
A BILL FOR AN ACT

RELATING TO SEXUAL OFFENSES.

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

1 SECTION 1. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§712- Sex trafficking; capital punishment. (1) This
5 section shall apply only to a defendant who has been convicted
6 of sex trafficking under section 712-1202.

7 (2) Upon the defendant's conviction, the court shall
8 conduct a separate sentencing proceeding to determine whether
9 the defendant shall be sentenced to death or to life
10 imprisonment without possibility of parole; provided that a
11 defendant shall not be sentenced to death under this section if
12 the defendant:

13 (a) Is under eighteen years of age; or

14 (b) As a result of a physical or mental disease, disorder,
15 or defect lacks the capacity to understand the
16 proceedings against the person or to assist in the



1 person's own defense, so long as the incapacity
2 endures.

3 (3) The proceeding shall be conducted by the trial court
4 judge before the trial jury as soon after the defendant's
5 conviction as is practicable. If a jury trial has been waived
6 or if the defendant pleaded guilty, the sentencing proceeding
7 shall be conducted before a jury empaneled for that purpose,
8 unless waived by the defendant. In the proceeding, evidence
9 shall be presented regarding any aggravating circumstances
10 listed in subsection (5) and mitigating circumstances listed in
11 subsection (6), and evidence may be presented as to any other
12 matter that the court deems relevant to the sentence. Any
13 evidence that the court deems to have probative value may be
14 received; provided that this subsection shall not be construed
15 to authorize the introduction of any evidence secured in
16 violation of the Constitution of the United States or the
17 Constitution of the State of Hawaii. The defendant and the
18 State shall be permitted to present arguments for or against the
19 sentence of death.

20 (4) After hearing all evidence, the jury shall deliberate
21 and recommend to the court whether the defendant should be



1 sentenced to death or to life imprisonment without possibility
2 of parole. A recommendation of death shall require a unanimous
3 vote of the jury and shall be based on a written finding that
4 there are insufficient mitigating circumstances to overcome the
5 circumstances of the act of sex trafficking and a listing of any
6 aggravating circumstances. The jury shall not recommend a death
7 sentence unless the jury finds that:

8 (a) There exists at least one aggravating circumstance
9 under subsection (5) that justifies the death penalty;
10 and

11 (b) There are no mitigating circumstances under subsection
12 (6), or there are insufficient mitigating
13 circumstances, considered as a whole, to outweigh each
14 aggravating circumstance, considered separately.

15 (5) In making its recommendation, the jury shall consider
16 the following as aggravating circumstances, if they apply:

17 (a) The defendant knowingly created a substantial risk of
18 death to the victim;

19 (b) The offense was committed while the defendant was
20 engaged in the commission of, or an attempt to commit,
21 any other felony; or



1 (e) The defendant was an accomplice in the offense
2 committed by another person, and the defendant's
3 participation was relatively minor, a finding of which
4 shall eliminate the possible imposition of the death
5 penalty.

6 (7) The court may enter a sentence of death only upon the
7 recommendation of the jury but shall have full discretion to
8 decline to issue that sentence. The court shall set forth in
9 writing its findings upon which the sentence of death is based,
10 including the finding required of the jury pursuant to
11 subsection (4). If the court does not make the findings
12 required to impose the death sentence, the court shall impose a
13 sentence of life imprisonment without possibility of parole.

14 (8) The judgment of conviction and sentence of death shall
15 be subject to automatic review by the supreme court within sixty
16 days after certification by the sentencing court of the entire
17 record unless time is extended by the supreme court for an
18 additional period, not to exceed thirty days, for good cause
19 shown. The review by the supreme court shall have priority over
20 all other cases before the supreme court and shall be heard in



1 accordance with rules adopted by the supreme court. The supreme
2 court shall determine whether:

3 (a) The sentence was imposed under the influence of
4 passion, prejudice, or any other arbitrary factor;

5 (b) The evidence supports the finding of a statutory
6 aggravating circumstance; and

7 (c) The sentence is disproportionate, as compared to other
8 cases of a similar nature.

9 If the sentence is affirmed, the supreme court's findings shall
10 include a reference to any other cases of a similar nature that
11 the court considered in affirming the sentence.

12 (9) A person sentenced to death under this section shall
13 be executed by the administration of lethal injection at a place
14 and time to be determined by the sentencing court; provided that
15 the court may delegate that decision to the director of
16 corrections and rehabilitation; provided further that if the
17 death penalty is imposed on a pregnant person, the execution
18 shall be stayed until after that person has given birth.

19 (10) If the death penalty as provided for in this section
20 is held to be unconstitutional by the supreme court or the
21 United States Supreme Court, the court having jurisdiction over



1 a person previously sentenced to death shall cause that person
2 to be brought before the court, and the court shall sentence
3 that person to life imprisonment without possibility of parole.

4 (11) As part of the sentence imposed under this section,
5 the court shall order the director of corrections and
6 rehabilitation and the Hawaii paroling authority to prepare an
7 application for the governor to commute a sentence of death to
8 life imprisonment without possibility of parole.

9 (12) Any deoxyribonucleic acid samples or evidence
10 collected from:

11 (a) The defendant pursuant to a court order; or

12 (b) The victim, the scene of the offense, or from any
13 other person or place relevant to any of the offenses
14 in question,

15 shall be further preserved for evidentiary purposes by the
16 appropriate law enforcement agency in order to allow the
17 defendant the opportunity to introduce the deoxyribonucleic acid
18 evidence at any hearing for which the purpose, in whole or in
19 part, is to overturn the defendant's conviction. The
20 deoxyribonucleic acid evidence shall be preserved until either



1 the defendant's conviction has been overturned or the defendant
2 has been executed pursuant to this section."

3 SECTION 2. Section 350-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "child abuse or neglect"
5 to read as follows:

6 "Child abuse or neglect" means:

7 (1) The acts or omissions of any person who, or legal
8 entity which, is in any manner or degree related to
9 the child, is residing with the child, or is otherwise
10 responsible for the child's care, that have resulted
11 in the physical or psychological health or welfare of
12 the child, who is under the age of eighteen, to be
13 harmed, or to be subject to any reasonably
14 foreseeable, substantial risk of being harmed. The
15 acts or omissions are indicated for the purposes of
16 reports by circumstances that include but are not
17 limited to:

18 (A) When the child exhibits evidence of:

19 (i) Substantial or multiple skin bruising or any
20 other internal bleeding;



- 1 (ii) Any injury to skin causing substantial
- 2 bleeding;
- 3 (iii) Malnutrition;
- 4 (iv) Failure to thrive;
- 5 (v) Burn or burns;
- 6 (vi) Poisoning;
- 7 (vii) Fracture of any bone;
- 8 (viii) Subdural hematoma;
- 9 (ix) Soft tissue swelling;
- 10 (x) Extreme pain;
- 11 (xi) Extreme mental distress;
- 12 (xii) Gross degradation; or
- 13 (xiii) Death; and
- 14 such injury is not justifiably explained, or when
- 15 the history given concerning such condition or
- 16 death is at variance with the degree or type of
- 17 such condition or death, or circumstances
- 18 indicate that such condition or death may not be
- 19 the product of an accidental occurrence;
- 20 (B) When the child has been the victim of sexual
- 21 contact or conduct, including but not limited to



1 sexual assault as defined in the Penal Code,
2 molestation, sexual fondling, incest, or
3 prostitution; obscene or pornographic
4 photographing, filming, or depiction; or other
5 similar forms of sexual exploitation, including
6 but not limited to acts that constitute an
7 offense pursuant to section [~~712-1202(1)(b)+~~]
8 712-1202(1);

9 (C) When there exists injury to the psychological
10 capacity of a child as is evidenced by an
11 observable and substantial impairment in the
12 child's ability to function;

13 (D) When the child is not provided in a timely manner
14 with adequate food, clothing, shelter,
15 psychological care, physical care, medical care,
16 or supervision;

17 (E) When the child is provided with dangerous,
18 harmful, or detrimental drugs as defined by
19 section 712-1240; provided that this subparagraph
20 shall not apply when such drugs are provided to
21 the child pursuant to the direction or



1 prescription of a practitioner, as defined in
2 section 712-1240; or

3 (F) When the child has been the victim of labor
4 trafficking under chapter 707; or

5 (2) The acts or omissions of any person that have resulted
6 in sex trafficking or severe forms of trafficking in
7 persons; provided that no finding by the department
8 pursuant to this chapter shall be used as conclusive
9 evidence that a person has committed an offense under
10 part VIII of chapter 707 or section 712-1202."

11 SECTION 3. Section 587A-4, Hawaii Revised Statutes, is
12 amended by amending the definition of "harm" to read as follows:

13 "Harm" means damage or injury to a child's physical or
14 psychological health or welfare, where:

15 (1) The child exhibits evidence of injury, including, but
16 not limited to:

17 (A) Substantial or multiple skin bruising;

18 (B) Substantial external or internal bleeding;

19 (C) Burn or burns;

20 (D) Malnutrition;

21 (E) Failure to thrive;



- 1 (F) Soft tissue swelling;
2 (G) Extreme pain;
3 (H) Extreme mental distress;
4 (I) Gross degradation;
5 (J) Poisoning;
6 (K) Fracture of any bone;
7 (L) Subdural hematoma; or
8 (M) Death;

9 and the injury is not justifiably explained, or the
10 history given concerning the condition or death is not
11 consistent with the degree or type of the condition or
12 death, or there is evidence that the condition or
13 death may not be the result of an accident;

- 14 (2) The child has been the victim of sexual contact or
15 conduct, including sexual assault; sodomy;
16 molestation; sexual fondling; incest; prostitution;
17 obscene or pornographic photographing, filming, or
18 depiction; or other similar forms of sexual
19 exploitation, including but not limited to acts that
20 constitute an offense pursuant to section
21 [~~712-1202(1)(b)~~]; 712-1202(1);



1 (3) The child's psychological well-being has been injured
2 as evidenced by a substantial impairment in the
3 child's ability to function;

4 (4) The child is not provided in a timely manner with
5 adequate food; clothing; shelter; supervision; or
6 psychological, physical, or medical care;

7 (5) The child is provided with dangerous, harmful, or
8 detrimental drugs as defined in section 712-1240,
9 except when a child's family administers drugs to the
10 child as directed or prescribed by a practitioner as
11 defined in section 712-1240; or

12 (6) The child has been the victim of labor trafficking
13 under chapter 707."

14 SECTION 4. Section 712-1200.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§712-1200.5[+] **Commercial sexual exploitation.** (1) A
17 person commits the offense of commercial sexual exploitation if
18 the person provides, agrees to provide, or offers to provide a
19 fee or anything of value to another to engage in sexual conduct.

20 (2) As used in this section, "sexual conduct" has the same
21 meaning as in section 712-1200(2).



1 ~~[(3) Except as provided in subsection (4), commercial~~
2 ~~sexual exploitation is a petty misdemeanor.~~

3 ~~(4)]~~ (3) Commercial sexual exploitation is a class [E] A
4 felony ~~[if the person who commits the offense under subsection~~
5 ~~(1) does so in reckless disregard of the fact that the person~~
6 ~~exploited is a victim of sex trafficking.~~

7 ~~(5) A person convicted of committing the offense of~~
8 ~~commercial sexual exploitation as a petty misdemeanor shall be~~
9 ~~sentenced as follows:~~

10 ~~(a) For the first offense, a fine of no less than \$500 but~~
11 ~~no more than \$1,000 and the person may be sentenced to~~
12 ~~a term of imprisonment of no more than thirty days or~~
13 ~~probation; provided that in the event the convicted~~
14 ~~person defaults in payment of the fine, and the~~
15 ~~default was not contumacious, the court may order~~
16 ~~conversion of the unpaid portion of the fine to~~
17 ~~community service as authorized by section 706 605(1);~~

18 ~~(b) For any subsequent offense, a fine of no less than~~
19 ~~\$500 but no more than \$1,000 and a term of~~
20 ~~imprisonment or probation of no more than thirty days,~~
21 ~~without possibility of suspension of sentence; and~~



1 ~~(c) For purposes of this subsection, the court may impose~~
2 ~~as a condition of probation that the defendant~~
3 ~~complete a course of exploitation intervention~~
4 ~~classes; provided that the court shall only impose the~~
5 ~~condition for one term of probation].~~

6 ~~[(6)]~~ (4) This section shall not apply to any member of a
7 police department, a sheriff, or a law enforcement officer
8 acting in the course and scope of duties; provided that the
9 member of a police department, sheriff, or law enforcement
10 officer is engaging in undercover operations; provided further
11 that under no circumstances shall sexual contact initiated by a
12 member of a police department, sheriff, or law enforcement
13 officer; sexual penetration; or sadomasochistic abuse be
14 considered to fall within the course and scope of duties."

15 SECTION 5. Section 712-1202, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§712-1202 Sex trafficking.** (1) A person commits the
18 offense of sex trafficking if the person knowingly:

19 ~~[(a)]~~Advances prostitution by compelling or inducing a
20 person, including a minor, by force, threat, fraud,



1 coercion, or intimidation to engage in prostitution,
2 or profits from [such] the conduct by another[~~or~~
3 ~~(b) Advances prostitution or profits from prostitution of~~
4 ~~a minor~~].

5 (2) Sex trafficking is a class A felony[~~and~~] and may be
6 punished pursuant to section 712- .

7 (3) 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 "Threat" means any of the actions listed in section
13 707-764(1).

14 [~~(4) The state of mind requirement for the offense under~~
15 ~~subsection (1)(b) is not applicable to the fact that the victim~~
16 ~~was a minor. A person is strictly liable with respect to the~~
17 ~~attendant circumstances that the victim was a minor.] "~~

18 SECTION 6. Section 846E-1, Hawaii Revised Statutes, is
19 amended by amending the definition of "sexual offense" to read
20 as follows:

21 "Sexual offense" means an offense that is:



- 1 (1) Set forth in section 707-730(1), 707-731(1),
2 707-732(1), 707-733(1)(a), 707-733.6, [~~712-1200.5(4)~~],
3 712-1200.5, 712-1202(1), or 712-1203(1), but excludes
4 conduct that is criminal only because of the age of
5 the victim, as provided in section 707-730(1)(b), or
6 section 707-732(1)(b) if the perpetrator is under the
7 age of eighteen;
- 8 (2) An act defined in section 707-720 if the charging
9 document for the offense for which there has been a
10 conviction alleged intent to subject the victim to a
11 sexual offense;
- 12 (3) An act that consists of:
- 13 (A) Criminal sexual conduct toward a minor, including
14 but not limited to an offense set forth in
15 section 707-759;
- 16 (B) Solicitation of a minor who is less than fourteen
17 years old to engage in sexual conduct;
- 18 (C) Use of a minor in a sexual performance;
- 19 (D) Production, distribution, or possession of child
20 pornography chargeable as a felony under section
21 707-750, 707-751, or 707-752;



- 1 (E) Electronic enticement of a child chargeable under
2 section 707-756 or 707-757 if the offense was
3 committed with the intent to promote or
4 facilitate the commission of another covered
5 offense as defined in this section; or
6 (F) Commercial sexual exploitation of a minor in
7 violation of section 712-1209.1;
- 8 (4) A violation of privacy under section 711-1110.9;
- 9 (5) An act, as described in chapter 705, that is an
10 attempt, criminal solicitation, or criminal conspiracy
11 to commit one of the offenses designated in paragraphs
12 (1) through (4);
- 13 (6) A criminal offense that is comparable to or that
14 exceeds a sexual offense as defined in paragraphs (1)
15 through (5); or
- 16 (7) Any federal, military, out-of-state, tribal, or
17 foreign conviction for any offense that under the laws
18 of this State would be a sexual offense as defined in
19 paragraphs (1) through (6)."

20 SECTION 7. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

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

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

10 SECTION 10. This Act shall take effect upon its approval.

11

INTRODUCED BY: _____



JAN 21 2025



H.B. NO. 896

Report Title:

Commercial Sexual Exploitation; Sex Trafficking; Capital Punishment

Description:

Provides for a sentence of death or life imprisonment without possibility of parole upon a conviction for sex trafficking. Requires a separate sentencing proceeding by a jury, except if waived by the defendant, for a conviction for sex trafficking. Makes commercial sexual exploitation a class A felony. Makes conforming amendments.

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