

JAN 19 2018

S.B. NO. 2352

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# A BILL FOR AN ACT

RELATING TO PROTECTION OF CHILDREN.

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

1       SECTION 1. The purpose of this Act is to increase  
2       protections for child victims of sex trafficking, prostitution,  
3       and commercial exploitation by:

4       (1) Specifying that the crime victim compensation  
5       commission, when considering the behavior of a crime  
6       victim and whether the victim bears any responsibility  
7       for the act that caused the victim's injury or death,  
8       shall not deny or reduce compensation to a victim of  
9       sex trafficking solely because the victim appeared to  
10      acquiesce to being trafficked;

11      (2) Increasing the penalties for the offense of promoting  
12      travel for prostitution and related offenses;

13      (3) Expressly including convictions for sex trafficking  
14      and any prostitution offense under chapter 712, Hawaii  
15      Revised Statutes, as grounds for terminating parental  
16      rights;



- 1       (4) Removing the period of limitation within which a
- 2           prosecution for sex trafficking or solicitation of a
- 3           minor for prostitution shall be commenced;
- 4       (5) Increasing the respective penalties for the offenses
- 5           of promoting child abuse in the first, second, and
- 6           third degrees;
- 7       (6) Amending the offense of prostitution to increase the
- 8           enhanced penalty that already applies when the offense
- 9           involves a victim of sex trafficking and to specify
- 10          that the term "victim of sex trafficking" includes all
- 11          commercially sexually exploited persons, regardless of
- 12          whether the trafficker is a readily identifiable
- 13          person or being prosecuted separately;
- 14       (7) Amending the offense of sex trafficking by bringing
- 15           within its purview a person who solicits a minor for
- 16           prostitution and by imposing strict liability with
- 17           respect to the age of the minor;
- 18       (8) Amending the offense of solicitation of a minor for
- 19           prostitution to apply only to situations where a law
- 20           enforcement officer poses as a minor and by increasing
- 21           the penalty for the offense;



(9) Prohibiting a defense to sex trafficking based on a minor victim's having willingly engaged in or having appeared to willingly engage in prostitution;

(10) Amending the offense of habitual solicitation of prostitution to clarify that "habitual prostitution offender" includes a person who has been convicted for solicitation of a minor or certain instances of sex trafficking; and

(11) Including solicitation of a minor for prostitution among the offenses for which a prosecuting attorney may seek a court order authorizing the use of wiretapping where the interception might provide or has provided evidence of the crime.

SECTION 2. Section 351-31, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused the victim's injury or death and the



1 commission shall reduce the amount of compensation in proportion  
2 to the amount of responsibility for the crime which caused the  
3 victim's injury or death; provided that if the proportion is  
4 greater than the responsibility of the person who committed the  
5 act or omission or, in the case of more than one person, the  
6 aggregate responsibility of such persons because of whom  
7 compensation is sought, the commission shall not award any  
8 compensation to the victim.

9 In the case of victims of sex trafficking under section  
10 712-1202, the commission shall not deny or reduce compensation  
11 to a victim solely because of the victim's perceived  
12 acquiescence to being trafficked."

13 SECTION 3. Section 468L-5.6, Hawaii Revised Statutes, is  
14 amended by amending subsection (c) to read as follows:

15 "(c) A travel agency or charter tour operator that  
16 violates any provision of this chapter may be fined not more  
17 than \$1,000 for each violation; provided that a travel agency or  
18 charter tour operator shall be fined not less than \$5,000 for  
19 each violation of section 468L-7.5(9) or (10) that involves a  
20 minor under the age of eighteen and shall be subject to separate  
21 criminal penalties under section 712-1208; provided further that



1 a charter tour operator also shall be assessed an administrative  
2 fine pursuant to section 468L-27 for any violation of that  
3 section."

4 SECTION 4. Section 571-61, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) Involuntary termination.

7 (1) The family courts may terminate the parental rights in  
8 respect to any child as to any legal parent:

9 (A) Who has deserted the child without affording  
10 means of identification for a period of at least  
11 ninety days;

12 (B) Who has voluntarily surrendered the care and  
13 custody of the child to another for a period of  
14 at least two years;

15 (C) Who, when the child is in the custody of another,  
16 has failed to communicate with the child when  
17 able to do so for a period of at least one year;

18 (D) Who, when the child is in the custody of another,  
19 has failed to provide for care and support of the  
20 child when able to do so for a period of at least  
21 one year;



## S.B. NO. 2352

1 (E) Whose child has been removed from the parent's  
2 physical custody pursuant to legally authorized  
3 judicial action under section 571-11(9), and who  
4 is found to be unable to provide now and in the  
5 foreseeable future the care necessary for the  
6 well-being of the child;

7 (F) Who is found by the court to be mentally ill or  
8 intellectually disabled and incapacitated from  
9 giving consent to the adoption of or from  
10 providing now and in the foreseeable future the  
11 care necessary for the well-being of the child;  
12 [~~or~~]

13 (G) Who is found not to be the child's natural or  
14 adoptive father[-]; or

15 (H) Who has been convicted of sex trafficking under  
16 section 712-1202 or any prostitution offense  
17 under chapter 712, or an equivalent offense under  
18 the laws of another state, territory, possession,  
19 or Native American tribe where the offense  
20 occurred.



# S.B. NO. 2352

(2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under chapter 578, or who is named as the father on the child's birth certificate:

(A) Who falls within paragraph (1)(A), (B), (C), (D), (E), or (F);

(B) Whose child is sought to be adopted by the child's stepfather and the stepfather has lived with the child and the child's legal mother for a period of at least one year;

(C) Who is only a concerned father who has failed to file a petition for the adoption of the child or whose petition for the adoption of the child has been denied; or

(D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.

(3) In respect to any proceedings under paragraphs (1) and (2), the authority to terminate parental rights may be exercised by the court only when a verified petition,



1 substantially in the form above prescribed, has been  
2 filed by some responsible adult person on behalf of  
3 the child in the family court of the circuit in which  
4 the parent resides or the child resides or was born  
5 and the court has conducted a hearing of the petition.  
6 A copy of the petition, together with notice of the  
7 time and place of the hearing thereof, shall be  
8 personally served at least twenty days prior to the  
9 hearing upon the parent whose rights are sought to be  
10 terminated. If personal service cannot be effected  
11 within the State, service of the notice may be made as  
12 provided in section 634-23 or 634-24.

13 (4) The family courts may terminate the parental rights in  
14 respect to any child as to any natural father who is  
15 not the child's legal, adjudicated, presumed or  
16 concerned father under chapter 578.

17 (5) The family courts may terminate the parental rights in  
18 respect to any child of any natural parent upon a  
19 finding by clear and convincing evidence that the  
20 natural parent committed sexual assault of the other  
21 natural parent, or an equivalent offense under the





1 laws of another state, territory, possession, or  
2 Native American tribe where the offense occurred, and  
3 the child was conceived as a result of the sexual  
4 assault perpetrated by the parent whose rights are  
5 sought to be terminated; provided that:

6 (A) The court shall accept, as conclusive proof of  
7 the sexual assault, a guilty plea or conviction  
8 of the child's natural parent for the sexual  
9 assault, or an equivalent offense under the laws  
10 of another state, territory, possession, or  
11 Native American tribe where the offense occurred,  
12 of the other natural parent;

13 (B) Termination shall mean, when used with respect to  
14 parental rights in this paragraph, a complete and  
15 final termination of the parent's right to  
16 custody of, guardianship of, visitation with,  
17 access to, and inheritance from a child;

18 (C) The termination of parental rights shall not  
19 affect the obligation of the child's natural  
20 parent to support the child;



(D) The court may order the child's natural parent to pay child support;

(E) It is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the sexual assault;

(F) This paragraph shall not apply if subsequent to the date of the sexual assault, the child's natural parent and custodial natural parent cohabitate and establish a mutual custodial environment for the child; and

(G) The custodial natural parent may petition the court to reinstate the child's natural parent's parental rights terminated pursuant to this paragraph.

(6) The family courts may terminate the parental rights in respect to any child of any natural parent who has been convicted of sex trafficking under section 712-1202 or any prostitution offense under chapter 712, or an equivalent offense under the laws of another state,



1           territory, possession, or Native American tribe where  
2           the offense occurred.

3           Such authority may be exercised under this chapter only  
4 when a verified petition, substantially in the form above  
5 prescribed, has been filed by some responsible adult person on  
6 behalf of the child in the family court of the circuit in which  
7 the parent resides or the child resides or was born, and the  
8 court has conducted a hearing of the petition.

9           If the mother of the child files with the petition an  
10 affidavit representing that the identity or whereabouts of the  
11 child's father is unknown to her or not ascertainable by her or  
12 that other good cause exists why notice cannot or should not be  
13 given to the father, the court shall conduct a hearing to  
14 determine whether notice is required.

15          If the court finds that good cause exists why notice cannot  
16 or should not be given to the child's father, and that the  
17 father is neither the legal nor adjudicated nor presumed father  
18 of the child, nor has he demonstrated a reasonable degree of  
19 interest, concern, or responsibility as to the existence or  
20 welfare of the child, the court may enter an order authorizing



1 the termination of the father's parental rights and the  
2 subsequent adoption of the child without notice to the father."

3 SECTION 5. Section 701-108, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

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

13 SECTION 6. Section 706-610, Hawaii Revised Statutes, is  
14 amended by amending subsection (1) to read as follows:

15 "§706-610 Classes of felonies. (1) Apart from first and  
16 second degree murder [and], attempted first and second degree  
17 murder, and promoting child abuse in the first degree, felonies  
18 defined by this Code are classified, for the purpose of  
19 sentence, into three classes, as follows:

20 (a) Class A felonies;

21 (b) Class B felonies; and



1 (c) Class C felonies.

2 A felony is a class A, class B, or class C felony when it  
3 is so designated by this Code. Except for first and second  
4 degree murder [~~and~~], attempted first and second degree murder,  
5 and promoting child abuse in the first degree, a crime declared  
6 to be a felony, without specification of class, is a class C  
7 felony."

8 SECTION 7. Section 707-750, Hawaii Revised Statutes, is  
9 amended by amending subsection (4) to read as follows:

10 "(4) Promoting child abuse in the first degree [~~is a class~~  
11 ~~A felony.~~] is a felony for which a person convicted shall be  
12 sentenced to life imprisonment with the possibility of parole."

13 SECTION 8. Section 707-751, Hawaii Revised Statutes, is  
14 amended by amending subsection (4) to read as follows:

15 "(4) Promoting child abuse in the second degree is a class  
16 [B] A felony."

17 SECTION 9. Section 707-752, Hawaii Revised Statutes, is  
18 amended by amending subsection (4) to read as follows:

19 "(4) Promoting child abuse in the third degree is a class  
20 [E] B felony."



SECTION 10. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (3) read as follows:

"(3) Prostitution is a petty misdemeanor; provided that:

(a) If the person who commits the offense under subsection

(1)(a) is a minor, prostitution is a violation; and

(b) If the person who commits the offense under subsection

(1)(b) does so in reckless disregard of the fact that

the other person is a victim of sex trafficking,

prostitution is ~~[a class C felony]~~:

(i) A class A felony if the victim of sex trafficking is a minor under fourteen years of age;

(ii) A class B felony if the victim of sex trafficking is a minor between fourteen but less than eighteen years of age; and

(iii) A class C felony if the victim of sex trafficking is eighteen years of age or older.

As used in this paragraph, "victim of sex trafficking" includes all commercially sexually exploited persons, regardless of whether the trafficker is a readily identifiable person or being prosecuted separately."



1       SECTION 11. Section 712-1202, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "**§712-1202 Sex trafficking.** (1) A person commits the  
4 offense of sex trafficking if the person knowingly:

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

9       (b) Advances or profits from prostitution of a minor;  
10 provided that with respect to the ~~[victim's]~~ minor's  
11 age, ~~[the prosecution shall be required to prove only~~  
12 ~~that the person committing the offense acted~~  
13 ~~negligently.]~~ the state of mind requirement is not  
14 applicable and a person is strictly liable with  
15 respect to the attendant circumstance that the minor  
16 was under eighteen years of age;

17       (c) Solicits a minor under fourteen years of age for  
18 prostitution; provided that with respect to the  
19 minor's age, the state of mind requirement is not  
20 applicable and a person is strictly liable with



1           respect to the attendant circumstance that the minor  
2           was under fourteen years of age; or

3       (d) Solicits a minor between fourteen but less than  
4           eighteen years of age for prostitution; provided that  
5           with respect to the minor's age, the state of mind  
6           requirement is not applicable and a person is strictly  
7           liable with respect to the attendant circumstance that  
8           the minor was between fourteen but less than eighteen  
9           years of age.

10       (2) Sex trafficking is [~~a class A felony.~~] punishable as  
11 follows:

12       (a) As a class A felony when committed under paragraph

13           (1) (a), (b), or (c); and

14       (b) As a class B felony when committed under paragraph

15           (1) (d).

16       (3) As used in this section:

17       "Fraud" means making material false statements,  
18       misstatements, or omissions.

19       "Minor" means a person who is less than eighteen years of  
20       age.





1 "Threat" means any of the actions listed in section 707-  
2 764(1).

3 (4) It shall not be a defense to prosecution under this  
4 section that the trafficked person willingly engaged in or  
5 appeared to willingly engage in prostitution at the time of the  
6 offense or at any other time."

7 SECTION 12. Section 712-1208, Hawaii Revised Statutes, is  
8 amended by amending subsection (3) to read as follows:

9 "(3) Promoting travel for prostitution is a class C  
10 felony[-]; provided that promoting travel for prostitution is a  
11 class B felony when the travel services include or facilitate  
12 travel for the purpose of engaging in a sexual act with a minor  
13 under the age of eighteen."

14 SECTION 13. Section 712-1209.1, Hawaii Revised Statutes,  
15 is amended by amending subsections (1) through (4) to read as  
16 follows:

17 "(1) A person eighteen years of age or older commits the  
18 offense of solicitation of a minor for prostitution if the  
19 person intentionally, knowingly, or recklessly offers or agrees  
20 to pay a fee to ~~[a minor or to a member of a police department,~~



1 ~~a sheriff, or~~ a law enforcement officer who represents that  
2 person's self as a minor to engage in sexual conduct.

3 (2) Solicitation of a minor for prostitution is ~~[a class C~~  
4 ~~felony.]~~ punishable as follows:

5 (a) As a class A felony when the law enforcement officer  
6 represents that person's self as a minor under  
7 fourteen years of age; and

8 (b) As a class B felony when the law enforcement officer  
9 represents that person's self as a minor between  
10 fourteen but less than eighteen years of age.

11 (3) A person convicted of committing the offense of  
12 solicitation of a minor for prostitution shall be imposed a fine  
13 of not less than ~~[\$5,000,]~~ \$15,000; provided that ~~[\$5,000]~~  
14 \$10,000 of the imposed fine shall be credited to the general  
15 fund.

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



SECTION 14. Section 712-1209.5, Hawaii Revised Statutes, is amended by amending subsections (2) and (3) to read as follows:

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

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

(b) Street solicitation of prostitution, in violation of section 712-1207(1)(b);

(c) Solicitation of a minor for prostitution, in violation of section 712-1209.1;

(d) Sex trafficking, in violation of section 712-1202(1)(c) or (d);

~~[(e)]~~ (e) Habitual solicitation of prostitution, in violation of this section;

~~[(d)]~~ (f) An offense of any other jurisdiction that is comparable to one of the offenses in paragraph (a), (b), ~~[or (e); or]~~ (c), (d), or (e); or

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



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

7 (3) Habitual solicitation of prostitution is a class C  
8 felony[-]; provided that it is a class A felony when the instant  
9 offense is solicitation of a minor for prostitution or sex  
10 trafficking under section 712-1202(1)(c) or (d)."

11 SECTION 15. 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  
17 attorney of each county, or a designated deputy prosecuting  
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



1 supreme court, or is otherwise unavailable, in the county where  
2 the interception is to take place, for an order authorizing or  
3 approving the interception of wire, oral, or electronic  
4 communications, and the court may grant in conformity with  
5 section 803-46 an order authorizing or approving the  
6 interception of wire, oral, or electronic communications by  
7 investigative or law enforcement officers having responsibility  
8 for the investigation of the offense as to which the application  
9 is made, if the interception might provide or has provided  
10 evidence of:

- 11 (1) Murder;
- 12 (2) Kidnapping;
- 13 (3) Labor trafficking in the first degree;
- 14 (4) Labor trafficking in the second degree;
- 15 (5) Felony criminal property damage involving the danger  
16 of bodily injury as defined in section 707-700;
- 17 (6) Distribution of dangerous, harmful, or detrimental  
18 drugs;
- 19 (7) Conspiracy to commit one or more of the above; or
- 20 (8) Involvement of organized crime and any of the  
21 following felony offenses:



- 1 (A) Extortion;
- 2 (B) Bribery of a juror, witness, or police officer;
- 3 (C) Receiving stolen property;
- 4 (D) Gambling;
- 5 (E) Money laundering; [and]
- 6 (F) Sex trafficking[-]; and
- 7 (G) Solicitation of a minor for prostitution."

8 SECTION 16. This Act does not affect rights and duties  
9 that matured, penalties that were incurred, and proceedings that  
10 were begun before its effective date.

11 SECTION 17. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 18. This Act shall take effect upon its approval.  
14

INTRODUCED BY:

*Michelle Kilday*  
*Travis [unclear]*  
*Amanda Taul*  
*[unclear]*

*[unclear]*  
*Shane Mendoza Kim*  
*[unclear]*  
*[unclear]*  
*Quincy H. Bell*  
*[unclear]*  
*Imane R. Anouye*



# S.B. NO. 2352

**Report Title:**

Children; Sex Trafficking; Prostitution; Commercial Exploitation

**Description:**

Amends various provisions of the HRS to increase protections for child victims of sex trafficking, prostitution, and commercial exploitation by increasing penalties for offenders and habitual offenders. Among other things, amends the offense of sex trafficking to impose criminal liability on a person who solicits a minor for prostitution and by imposing strict liability with respect to the age of the minor.

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

