
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 134-7 relating to persons
7 prohibited from owning, possessing, or controlling firearms or
8 ammunition; section 134-8 relating to ownership, etc., of
9 certain prohibited weapons; section 134-17 only as it relates to
10 providing false information or evidence to obtain a permit under
11 section 134-9; section 188-23 relating to possession or use of
12 explosives, electrofishing devices, and poisonous substances in
13 state waters; section 386-98(d)(1) relating to fraud violations
14 and penalties; section 431:2-403(b)(2) relating to insurance
15 fraud; section 707-703 relating to negligent homicide in the
16 second degree; section 707-711 relating to assault in the second
17 degree; section 707-713 relating to reckless endangering in the
18 first degree; section 707-716 relating to terroristic



1 threatening in the first degree; section 707-721 relating to
2 unlawful imprisonment in the first degree; section 707-732
3 relating to sexual assault [~~or rape~~] in the third degree;
4 section 707-752 relating to promoting child abuse in the third
5 degree; section 707-757 relating to electronic enticement of a
6 child in the second degree; section 707-766 relating to
7 extortion in the second degree; section 708-811 relating to
8 burglary in the second degree; section 708-821 relating to
9 criminal property damage in the second degree; [~~section 708-831~~
10 ~~relating to theft in the first degree as amended by Act 68,~~
11 ~~Session Laws of Hawaii 1981,~~] section 708-831 relating to theft
12 in the second degree; section 708-835.5 relating to theft of
13 livestock; section 708-836 relating to unauthorized control of
14 propelled vehicle; section 708-839.55 relating to unauthorized
15 possession of confidential personal information; section
16 708-839.8 relating to identity theft in the third degree;
17 [~~section 708-839.55 relating to unauthorized possession of~~
18 ~~confidential personal information,~~] section 708-852 relating to
19 forgery in the second degree; section 708-854 relating to
20 criminal possession of a forgery device; section 708-875
21 relating to trademark counterfeiting; section 710-1071 relating
22 to intimidating a witness; section 711-1103 relating to riot;



1 ~~[section 712-1203 relating to promoting prostitution in the~~
2 ~~second degree,]~~ section 712-1221 relating to promoting gambling
3 in the first degree; section 712-1224 relating to possession of
4 gambling records in the first degree; section 712-1243 relating
5 to promoting a dangerous drug in the third degree; section
6 712-1247 relating to promoting a detrimental drug in the first
7 degree; section 846E-9 relating to failure to comply with
8 covered offender registration requirements~~[, section 134-7~~
9 ~~relating to ownership or possession of firearms or ammunition by~~
10 ~~persons convicted of certain crimes; section 134-8 relating to~~
11 ~~ownership, etc., of prohibited weapons; section 134-9 relating~~
12 ~~to permits to carry]~~, or who is convicted of attempting to
13 commit murder in the second degree, any class A felony, any
14 class B felony, or any of the class C felony offenses enumerated
15 above and who has a prior conviction or prior convictions for
16 the following felonies, including an attempt to commit the same:
17 murder, murder in the first or second degree, a class A felony,
18 a class B felony, any of the class C felony offenses enumerated
19 above, or any felony conviction of another jurisdiction, shall
20 be sentenced to a mandatory minimum period of imprisonment
21 without possibility of parole during such period as follows:

22 (a) One prior felony conviction:



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



- 1 (i) Where the instant conviction is for murder in the
2 second degree or attempted murder in the second
3 degree--thirty years;
- 4 (ii) Where the instant conviction is for a class A
5 felony--twenty years;
- 6 (iii) Where the instant conviction is for a class B
7 felony--ten years; and
- 8 (iv) Where the instant conviction is for a class C
9 felony offense enumerated above--five years."

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

12 **"§706-606.6 Repeat violent and sexual offender; enhanced**
13 **sentence.** (1) Notwithstanding any other provision of law to
14 the contrary, any person who is convicted of an offense under
15 section 707-701.5, 707-702, 707-730, 707-731, 707-732,
16 707-733.6, 707-750, [~~or~~] 708-840, 712-1202, 712-1203, or
17 712-1209.1, after having been convicted on at least three prior
18 and separate occasions of an offense under section 707-701.5,
19 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6,
20 707-750, [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, or of
21 an offense under federal law or the laws of another state that
22 is comparable to an offense under section 707-701.5, 707-702,



1 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
2 [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, shall be
3 sentenced to an extended term of imprisonment as provided in
4 section 706-661.

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

8 (a) For an offense under section 707-701.5, 707-702,
9 707-730, 707-733.6, 707-750, [~~or~~] 708-840, 712-1202,
10 712-1203, or 712-1209.1, within the past twenty years
11 from the date of the instant offense;

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

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

18 (d) For an offense under federal law or the laws of
19 another state that is comparable to an offense under
20 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
21 707-731, 707-732, 707-733.6, 707-750, [~~or~~] 708-840,
22 712-1202, 712-1203, or 712-1209.1, within the maximum



1 term of imprisonment possible under the appropriate
2 jurisdiction."

3 SECTION 3. Section 712-1200, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (2) to read:

6 "(2) As used in subsection (1), "sexual conduct" means
7 "sexual penetration," "deviate sexual intercourse," or "sexual
8 contact," as those terms are defined in section 707-700[-], or
9 "sodomasochistic abuse" as defined in section 707-752."

10 2. By amending subsection (5) to read:

11 "(5) This section shall not apply to any member of a
12 police department, a sheriff, or a law enforcement officer
13 acting in the course and scope of duties[-], unless engaged in
14 sexual penetration or sodomasochistic abuse."

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

17 "[+]§712-1209.1[+] **Solicitation of a minor for**
18 **prostitution.** (1) A person eighteen years of age or older
19 commits the offense of solicitation of a minor for prostitution
20 if the person intentionally, knowingly, or recklessly offers or
21 agrees to pay a fee to a minor or to a member of a police
22 department, a sheriff, or a law enforcement officer who



1 represents that person's self as a minor to engage in sexual
2 conduct.

3 (2) Solicitation of a minor for prostitution is a class C
4 felony.

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

9 (4) This section shall not apply to any member of a police
10 department, a sheriff, or a law enforcement officer who offers
11 or agrees to pay a fee to a minor while acting in the course and
12 scope of duties.

13 (5) The state of mind requirement for this offense is not
14 applicable to the fact that the person solicited was a minor. A
15 person is strictly liable with respect to the attendant
16 circumstance that the person solicited was a minor.

17 [~~(4)~~] (6) For purposes of this section:

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

20 "Sexual conduct" has the same meaning as in section
21 712-1200(2)."



1 SECTION 5. 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 (3) The offense charged involves a conspiracy or
17 solicitation to intentionally, knowingly, or
18 recklessly kill another person or to cause serious
19 bodily injury to another person;

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

21 (5) The offense charged is nonprobationable;



- 1 (6) The defendant has been convicted of any offense
2 defined as a felony by the Hawaii Penal Code or has
3 been convicted for any conduct that if perpetrated in
4 this State would be punishable as a felony;
- 5 (7) The defendant is found to be a law violator or
6 delinquent child for the commission of any offense
7 defined as a felony by the Hawaii Penal Code or for
8 any conduct that if perpetrated in this State would
9 constitute a felony;
- 10 (8) The defendant has a prior conviction for a felony
11 committed in any state, federal, or foreign
12 jurisdiction;
- 13 (9) A firearm was used in the commission of the offense
14 charged;
- 15 (10) The defendant is charged with the distribution of a
16 dangerous, harmful, or detrimental drug to a minor;
- 17 (11) The defendant has been charged with a felony offense
18 and has been previously granted deferred acceptance of
19 guilty plea status for a prior offense, regardless of
20 whether the period of deferral has already expired;
- 21 (12) The defendant has been charged with a misdemeanor
22 offense and has been previously granted deferred



- 1 acceptance of guilty plea status for a prior felony,
2 misdemeanor, or petty misdemeanor for which the period
3 of deferral has not yet expired;
- 4 (13) The offense charged is:
- 5 (A) Escape in the first degree;
- 6 (B) Escape in the second degree;
- 7 (C) Promoting prison contraband in the first degree;
- 8 (D) Promoting prison contraband in the second degree;
- 9 (E) Bail jumping in the first degree;
- 10 (F) Bail jumping in the second degree;
- 11 (G) Bribery;
- 12 (H) Bribery of or by a witness;
- 13 (I) Intimidating a witness;
- 14 (J) Bribery of or by a juror;
- 15 (K) Intimidating a juror;
- 16 (L) Jury tampering;
- 17 [~~M~~] ~~Promoting prostitution in the first degree;~~
- 18 [~~N~~] (M) Promoting prostitution in the second degree;
- 19 [~~O~~] (N) Abuse of family or household [~~members~~]
- 20 member;
- 21 [~~P~~] (O) Sexual assault in the second degree;
- 22 [~~Q~~] (P) Sexual assault in the third degree;



1 intent to circumvent the law or deceive the
2 campaign spending commission; or

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

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

8 SECTION 6. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Prostitution; Sex Crimes

Description:

Amends the offense of prostitution to include sadomasochistic abuse under the definition of "sexual conduct" and clarify that a law enforcement officer shall not be exempt from the offense if the law enforcement officer engages in sexual penetration or sadomasochistic abuse while acting in the course and scope of duties. Amends the offense of solicitation of a minor for prostitution. Clarifies sentencing of repeat offenders and enhanced sentences for repeat violent and sexual offenders. Amends the applicability of a deferred acceptance of guilty plea or nolo contendere plea. (HB1926 CD1)

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

