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# A BILL FOR AN ACT

RELATING TO PROSTITUTION.

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

1 SECTION 1. Section 701-108, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:

3 "(1) A prosecution for murder, murder in the first and  
4 second degrees, attempted murder, and attempted murder in the  
5 first and second degrees, criminal conspiracy to commit murder  
6 in any degree, criminal solicitation to commit murder in any  
7 degree, sexual assault in the first and second degrees, [~~and~~]  
8 continuous sexual assault of a minor under the age of fourteen  
9 years, sex trafficking, and promoting prostitution may be  
10 commenced at any time."

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

13 "~~§706-606.6 Repeat violent and sexual offender; enhanced~~  
14 ~~sentence.~~ (1) Notwithstanding any other provision of law to  
15 the contrary, any person who is convicted of an offense under  
16 section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-  
17 733.6, 707-750, 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~]



1 after having been convicted on at least three prior and separate  
2 occasions of an offense under section 707-701.5, 707-702, 707-  
3 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,  
4 708-840, 712-1202, or 712-1203, [~~er 712-1209.1,~~] or of an  
5 offense under federal law or the laws of another state that is  
6 comparable to an offense under section 707-701.5, 707-702, 707-  
7 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,  
8 708-840, 712-1202, or 712-1203, [~~er 712-1209.1,~~] shall be  
9 sentenced to an extended term of imprisonment as provided in  
10 section 706-661.

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

14 (a) For an offense under section 707-701.5, 707-702,  
15 707-730, 707-733.6, 707-750, 708-840, 712-1202, or  
16 712-1203, [~~er 712-1209.1,~~] within the past twenty  
17 years from the date of the instant offense;

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



- 1 (c) For an offense under section 707-711 or 707-732,
- 2 within the past five years from the date of the
- 3 instant offense; or
- 4 (d) For an offense under federal law or the laws of
- 5 another state [~~that is~~] comparable to an offense under
- 6 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
- 7 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-
- 8 1202, or 712-1203, [~~or 712-1209.1,~~] within the maximum
- 9 term of imprisonment possible under the appropriate
- 10 jurisdiction."

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

- 13 1. By amending subsection (1) to read:
- 14 "(1) A person commits the offense of prostitution if the
- 15 person:
- 16 (a) Engages in, or agrees or offers to engage in, sexual
- 17 conduct with another person in return for a fee;
- 18 provided that this paragraph shall not apply if the
- 19 person committing the offense is a minor; or
- 20 (b) Pays, agrees to pay, or offers to pay a fee to another
- 21 to engage in sexual conduct."



1           2. By amending subsections (3) and (4) to read:

2           "(3) [~~Prostitution~~] The offense of prostitution under  
3 subsection (1) (a) is a petty misdemeanor~~[, provided that:~~

4           ~~(a) If the person who commits the offense under subsection~~  
5           ~~(1) (a) is a minor, prostitution is a violation; and~~

6           ~~(b) If the person who commits the offense under subsection~~  
7           ~~(1) (b) does so in reckless disregard of the fact that~~  
8           ~~the other person is a victim of sex trafficking,~~  
9           ~~prostitution is a class C felony].~~

10          (4) [~~A person convicted of committing the offense of~~  
11 ~~prostitution as a petty misdemeanor shall be sentenced as~~  
12 ~~follows:] The offense of prostitution under subsection (1) (b)  
13 is a misdemeanor; provided that:~~

14          (a) For the first [~~offense,~~] violation of subsection  
15          (1) (b), when the court has not deferred further  
16          proceedings pursuant to chapter 853, [~~a fine of not~~  
17          ~~less than \$500 but not more than \$1,000 and the person~~  
18          ~~may be sentenced to a term of imprisonment of not more~~  
19          ~~than thirty days or probation,] the person convicted  
20          of the offense shall be sentenced to pay a fine,  
21          pursuant to section 706-640, of not less than \$1,000,~~



1 and to imprisonment for a definite term, pursuant to  
2 section 706-663, of not less than thirty days;  
3 provided that the court may order a sentence of  
4 probation in addition to the term of imprisonment;  
5 provided further that in the event the convicted  
6 person defaults in payment of the fine, and the  
7 default was not contumacious, the court may sentence  
8 the person to perform services for the community as  
9 authorized by section 706-605(1) [-];

10 (b) For any subsequent [~~offense, a fine of not less than~~  
11 ~~\$500 but not more than \$1,000 and a term of~~  
12 ~~imprisonment of thirty days or probation,] violation  
13 of subsection (1) (b), the person convicted of the  
14 offense shall be sentenced to pay a fine, pursuant to  
15 section 706-640, of not less than \$1,000, and to  
16 imprisonment for a definite term, pursuant to section  
17 706-663, of not less than ninety days without  
18 possibility of deferral of further proceedings  
19 pursuant to chapter 853 and without possibility of  
20 suspension of sentence [-]; provided that the court may~~



1           order a sentence of probation in addition to the term  
2           of imprisonment; and

3           (c) For a person convicted under subsection (1)(b) and who  
4           committed the offense in reckless disregard of the  
5           fact that the other person is a victim of sex  
6           trafficking, the offense shall be a class C felony.

7           For the purpose of this subsection, if the court has deferred  
8           further proceedings pursuant to chapter 853, and notwithstanding  
9           any provision of chapter 853 to the contrary, the defendant  
10          shall not be eligible to apply for expungement pursuant to  
11          section 831-3.2 until [~~four~~] three years following discharge. A  
12          plea previously entered by a defendant under section 853-1 for a  
13          violation of this section shall be considered a prior offense.  
14          When the court has ordered a sentence of probation, the court  
15          may impose as a condition of probation that the defendant  
16          complete a course of prostitution intervention classes; provided  
17          that the court may only impose the condition for one term of  
18          probation."

19          SECTION 4. Section 712-1202, Hawaii Revised Statutes, is  
20          amended to read as follows:



1           "§712-1202 Sex trafficking. (1) A person commits the  
2 offense of sex trafficking if the person knowingly:

3           (a) Advances prostitution by compelling or inducing a  
4           person by force, threat, fraud, or intimidation to  
5           engage in prostitution, or profits from such conduct  
6           by another; [~~or~~]

7           (b) Advances or profits from prostitution of a minor;  
8           ~~[provided that with respect to the victim's age, the~~  
9           ~~prosecution shall be required to prove only that the~~  
10           ~~person committing the offense acted negligently.] or~~

11           (c) Offers or agrees to pay a fee to a minor or to a  
12           member of a police department, a sheriff, or a law  
13           enforcement officer who represents that person's self  
14           as a minor to engage in sexual conduct.

15           (2) Sex trafficking is a class A felony.

16           (3) The state of mind requirement for the offenses under  
17           subsection (1)(b) and (c) is not applicable to the fact that the  
18           person solicited was a minor. A person is strictly liable with  
19           respect to the attendant circumstance that the person solicited  
20           was a minor.



1           (4) Consent to sexual conduct shall not constitute a  
2 defense to a violation of this section.

3           (5) Subsection (1)(c) shall not apply to any member of a  
4 police department, a sheriff, or a law enforcement officer who  
5 offers or agrees to pay a fee to a minor while acting in the  
6 course and scope of duties.

7           ~~[(3)]~~ (6) As used in this section:

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

10           "Minor" means a person who is less than eighteen years of  
11 age.

12           "Sexual conduct" has the same meaning as in section 712-  
13 1200(2).

14           "Threat" means any of the actions listed in section 707-  
15 764(1)."

16           SECTION 5. Section 712-1203, Hawaii Revised Statutes, is  
17 amended by amending subsection (1) to read as follows:

18           "(1) A person commits the offense of promoting  
19 prostitution if the person [~~knowingly~~] recklessly advances or  
20 profits from prostitution."





1 SECTION 6. Section 712-1208, Hawaii Revised Statutes, is  
2 amended by amending subsection (3) to read as follows:

3 "(3) Promoting travel for prostitution is a class C  
4 felony~~[-]~~; provided that if the travel services in subsection  
5 (1) are for the purpose of engaging in prostitution with a  
6 person who is under the age of eighteen, promoting travel for  
7 prostitution is a class B felony."

8 SECTION 7. Section 712-1209.5, Hawaii Revised Statutes, is  
9 amended by amending subsection (2) to read as follows:

10 "(2) For the purposes of this section, a person has the  
11 status of a "habitual prostitution offender" if the person, at  
12 the time of the conduct for which the person is charged, had two  
13 or more convictions within ten years of the instant offense for:

14 (a) Prostitution, in violation of section 712-1200(1)(b);

15 ~~[-(b) Street solicitation of prostitution, in violation of~~

16 ~~section 712-1207(1)(b);~~

17 ~~-(e)]~~ (b) Habitual solicitation of prostitution, in

18 violation of this section;

19 ~~[-(d)]~~ (c) An offense of any other jurisdiction that is

20 comparable to one of the offenses in paragraph (a) ~~[-]~~

21 or (b) ~~[- or -(e)]~~; or



1 ~~[(e)]~~ (d) Any combination of the offenses in paragraph (a), (b),  
2 or (c) ~~[, or (d)]~~.

3 A conviction for purposes of this section is a judgment on the  
4 verdict or a finding of guilt, or a plea of guilty or nolo  
5 contendere. The convictions must have occurred on separate  
6 dates and be for separate incidents on separate dates. At the  
7 time of the instant offense, the conviction must not have been  
8 expunged by pardon, reversed, or set aside."

9 SECTION 8. Section 712-1209.6, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§712-1209.6 Prostitution; motion to vacate conviction.**

12 (1) A person convicted of committing the offense of  
13 prostitution under section ~~[712-1200,]~~ 712-1200(1)(a), loitering  
14 for the purpose of engaging in ~~[or advancing]~~ prostitution under  
15 section ~~[712-1206, street solicitation of prostitution in~~  
16 ~~designated areas under section 712-1207,]~~ 712-1206(2), or  
17 convicted of a lesser offense when originally charged with a  
18 violation of section ~~[712-1200, 712-1206, or 712-1207,]~~ 712-  
19 1200(1)(a) or 712-1206(2), may file a motion to vacate the  
20 conviction if the ~~[defendant's participation in the offense was~~  
21 ~~the result of the person having been a victim of:~~



- 1       ~~(a) Sex trafficking under section 712-1202 or promoting~~  
2           ~~prostitution under section 712-1203; or~~
- 3       ~~(b) A severe form of trafficking in persons as defined in~~  
4           ~~title 22 United States Code section 7102(9)(A).~~
- 5       ~~(2) A motion filed under this section shall:~~
- 6           ~~(a) Be in writing;~~
- 7           ~~(b) Be signed and sworn to by the petitioner;~~
- 8           ~~(c) Be made within six years after the date that the~~  
9           ~~person ceases to be a victim as described in~~  
10          ~~subsection (1), subject to reasonable concerns for the~~  
11          ~~safety of the defendant, family members of the~~  
12          ~~defendant, or other victims of the trafficking that~~  
13          ~~may be jeopardized by the bringing of a motion, or for~~  
14          ~~other reasons consistent with the purpose of this~~  
15          ~~section;~~
- 16       ~~(d) Describe all the grounds and evidence for vacation of~~  
17          ~~a conviction which are available to the petitioner and~~  
18          ~~of which the petitioner has or by the exercise of~~  
19          ~~reasonable diligence should have knowledge, and~~  
20          ~~provide copies of any official documents showing that~~



1 ~~the defendant is entitled to relief under this~~  
2 ~~section; and~~

3 ~~(e) Be subject to the review and written approval of the~~  
4 ~~state agency or county prosecutor responsible for~~  
5 ~~prosecuting the offense that is the subject of the~~  
6 ~~motion to vacate conviction.~~

7 ~~(3)] person is not subsequently convicted of any offense~~  
8 ~~under the penal code within three years after the date of the~~  
9 ~~original conviction.~~

10 ~~(2) The court shall hold a hearing on a motion filed under~~  
11 ~~this section [if the motion satisfies the requirements of~~  
12 ~~subsection (2); provided that the court may dismiss a motion~~  
13 ~~without a hearing if the court finds that the motion fails to~~  
14 ~~assert grounds on which relief may be granted.~~

15 ~~(4) If the court grants a motion filed under this~~  
16 ~~section,] to review the defendant's record over the three years~~  
17 ~~after the date of the original conviction under section~~  
18 ~~712-1200(1)(a) or 712-1206(2) or conviction of a lesser offense~~  
19 ~~when originally charged with a violation of any of those~~  
20 ~~sections, and if the court finds that the defendant has not been~~



1 convicted of any offense under the penal code within this three  
2 year period, the court shall vacate the conviction.

3 ~~[-(5) A person making a motion to vacate pursuant to this~~  
4 ~~section has the burden of proof by a preponderance of the~~  
5 ~~evidence.~~

6 ~~-(6) This section shall not apply to a motion to vacate a~~  
7 ~~conviction under this chapter for:~~

8 ~~-(a) Sex trafficking under section 712-1202;~~

9 ~~-(b) Promoting prostitution under section 712-1203; or~~

10 ~~-(c) A person who pays, agrees to pay or offers a fee to~~  
11 ~~another person to engage in sexual conduct.] "~~

12 SECTION 9. Section 804-4, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§804-4 When a matter of right. (a) If the charge is for  
15 an offense for which bail is allowable under section 804-3, the  
16 defendant may be admitted to bail before conviction as a matter  
17 of right. ~~[Except for section 712-1207(7), bail shall be~~  
18 ~~allowed for any person charged under section 712-1207 only~~  
19 ~~subject to the mandatory condition that the person observe~~  
20 ~~geographic restrictions that prohibit the defendant from~~  
21 ~~entering or remaining on public property, in Waikiki and other~~



1 ~~areas in the State designated by county ordinance during the~~  
2 ~~hours from 6 p.m. to 6 a.m.; and provided further that nothing~~  
3 ~~contained in this subsection shall be construed as prohibiting~~  
4 ~~the imposition of stricter geographic restrictions under section~~  
5 ~~804-7.1.]~~ The right to bail shall continue after conviction of  
6 a misdemeanor, petty misdemeanor, or violation, and release on  
7 bail may continue, in the discretion of the court, after  
8 conviction of a felony until the final determination of any  
9 motion for a new trial, appeal, habeas corpus, or other  
10 proceedings that are made, taken, issued, or allowed for the  
11 purpose of securing a review of the rulings, verdict, judgment,  
12 sentence, or other proceedings of any court or jury in or by  
13 which the defendant has been arraigned, tried, convicted, or  
14 sentenced; provided that:

15 (1) No bail shall be allowed after conviction and prior to  
16 sentencing in cases where bail was not available under  
17 section 804-3, or where bail was denied or revoked  
18 before conviction; and

19 (2) No bail shall be allowed pending appeal of a felony  
20 conviction where a sentence of imprisonment has been  
21 imposed [~~and~~



1       ~~(3) No bail shall be allowed pending appeal of a~~  
2       ~~conviction for a violation of section 712-1207, unless~~  
3       ~~the court finds, based on the defendant's record, that~~  
4       ~~the defendant may be admitted to bail subject to the~~  
5       ~~mandatory condition that the person observe geographic~~  
6       ~~restrictions that prohibit the defendant from entering~~  
7       ~~or walking along the public streets or sidewalks of~~  
8       ~~Waikiki or other areas in the State designated by~~  
9       ~~county ordinance pursuant to section 712-1207 during~~  
10       ~~the hours from 6 p.m. to 6 a.m.~~

11       ~~Notwithstanding any other provision of law to the contrary, any~~  
12       ~~person who violates these bail restrictions shall have the~~  
13       ~~person's bail revoked after hearing and shall be imprisoned~~  
14       ~~forthwith].~~

15       (b) The court shall order that a person who has been found  
16       guilty of an offense and sentenced to a term of imprisonment,  
17       and who has filed an appeal or a petition for a writ of  
18       certiorari, be detained, unless the court finds:

19       (1) By clear and convincing evidence that the person is  
20       not likely to flee or pose a danger to the safety of  
21       any other person or the community if released; and



1           (2) That the appeal is not for purpose of delay and raises  
2           a substantial question of law or fact likely to result  
3           in reversal or an order for a new trial.

4 If the court makes these findings, the court shall order the  
5 release of the person in accordance with section 804-7.1. No  
6 defendant entitled to bail, whether bailed or not, shall be  
7 subject, without the defendant's written consent, to the  
8 operation of any sentence passed upon the defendant, while any  
9 proceedings to procure a review of any action of the trial court  
10 or jury in the premises are pending and undetermined, except as  
11 provided in section 641-14(a) [~~or section 712-1207~~]."

12           SECTION 10. Section 804-5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "**§804-5 By whom allowed.** In cases where the punishment  
15 for the offense charged may be imprisonment for life not subject  
16 to parole, or imprisonment for a term more than ten years with  
17 or without fine, a judge or justice of a court of record,  
18 including a district judge, shall be competent to admit the  
19 accused to bail, in conformity with sections 804-3 to 804-6. In  
20 all other cases, the accused may be so admitted to bail by any  
21 judge or justice of a court of record, including a district





1 judge, and in cases [~~7, except under section 712-1207,~~] where the  
2 punishment for the offense charged may not exceed two years'  
3 imprisonment with or without fine, the sheriff, the sheriff's  
4 deputy, the chief of police or any person named by the chief of  
5 police, or the sheriff of Kalawao, regardless of the circuit  
6 within which the alleged offense was committed, may admit the  
7 accused person to bail."

8 SECTION 11. Section 806-83, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) Criminal charges may be instituted by written  
11 information for a felony when the charge is a class C felony,  
12 except under:

13 (1) Section 159-28 (bribery related to the Hawaii Meat  
14 Inspection Act);

15 (2) Section 161-28 (bribery related to the Hawaii Poultry  
16 Inspection Act);

17 (3) Section 707-712.5 (assault against a law enforcement  
18 officer in the first degree);

19 (4) Section 707-716 (terroristic threatening in the first  
20 degree);

21 (5) Section 707-732 (sexual assault in the third degree);



- 1 (6) Section 707-741 (incest);
- 2 (7) Section 707-752 (promoting child abuse in the third  
3 degree);
- 4 (8) Section 708-880 (commercial bribery);
- 5 (9) Section 709-904.5 (compensation by an adult of  
6 juveniles for crimes);
- 7 (10) Section 710-1026.9 (resisting an order to stop a motor  
8 vehicle in the first degree);
- 9 (11) Section 710-1070 (bribery of or by a witness);
- 10 (12) Section 710-1071 (intimidating a witness);
- 11 (13) Section 710-1072.2 (retaliating against a witness);
- 12 (14) Section 710-1073 (bribery of or by a juror);
- 13 (15) Section 710-1075 (jury tampering);
- 14 (16) Section 710-1075.5 (retaliating against a juror);
- 15 (17) Section 711-1106.4 (aggravated harassment by  
16 stalking);
- 17 (18) Section 711-1110.9 (violation of privacy in the first  
18 degree);
- 19 (19) Section 712-1208 (promoting travel for prostitution);
- 20 [~~20~~] Section ~~712-1209.1~~ (~~solicitation of a minor for~~  
21 ~~prostitution~~);



1       ~~(21)~~ (20) Section 712-1209.5 (habitual solicitation of  
2                   prostitution);

3       ~~[(22)]~~ (21) Section 712-1215 (promoting pornography for  
4                   minors);

5       ~~[(23)]~~ (22) Section 712-1218 (failure to maintain age  
6                   verification records of sexual performers);

7       ~~[(24)]~~ (23) Section 712-1218.5 (failure to maintain age  
8                   verification records of sexually exploited  
9                   individuals); and

10       ~~[(25)]~~ (24) Section 712-1219 (failure to affix information  
11                   disclosing location of age verification records of  
12                   sexual performers)."

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

16           ""Sexual offense" means an offense that is:

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



1 section 707-730(1)(b), or section 707-732(1)(b) if the  
2 perpetrator is under the age of eighteen;

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

7 (3) An act that consists of:

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

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

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

14 (D) Production, distribution, or possession of child  
15 pornography chargeable as a felony under section  
16 707-750, 707-751, or 707-752; or

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



- 1           ~~(F) Solicitation of a minor for prostitution in~~  
2           ~~violation of section 712-1209.1,]~~
- 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 13. Section 846E-10, Hawaii Revised Statutes, is  
16 amended by amending subsection (d) to read as follows:

17          "(d) Tier 1 offenses. A covered offender who has  
18 maintained a clean record for the previous ten years, excluding  
19 any time the offender was in custody or civilly committed, and  
20 who has substantially complied with the registration  
21 requirements of this chapter for the previous ten years, or for



1 the portion of that ten years that this chapter has been  
2 applicable, and who is not a repeat covered offender may  
3 petition the court, in a civil proceeding, for termination of  
4 registration requirements; provided that the covered offender's  
5 most serious covered offense is one of the following:

6 (1) Any offense set forth in section 707-732(1)(d) or (e),  
7 707-733(1)(a), 707-752, 707-759, 711-1110.9, or 712-  
8 1203(1) [~~, or 712-1209.1~~];

9 (2) An offense set forth in section 707-721 or 707-722;  
10 provided that the offense involves unlawful  
11 imprisonment of a minor by someone other than a  
12 parent;

13 (3) An offense set forth in section 707-757 that includes  
14 an intent to promote or facilitate the commission of  
15 another covered offense as defined in section 846E-1;

16 (4) An offense that is an attempt, criminal solicitation,  
17 or criminal conspiracy to commit any of the offenses  
18 in paragraph (1), (2), or (3);

19 (5) Any criminal offense that is comparable to one of the  
20 offenses in paragraph (1), (2), (3), or (4);



- 1 (6) Any federal, military, out-of-state, tribal, or
- 2 foreign offense that is comparable to one of the
- 3 offenses in paragraph (1), (2), (3), or (4); or
- 4 (7) Any other covered offense that is not specified in
- 5 subsection (a) or (c) or paragraph (1), (2), (3), (4),
- 6 (5), or (6)."

7 SECTION 14. Section 853-4, Hawaii Revised Statutes, is  
 8 amended by amending subsection (a) to read as follows:

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

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

12 (2) The offense charged is:

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

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



- 1           (3) The offense charged involves a conspiracy or
- 2                   solicitation to intentionally, knowingly, or
- 3                   recklessly kill another person or to cause serious
- 4                   bodily injury to another person;
- 5           (4) The offense charged is a class A felony;
- 6           (5) The offense charged is nonprobationable;
- 7           (6) The defendant has been convicted of any offense
- 8                   defined as a felony by the Hawaii Penal Code or has
- 9                   been convicted for any conduct that if perpetrated in
- 10                  this State would be punishable as a felony;
- 11           (7) The defendant is found to be a law violator or
- 12                   delinquent child for the commission of any offense
- 13                   defined as a felony by the Hawaii Penal Code or for
- 14                   any conduct that if perpetrated in this State would
- 15                   constitute a felony;
- 16           (8) The defendant has a prior conviction for a felony
- 17                   committed in any state, federal, or foreign
- 18                   jurisdiction;
- 19           (9) A firearm was used in the commission of the offense
- 20                   charged;





- 1 (10) The defendant is charged with the distribution of a  
2 dangerous, harmful, or detrimental drug to a minor;
- 3 (11) The defendant has been charged with a felony offense  
4 and has been previously granted deferred acceptance of  
5 guilty plea or no contest plea for a prior offense,  
6 regardless of whether the period of deferral has  
7 already expired;
- 8 (12) The defendant has been charged with a misdemeanor  
9 offense and has been previously granted deferred  
10 acceptance of guilty plea or no contest plea for a  
11 prior felony, misdemeanor, or petty misdemeanor for  
12 which the period of deferral has not yet expired;
- 13 (13) The offense charged is:
- 14 (A) Escape in the first degree;
- 15 (B) Escape in the second degree;
- 16 (C) Promoting prison contraband in the first degree;
- 17 (D) Promoting prison contraband in the second degree;
- 18 (E) Bail jumping in the first degree;
- 19 (F) Bail jumping in the second degree;
- 20 (G) Bribery;
- 21 (H) Bribery of or by a witness;



- 1 (I) Intimidating a witness;
- 2 (J) Bribery of or by a juror;
- 3 (K) Intimidating a juror;
- 4 (L) Jury tampering;
- 5 (M) Promoting prostitution;
- 6 (N) Abuse of family or household member;
- 7 (O) Sexual assault in the second degree;
- 8 (P) Sexual assault in the third degree;
- 9 (Q) A violation of an order issued pursuant to
- 10 chapter 586;
- 11 (R) Promoting child abuse in the second degree;
- 12 (S) Promoting child abuse in the third degree;
- 13 (T) Electronic enticement of a child in the first
- 14 degree;
- 15 (U) Electronic enticement of a child in the second
- 16 degree;
- 17 (V) Prostitution pursuant to section 712-1200(1)(b);
- 18 [~~(W)~~ ~~Street solicitation of prostitution under section~~
- 19 ~~712-1207(1)(b)~~;
- 20 ~~(X)~~] (W) Solicitation of prostitution near schools or
- 21 public parks under section 712-1209; or



1           [~~(Y)~~] (X)   Habitual solicitation of prostitution under  
2                                    section 712-1209.5; [~~e~~  
3           ~~(Z)~~ ~~Solicitation of a minor for prostitution under~~  
4                                    ~~section 712-1209.1;~~]

5           (14)   The defendant has been charged with:

6                   (A)   Knowingly or intentionally falsifying any report  
7                                    required under chapter 11, part XIII with the  
8                                    intent to circumvent the law or deceive the  
9                                    campaign spending commission; or

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

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

15           SECTION 15.   Section 712-1207, Hawaii Revised Statutes, is  
16   repealed.

17           ~~["§712-1207 Street solicitation of prostitution;~~  
18   ~~designated areas. (1) It shall be unlawful for any person~~  
19   ~~within the boundaries of Waikiki and while on any public~~  
20   ~~property to:~~



1       ~~(a) Offer or agree to engage in sexual conduct with~~  
2           ~~another person in return for a fee; or~~

3       ~~(b) Pay, agree to pay, or offer to pay a fee to another~~  
4           ~~person to engage in sexual conduct.~~

5       ~~(2) It shall be unlawful for any person within the~~  
6       ~~boundaries of other areas in this State designated by county~~  
7       ~~ordinance pursuant to subsection (3), and while on any public~~  
8       ~~property to:~~

9       ~~(a) Offer or agree to engage in sexual conduct with~~  
10           ~~another person in return for a fee; or~~

11       ~~(b) Pay, agree to pay, or offer to pay a fee to another~~  
12           ~~person to engage in sexual conduct.~~

13       ~~(3) Upon a recommendation of the chief of police of a~~  
14       ~~county, that county may enact an ordinance that:~~

15       ~~(a) Designates areas, each no larger than three square~~  
16           ~~miles, as zones of significant prostitution-related~~  
17           ~~activity that is detrimental to the health, safety, or~~  
18           ~~welfare of the general public; or~~

19       ~~(b) Alters the boundaries of any existing area under~~  
20           ~~paragraph (a);~~

1 ~~provided that not more than four areas may be designated within~~  
2 ~~the State.~~

3 ~~(4) Notwithstanding any law to the contrary, any person~~  
4 ~~violating this section shall be guilty of a petty misdemeanor~~  
5 ~~and shall be sentenced to a mandatory term of thirty days~~  
6 ~~imprisonment. The term of imprisonment shall be imposed~~  
7 ~~immediately, regardless of whether the defendant appeals the~~  
8 ~~conviction, except as provided in subsection (5).~~

9 ~~(5) As an option to the mandatory term of thirty days~~  
10 ~~imprisonment, if the court finds the option is warranted based~~  
11 ~~upon the defendant's record, the court may place the defendant~~  
12 ~~on probation for a period not to exceed six months, subject to~~  
13 ~~the mandatory condition that the defendant observe geographic~~  
14 ~~restrictions that prohibit the defendant from entering or~~  
15 ~~remaining on public property, in Waikiki and other areas in the~~  
16 ~~State designated by county ordinance during the hours from 6~~  
17 ~~p.m. to 6 a.m. Upon any violation of the geographic~~  
18 ~~restrictions by the defendant, the court, after hearing, shall~~  
19 ~~revoke the defendant's probation and immediately impose the~~  
20 ~~mandatory thirty day term of imprisonment. Nothing contained in~~



1 ~~this subsection shall be construed as prohibiting the imposition~~  
2 ~~of stricter geographic restrictions under section 706-624(2)(h).~~

3 ~~(6) Any person charged under this section may be admitted~~  
4 ~~to bail, pursuant to section 804-4, subject to the mandatory~~  
5 ~~condition that the person observe geographic restrictions that~~  
6 ~~prohibit the defendant from entering or remaining on public~~  
7 ~~property, in Waikiki and other areas in the State designated by~~  
8 ~~county ordinance during the hours from 6 p.m. to 6 a.m.~~  
9 ~~Notwithstanding any other provision of law to the contrary, any~~  
10 ~~person who violates these bail restrictions shall have the~~  
11 ~~person's bail revoked after hearing and shall be imprisoned~~  
12 ~~forthwith. Nothing contained in this subsection shall be~~  
13 ~~construed as prohibiting the imposition of stricter geographic~~  
14 ~~restrictions under section 804-7.1.~~

15 ~~(7) Notwithstanding any other law to the contrary, a~~  
16 ~~police officer, without warrant, may arrest any person when the~~  
17 ~~officer has probable cause to believe that the person has~~  
18 ~~committed a violation of subsection (5) or (6), and the person~~  
19 ~~shall be detained, without bail, until the hearing under the~~  
20 ~~appropriate subsection can be held, which hearing shall be held~~  
21 ~~as soon as reasonably practicable.~~



1 ~~(8) For purposes of this section:~~

2 ~~"Area" means any zone within a county that is defined with~~  
3 ~~specific boundaries and designated as a zone of significant~~  
4 ~~prostitution by this section or a county ordinance.~~

5 ~~"Public property" includes any street, highway, road,~~  
6 ~~sidewalk, alley, lane, bridge, parking lot, park, or other~~  
7 ~~property owned or under the jurisdiction of any governmental~~  
8 ~~entity or otherwise open to the public.~~

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

11 ~~"Waikiki" means that area of Oahu bounded by the Ala Wai~~  
12 ~~canal, the ocean, and Kapahulu avenue.~~

13 ~~(9) This section shall apply to all counties; provided~~  
14 ~~that if a county enacts an ordinance to regulate street~~  
15 ~~solicitation for prostitution, other than an ordinance~~  
16 ~~designating an area as a zone of significant prostitution-~~  
17 ~~related activity, the county ordinance shall supersede this~~  
18 ~~section and no person shall be convicted under this section in~~  
19 ~~that county." ]~~

20 SECTION 16. Section 712-1209.1, Hawaii Revised Statutes,  
21 is repealed.



1           ~~["§712-1209.1 Solicitation of a minor for prostitution.~~

2           ~~(1) A person eighteen years of age or older commits the offense~~  
3           ~~of solicitation of a minor for prostitution if the person~~  
4           ~~intentionally, knowingly, or recklessly offers or agrees to pay~~  
5           ~~a fee to a minor or to a member of a police department, a~~  
6           ~~sheriff, or a law enforcement officer who represents that~~  
7           ~~person's self as a minor to engage in sexual conduct.~~

8           ~~(2) Solicitation of a minor for prostitution is a class C~~  
9           ~~felony.~~

10           ~~(3) A person convicted of committing the offense of~~  
11           ~~solicitation of a minor for prostitution shall be imposed a fine~~  
12           ~~of not less than \$5,000; provided that \$5,000 of the imposed~~  
13           ~~fine shall be credited to the general fund.~~

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

18           ~~(5) The state of mind requirement for this offense is not~~  
19           ~~applicable to the fact that the person solicited was a minor. A~~  
20           ~~person is strictly liable with respect to the attendant~~  
21           ~~circumstance that the person solicited was a minor.~~





1 ~~(6) For purposes of this section:~~

2 ~~"Minor" means a person who is less than eighteen years of~~  
3 ~~age.~~

4 ~~"Sexual conduct" has the same meaning as in section~~  
5 ~~712-1200(2)."]~~

6 SECTION 17. This Act does not affect rights and duties  
7 that matured, penalties that were incurred, and proceedings that  
8 were begun before its effective date.

9 SECTION 18. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 19. This Act shall take effect on January 28,  
12 2081.



**Report Title:**

Prostitution; Sex Trafficking; Minor; Motion to Vacate;  
Penalties; Statute of Limitations

**Description:**

Removes the criminal statute of limitations for sex trafficking and promoting prostitution. Exempts minors from criminal liability for prostitution. Permits persons convicted of certain prostitution offenses to file a motion to vacate the conviction if the defendant is not convicted of another offense under the Penal Code within three years of the prostitution offense. Establishes minimum criminal and regulatory penalties for prostitution, sex trafficking, and promoting travel for prostitution. Incorporates the offense of solicitation of a minor for prostitution into the offense of sex trafficking, which is a class A felony. Reduces the state of mind requirement for the offense of promoting prostitution. Repeals the offense of street solicitation of prostitution. (HB486 HD1)

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

