THE SENATE TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII JAN 21 2011

S.B. NO. **757**

A BILL FOR AN ACT

RELATING TO CRIME.

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 part to be appropriately designated and 3 to read as follows: 4 "PART SEX TRAFFICKING 5 \$712-A Definitions. For purposes of this part: 6 "Advances", with respect to prostitution, occurs if a 7 person, acting other than a prostitute or a patron of a

8 prostitute, knowingly causes or aids a person to commit or 9 engage in prostitution; procures or solicits patrons for 10 prostitution; provides persons for prostitution purposes; 11 permits premises to be regularly used for prostitution purposes; operates or assists in the operation of a house of prostitution 12 13 or a prostitution enterprise; or engages in any other conduct 14 designed to institute, aid, or facilitate an act or enterprise 15 of prostitution.

16 "Profits" with respect to prostitution, as applicable, 17 means, if, acting other than as a prostitute, receiving 18 compensation for personally-rendered prostitution services, as 2011-0041 SB SMA-2.doc

applicable, the person accepts or receives money or other
 property, in any form or manner, pursuant to an agreement or
 understanding with any other person whereby the person
 participates or is to participate in the proceeds of
 prostitution.

6 "Prostitution" means the activity of engaging in, or
7 agreeing or offering to engage in, sexual conduct with another
8 person for a fee.

9 §712-B Sex trafficking in the first degree. (1) A person
10 commits the offense of sex trafficking in the first degree if
11 the person knowingly:

12 (a) Advances or profits from the prostitution of an 13 individual who is less than eighteen years of age; or 14 (b) Advances the prostitution of an individual by the use 15 of any of the following against or to the individual: Extortion in violation of section 707-764; 16 (i) 17 Kidnapping in violation of section 707-720; (ii) 18 (iii) Unlawful imprisonment in violation of either 19 section 707-721 or 707-722; 20 Making material false statements, misstatements, (iv)

or omissions to induce or maintain the person



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1		being prostituted to engage in or continue to	
2		engage in prostitution;	
3	(v)	Requiring that prostitution be performed to	
4		retire, repay, or service a real or purported	
5		debt;	
6	(vi)	Assault in violation of either section 707-710,	
7		707-711, or 707-712; or	
8	(vii)	Unlawfully providing to the prostituted person	
9		with intent to impair said person's judgment any	
10		"dangerous drugs", "detrimental drugs", "harmful	
11		drugs", or "intoxicating liquor" as defined in	
12		section 712-1240.	
13	(2) In a	prosecution under subsection (1)(a) where it is	
14	alleged that the person performing prostitution was under		
15	eighteen years of age, the prosecution need not prove that the		
16	defendant knew the person performing prostitution was under		
17	eighteen years of age.		
18	(3) Sex trafficking in the first degree is a class A		
19	felony.		
20	§712-C S	ex trafficking in the second degree. (1) A	
21	person commits the offense of sex trafficking in the second		
22	degree if the person advances or profits from prostitution by		
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1 managing, supervising, controlling, or owning, either alone or 2 in association with others, a house of prostitution or 3 prostitution business or enterprise involving the prostitution 4 of an individual, knowing that the prostitution activity of the 5 individual was obtained, maintained, or advanced by any of the 6 methods set forth in section 712-B(1)(b)(i) through (vii) 7 against or to the individual.

8 (2) Sex trafficking in the second degree is a class B9 felony.

10 §712-D Rights of alleged trafficking victims. It shall be
11 a complete defense to a charge under section 712-B, 712-C, or
12 712-1200, that the act alleged to have been committed by the
13 accused was obtained, maintained, or advanced by any of the
14 methods set forth in section 712-B(1)(b)(i) through (vii)
15 against or to the accused."

16 SECTION 2. Section 28-101, Hawaii Revised Statutes, is 17 amended by amending subsection (a) to read as follows:

18 "(a) The attorney general shall establish a statewide 19 witness program through which the attorney general may fund or 20 provide for the security and protection of a government witness 21 or a potential government witness in an official proceeding or 22 investigation where the attorney general determines that an





1 offense such as those described in sections 710-1071 2 (intimidating a witness), 710-1072 (tampering with a witness), 3 or 710-1072.2 (retaliating against a witness) is likely to be 4 committed or which involves great public interest. The attorney 5 general may also fund or provide for the security and protection 6 of the immediate family of, or a person otherwise closely 7 associated with, such witness or potential witness if the family 8 or person may also be endangered. In determining whether such 9 security and protection or funds are to be provided, the 10 attorney general shall give greatest priority to official 11 proceedings or investigations involving pending or potential 12 organized crime, racketeering activity, sex trafficking, or 13 career criminal prosecutions." 14 SECTION 3. Section 351-32, Hawaii Revised Statutes, is 15 amended to read as follows: 16 "\$351-32 Violent crimes. The crimes to which part III of 17 this chapter applies are the following and no other: Murder in the first degree (section 707-701); 18 (1)19 Murder in the second degree (section 707-701.5); (2)20 (3) Manslaughter (section 707-702); 21 Negligent homicide in the first degree (section (4)22 707 - 702.5;



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1	(5)	Negligent homicide in the second degree (section
2		707-703);
3	(6)	Negligent injury in the first degree (section
4		707-705);
5	(7)	Negligent injury in the second degree (section
6		707-706);
7	(8)	Assault in the first degree (section 707-710);
8	(9)	Assault in the second degree (section 707-711);
9	(10)	Assault in the third degree (section 707-712);
10	(11)	Kidnapping (section 707-720);
11	(12)	Sexual assault in the first degree (section 707-730);
12	(13)	Sexual assault in the second degree (section 707-731);
13	(14)	Sexual assault in the third degree (section 707-732);
14	(15)	Sexual assault in the fourth degree (section 707-733);
15	(16)	Abuse of family [+]or[+] household member (section
16		709-906); [and]
17	(17)	Sex trafficking in the first degree (section 712-B);
18	(18)	Sex trafficking in the second degree (section 712-C);
19		and
20	[(17)]	(19) Terrorism, as defined in Title 18 United States
21		Code section 2331."



Section 663J-2, Hawaii Revised Statutes, is 2 amended by amending the definition of "promoting prostitution" 3 to read as follows: 4 "Promoting prostitution" means promoting prostitution in 5 the first [or second] degree, as provided in [sections 712-1202 6 and] section 712-1203[, respectively]." 7 Section 706-606.5, Hawaii Revised Statutes, is SECTION 5. 8 amended by amending subsection (1) to read as follows: 9 Notwithstanding section 706-669 and any other law to "(1) 10 the contrary, any person convicted of murder in the second 11 degree, any class A felony, any class B felony, or any of the 12 following class C felonies: section 188-23 relating to 13 possession or use of explosives, electrofishing devices, and 14 poisonous substances in state waters; section 386-98(d)(1) 15 relating to fraud violations and penalties; section 16 431:2-403(b)(2) relating to insurance fraud; section 707-703 17 relating to negligent homicide in the second degree; section 18 707-711 relating to assault in the second degree; section 19 707-713 relating to reckless endangering in the first degree; 20 section 707-716 relating to terroristic threatening in the first 21 degree; section 707-721 relating to unlawful imprisonment in the 22 first degree; section 707-732 relating to sexual assault or rape 2011-0041 SB SMA-2.doc

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1 in the third degree; section 707-752 relating to promoting child 2 abuse in the third degree; section 707-757 relating to 3 electronic enticement of a child in the second degree; section 4 707-766 relating to extortion in the second degree; section 5 708-811 relating to burglary in the second degree; section 6 708-821 relating to criminal property damage in the second 7 degree; section 708-831 relating to theft in the first degree as 8 amended by Act 68, Session Laws of Hawaii 1981; section 708-831 9 relating to theft in the second degree; section 708-835.5 10 relating to theft of livestock; section 708-836 relating to 11 unauthorized control of propelled vehicle; section 708-839.8 12 relating to identity theft in the third degree; section 708-13 839.55 relating to unauthorized possession of confidential 14 personal information; section 708-852 relating to forgery in the 15 second degree; section 708-854 relating to criminal possession 16 of a forgery device; section 708-875 relating to trademark 17 counterfeiting; section 710-1071 relating to intimidating a 18 witness; section 711-1103 relating to riot; section 712-1203 19 relating to promoting prostitution in the [second] first degree; section 712-1221 relating to gambling in the first degree; 20 21 section 712-1224 relating to possession of gambling records in 22 the first degree; section 712-1243 relating to promoting a



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

18 (a) One prior felony conviction:

19 (i) Where the instant conviction is for murder in the
20 second degree or attempted murder in the second
21 degree--ten years;



1	(ii)	Where the instant conviction is for a class A
2		felonysix years, eight months;
3	(iii)	Where the instant conviction is for a class B
4		felonythree years, four months; and
5	(iv)	Where the instant conviction is for a class C
6		felony offense enumerated aboveone year, eight
7		months;
8	(b) Two	prior felony convictions:
9	(i)	Where the instant conviction is for murder in the
10		second degree or attempted murder in the second
11		degreetwenty years;
12	(ii)	Where the instant conviction is for a class A
13		felonythirteen years, four months;
14	(iii)	Where the instant conviction is for a class B
15		felonysix years, eight months; and
16	(iv)	Where the instant conviction is for a class C
17		felony offense enumerated abovethree years,
18		four months;
19	(c) Thre	e or more prior felony convictions:
20	(i)	Where the instant conviction is for murder in the
21		second degree or attempted murder in the second
22		degreethirty years;



1	(ii) Where the instant conviction is for a class A
2	felonytwenty years;
3	(iii) Where the instant conviction is for a class B
4	felonyten years; and
5	(iv) Where the instant conviction is for a class C
6	felony offense enumerated abovefive years."
7	SECTION 6. Section 712-1201, Hawaii Revised Statutes, is
8	amended to read as follows:
9	"§712-1201 Promoting prostitution; definition of terms.
10	In sections [712-1202,] 712-1203 and 712-1204:
11	(1) A person "advances prostitution" if, acting other than
12	as a prostitute or a patron of a prostitute, he
13	knowingly causes or aids a person to commit or engage
14	in prostitution, procures or solicits patrons for
15	prostitution, provides persons for prostitution
16	purposes, permits premises to be regularly used for
17	prostitution purposes, operates or assists in the
18	operation of a house of prostitution or a prostitution
19	enterprise, or engages in any other conduct designed
20	to institute, aid, or facilitate an act or enterprise
21	of prostitution.



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1 (2) A person "profits from prostitution" if, acting other
2 than as a prostitute receiving compensation for
3 personally-rendered prostitution services, he accepts
4 or receives money or other property pursuant to an
5 agreement or understanding with any person whereby he
6 participates or is to participate in the proceeds of
7 prostitution activity."

8 SECTION 7. Section 712-1203, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§712-1203 Promoting prostitution in the [second] first (1) A person commits the offense of promoting 11 degree. 12 prostitution in the [second] first degree if the person 13 knowingly advances or profits from prostitution by managing, 14 supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a 15 16 prostitution business or enterprise involving prostitution 17 activity by two or more prostituted persons.

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

20 SECTION 8. Section 712-1204, Hawaii Revised Statutes, is 21 amended to read as follows:



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1	"§712-1204 Promoting prostitution in the [third] second
2	degree. (1) A person commits the offense of promoting
3	prostitution in the [third] second degree if the person
4	knowingly advances or profits from prostitution.
5	(2) Promoting prostitution in the [third] second degree is
6	a misdemeanor."
7	SECTION 9. Section 712A-4, Hawaii Revised Statutes, is
8	amended to read as follows:
9	"§712A-4 Covered offenses. Offenses for which property is
10	subject to forfeiture under this chapter are:
11	(a) All offenses which specifically authorize forfeiture;
12	(b) Murder, kidnapping, gambling, criminal property
13	damage, robbery, bribery, extortion, theft,
14	unauthorized entry into motor vehicle, burglary, money
15	laundering, trademark counterfeiting, insurance fraud,
16	promoting a dangerous, harmful, or detrimental drug,
17	commercial promotion of marijuana, unlawful
18	methamphetamine trafficking, manufacturing of a
19	controlled substance with a child present, promoting
20	child abuse, <u>sex trafficking,</u> or electronic enticement
21	of a child which is chargeable as a felony offense
22	under state law;



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The manufacture, sale, or distribution of a controlled 1 (C) 2 substance in violation of chapter 329, promoting 3 detrimental drugs or intoxicating compounds, promoting 4 pornography, promoting pornography for minors, or 5 promoting prostitution, which is chargeable as a 6 felony or misdemeanor offense, but not as a petty 7 misdemeanor, under state law; and 8 (d) The attempt, conspiracy, solicitation, coercion, or 9 intimidation of another to commit any offense for which property is subject to forfeiture." 10 11 SECTION 10. Section 803-44, Hawaii Revised Statutes, is 12 amended to read as follows: 13 "§803-44 Application for court order to intercept wire, 14 oral, or electronic communications. The attorney general of 15 this State, or a designated deputy attorney general in the 16 attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting 17

18 attorney in the prosecuting attorney's absence or incapacity, 19 may make application to a designated judge or any other circuit 20 court judge or district court judge, if a circuit court judge 21 has not been designated by the chief justice of the Hawaii 22 supreme court, or is otherwise unavailable, in the county where



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1 the interception is to take place, for an order authorizing or 2 approving the interception of wire, oral, or electronic 3 communications, and such court may grant in conformity with 4 section 803-46 an order authorizing, or approving the 5 interception of wire, oral, or electronic communications by 6 investigative or law enforcement officers having responsibility 7 for the investigation of the offense as to which the application 8 is made, if the interception might provide or has provided 9 evidence of: 10 (1) Murder; 11 (2) Kidnapping; 12 (3) Sex trafficking in the first degree; 13 (4) Sex trafficking in the second degree; 14 [(3)] (5) Felony criminal property damage involving the 15 danger of bodily injury as defined in section 707-700; 16 $\left[\frac{4}{4}\right]$ (6) Distribution of dangerous, harmful, or

- 17 detrimental drugs; or
- 18 [(5)] (7) Conspiracy to commit one or more of the above; or 19 involving
- 20 [(6)] (8) Organized crime and any of the following felony 21 offenses:
- **22** (A)



Extortion;

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1	(B)	Bribery of a juror, of a witness, or of a police
2		officer;
3	(C)	Receiving stolen property; [and]
4	(D)	Gambling; and
5	(E)	Money laundering."
6	SECTION 11	. Section 842-1, Hawaii Revised Statutes, is
7	amended by amer	nding the definitions of "organized crime" and
8	"racketeering a	activity" to read as follows:
9	""Organize	ed crime" means any combination or conspiracy to
10	engage in crimi	nal activity as a significant source of income or
11	livelihood, or	to violate, aid or abet the violation of criminal
12	laws relating t	o prostitution, gambling, loan sharking, drug
13	abuse, illegal	drug distribution, counterfeiting, extortion, sex
14	trafficking, co	orruption of law enforcement officers or other
15	public officers	s or employers.
16	"Racketeer	ing activity" means any act or threat involving,
17	but not limited	to <u>,</u> murder, kidnapping, gambling, criminal
18	property damage	e, robbery, bribery, extortion, <u>sex trafficking,</u>
19	theft or prosti	tution, or any dealing in narcotic or other
20	dangerous drugs	which is chargeable as a crime under state law
21	and punishable	by imprisonment for more than one year."



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1	SECT	ION 12. Section 846E-1, Hawaii Revised Statutes, is				
2	amended by amending the definition of "sexual offense" to read					
3	as follow	S:				
4	""Se	xual offense" means an offense that is:				
5	(1)	Set forth in section 707-730(1)(a), 707-730(1)(b),				
6		707-730(1)(c), $707-730(1)(d)$ or (e), $707-731(1)(a)$,				
7		707-731(1)(b), 707-731(1)(c), 707-732(1)(a),				
8		707-732(1)(b), 707-732(1)(c), 707-732(1)(d),				
9		707-732(1)(e), 707-732(1)(f), 707-733(1)(a),				
10		707-733.6, [712-1202(1)(b), or] 712-1203(1)(b),				
11		712-1204, 712-B, or 712-C, but excludes conduct that				
12		is criminal only because of the age of the victim, as				
13		provided in section 707-730(1)(b), or section				
14		707-732(1)(b) if the perpetrator is under the age of				
15		eighteen;				
16	(2)	An act defined in section 707-720 if the charging				
17		document for the offense for which there has been a				
18		conviction alleged intent to subject the victim to a				
19		sexual offense;				
20	(3)	An act that consists of:				



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1		(A)	Criminal sexual conduct toward a minor, including
2			but not limited to an offense set forth in
3			section 707-759;
4		(B)	Solicitation of a minor who is less than fourteen
5			years old to engage in sexual conduct;
6		(C)	Use of a minor in a sexual performance;
7		(D)	Production, distribution, or possession of child
8			pornography chargeable as a felony under section
9			707-750, 707-751, or 707-752;
10		(E)	Electronic enticement of a child chargeable under
11			section 707-756 or 707-757 if the offense was
12			committed with the intent to promote or
13			facilitate the commission of another covered
14			offense as defined in this section; or
15		(F)	Solicitation of a minor to practice prostitution;
16	(4)	A cr:	iminal offense that is comparable to or that
17		exce	eds a sexual offense as defined in paragraphs (1)
18		throu	ugh (3) or any federal, military, or out-of-state
19		conv	iction for any offense that under the laws of this
20		State	e would be a sexual offense as defined in
21		parag	graphs (1) through (3); or



1	(5)	An act, as described in chapter 705, that is an
2		attempt, criminal solicitation, or criminal conspiracy
3		to commit one of the offenses designated in paragraphs
4		(1) through (4)."
5	SECTI	CON 13. Section 853-4, Hawaii Revised Statutes, is
6	amended to	read as follows:
7	"§853	-4 Chapter not applicable; when. This chapter shall
8	not apply	when:
9	(1)	The offense charged involves the intentional, knowing,
10		reckless, or negligent killing of another person;
11	(2)	The offense charged is:
12		(A) A felony that involves the intentional, knowing,
13		or reckless bodily injury, substantial bodily
14		injury, or serious bodily injury of another
15		person; or
16		(B) A misdemeanor or petty misdemeanor that carries a
17		mandatory minimum sentence and that involves the
18		intentional, knowing, or reckless bodily injury,
19		substantial bodily injury, or serious bodily
20		injury of another person;
21	(3)	The offense charged involves a conspiracy or
22		solicitation to intentionally, knowingly, or



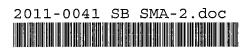
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1		recklessly kill another person or to cause serious
2		bodily injury to another person;
3	(4)	The offense charged is a class A felony;
4	(5)	The offense charged is nonprobationable;
5	(6)	The defendant has been convicted of any offense
6		defined as a felony by the Hawaii Penal Code or has
7		been convicted for any conduct that if perpetrated in
8		this State would be punishable as a felony;
9	(7)	The defendant is found to be a law violator or
10		delinquent child for the commission of any offense
11		defined as a felony by the Hawaii Penal Code or for
12		any conduct that if perpetrated in this State would
13		constitute a felony;
14	(8)	The defendant has a prior conviction for a felony
15		committed in any state, federal, or foreign
16		jurisdiction;
17	(9)	A firearm was used in the commission of the offense
18		charged;
19	(10)	The defendant is charged with the distribution of a
20		dangerous, harmful, or detrimental drug to a minor;
21	(11)	The defendant has been charged with a felony offense
22		and has been previously granted deferred acceptance of
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1		guilty plea status for a prior offense, regardless of
2		whether the period of deferral has already expired;
3	(12)	The defendant has been charged with a misdemeanor
4		offense and has been previously granted deferred
5		acceptance of guilty plea status for a prior felony,
6		misdemeanor, or petty misdemeanor for which the period
7		of deferral has not yet expired;
8	(13)	The offense charged is:
9		(A) Escape in the first degree;
10		(B) Escape in the second degree;
11		(C) Promoting prison contraband in the first degree;
12		(D) Promoting prison contraband in the second degree;
13		(E) Bail jumping in the first degree;
14		(F) Bail jumping in the second degree;
15		(G) Bribery;
16		(H) Bribery of or by a witness;
17		(I) Intimidating a witness;
18		(J) Bribery of or by a juror;
19		(K) Intimidating a juror;
20		(L) Jury tampering;
21		(M) Promoting prostitution in the first degree;
22		(N) Promoting prostitution in the second degree;



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1	[-(0)-	Promoting prostitution in the third degree;
2	- (₽) -]	(0) Abuse of family or household members;
3	[-(Q) -]	(P) Sexual assault in the second degree;
4	[(R)]	(Q) Sexual assault in the third degree;
5	[(S)]	(R) A violation of an order issued pursuant to
6		chapter 586;
7	[(T)]	(S) Promoting child abuse in the second degree;
8	[-(U) -]	(T) Promoting child abuse in the third degree;
9	[-(V)]	(U) Electronic enticement of a child in the
10		first degree;
11	[-(W) -]	(V) Electronic enticement of a child in the
12		second degree; [or]
13	[-(x)]	(W) An offense under part IV, chapter 291E;
14	<u>(X)</u>	Sex trafficking in the first degree; or
15	(Y)	Sex trafficking in the second degree;
16	(14) The	defendant has been charged with:
17	(A)	Knowingly or intentionally falsifying any report
18		required under chapter 11, subpart B of part XII,
19		with the intent to circumvent the law or deceive
20		the campaign spending commission; or
21	(B)	Violating section 11-201 or 11-202; or



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1	(15) The defendant holds a commercial driver's license and
2	has been charged with violating a traffic control law,
3	other than a parking law, in connection with the
4	operation of any type of motor vehicle.
5	The court may adopt by rule other criteria in this area."
6	SECTION 14. Section 712-1202, Hawaii Revised Statutes, is
7	repealed.
8	["§712-1202 Promoting prostitution in the first degree.
9	(1) A person commits the offense of promoting prostitution in
10	the first degree if the person knowingly:
11	(a) Advances prostitution by compelling a person by force,
12	threat, or intimidation to engage in prostitution, or
13	profits from such coercive conduct by another; or
14	(b) Advances or profits from prostitution of a person less
15	than eighteen years old.
16	(2) Promoting prostitution in the first degree is a class
17	B-felony.
18	(3) As used in this section, "threat" means any of the
19	actions listed in section 707 764(1)."]
20	SECTION 15. In codifying the new sections added by section
21	1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating 2 the new sections in this Act. 3 SECTION 16. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that 4 5 were begun before its effective date. 6 SECTION 17. Statutory material to be repealed is bracketed 7 and stricken. New statutory material is underscored. 8 SECTION 18. This Act shall take effect upon approval. 9

INTRODUCED BY:

Manne Chun aalland



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Report Title: Sex Trafficking Offenses; Crime

Description:

Establishes class A and B felony sex trafficking offenses and provisions related to prosecution of the offenses. Effective upon approval.

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

