

JAN 20 2012

S.B. NO. 2579

A BILL FOR AN ACT

RELATING TO MINORS.

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

1 SECTION 1. Chapter 706, part III, Hawaii Revised Statutes,
2 is amended by adding a new section to be appropriately
3 designated and to read as follows:

4 "**§706- Minor victims of prostitution special fund.** (1)

5 In addition to any disposition authorized by chapter 706 or 853,
6 any person who is:

7 (a) Convicted of an offense under part I of chapter 712
8 when the offense involves prostitution or promoting
9 prostitution of a person less than eighteen years old;
10 or

11 (b) Charged with an offense under part I of chapter 712
12 when the offense involves prostitution or promoting
13 prostitution of a person less than eighteen years old
14 and who has been granted a deferred acceptance of
15 guilty or no contest plea;

16 shall be ordered to pay a monetary assessment not to exceed
17 \$5,000.



1 Notwithstanding sections 706-640 and 706-641 and any other law
2 to the contrary, the assessments provided by this section shall
3 be in addition to and not in lieu of, and shall not be used to
4 offset or reduce, any fine authorized or required by law.

5 (2) There is established a special fund to be known as the
6 minor victims of prostitution special fund to be administered by
7 the department of human services. The disbursement of money
8 from the minor victims of prostitution special fund shall be
9 used to provide services and treatment to persons confirmed to
10 be minor victims of prostitution. The department may also use
11 moneys from the fund to enter into contracts with organizations
12 that can provide services to persons confirmed to be minor
13 victims of prostitution.

14 (3) Appropriations by the legislature and all monetary
15 assessments paid and interest accrued on funds collected
16 pursuant to this section shall be deposited into the minor
17 victims of prostitution special fund.

18 (4) Probation fees imposed under part III of chapter 706
19 shall be paid before payment of the monetary assessment."

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



1 "Child abuse or neglect" means the acts or omissions of
2 any person ~~[who,~~ or legal entity ~~[which, is in any manner or~~
3 ~~degree related to the child, is residing with the child, or is~~
4 ~~otherwise responsible for the child's care,~~] that have resulted
5 in the physical or psychological health or welfare of the child,
6 who is under the age of eighteen, to be harmed, or to be subject
7 to any reasonably foreseeable, substantial risk of being harmed.
8 The acts or omissions are indicated for the purposes of reports
9 by circumstances that include but are not limited to:

10 (1) When the child exhibits evidence of:

- 11 (A) Substantial or multiple skin bruising or any
- 12 other internal bleeding;
- 13 (B) Any injury to skin causing substantial bleeding;
- 14 (C) Malnutrition;
- 15 (D) Failure to thrive;
- 16 (E) Burn or burns;
- 17 (F) Poisoning;
- 18 (G) Fracture of any bone;
- 19 (H) Subdural hematoma;
- 20 (I) Soft tissue swelling;
- 21 (J) Extreme pain;
- 22 (K) Extreme mental distress;



1 (L) Gross degradation;

2 (M) Death; and

3 such injury is not justifiably explained, or when the
4 history given concerning such condition or death is at
5 variance with the degree or type of such condition or
6 death, or circumstances indicate that such condition
7 or death may not be the product of an accidental
8 occurrence; or

- 9 (2) When the child has been the victim of sexual contact
10 or conduct, including, but not limited to, sexual
11 assault as defined in the Penal Code, molestation,
12 sexual fondling, incest, or prostitution; obscene or
13 pornographic photographing, filming, or depiction; or
14 other similar forms of sexual exploitation; or
- 15 (3) When there exists injury to the psychological capacity
16 of a child as is evidenced by an observable and
17 substantial impairment in the child's ability to
18 function; or
- 19 (4) When the child is not provided in a timely manner with
20 adequate food, clothing, shelter, psychological care,
21 physical care, medical care, or supervision; or



(5) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this paragraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240."

SECTION 3. Section 350-1.1, Hawaii Revised Statutes, is amended to read as follows:

"§350-1.1 Reports. (a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have ~~[reason to believe]~~ a reasonable suspicion that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department or to the police department:

(1) Any licensed or registered professional of the healing arts or any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including but not limited to physicians, including physicians in training, psychologists, dentists, nurses, osteopathic



1 physicians and surgeons, optometrists, chiropractors,
2 podiatrists, pharmacists, and other health-related
3 professionals;

4 (2) Employees or officers of any public or private school;

5 (3) Employees or officers of any public or private agency
6 or institution, or other individuals, providing
7 social, medical, hospital, or mental health services,
8 including financial assistance;

9 (4) Employees or officers of any law enforcement agency,
10 including but not limited to the courts, police
11 departments, department of public safety, correctional
12 institutions, and parole or probation offices;

13 (5) Individual providers of child care, or employees or
14 officers of any licensed or registered child care
15 facility, foster home, or similar institution;

16 (6) Medical examiners or coroners; and

17 (7) Employees of any public or private agency providing
18 recreational or sports activities.

19 (b) Whenever a person designated in subsection (a) is a
20 member of the staff of any public or private school, agency, or
21 institution, that staff member shall immediately report the
22 known or suspected child abuse or neglect directly to the



1 department or to the police department and also shall
2 immediately notify the person in charge or a designated delegate
3 of the report made in accordance with this chapter.

4 (c) Whenever an employee or officer of any law enforcement
5 agency suspects or charges a person under eighteen years of age
6 with a violation of sections 712-1200(1), 712-1207(1), or
7 712-1209(1), that employee or officer shall immediately report
8 the known or suspected child abuse or neglect directly to the
9 department.

10 [~~(c)~~] (d) The initial oral report shall be followed as
11 soon as possible by a report in writing to the department. If a
12 police department or the department of public safety is the
13 initiating agency, a written report shall be filed with the
14 department for cases that the police or the department of public
15 safety takes further action on or for active cases in the
16 department under this chapter. All written reports shall
17 contain the name and address of the child and the child's
18 parents or other persons responsible for the child's care, if
19 known, the child's age, the nature and extent of the child's
20 injuries, and any other information that the reporter believes
21 might be helpful or relevant to the investigation of the child
22 abuse or neglect. This subsection shall not be construed to



1 serve as a cause of action against the department, the police,
2 or the department of public safety.

3 ~~[(d)]~~ (e) Any person subject to subsection (a) shall, upon
4 demand of the department or any police department, provide all
5 information related to the alleged incident of child abuse or
6 neglect, including, but not limited to, medical records and
7 medical reports, which was not included in the written report
8 submitted pursuant to subsection ~~[(e)]~~ (d).

9 ~~[(e)]~~ (f) The director may adopt, amend, or repeal rules,
10 subject to chapter 91, to further define or clarify the specific
11 forms of child abuse or neglect enumerated in section 350-1 for
12 use in implementing this chapter; provided that rules adopted
13 under this subsection shall be limited to such further or
14 clarifying definitions."

15 SECTION 4. Section 571-11, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§571-11 Jurisdiction; children.** Except as otherwise
18 provided in this chapter, the court shall have exclusive
19 original jurisdiction in proceedings:

20 (1) Concerning any person who is alleged to have committed
21 an act prior to achieving eighteen years of age that
22 would constitute a violation or attempted violation of



1 any federal, state, or local law or county ordinance.
2 Regardless of where the violation occurred,
3 jurisdiction may be taken by the court of the circuit
4 where the person resides, is living, or is found, or
5 in which the offense is alleged to have occurred;

6 (2) Concerning any person under eighteen years of age who
7 is suspected of or charged with a violation of
8 sections 712-1200(1), 712-1207(1), or 712-1209(1) and
9 later granted immunity under sections 712-1200(6),
10 712-1207(8), or 712-1209(3). Regardless of where the
11 violation occurred, jurisdiction may be taken by the
12 court of the circuit where the person resides, is
13 living, or is found, or in which the offense is
14 alleged to have occurred;

15 ~~[+2+]~~ (3) Concerning any child living or found within the
16 circuit:

17 (A) Who is neglected as to or deprived of educational
18 services because of the failure of any person or
19 agency to exercise that degree of care for which
20 it is legally responsible;



1 (B) Who is beyond the control of the child's parent
2 or other custodian or whose behavior is injurious
3 to the child's own or others' welfare;

4 (C) Who is neither attending school nor receiving
5 educational services required by law whether
6 through the child's own misbehavior or
7 nonattendance or otherwise; or

8 (D) Who is in violation of curfew;

9 ~~[(+3)]~~ (4) To determine the custody of any child or appoint
10 a guardian of any child;

11 ~~[(+4)]~~ (5) For the adoption of a person under chapter 578;

12 ~~[(+5)]~~ (6) For the termination of parental rights under
13 sections 571-61 through 571-63;

14 ~~[(+6)]~~ (7) For judicial consent to the marriage, employment,
15 or enlistment of a child, when consent is required by
16 law;

17 ~~[(+7)]~~ (8) For the treatment or commitment of a mentally
18 defective or mentally ill child, or a child with an
19 intellectual disability;

20 ~~[(+8)]~~ (9) Under the Interstate Compact on Juveniles under
21 chapter 582 or the Interstate Compact for Juveniles
22 under chapter 582D;



1 ~~[(9)]~~ (10) For the protection of any child under chapter
2 587A; and

3 ~~[(10)]~~ (11) For a change of name as provided in section
4 574-5(a)(2)(C)."

5 SECTION 5. Section 663J-7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~[(1)]~~**\$663J-7**~~[(1)]~~ **Statute of limitations.** (a) A claim under
8 this chapter may not be brought against a person more than ~~[two]~~
9 six years after an act of promoting prostitution by coercion by
10 that person.

11 (b) The limitation period provided for in this chapter is
12 tolled:

13 (1) During the minority of the individual who engages in
14 prostitution; ~~[or]~~

15 (2) Any time there is a criminal offense investigation
16 being actively conducted against the defendant by a
17 governmental agency or there is a criminal offense
18 charge, information, or indictment pending against the
19 defendant~~[-]~~;

20 (3) Until the plaintiff discovers that an act of promoting
21 prostitution by coercion has occurred and the
22 defendant caused, was responsible for, or profited



1 from the act of promoting prostitution by coercion;

2 and

3 (4) If the plaintiff is a victim of a series of acts of

4 promoting prostitution by coercion by the same

5 defendant, until the last act of promoting

6 prostitution by coercion has occurred.

7 (c) A statute of limitations defense may not be asserted

8 if the defendant induced or attempted to induce the plaintiff to

9 delay filing of a claim under this chapter."

10 SECTION 6. Section 712-1200, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§712-1200 Prostitution.** (1) A person commits the
13 offense of prostitution if the person:

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

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

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

21 (3) Prostitution is a petty misdemeanor.



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

3 (a) For the first offense, when the court has not deferred
4 further proceedings pursuant to chapter 853, a
5 mandatory fine of \$500 and the person may be sentenced
6 to a term of imprisonment of not more than thirty days
7 or probation; provided that in the event the convicted
8 person defaults in payment of the \$500 fine, and the
9 default was not contumacious, the court may sentence
10 the person to perform services for the community as
11 authorized by section 706-605(1).

12 (b) For any subsequent offense, a mandatory fine of \$500
13 and a term of imprisonment of thirty days or
14 probation, without possibility of deferral of further
15 proceedings pursuant to chapter 853 and without
16 possibility of suspension of sentence.

17 (c) For the purpose of this subsection, if the court has
18 deferred further proceedings pursuant to chapter 853,
19 and notwithstanding any provision of chapter 853 to
20 the contrary, the defendant shall not be eligible to
21 apply for expungement pursuant to section 831-3.2
22 until four years following discharge. A plea



1 previously entered by a defendant under section 853-1
2 for a violation of this section shall be considered a
3 prior offense. When the court has ordered a sentence
4 of probation, the court may impose as a condition of
5 probation that the defendant complete a course of
6 prostitution intervention classes; provided that the
7 court may only impose such condition for one term of
8 probation.

9 (5) 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 (6) If it is determined, after a reasonable detention for
13 investigative purposes, that a person suspected of or charged
14 with a violation of subsection (1) was less than eighteen years
15 old at the time the offense of prostitution was committed, that
16 person shall be immune to prosecution under this section, and
17 shall be subject to the child protective provisions of chapter
18 587A. Immunity to prosecution under this section shall not
19 apply to patrons of prostitution or persons who procure or
20 solicit patrons for prostitution."

21 SECTION 7. Section 712-1207, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§712-1207 Street solicitation of prostitution; designated**

2 **areas.** (1) It shall be unlawful for any person within the
3 boundaries of Waikiki and while on any public property to:

4 (a) Offer or agree to engage in sexual conduct with
5 another person in return for a fee; or

6 (b) Pay, agree to pay, or offer to pay a fee to another
7 person to engage in sexual conduct.

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

12 (a) Offer or agree to engage in sexual conduct with
13 another person in return for a fee; or

14 (b) Pay, agree to pay, or offer to pay a fee to another
15 person to engage in sexual conduct."

16 (3) Upon a recommendation of the chief of police of a
17 county, that county may enact an ordinance that:

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



1 (b) Alters the boundaries of any existing area under
2 paragraph (a);
3 provided that not more than four areas may be designated within
4 the State.

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

11 (5) As an option to the mandatory term of thirty days
12 imprisonment, if the court finds the option is warranted based
13 upon the defendant's record, the court may place the defendant
14 on probation for a period not to exceed six months, subject to
15 the mandatory condition that the defendant observe geographic
16 restrictions that prohibit the defendant from entering or
17 remaining on public property, in Waikiki and other areas in the
18 State designated by county ordinance during the hours from
19 6 p.m. to 6 a.m. Upon any violation of the geographic
20 restrictions by the defendant, the court, after hearing, shall
21 revoke the defendant's probation and immediately impose the
22 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) If it is determined, after a reasonable detention for
2 investigative purposes, that a person suspected of or charged
3 with a violation of subsection (1) was less than eighteen years
4 old at the time the violation was committed, that person shall
5 be immune to prosecution under this section, and shall be
6 subject to the child protective provisions of chapter 587A.
7 Immunity to prosecution under this section shall not apply to
8 patrons of prostitution or persons who procure or solicit
9 patrons for prostitution."

10 ~~[(8)]~~ (9) For purposes of this section:

11 "Area" means any zone within a county that is defined with
12 specific boundaries and designated as a zone of significant
13 prostitution by this section or a county ordinance.

14 "Public property" includes any street, highway, road,
15 sidewalk, alley, lane, bridge, parking lot, park, or other
16 property owned or under the jurisdiction of any governmental
17 entity or otherwise open to the public.

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

20 "Waikiki" means that area of Oahu bounded by the Ala Wai
21 canal, the ocean, and Kapahulu avenue.



1 ~~[(9)]~~ (10) This section shall apply to all counties;
2 provided that if a county enacts an ordinance to regulate street
3 solicitation for prostitution, other than an ordinance
4 designating an area as a zone of significant prostitution-
5 related activity, the county ordinance shall supersede this
6 section and no person shall be convicted under this section in
7 that county."

8 SECTION 8. Section 712-1209, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[(1)]~~§712-1209~~[(1)]~~ **Solicitation of prostitution near schools**
11 **or public parks.** (1) A person commits the offense of
12 solicitation of prostitution near schools or public parks if,
13 within seven hundred fifty feet of a school or public park, the
14 person offers or agrees to pay a fee to another person to engage
15 in sexual conduct.

16 (2) Solicitation of prostitution near schools or public
17 parks is a misdemeanor.

18 (3) If it is determined, after a reasonable detention for
19 investigative purposes, that a person suspected of or charged
20 with a violation of subsection (1) was less than eighteen years
21 old at the time the violation was committed, that person shall
22 be immune to prosecution under this section, and shall be



1 subject to the child protective provisions of chapter 587A.
2 Immunity to prosecution under this section shall not apply to
3 patrons of prostitution or persons who procure or solicit
4 patrons for prostitution."

5 [~~3~~] (4) For purposes of this section:

6 "School" has the same meaning as in section 712-1249.6(6).

7 "Sexual conduct" has the same meaning as in section
8 712-1200(2)."

9 SECTION 9. (a) The department of human services shall
10 develop a two-year victim services pilot program to address the
11 needs of minor victims of prostitution and minors at-risk of
12 victimization through prostitution.

13 (b) The department shall:

14 (1) Coordinate with law enforcement agencies, the county
15 prosecutors' offices, child protection workers, and
16 human trafficking service providers to implement the
17 victim services pilot program;

18 (2) Provide training and educational materials to its
19 employees regarding sex trafficking and exploitation
20 of minors through prostitution;

21 (3) Develop a public awareness campaign regarding sex
22 trafficking of minors; and



(4) Conduct outreach to youth identified as being at risk for victimization through prostitution.

(c) Moneys from the minor victims of prostitution special fund shall be used to develop and provide services to minor victims of prostitution; the department may also use moneys from the fund to enter into contracts with organizations that can provide services to minor victims of prostitution.

(d) The department shall submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2014, detailing the implementation of the pilot program. The report shall include findings and recommendations, including proposed legislation and the estimated costs of implementation of the program on a permanent basis.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

Polait Ryan

INTRODUCED BY: *Shianne Chun Oallane*



S.B. NO. 2579

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Report Title:

Minors; Prostitution; Family Court; Penal Code; Special Fund;
Victim Services Pilot Program

Description:

Establishes the minor victims of prostitution special fund. Amends the definition of child abuse or neglect to include acts or omissions of any person or legal entity. Requires mandatory reporting when there is reasonable suspicion of child abuse or neglect. Requires law enforcement to immediately report incidents of child prostitution to DHS. Grants the family court exclusive jurisdiction over any person under eighteen who is charged with an offense of prostitution. Amends the statute of limitations under the prostitution coercion liability act. Establishes that a person who is under eighteen and suspected of or charged with an offense of prostitution shall be granted immunity from prosecution, and shall be subject to the child protective provisions of chapter 587A. Establishes a two-year victim services pilot program to address the needs of minor victims of prostitution.

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

