
A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) Notwithstanding section 706-669 and any other law to
4 the contrary, any person convicted of murder in the second
5 degree, any class A felony, any class B felony, or any of the
6 following class C felonies: section 188-23 relating to
7 possession or use of explosives, electrofishing devices, and
8 poisonous substances in state waters; section 386-98(d)(1)
9 relating to fraud violations and penalties; section 431:2-
10 403(b)(2) relating to insurance fraud; section 707-703 relating
11 to negligent homicide in the second degree; section 707-711
12 relating to assault in the second degree; section 707-713
13 relating to reckless endangering in the first degree; section
14 707-716 relating to terroristic threatening in the first degree;
15 section 707-721 relating to unlawful imprisonment in the first
16 degree; section 707-732 relating to sexual assault or rape in
17 the third degree; section 707-752 relating to promoting child
18 abuse in the third degree; section 707-757 relating to



1 electronic enticement of a child in the second degree; section
2 707-766 relating to extortion in the second degree; section 708-
3 811 relating to burglary in the second degree; section 708-821
4 relating to criminal property damage in the second degree;
5 section 708-831 relating to theft in the first degree as amended
6 by Act 68, Session Laws of Hawaii 1981; section 708-831 relating
7 to theft in the second degree; section 708-835.5 relating to
8 theft of livestock; section 708-836 relating to unauthorized
9 control of propelled vehicle; section 708-839.8 relating to
10 identity theft in the third degree; section 708-839.55 relating
11 to unauthorized possession of confidential personal information;
12 section 708-852 relating to forgery in the second degree;
13 section 708-854 relating to criminal possession of a forgery
14 device; section 708-875 relating to trademark counterfeiting;
15 section 710-1071 relating to intimidating a witness; section
16 711-1103 relating to riot; [~~section 712-1203 relating to~~
17 ~~promoting prostitution in the second degree,~~] section 712-1221
18 relating to promoting gambling in the first degree; section 712-
19 1224 relating to possession of gambling records in the first
20 degree; section 712-1243 relating to promoting a dangerous drug
21 in the third degree; section 712-1247 relating to promoting a
22 detrimental drug in the first degree; section 846E-9 relating to



1 failure to comply with covered offender registration
2 requirements; section 134-7 relating to ownership or possession
3 of firearms or ammunition by persons convicted of certain
4 crimes; section 134-8 relating to ownership, etc., of prohibited
5 weapons; section 134-9 relating to permits to carry, or who is
6 convicted of attempting to commit murder in the second degree,
7 any class A felony, any class B felony, or any of the class C
8 felony offenses enumerated above and who has a prior conviction
9 or prior convictions for the following felonies, including an
10 attempt to commit the same: murder, murder in the first or
11 second degree, a class A felony, a class B felony, any of the
12 class C felony offenses enumerated above, or any felony
13 conviction of another jurisdiction, shall be sentenced to a
14 mandatory minimum period of imprisonment without possibility of
15 parole during such period as follows:

- 16 (a) One prior felony conviction:
- 17 (i) Where the instant conviction is for murder in the
18 second degree or attempted murder in the second
19 degree--ten years;
- 20 (ii) Where the instant conviction is for a class A
21 felony--six years, eight months;



- 1 (iii) Where the instant conviction is for a class B
- 2 felony--three years, four months; and
- 3 (iv) Where the instant conviction is for a class C
- 4 felony offense enumerated above--one year, eight
- 5 months;
- 6 (b) Two prior felony convictions:
- 7 (i) Where the instant conviction is for murder in the
- 8 second degree or attempted murder in the second
- 9 degree--twenty years;
- 10 (ii) Where the instant conviction is for a class A
- 11 felony--thirteen years, four months;
- 12 (iii) Where the instant conviction is for a class B
- 13 felony--six years, eight months; and
- 14 (iv) Where the instant conviction is for a class C
- 15 felony offense enumerated above--three years,
- 16 four months;
- 17 (c) Three or more prior felony convictions:
- 18 (i) Where the instant conviction is for murder in the
- 19 second degree or attempted murder in the second
- 20 degree--thirty years;
- 21 (ii) Where the instant conviction is for a class A
- 22 felony--twenty years;



- 1 (iii) Where the instant conviction is for a class B
- 2 felony--ten years; and
- 3 (iv) Where the instant conviction is for a class C
- 4 felony offense enumerated above--five years."

5 SECTION 2. Section 706-606.6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§706-606.6 Repeat violent and sexual offender; enhanced**

8 **sentence.** (1) Notwithstanding any other provision of law to
9 the contrary, any person who is convicted of an offense under
10 section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-
11 733.6, 707-750, [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1,
12 after having been convicted on at least three prior and separate
13 occasions of an offense under section 707-701.5, 707-702, 707-
14 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
15 [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, or of an
16 offense under federal law or the laws of another state that is
17 comparable to an offense under section 707-701.5, 707-702, 707-
18 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
19 [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, shall be
20 sentenced to an extended term of imprisonment as provided in
21 section 706-661.



1 (2) A conviction shall not be considered a prior offense
2 unless the conviction occurred within the following time
3 periods:

4 (a) For an offense under section 707-701.5, 707-702,
5 707-730, 707-733.6, 707-750, [~~ex~~] 708-840, 712-1202,
6 712-1203, or 712-1209.1, within the past twenty years
7 from the date of the instant offense;

8 (b) For an offense under section 707-710 or 707-731,
9 within the past ten years from the date of the instant
10 offense;

11 (c) For an offense under section 707-711 or 707-732,
12 within the past five years from the date of the
13 instant offense; or

14 (d) For an offense under federal law or the laws of
15 another state that is comparable to an offense under
16 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
17 707-731, 707-732, 707-733.6, 707-750, [~~ex~~] 708-840,
18 712-1202, 712-1203, or 712-1209.1, within the maximum
19 term of imprisonment possible under the appropriate
20 jurisdiction."

21 SECTION 3. Section 712-1200, Hawaii Revised Statutes, is
22 amended by amending subsection (2) to read as follows:



1 "(2) As used in subsection (1), "sexual conduct" means
2 ~~["sexual penetration,"]~~
3 "Sadomasochistic abuse," as defined in section 707-752; or
4 "Sexual penetration," "deviate sexual intercourse," or
5 "sexual contact," as those terms are defined in section 707-
6 700."

7 SECTION 4. Section 712-1209.1, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~+~~**§712-1209.1**~~+~~ **Solicitation of a minor for**
10 **prostitution.** (1) A person eighteen years of age or older
11 commits the offense of solicitation of a minor for prostitution
12 if the person offers or agrees to pay a fee to a minor or to
13 another person who represents that person's self as a minor to
14 engage in sexual conduct.

15 (2) Solicitation of a minor for prostitution is a class C
16 felony.

17 (3) A person convicted of committing the offense of
18 solicitation of a minor for prostitution shall be imposed a fine
19 of not less than ~~[\$2,000,]~~ \$5,000; provided that ~~[\$2,000]~~ \$5,000
20 of the imposed fine shall be credited to the general fund.



1 (4) This section shall not apply to any member of a police
2 department, a sheriff, or a law enforcement officer acting in
3 the course and scope of duties.

4 (5) It shall not be a defense to a prosecution for
5 solicitation of a minor for prostitution that the defendant did
6 not know the minor was under the age of eighteen.

7 [~~4~~] (6) For purposes of this section:

8 "Minor" means a person who is less than eighteen years of
9 age.

10 "Sexual conduct" has the same meaning as in section
11 712-1200(2)."

12 SECTION 5. Section 846E-1, Hawaii Revised Statutes, is
13 amended by amending the definition of "sexual offense" to read
14 as follows:

15 "'Sexual offense" means an offense that is:

16 (1) Set forth in section 707-730(1), 707-731(1), 707-
17 732(1), 707-733(1)(a), 707-733.6, 712-1202(1), or 712-
18 1203(1), but excludes conduct that is criminal only
19 because of the age of the victim, as provided in
20 section 707-730(1)(b), or section 707-732(1)(b) if the
21 perpetrator is under the age of eighteen;



- 1 (2) An act defined in section 707-720 if the charging
2 document for the offense for which there has been a
3 conviction alleged intent to subject the victim to a
4 sexual offense;
- 5 (3) An act that consists of:
- 6 (A) Criminal sexual conduct toward a minor, including
7 but not limited to an offense set forth in
8 section 707-759;
- 9 (B) Solicitation of a minor who is less than fourteen
10 years old to engage in sexual conduct;
- 11 (C) Use of a minor in a sexual performance;
- 12 (D) Production, distribution, or possession of child
13 pornography chargeable as a felony under section
14 707-750, 707-751, or 707-752;
- 15 (E) Electronic enticement of a child chargeable under
16 section 707-756 or 707-757 if the offense was
17 committed with the intent to promote or
18 facilitate the commission of another covered
19 offense as defined in this section; or
- 20 (F) Solicitation of a minor for prostitution in
21 violation of section 712-1209.1[+], unless the



1 perpetrator was not more than two years older
2 than the minor at the time of the offense;

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

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

8 (6) A criminal offense that is comparable to or that
9 exceeds a sexual offense as defined in paragraphs (1)
10 through (5); or

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

15 SECTION 6. Section 853-4, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

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

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

20 (2) The offense charged is:

21 (A) A felony that involves the intentional, knowing,
22 or reckless bodily injury, substantial bodily



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

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

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

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

13 (5) The offense charged is nonprobationable;

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

18 (7) The defendant is found to be a law violator or
19 delinquent child for the commission of any offense
20 defined as a felony by the Hawaii Penal Code or for
21 any conduct that if perpetrated in this State would
22 constitute a felony;



- 1 (8) The defendant has a prior conviction for a felony
- 2 committed in any state, federal, or foreign
- 3 jurisdiction;
- 4 (9) A firearm was used in the commission of the offense
- 5 charged;
- 6 (10) The defendant is charged with the distribution of a
- 7 dangerous, harmful, or detrimental drug to a minor;
- 8 (11) The defendant has been charged with a felony offense
- 9 and has been previously granted deferred acceptance of
- 10 guilty plea status for a prior offense, regardless of
- 11 whether the period of deferral has already expired;
- 12 (12) The defendant has been charged with a misdemeanor
- 13 offense and has been previously granted deferred
- 14 acceptance of guilty plea status for a prior felony,
- 15 misdemeanor, or petty misdemeanor for which the period
- 16 of deferral has not yet expired;
- 17 (13) The offense charged is:
- 18 (A) Escape in the first degree;
- 19 (B) Escape in the second degree;
- 20 (C) Promoting prison contraband in the first degree;
- 21 (D) Promoting prison contraband in the second degree;
- 22 (E) Bail jumping in the first degree;



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



- 1 ~~[-(W)]~~ (V) Prostitution pursuant to section 712-
- 2 1200(1) (b);
- 3 ~~[-(X)]~~ (W) Street solicitation of prostitution under
- 4 section 712-1207(1) (b);
- 5 ~~[-(Y)]~~ (X) Solicitation of prostitution near schools or
- 6 public parks under section 712-1209; ~~[e#]~~
- 7 ~~[-(Z)]~~ (Y) Habitual solicitation of prostitution under
- 8 section 712-1209.5; or
- 9 (Z) Solicitation of a minor for prostitution under
- 10 section 712-1209.1;

- 11 (14) The defendant has been charged with:
- 12 (A) Knowingly or intentionally falsifying any report
- 13 required under chapter 11, part XIII with the
- 14 intent to circumvent the law or deceive the
- 15 campaign spending commission; or
- 16 (B) Violating section 11-352 or 11-353; or
- 17 (15) The defendant holds a commercial driver's license and
- 18 has been charged with violating a traffic control law,
- 19 other than a parking law, in connection with the
- 20 operation of any type of motor vehicle."

1 SECTION 7. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Prostitution; Sex Crimes

Description:

Adds sadomasochistic abuse as an element of the offense of prostitution. Amends the offense of solicitation of a minor for prostitution. Exempts a person not more than two years older than the minor convicted of solicitation of a minor for prostitution from registration as a sex offender. Clarifies sentencing of repeat offenders and enhanced sentences for repeat violent and sexual offenders. (HB1926 HD1)

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