against a public servant arising out of the  
11 performance of the public servant's official duties.  
12 For the purposes of this paragraph, "public servant"  
13 includes but is not limited to an educational worker.  
14 "Educational worker" has the same meaning as defined  
15 in section 707-711;

16 (d) Against any emergency medical services provider who is  
17 engaged in the performance of duty. For the purposes  
18 of this paragraph, "emergency medical services  
19 provider" means emergency medical services personnel,  
20 as defined in section 321-222, and physicians,  
21 physician's assistants, nurses, nurse practitioners,  
22 certified registered nurse anesthetists, respiratory



1 therapists, laboratory technicians, radiology  
2 technicians, and social workers, providing services in  
3 the emergency room of a hospital; [øæ]

4 (e) With the use of a dangerous instrument[-]; or

5 (f) By threatening:

6 (i) A person from whom the defendant has been  
7 restrained, by order of any court, including an  
8 ex parte order, from contacting, threatening, or  
9 physically abusing pursuant to chapter 586; or

10 (ii) A person who is being protected by a police  
11 officer ordering the defendant to leave the  
12 premises of that protected person pursuant to  
13 section 709-906(4), during the effective period  
14 of that order."

15 PART II

16 SECTION 6. Chapter 707, Hawaii Revised Statutes, is  
17 amended by adding a new part to be appropriately designated and  
18 to read as follows:

19 "PART . LABOR TRAFFICKING

20 §707-A Definitions. As used in this part:

21 "Labor" means work of economic or financial value.



1 "Services" means a relationship between a person and the  
2 actor in which the person performs activities under the  
3 supervision of or for the benefit of the actor or a third party.

4 "Venture" means a business relationship between two or more  
5 parties to undertake economic activity together.

6 **§707-B Labor trafficking in the first degree.** (1) A  
7 person commits the offense of labor trafficking in the first  
8 degree if the person knowingly provides or obtains or attempts  
9 to provide or obtain another person for labor or services, by  
10 any of the following means:

- 11 (a) Extortion as defined in section 707-764;
- 12 (b) Kidnapping as defined in section 707-720;
- 13 (c) Unlawful imprisonment as defined in section 707-721 or  
14 707-722;
- 15 (d) Force, threat, or intimidation;
- 16 (e) Deception, as defined in section 708-800, or fraud,  
17 which means making material false statements,  
18 misstatements, or omissions to induce or maintain the  
19 person to engage or continue to engage in the labor or  
20 services;
- 21 (f) Requiring that labor be performed to retire, repay, or  
22 service a real or purported debt, if performing the





1 labor or services is the exclusive method allowed to  
2 retire, repay, or service the debt and the indebted  
3 person is required to repay the debt with direct labor  
4 in place of currency; provided that this shall not  
5 include labor or services performed by a child for the  
6 child's parent or guardian;

7 (g) Assault in violation of either section 707-710,  
8 707-711, or 707-712;

9 (h) Withholding any of the trafficked person's government-  
10 issued identification documents with the intent to  
11 impede the movement of the person;

12 (i) Using any scheme, plan, or pattern intended to cause  
13 the person to believe that if the person did not  
14 perform the labor or services, then the person or a  
15 friend or a member of the person's family would suffer  
16 serious harm, serious financial loss, or physical  
17 restraint; or

18 (j) Using or threatening to use any form of domination,  
19 restraint, or control over the person which, given the  
20 totality of the circumstances, would have the  
21 reasonably foreseeable effect of causing the person to



1 engage in or to remain engaged in the labor or  
2 services.

3 (2) Labor trafficking in the first degree is a class A  
4 felony.

5 **§707-C Labor trafficking in the second degree.** (1) A  
6 person commits the offense of labor trafficking in the second  
7 degree if the person knowingly:

8 (a) Either acting as an individual or using a licensed  
9 business or business enterprise, aids another in a  
10 venture knowing that the other person in that venture  
11 is committing the offense of labor trafficking in the  
12 first degree; or

13 (b) Benefits, financially or by receiving something of  
14 value, from participation in a venture knowing or in  
15 reckless disregard of the fact that another person has  
16 engaged in any act in violation of subsection (a) in  
17 the course of that venture or that another person in  
18 that venture is committing the offense of labor  
19 trafficking in the first degree.

20 (2) Labor trafficking in the second degree is a class B  
21 felony; provided that if a violation of subsection (1) involves  
22 kidnapping or an attempt to kidnap, aggravated sexual abuse or



1 the attempt to commit aggravated sexual abuse, or an attempt to  
2 cause the death of a person, or if a death results, the offense  
3 shall be a class A felony.

4 (3) Upon conviction of a defendant under subsection (1),  
5 the court shall also order that any and all business licenses  
6 issued by the State be revoked for the business or enterprise  
7 that the defendant used to aid in the offense of labor  
8 trafficking in the second degree; provided that the court, in  
9 its discretion, may reinstate the business license upon petition  
10 to the court by any remaining owner or partner of the business  
11 or enterprise who was not convicted of an offense under this  
12 section.

13 **§707-D Additional sentencing considerations; victims held**  
14 **in servitude.** In addition to the factors set forth in sections  
15 706-606 and 706-621, when determining the particular sentence to  
16 be imposed on a defendant convicted under section 707-B or  
17 707-C, the court shall consider:

- 18 (a) The time in which the victim was held in servitude;  
19 and  
20 (b) The number of victims.

21 **§707-E Extended terms of imprisonment; labor trafficking**  
22 **offenses.** If a person is found guilty of a violation under



1 section 707-B or 707-C and the victim suffered bodily injury,  
2 the person may be sentenced to an extended indeterminate term of  
3 imprisonment. Subject to the procedures set forth in section  
4 706-664, the court may impose, in addition to the indeterminate  
5 term of imprisonment provided for the grade of offense, an  
6 additional indeterminate term of imprisonment as follows:

- 7 (a) Bodily injury - an additional two years of  
8 imprisonment;
- 9 (b) Serious bodily injury - an additional five years of  
10 imprisonment;
- 11 (c) Permanent or life-threatening bodily injury - an  
12 additional fifteen years of imprisonment; or
- 13 (d) If death results, the defendant shall be sentenced in  
14 accordance with the homicide statute relevant for the  
15 level of criminal intent.

16 When ordering an extended term sentence, the court shall impose  
17 the maximum length of imprisonment. The minimum length of  
18 imprisonment for an extended term sentence under paragraph (a),  
19 (b), (c), or (d) shall be determined by the Hawaii paroling  
20 authority in accordance with section 706-669.

21 **§707-F Restitution for victims of labor trafficking. (1)**

22 In addition to any other penalty, and notwithstanding a victim's



1 failure to request restitution under section 706-646(2), the  
2 court shall order restitution to be paid to the victim,  
3 consisting of an amount that is the greater of:

4 (a) The total gross income or value to the defendant of  
5 the victim's labor or services; or

6 (b) The value of the victim's labor or services, as  
7 guaranteed under the minimum wage provisions of  
8 chapter 387 or the Fair Labor Standards Act of 1938,  
9 P.L. 75-718, 29 United States Code 201 - 219,  
10 inclusive, whichever is greater.

11 (2) The return of the victim to the victim's home country  
12 or other absence of the victim from the jurisdiction shall not  
13 relieve the defendant of the defendant's restitution obligation.

14 (3) For purposes of this section, "victim" means the  
15 person against whom an offense specified in section 707-B or  
16 707-C has been committed.

17 **§707-G Nonpayment of wages.** (1) A person commits the  
18 offense of nonpayment of wages if the person, in the capacity as  
19 an employer of an employee, wilfully or with intent to defraud  
20 fails or refuses to pay wages to the employee. In addition to  
21 any other penalty, a person convicted of nonpayment of wages



1 shall be fined not less than \$2,000 nor more than \$10,000 for  
2 each offense.

3 (2) Nonpayment of wages is:

4 (a) A class C felony, if the amount owed to the employee  
5 is equal to or greater than \$2,000 or if the person  
6 convicted of nonpayment of wages falsely denies the  
7 amount or validity of the wages owed; or

8 (b) A misdemeanor, if the amount owed to the employee is  
9 less than \$2,000.

10 (3) A person commits a separate offense under this section  
11 for each pay period during which the employee earned wages that  
12 the person failed or refused to pay the employee. If no set pay  
13 periods were agreed upon between the person and the employee at  
14 the time the employee commenced the work, then each "pay period"  
15 shall be deemed to be bi-weekly.

16 (4) In addition to any other penalty, the court shall  
17 order restitution to be paid to the employee, consisting of an  
18 amount that is the greater of:

19 (a) The wages earned by the employee that were unpaid by  
20 the person convicted of nonpayment of wages; or

21 (b) The value of the employee's labor or services, as  
22 guaranteed under the minimum wage provisions of



1 chapter 387 or the Fair Labor Standards Act of 1938,  
2 P.L. 75-718, 29 United States Code 201 - 219,  
3 inclusive, whichever is greater.

4 (5) An employee who is the victim of nonpayment of wages  
5 may bring a civil action to recover all wages owed by the person  
6 convicted of nonpayment of wages.

7 (6) For purposes of this section:

8 "Employee" means any person working for another for hire,  
9 including but not limited to an individual employed in domestic  
10 service or at a family or person's home or any individual  
11 employed by the individual's parent or spouse, or independent  
12 contractors.

13 "Person" includes any individual, partnership, association,  
14 joint-stock company, trust, corporation, the personal  
15 representative of the estate of a deceased individual, or the  
16 receiver, trustee, or successor of any of the same, employing  
17 any persons, but shall not include the United States.

18 "Wages" means compensation for labor or services rendered  
19 by an employee, whether the amount is determined on a time,  
20 task, piece, commission, or other basis of calculation.

21 **§707-H Unlawful conduct with respect to documents.** (1) A  
22 person commits unlawful conduct with respect to documents if the



1 person knowingly destroys, conceals, removes, confiscates, or  
2 possesses any actual or purported government identification  
3 document of another person:

4 (a) In the course of a violation or attempt to commit an  
5 offense under section 707-B or 707-C; or

6 (b) To prevent or restrict, or in an attempt to prevent or  
7 restrict, without lawful authority, the ability of the  
8 other person to move or travel, in order to maintain  
9 the labor or services of the other person, when the  
10 person is or has been the victim of an offense under  
11 section 707-B or 707-C.

12 (2) A person commits unlawful conduct with respect to  
13 documents if the person knowingly destroys, conceals, removes,  
14 or confiscates any actual or purported government identification  
15 document of an employee.

16 (3) Unlawful conduct with respect to documents is a  
17 class C felony."

18 SECTION 7. Section 712A-4, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§712A-4 **Covered offenses.** Offenses for which property is  
21 subject to forfeiture under this chapter are:

22 (a) All offenses which specifically authorize forfeiture;





- 1 (b) Murder, kidnapping, labor trafficking, gambling,  
2 criminal property damage, robbery, bribery, extortion,  
3 theft, unauthorized entry into motor vehicle,  
4 burglary, money laundering, trademark counterfeiting,  
5 insurance fraud, promoting a dangerous, harmful, or  
6 detrimental drug, commercial promotion of marijuana,  
7 unlawful methamphetamine trafficking, manufacturing of  
8 a controlled substance with a child present, promoting  
9 child abuse, or electronic enticement of a child which  
10 is chargeable as a felony offense under state law;
- 11 (c) The manufacture, sale, or distribution of a controlled  
12 substance in violation of chapter 329, promoting  
13 detrimental drugs or intoxicating compounds, promoting  
14 pornography, promoting pornography for minors, or  
15 promoting prostitution, which is chargeable as a  
16 felony or misdemeanor offense, but not as a petty  
17 misdemeanor, under state law; and
- 18 (d) The attempt, conspiracy, solicitation, coercion, or  
19 intimidation of another to commit any offense for  
20 which property is subject to forfeiture."

21 SECTION 8. Section 803-44, Hawaii Revised Statutes, is  
22 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;  
22           (3) Labor trafficking in the first degree;



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

16        SECTION 9. Section 842-1, Hawaii Revised Statutes, is  
 17 amended by amending the definitions of "organized crime" and  
 18 "racketeering activity" to read as follows:

19        "'Organized crime" means any combination or conspiracy to  
 20 engage in criminal activity as a significant source of income or  
 21 livelihood, or to violate, aid or abet the violation of criminal  
 22 laws relating to prostitution, gambling, loan sharking, drug



1 abuse, illegal drug distribution, counterfeiting, extortion,  
2 labor trafficking, or corruption of law enforcement officers or  
3 other public officers or employers.

4 "Racketeering activity" means any act or threat  
5 involving[7] but not limited to murder, kidnapping, gambling,  
6 criminal property damage, robbery, bribery, extortion, labor  
7 trafficking, theft, or prostitution, or any dealing in narcotic  
8 or other dangerous drugs which is chargeable as a crime under  
9 state law and punishable by imprisonment for more than one  
10 year."

11 **PART III**

12 SECTION 10. In codifying the new sections added by  
13 section 6 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 11. This Act does not affect rights and duties  
17 that matured, penalties that were incurred, and proceedings that  
18 were begun before its effective date.

19 SECTION 12. If any provision of this Act, or the  
20 application thereof to any person or circumstance is held  
21 invalid, the invalidity does not affect other provisions or  
22 applications of the Act, which can be given effect without the



1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 13. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 14. This Act shall take effect on July 1, 2011.

6



**Report Title:**

Penal Code; Domestic Violence Victim Protection; Labor  
Trafficking; Nonpayment of Wages

**Description:**

Amends certain criminal offenses to include conduct committed against domestic violence victims covered by protective orders or restraining orders. Establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. Establishes provisions related to prosecution of the offenses. (SD1)

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