



GOV. MSG. NO. 1331

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 13, 2015

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker  
and Members of the House  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

I am transmitting herewith SB265 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB265 SD1 HD1 CD1

RELATING TO SEX TRAFFICKING

Sincerely,

DAVID Y. IGE  
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 13, 2015

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 265

Honorable Members  
Twenty-Eighth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 265, entitled "A Bill for an Act Relating to Sex Trafficking."

The purpose of this bill is to strengthen our laws against sex trafficking. This bill replaces the offense of promoting prostitution in the first degree with the new offense of sex trafficking, also a class A felony; amends the offense of promoting prostitution in the second degree to promoting prostitution, and limits it to the prostitution of persons eighteen and over; reduces the grade of the offense of prostitution to a violation if the offender is a juvenile; includes the offense of sex trafficking in the list of violent crimes for which victims may be eligible for criminal injury compensation; adds sex trafficking to the Prostitution Coercion Liability Act; adds sex trafficking to the list of covered offenses under the forfeiture law; amends the tier level for sex trafficking under the sex offender registration law; includes the offense of sex trafficking in the Department of the Attorney General's statewide witness program; adds the offense of sex trafficking to the list of crimes for which an order to intercept wire, oral, or electronic communications is permitted; and precludes deferred plea dispositions for sex trafficking offenses.

The Attorney General, the Prosecuting Attorneys of the City and County of Honolulu and of the Counties of Maui and of Hawaii, the Office of the Public Defender, and the Honolulu Police Department all objected to provisions of this bill and recommended that it be vetoed. In addition to legal objections, the Attorney General and the three Prosecuting Attorneys noted that the Penal Code Review Committee, which will include the Attorney General, all the county Prosecuting Attorneys, a

## STATEMENT OF OBJECTIONS

SENATE BILL NO. 265

Page 2

representative from the Office of the Public Defender, and representatives from the criminal defense bar, will meet this year to review our criminal laws and make recommendations to the Legislature in response to the recently adopted House Concurrent Resolution No. 155, Senate Draft 1 (Requesting the Judicial Council to Appoint a Committee to Review and Recommend Revisions to the Hawaii Penal Code). This Committee will have an opportunity to review sex trafficking laws and propose amendments with a broader base of support.

This bill is objectionable because the provisions that amend the offenses of promoting prostitution in the first and second degrees may actually impair law enforcement's ability to address the problems of prostitution and sex trafficking. The bill will preclude the prosecution of certain crimes, including sex trafficking of some juveniles, and profiting from the acts of another who forced a victim to engage in prostitution.

This bill is also objectionable because the new sex trafficking offense is confusing, can be difficult or impossible to apply, and requires the prosecution to prove additional elements of the crime. The conduct that this bill seeks to prohibit is already prohibited as a result of Act 147, Session Laws of Hawaii 2008, which was proposed by the Hawaii Anti-Trafficking Task Force after two years of analysis and discussion, and Act 145, Session Laws of Hawaii 2011. The current offense of promoting prostitution in the first degree would appear to cover the conduct prohibited by this offense, and does so with clearer provisions that state prosecutors would find easier to use and prove.

### SEX TRAFFICKING

In section 13, beginning on page 8, line 8, the bill proposes to amend section 712-1202, Hawaii Revised Statutes, the current offense of promoting prostitution in the first degree, to create the new offense of sex trafficking. Section 712-1202 currently provides:

STATEMENT OF OBJECTIONS

SENATE BILL NO. 265

Page 3

- (1) A person commits the offense of promoting prostitution in the first degree if the person knowingly:
  - (a) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, *or profits from such conduct by another*, or
  - (b) Advances or profits from prostitution of a person less than eighteen years old.
- (2) Promoting prostitution in the first degree is a class A felony.
- (3) As used in this section:

"Fraud" means making material false statements, misstatements, or omissions.

"Threat" means any of the actions listed in section 707-764(1).

Section 707-764(1), upon which "threat" is based, includes the many forms of extortionate conduct.

This bill renames the offense of "promoting prostitution in the first degree" as "sex trafficking." It then amends subsection (1)(a) of the offense in pertinent part as follows:

- (1) A person commits the offense of [~~promoting prostitution in the first degree~~] sex trafficking if the person knowingly:
  - (a) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, *or profits from* [~~such conduct by~~] prostitution of another[-or] by any of the following means. . . .

While the current law prohibits a person from *profiting from the acts of another* who forced a victim to engage in prostitution ("such conduct of another"), this bill prohibits a person from *profiting from prostitution of another* by any of the specified means. It is a completely different criminal prohibition. The current provision, which is being repealed by the bill, addresses a person profiting from the acts of a trafficker, whereas the new bill provision, replacing the repealed provision, addresses only the trafficker himself, who is already covered by the law. The bill amendments raise two main concerns.

First, by removing the existing wording, the prosecution will no longer be

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 265  
Page 4

able to prosecute someone (person A) for knowingly profiting from the acts of another person (person B) who compelled or induced a victim (person C) by force, threat, fraud, or intimidation to engage in prostitution. The existing wording provides an important tool for prosecutors when there is insufficient evidence to prove the person was an accomplice to the forced prostitution conduct, but there is adequate evidence to prove the person was *knowingly profiting* from the forced prostitution by another. This bill eliminates this tool, and thereby will prevent prosecutions in those types of cases.

Second, the new provision, which reads "the person knowingly profits from prostitution of another by any of the following means," requires not only that the person compel or induce another to engage in prostitution by various means, but also requires that the person profit from that conduct. So this provision is very similar in concept to the first part of the offense which requires that "the person knowingly advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution." But, this provision requires an additional element of proof—that the person profit from that conduct. It would be much easier to just prosecute the offender under the first part of the offense.

#### PROMOTING PROSTITUTION

In section 14, beginning on page 11, line 12, the bill amends section 712-1203, Hawaii Revised Statutes, to rename the offense of "promoting prostitution in the second degree" by deleting "in the second degree" and to **limit** it to the prostitution of persons eighteen years of age or older. This creates a critical loophole in the law because the new sex trafficking offense under section 712-1202, Hawaii Revised Statutes, includes a provision that prohibits a person from knowingly advancing or profiting from prostitution of a person less than eighteen years old. The new offense of "promoting prostitution" would prohibit a person from knowingly advancing or profiting from prostitution of a person eighteen years of age or older. If a perpetrator knowingly

STATEMENT OF OBJECTIONS

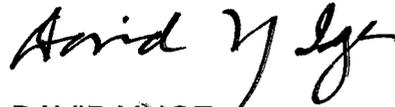
SENATE BILL NO. 265

Page 5

advanced prostitution, but did not know that the person was less than eighteen (or the prosecution could not prove that the perpetrator knew that), the person could not be charged with sex trafficking. But since the person was not eighteen or older, the perpetrator also could not be charged with promoting prostitution, as amended by the bill. This loophole in the law would preclude the prosecution of this offender, even though the offender was trafficking a juvenile.

For the foregoing reasons, I am returning Senate Bill No. 265 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE  
Governor of Hawaii

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## 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  
18 proceedings or investigations involving pending or potential



1 organized crime, racketeering activity, promoting prostitution,  
2 sex trafficking, or career criminal prosecutions."

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

5 "**§351-32 Violent crimes.** The crimes to which part III of  
6 this chapter applies are the following and no other:

- 7 (1) Murder in the first degree (section 707-701);
- 8 (2) Murder in the second degree (section 707-701.5);
- 9 (3) Manslaughter (section 707-702);
- 10 (4) Negligent homicide in the first degree (section  
11 707-702.5);
- 12 (5) Negligent homicide in the second degree (section  
13 707-703);
- 14 (6) Negligent injury in the first degree (section  
15 707-705);
- 16 (7) Negligent injury in the second degree (section  
17 707-706);
- 18 (8) Assault in the first degree (section 707-710);
- 19 (9) Assault in the second degree (section 707-711);
- 20 (10) Assault in the third degree (section 707-712);
- 21 (11) Kidnapping (section 707-720);



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

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

12 "[†]§663J-1[†] **Title.** This [†]chapter[†] may be cited as  
 13 the Sex Trafficking and Prostitution Coercion Liability Act."

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

16 "[†]§663J-2[†] **Definitions.** As used in this chapter:

17 "Coerce" means to use or threaten to use any form of  
 18 domination, restraint, or control for the purpose of causing an  
 19 individual to engage in or remain in prostitution or to  
 20 relinquish earnings derived from prostitution. Coercion exists  
 21 if the totality of the circumstances establish the existence of



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

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

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

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

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

14 "[~~§~~663J-3[~~§~~] **Cause of action for coercion into**  
15 **prostitution[+]; sex trafficking.** An individual has a cause of  
16 action against a person who:

- 17 (1) Coerced the individual into prostitution[+] or  
18 subjected the individual to sex trafficking;
- 19 (2) Coerced the individual to remain in prostitution[+] or  
20 continue to be subject to sex trafficking;



- 1 (3) Used coercion to collect or receive any of the
- 2 individual's earnings derived from prostitution[+] or
- 3 sex trafficking; or
- 4 (4) Hired, or attempted to hire the individual to engage
- 5 in prostitution, when a reasonable person would
- 6 believe that the individual was coerced into
- 7 prostitution by another person[-] or was being
- 8 subjected to sex trafficking.

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

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

15 "[+]§663J-5[+] **Damages.** A person entitled to bring an  
 16 action under section 663J-3 may recover all of the following  
 17 damages:

- 18 (1) Economic damages proximately caused by coercion into
- 19 prostitution[+] or being subjected to sex trafficking;



- 1 (2) Noneconomic damages proximately caused by coercion
- 2 into prostitution[+] or being subjected to sex
- 3 trafficking;
- 4 (3) Exemplary damages;
- 5 (4) Reasonable attorney's fees; and
- 6 (5) Costs of suit, including reasonable expenses for
- 7 expert testimony."

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

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

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

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

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





1 SECTION 12. Section 712-1200, Hawaii Revised Statutes, is  
2 amended by amending subsection (3) to read as follows:

3 "(3) Prostitution is a petty misdemeanor[-]; provided that  
4 it is a violation if the person who engaged in, or agreed or  
5 offered to engage in, sexual conduct with another person for a  
6 fee was less than eighteen years of age at the time of the  
7 offense."

8 SECTION 13. Section 712-1202, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "~~§712-1202 [Promoting prostitution in the first degree.]~~

11 Sex trafficking. (1) A person commits the offense of  
12 [~~promoting prostitution in the first degree~~] sex trafficking if  
13 the person knowingly:

14 (a) Advances prostitution by compelling or inducing a  
15 person by force, threat, fraud, or intimidation to  
16 engage in prostitution, or profits from [~~such conduct~~  
17 ~~by~~] prostitution of another[-er] by any of the  
18 following means:

19 (i) Any of the acts constituting extortion as  
20 described in section 707-764 except that for  
21 purposes of this paragraph, "labor" or



- 1           "services", as used in section 707-764, shall be  
2           limited to "sexual conduct" as defined under this  
3           section;
- 4           (ii) Any of the acts constituting kidnapping as  
5           described in section 707-720(1)(a) through (e);
- 6           (iii) Any of the acts described in section 707-721(1)  
7           relating to unlawful imprisonment in the first  
8           degree or 707-722(1) relating to unlawful  
9           imprisonment in the second degree;
- 10          (iv) Any of the acts described in section 707-730  
11          relating to sexual assault in the first degree,  
12          section 707-731 relating to sexual assault in the  
13          second degree, or section 707-732 relating to  
14          sexual assault in the third degree;
- 15          (v) Acts of force, deadly force, or unlawful force as  
16          defined in section 703-300;
- 17          (vi) Any of the acts described in the definition of  
18          "deception" under section 708-800;
- 19          (vii) Acts of fraud in making material false  
20          statements, misstatements, or omissions to induce



- 1           or maintain the person to engage or continue to  
2           engage in sexual conduct;
- 3           (viii) Any act that requires sexual conduct to retire,  
4           repay, or service a real or purported debt;
- 5           (ix) Any of the acts described in section 707-710  
6           relating to assault in the first degree, section  
7           707-711 relating to assault in the second degree,  
8           and section 707-712 relating to assault in the  
9           third degree;
- 10           (x) Any act that uses any scheme, plan, or pattern  
11           intended to cause another person to believe that  
12           if that person did not engage in sexual conduct,  
13           then a friend or member of that person's family  
14           would suffer serious harm, serious financial  
15           loss, or physical restraint; or
- 16           (xi) Any act that uses or threatens to use any form of  
17           domination, restraint, or control over the other  
18           person, which given the totality of the  
19           circumstances, would have the foreseeable effect  
20           of causing another person to engage in or remain  
21           engaged in sexual conduct; or



1 (b) Advances or profits from prostitution of a person less  
2 than eighteen years old.

3 (2) [~~Promoting prostitution in the first degree~~] Sex  
4 trafficking is a class A felony.

5 (3) As used in this section:

6 "Fraud" means making material false statements,  
7 misstatements, or omissions.

8 "Sexual conduct" has the same meaning as used in section  
9 712-1200.

10 "Threat" means any of the actions listed in section 707-  
11 764(1)."

12 SECTION 14. Section 712-1203, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**~~§712-1203 Promoting prostitution [in the second degree].~~**

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

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

20 SECTION 15. Section 712-1209.6, Hawaii Revised Statutes,  
21 is amended as follows:



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

2 "(1) A person convicted of committing the offense of  
3 prostitution under section 712-1200, loitering for the purpose  
4 of engaging in or advancing prostitution under section 712-1206,  
5 street solicitation of prostitution in designated areas under  
6 section 712-1207, or convicted of a lesser offense when  
7 originally charged with a violation of section 712-1200, 712-  
8 1206, or 712-1207, may file a motion to vacate the conviction if  
9 the defendant's participation in the offense was the result of  
10 the person having been a victim of:

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

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

15 2. By amending subsections (6) and (7) to read:

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

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

19 [~~(a)] (b) Promoting prostitution under section [~~712-1202~~  
20 ~~e¶~~] 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 16. 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 17. 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 18. 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)~~], 712-1202, or 712-1203(1)(b), as  
11 section 712-1203(1)(b) read prior to its amendment  
12 pursuant to section 9 of Act 147, Session Laws of  
13 Hawaii 2008;
- 14 (2) An offense set forth in section 707-720; provided that  
15 the charging document for the offense for which there  
16 has been a conviction alleged intent to subject the  
17 victim to a sexual offense;
- 18 (3) An offense set forth in section 707-756 that includes  
19 an intent to promote or facilitate the commission of  
20 another felony covered offense as defined in section  
21 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 19. 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;



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

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 20. 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 21. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 22. This Act shall take effect upon its approval.  
4

APPROVED this                      day of                      , 2015

GOVERNOR OF THE STATE OF HAWAII