
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 ownership
7 or possession of firearms or ammunition by persons convicted of
8 certain crimes; section 134-8 relating to ownership, etc., of
9 certain prohibited weapons; section 134-9 relating to licenses
10 to carry; section 188-23 relating to possession or use of
11 explosives, electrofishing devices, and poisonous substances in
12 state waters; section 386-98(d)(1) relating to fraud violations
13 and penalties; section 431:2-403(b)(2) relating to insurance
14 fraud; section 707-703 relating to negligent homicide in the
15 second degree; section 707-711 relating to assault in the second
16 degree; section 707-713 relating to reckless endangering in the
17 first degree; section 707-716 relating to terroristic
18 threatening in the first degree; section 707-721 relating to



1 unlawful imprisonment in the first degree; section 707-732
2 relating to sexual assault [~~or rape~~] in the third degree;
3 section 707-752 relating to promoting child abuse in the third
4 degree; section 707-757 relating to electronic enticement of a
5 child in the second degree; section 707-766 relating to
6 extortion in the second degree; section 708-811 relating to
7 burglary in the second degree; section 708-821 relating to
8 criminal property damage in the second degree; [~~section 708-831~~
9 ~~relating to theft in the first degree as amended by Act 68,~~
10 ~~Session Laws of Hawaii 1981;~~] section 708-831 relating to theft
11 in the second degree; section 708-835.5 relating to theft of
12 livestock; section 708-836 relating to unauthorized control of
13 propelled vehicle; section 708-839.55 relating to unauthorized
14 possession of confidential personal information; section 708-
15 839.8 relating to identity theft in the third degree; [~~section~~
16 ~~708-839.55 relating to unauthorized possession of confidential~~
17 ~~personal information;~~] section 708-852 relating to forgery in
18 the second degree; section 708-854 relating to criminal
19 possession of a forgery device; section 708-875 relating to
20 trademark counterfeiting; section 710-1071 relating to
21 intimidating a witness; section 711-1103 relating to riot;
22 [~~section 712-1203 relating to promoting prostitution in the~~



1 ~~second degree;~~] section 712-1221 relating to promoting gambling
2 in the first degree; section 712-1224 relating to possession of
3 gambling records in the first degree; section 712-1243 relating
4 to promoting a dangerous drug in the third degree; section 712-
5 1247 relating to promoting a detrimental drug in the first
6 degree; section 846E-9 relating to failure to comply with
7 covered offender registration requirements [~~; section 134-7~~
8 ~~relating to ownership or possession of firearms or ammunition by~~
9 ~~persons convicted of certain crimes; section 134-8 relating to~~
10 ~~ownership, etc., of prohibited weapons; section 134-9 relating~~
11 ~~to permits to carry], or who is convicted of attempting to
12 commit murder in the second degree, any class A felony, any
13 class B felony, or any of the class C felony offenses enumerated
14 above and who has a prior conviction or prior convictions for
15 the following felonies, including an attempt to commit the same:
16 murder, murder in the first or second degree, a class A felony,
17 a class B felony, any of the class C felony offenses enumerated
18 above, or any felony conviction of another jurisdiction, shall
19 be sentenced to a mandatory minimum period of imprisonment
20 without possibility of parole during such period as follows:
21 (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, 707-
 16 733.6, 707-750, [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1,
 17 after having been convicted on at least three prior and separate
 18 occasions of an offense under section 707-701.5, 707-702, 707-
 19 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
 20 [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, or of an
 21 offense under federal law or the laws of another state that is
 22 comparable to an offense under section 707-701.5, 707-702, 707-

1 710, 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 to read as follows:

5 "**§712-1200 Prostitution.** (1) A person commits the
6 offense of prostitution if the person:

7 (a) Engages in, or agrees or offers to engage in, sexual
8 conduct with another person for a fee; or

9 (b) Pays, agrees to pay, or offers to pay a fee to another
10 to engage in sexual conduct.

11 (2) As used in subsection (1), "sexual conduct" means
12 "sexual penetration," "deviate sexual intercourse," or "sexual
13 contact," as those terms are defined in section 707-700.

14 (3) Prostitution is a petty misdemeanor.

15 (4) A person convicted of committing the offense of
16 prostitution shall be sentenced as follows:

17 (a) For the first offense, when the court has not deferred
18 further proceedings pursuant to chapter 853, a fine of
19 not less than \$500 but not more than \$1,000 and the
20 person may be sentenced to a term of imprisonment of
21 not more than thirty days or probation; provided that
22 in the event the convicted person defaults in payment



1 of the fine, and the default was not contumacious, the
2 court may sentence the person to perform services for
3 the community as authorized by section 706-605(1).

4 (b) For any subsequent offense, a fine of not less than
5 \$500 but not more than \$1,000 and a term of
6 imprisonment of thirty days or probation, without
7 possibility of deferral of further proceedings
8 pursuant to chapter 853 and without possibility of
9 suspension of sentence.

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



1 court may only impose such condition for one term of
2 probation.

3 (5) This section shall not apply to any member of a police
4 department, a sheriff, or a law enforcement officer acting in
5 the course and scope of duties[-], unless engaged in sexual
6 penetration.

7 (6) If, after a reasonable detention for investigative
8 purposes, the person suspected of or charged with prostitution
9 is found to be less than eighteen years of age at the time the
10 offense was allegedly committed, the person shall not be
11 prosecuted for any offense under part I of this chapter;
12 provided that the charge is the person's first and only charge
13 of prostitution. The exemption from prosecution of a person
14 pursuant to this subsection shall not affect the prosecution of
15 others for offenses under part I of this chapter."

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

18 "[+]§712-1209.1[+] **Solicitation of a minor for**
19 **prostitution.** (1) A person eighteen years of age or older
20 commits the offense of solicitation of a minor for prostitution
21 if the person offers or agrees to pay a fee to a minor or to



1 another person who represents that person's self as a minor to
2 engage in sexual 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 acting in
11 the course and scope of duties.

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

15 [~~(4)~~] (6) For purposes of this section:

16 "Minor" means a person who is less than eighteen years of
17 age.

18 "Sexual conduct" has the same meaning as in section
19 712-1200(2)."

20 SECTION 5. Section 853-4, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

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



- 1 (1) The offense charged involves the intentional, knowing,
2 reckless, or negligent killing of another person;
- 3 (2) The offense charged is:
 - 4 (A) A felony that involves the intentional, knowing,
5 or reckless bodily injury, substantial bodily
6 injury, or serious bodily injury of another
7 person; or
 - 8 (B) A misdemeanor or petty misdemeanor that carries a
9 mandatory minimum sentence and that involves the
10 intentional, knowing, or reckless bodily injury,
11 substantial bodily injury, or serious bodily
12 injury of another person;
- 13 (3) The offense charged involves a conspiracy or
14 solicitation to intentionally, knowingly, or
15 recklessly kill another person or to cause serious
16 bodily injury to another person;
- 17 (4) The offense charged is a class A felony;
- 18 (5) The offense charged is nonprobationable;
- 19 (6) The defendant has been convicted of any offense
20 defined as a felony by the Hawaii Penal Code or has
21 been convicted for any conduct that if perpetrated in
22 this State would be punishable as a felony;

- 1 (7) The defendant is found to be a law violator or
2 delinquent child for the commission of any offense
3 defined as a felony by the Hawaii Penal Code or for
4 any conduct that if perpetrated in this State would
5 constitute a felony;
- 6 (8) The defendant has a prior conviction for a felony
7 committed in any state, federal, or foreign
8 jurisdiction;
- 9 (9) A firearm was used in the commission of the offense
10 charged;
- 11 (10) The defendant is charged with the distribution of a
12 dangerous, harmful, or detrimental drug to a minor;
- 13 (11) The defendant has been charged with a felony offense
14 and has been previously granted deferred acceptance of
15 guilty plea status for a prior offense, regardless of
16 whether the period of deferral has already expired;
- 17 (12) The defendant has been charged with a misdemeanor
18 offense and has been previously granted deferred
19 acceptance of guilty plea status for a prior felony,
20 misdemeanor, or petty misdemeanor for which the period
21 of deferral has not yet expired;
- 22 (13) The offense charged is:



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



1 ~~[(U)]~~ (T) Electronic enticement of a child in the
2 first degree;

3 ~~[(V)]~~ (U) Electronic enticement of a child in the
4 second degree;

5 ~~[(W)]~~ (V) Prostitution pursuant to section 712-
6 1200(1)(b);

7 ~~[(X)]~~ (W) Street solicitation of prostitution under
8 section 712-1207(1)(b);

9 ~~[(Y)]~~ (X) Solicitation of prostitution near schools or
10 public parks under section 712-1209; ~~[e#]~~

11 ~~[(Z)]~~ (Y) Habitual solicitation of prostitution under
12 section 712-1209.5; or

13 (Z) Solicitation of a minor for prostitution under
14 section 712-1209.1;

15 (14) The defendant has been charged with:

16 (A) Knowingly or intentionally falsifying any report
17 required under chapter 11, part XIII with the
18 intent to circumvent the law or deceive the
19 campaign spending commission; or

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

21 (15) The defendant holds a commercial driver's license and
22 has been charged with violating a traffic control law,



1 other than a parking law, in connection with the
2 operation of any type of motor vehicle."

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

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



Report Title:

Prostitution; Sex Crimes

Description:

Amends the offense of prostitution to clarify that a law enforcement officer shall not be exempt from the offense if the law enforcement officer engages in sexual penetration while acting in the course and scope of duties; and establish that a person less than eighteen years of age shall not be prosecuted for prostitution or promoting prostitution offenses if the person is charged with a first and only prostitution charge; provided that a person's exemption shall not affect the prosecution of any other person for a prostitution or promoting prostitution offense. Amends the offense of solicitation of a minor for prostitution. Clarifies sentencing of repeat offenders and enhanced sentences for repeat violent and sexual offenders. (SD1)

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

