

JAN 19 2018

A BILL FOR AN ACT

RELATING TO PROSTITUTION.

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

1 SECTION 1. Section 351-31, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) In determining whether to make an order under this
4 section, the commission may consider any circumstances it
5 determines to be relevant, and the commission shall consider the
6 behavior of the victim, and whether, because of provocation or
7 otherwise, the victim bears any share of responsibility for the
8 crime that caused the victim's injury or death and the
9 commission shall reduce the amount of compensation in proportion
10 to the amount of responsibility for the crime which caused the
11 victim's injury or death; provided that if the proportion is
12 greater than the responsibility of the person who committed the
13 act or omission or, in the case of more than one person, the
14 aggregate responsibility of such persons because of whom
15 compensation is sought, the commission shall not award any
16 compensation to the victim[-]; provided further that this
17 subsection shall not apply to a victim of labor trafficking



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1 pursuant to sections 707-781 and 707-782, a victim of sex
2 trafficking pursuant to section 712-1202, or a victim of
3 promoting prostitution pursuant to section 712-1203."

4 SECTION 2. Section 701-108, Hawaii Revised Statutes, is
5 amended by amending subsection (1) to read as follows:

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

14 SECTION 3. Section 706-606.6, Hawaii Revised Statutes, is
15 amended by amending subsections (1) and (2) to read as follows:

16 "(1) Notwithstanding any other provision of law to the
17 contrary, any person who is convicted of an offense under
18 section 707-701.5, 707-702, 707-730, 707-731, 707-732,
19 707-733.6, 707-750, 708-840, 712-1202, or 712-1203, [~~or~~
20 ~~712-1209.17~~] after having been convicted on at least three prior
21 and separate occasions of an offense under section 707-701.5,



1 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6,
2 707-750, 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~] or of
3 an offense under federal law or the laws of another state that
4 is comparable to an offense under section 707-701.5, 707-702,
5 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
6 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~] shall be
7 sentenced to an extended term of imprisonment as provided in
8 section 706-661.

9 (2) A conviction shall not be considered a prior offense
10 unless the conviction occurred within the following time
11 periods:

12 (a) For an offense under section 707-701.5, 707-702,
13 707-730, 707-733.6, 707-750, 708-840, 712-1202, or
14 712-1203, [~~or 712-1209.1,~~] within the past twenty
15 years from the date of the instant offense;

16 (b) For an offense under section 707-710 or 707-731,
17 within the past ten years from the date of the instant
18 offense;

19 (c) For an offense under section 707-711 or 707-732,
20 within the past five years from the date of the
21 instant offense; or



(d) For an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~] within the maximum term of imprisonment possible under the appropriate jurisdiction."

SECTION 4. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsections (1) to (4) to read as follows:

"(1) A person commits the offense of prostitution if the person:

(a) Engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee; provided that this subsection shall not apply if the person committing the offense is a minor; or

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

(2) As used in this section:

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



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1 "Sexual conduct" means "sexual penetration", "deviate
2 sexual intercourse", or "sexual contact", as those terms are
3 defined in section 707-700, or "sodomasochistic abuse" as
4 defined in section 707-752.

5 (3) Prostitution under subsection (1)(a) is a petty
6 misdemeanor[+] and prostitution under subsection (1)(b) is a
7 misdemeanor; provided that[+]

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

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

10 ~~(b) If]~~ if the person who commits the offense under

11 subsection (1)(b) does so in reckless disregard of the

12 fact that the other person is a victim of sex

13 trafficking, prostitution is a class C felony.

14 (4) A person convicted of committing the offense of
15 prostitution under subsection (1)(b) as a [petty] misdemeanor
16 shall be sentenced as follows:

17 (a) For the first offense, when the court has not deferred
18 further proceedings pursuant to chapter 853, a fine of
19 not less than [~~\$500~~] \$1,000 but not more than [~~\$1,000~~]
20 \$2,000 and the person [may] shall be sentenced to a
21 term of imprisonment of not [~~more~~] less than thirty



1 days ~~[or]~~ but not more than one year; provided that
2 the court may order a sentence of probation[+] in
3 addition to the term of imprisonment; provided further
4 that in the event the convicted person defaults in
5 payment of the fine, and the default was not
6 contumacious, the court may sentence the person to
7 perform services for the community as authorized by
8 section 706-605(1).

9 (b) For any subsequent offense, a fine of not less than
10 ~~[\$500]~~ \$1,000 but not more than ~~[\$1,000]~~ \$2,000 and a
11 term of imprisonment of ~~[thirty]~~ not less than ninety
12 days ~~[or probation,]~~ but not more than one year;
13 without possibility of deferral of further proceedings
14 pursuant to chapter 853 and without possibility of
15 suspension of sentence[-]; provided that the court may
16 order a sentence of probation in addition to the term
17 of imprisonment.

18 (c) For the purpose of this subsection, if the court has
19 deferred further proceedings pursuant to chapter 853,
20 and notwithstanding any provision of chapter 853 to
21 the contrary, the defendant shall not be eligible to



1 apply for expungement pursuant to section 831-3.2
2 until four years following discharge. A plea
3 previously entered by a defendant under section 853-1
4 for a violation of this section shall be considered a
5 prior offense. When the court has ordered a sentence
6 of probation, the court may impose as a condition of
7 probation that the defendant complete a course of
8 prostitution intervention classes; provided that the
9 court may only impose the condition for one term of
10 probation."

11 SECTION 5. Section 712-1201, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§712-1201 Advancing prostitution; profiting from**
14 **prostitution; definition of terms.** In sections 712-1202 and
15 712-1203:

16 (1) A person "advances prostitution" if, acting other than
17 as a prostitute or a patron of a prostitute, the person
18 knowingly causes or aids a person to commit or engage in
19 prostitution, procures or solicits patrons for prostitution,
20 provides persons for prostitution purposes, permits premises to
21 be [~~regularly~~] used for prostitution purposes, operates or



1 assists in the operation of a house of prostitution or a
2 prostitution enterprise, or engages in any other conduct
3 designed to institute, aid, or facilitate an act or enterprise
4 of prostitution.

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

11 SECTION 6. Section 712-1202, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§712-1202 Sex trafficking.** (1) A person commits the
14 offense of sex trafficking if the person knowingly:

15 (a) Advances prostitution by compelling or inducing a
16 person by force, threat, fraud, or intimidation to
17 engage in prostitution, or profits from such conduct
18 by another; [or]

19 (b) Advances or profits from prostitution of a minor;
20 ~~[provided that with respect to the victim's age, the~~



~~prosecution shall be required to prove only that the
person committing the offense acted negligently.] or~~

(c) Offers or agrees to pay for a fee to a minor or to a
member of a police department, a sheriff, or a law
enforcement officer who represents that person's self
as a minor to engage in sexual conduct.

(2) Sex trafficking is a class A felony. A person
convicted of committing the offense of sex trafficking under
subsection (1)(c) shall be fined not less than \$50,000; provided
that the fine shall be credited to the general fund.

(3) For a violation of subsection (1)(b) or (1)(c), the
state of mind requirement for this offense shall not be
applicable to the fact that the victim was a minor. A person is
strictly liable with respect to the attendant circumstance that
the victim was a minor.

(4) A victim's consent to sexual conduct shall not be a
defense to a violation of subsection (1)(c).

(5) Subsection (1)(c) shall not apply to any member of a
police department, a sheriff, or a law enforcement officer who
offers or agrees to pay a fee to a minor while acting in the
course and scope of duties.



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1 [~~4~~] (6) As used in this section:

2 "Fraud" means making material false statements,
3 misstatements, or omissions.

4 "Minor" means a person who is less than eighteen years of
5 age.

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

8 SECTION 7. Section 712-1203, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "(1) A person commits the offense of promoting
11 prostitution if the person [~~knowingly~~] recklessly advances or
12 profits from prostitution."

13 SECTION 8. Section 712-1206, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) Any person who remains or wanders about in a public
16 place and repeatedly beckons to, or repeatedly stops, or
17 repeatedly attempts to engage passers-by in conversation, or
18 repeatedly stops or attempts to stop motor vehicles, or
19 repeatedly interferes with the free passage of other persons for
20 the purpose of committing the crime of advancing prostitution as



1 that term is defined in section 712-1201(1) is guilty of a
2 [~~petty misdemeanor.~~] misdemeanor."

3 SECTION 9. Section 712-1207, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsections (1) and (2) to read:

6 "(1) It shall be unlawful for any person within the
7 boundaries of Waikiki and while on any public property to:

8 (a) Offer or agree to engage in sexual conduct with
9 another person in return for a fee; provided that this
10 subsection shall not apply if the person committing
11 the offense is a minor; or

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

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

18 (a) Offer or agree to engage in sexual conduct with
19 another person in return for a fee; provided that this
20 subsection shall not apply if the person committing
21 the offense is a minor; or



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

2. By amending subsection (8) to read:

"(8) For purposes of this section:

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

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

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

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

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

SECTION 10. Section 712-1208, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) Promoting travel for prostitution is a class C felony[-]; provided that if the travel services for prostitution



1 described in subsection (1) is for the purpose of engaging in
2 prostitution with a person who is under the age of eighteen,
3 promoting travel for prostitution is a class A felony."

4 SECTION 11. Section 806-83, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Criminal charges may be instituted by written
7 information for a felony when the charge is a class C felony,
8 except under:

9 (1) Section 159-28 (bribery related to the Hawaii Meat
10 Inspection Act);

11 (2) Section 161-28 (bribery related to the Hawaii Poultry
12 Inspection Act);

13 (3) Section 707-712.5 (assault against a law enforcement
14 officer in the first degree);

15 (4) Section 707-716 (terroristic threatening in the first
16 degree);

17 (5) Section 707-732 (sexual assault in the third degree);

18 (6) Section 707-741 (incest);

19 (7) Section 707-752 (promoting child abuse in the third
20 degree);

21 (8) Section 708-880 (commercial bribery);



- 1 (9) Section 709-904.5 (compensation by an adult of
2 juveniles for crimes);
- 3 (10) Section 710-1026.9 (resisting an order to stop a motor
4 vehicle in the first degree);
- 5 (11) Section 710-1070 (bribery of or by a witness);
- 6 (12) Section 710-1071 (intimidating a witness);
- 7 (13) Section 710-1072.2 (retaliating against a witness);
- 8 (14) Section 710-1073 (bribery of or by a juror);
- 9 (15) Section 710-1075 (jury tampering);
- 10 (16) Section 710-1075.5 (retaliating against a juror);
- 11 (17) Section 711-1106.4 (aggravated harassment by
12 stalking);
- 13 (18) Section 711-1110.9 (violation of privacy in the first
14 degree);
- 15 (19) Section 712-1208 (promoting travel for prostitution);
- 16 ~~[(20) Section 712-1209.1 (solicitation of a minor for~~
17 ~~prostitution);~~
- 18 ~~+(21)+]~~ (20) Section 712-1209.5 (habitual solicitation of
19 prostitution);
- 20 ~~[(22)+]~~ (21) Section 712-1215 (promoting pornography for
21 minors);



1 ~~[(+23)]~~ (22) Section 712-1218 (failure to maintain age
2 verification records of sexual performers);

3 ~~[(+24)]~~ (23) Section 712-1218.5 (failure to maintain age
4 verification records of sexually exploited
5 individuals); and

6 ~~[(+25)]~~ (24) Section 712-1219 (failure to affix information
7 disclosing location of age verification records of
8 sexual performers)."

9 SECTION 12. Section 846E-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "sexual offense" to read
11 as follows:

12 "\"Sexual offense\" means an offense that is:

13 (1) Set forth in section 707-730(1), 707-731(1),
14 707-732(1), 707-733(1)(a), 707-733.6, 712-1202(1), or
15 712-1203(1), but excludes conduct that is criminal
16 only because of the age of the victim, as provided in
17 section 707-730(1)(b), or section 707-732(1)(b) if the
18 perpetrator is under the age of eighteen;

19 (2) An act defined in section 707-720 if the charging
20 document for the offense for which there has been a



1 conviction alleged intent to subject the victim to a
2 sexual offense;

3 (3) An act that consists of:

4 (A) Criminal sexual conduct toward a minor, including
5 but not limited to an offense set forth in
6 section 707-759;

7 (B) Solicitation of a minor who is less than fourteen
8 years old to engage in sexual conduct;

9 (C) Use of a minor in a sexual performance;

10 (D) Production, distribution, or possession of child
11 pornography chargeable as a felony under section
12 707-750, 707-751, or 707-752; or

13 (E) Electronic enticement of a child chargeable under
14 section 707-756 or 707-757 if the offense was
15 committed with the intent to promote or
16 facilitate the commission of another covered
17 offense as defined in this section; [~~or~~

18 ~~(F) Solicitation of a minor for prostitution in~~
19 ~~violation of section 712-1209.1;]~~

20 (4) A violation of privacy under section 711-1110.9;



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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 (6) A criminal offense that is comparable to or that
6 exceeds a sexual offense as defined in paragraphs (1)
7 through (5); or

8 (7) Any federal, military, out-of-state, tribal, or
9 foreign conviction for any offense that under the laws
10 of this State would be a sexual offense as defined in
11 paragraphs (1) through (6)."

12 SECTION 13. Section 846E-10, Hawaii Revised Statutes, is
13 amended by amending subsection (d) to read as follows:

14 "(d) Tier 1 offenses. A covered offender who has
15 maintained a clean record for the previous ten years, excluding
16 any time the offender was in custody or civilly committed, and
17 who has substantially complied with the registration
18 requirements of this chapter for the previous ten years, or for
19 the portion of that ten years that this chapter has been
20 applicable, and who is not a repeat covered offender may
21 petition the court, in a civil proceeding, for termination of



1 registration requirements; provided that the covered offender's
2 most serious covered offense is one of the following:

3 (1) Any offense set forth in section 707-732(1)(d) or (e),
4 707-733(1)(a), 707-752, 707-759, 711-1110.9, or
5 712-1203(1) [~~or 712-1209.1~~];

6 (2) An offense set forth in section 707-721 or 707-722;
7 provided that the offense involves unlawful
8 imprisonment of a minor by someone other than a
9 parent;

10 (3) An offense set forth in section 707-757 that includes
11 an intent to promote or facilitate the commission of
12 another covered offense as defined in section 846E-1;

13 (4) An offense that is an attempt, criminal solicitation,
14 or criminal conspiracy to commit any of the offenses
15 in paragraph (1), (2), or (3);

16 (5) Any criminal offense that is comparable to one of the
17 offenses in paragraph (1), (2), (3), or (4);

18 (6) Any federal, military, out-of-state, tribal, or
19 foreign offense that is comparable to one of the
20 offenses in paragraph (1), (2), (3), or (4); or



(7) Any other covered offense that is not specified in subsection (a) or (c) or paragraph (1), (2), (3), (4), (5), or (6)."

SECTION 14. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply when:

(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(2) The offense charged is:

(A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or

(B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

(3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or



recklessly kill another person or to cause serious
bodily injury to another person;

(4) The offense charged is a class A felony;

(5) The offense charged is nonprobationable;

(6) The defendant has been convicted of any offense
defined as a felony by the Hawaii Penal Code or has
been convicted for any conduct that if perpetrated in
this State would be punishable as a felony;

(7) The defendant is found to be a law violator or
delinquent child for the commission of any offense
defined as a felony by the Hawaii Penal Code or for
any conduct that if perpetrated in this State would
constitute a felony;

(8) The defendant has a prior conviction for a felony
committed in any state, federal, or foreign
jurisdiction;

(9) A firearm was used in the commission of the offense
charged;

(10) The defendant is charged with the distribution of a
dangerous, harmful, or detrimental drug to a minor;



1 (11) The defendant has been charged with a felony offense
2 and has been previously granted deferred acceptance of
3 guilty plea or no contest plea for a prior offense,
4 regardless of whether the period of deferral has
5 already expired;

6 (12) The defendant has been charged with a misdemeanor
7 offense and has been previously granted deferred
8 acceptance of guilty plea or no contest plea for a
9 prior felony, misdemeanor, or petty misdemeanor for
10 which the period of deferral has not yet expired;

11 (13) The offense charged is:

- 12 (A) Escape in the first degree;
13 (B) Escape in the second degree;
14 (C) Promoting prison contraband in the first degree;
15 (D) Promoting prison contraband in the second degree;
16 (E) Bail jumping in the first degree;
17 (F) Bail jumping in the second degree;
18 (G) Bribery;
19 (H) Bribery of or by a witness;
20 (I) Intimidating a witness;
21 (J) Bribery of or by a juror;



- 1 (K) Intimidating a juror;
- 2 (L) Jury tampering;
- 3 (M) Promoting prostitution;
- 4 (N) Abuse of family or household member;
- 5 (O) Sexual assault in the second degree;
- 6 (P) Sexual assault in the third degree;
- 7 (Q) A violation of an order issued pursuant to
- 8 chapter 586;
- 9 (R) Promoting child abuse in the second degree;
- 10 (S) Promoting child abuse in the third degree;
- 11 (T) Electronic enticement of a child in the first
- 12 degree;
- 13 (U) Electronic enticement of a child in the second
- 14 degree;
- 15 (V) Prostitution pursuant to section 712-1200(1)(b);
- 16 (W) Street solicitation of prostitution under section
- 17 712-1207(1)(b);
- 18 (X) Solicitation of prostitution near schools or
- 19 public parks under section 712-1209; or
- 20 (Y) Habitual solicitation of prostitution under
- 21 section 712-1209.5; [~~or~~



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~~(Z) Solicitation of a minor for prostitution under
section 712-1209.1,]~~

(14) The defendant has been charged with:

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

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

(15) The defendant holds a commercial driver's license and
has been charged with violating a traffic control law,
other than a parking law, in connection with the
operation of any type of motor vehicle."

SECTION 15. Section 712-1209.1, Hawaii Revised Statutes,
is repealed.

~~["§712-1209.1 Solicitation of a minor for prostitution.~~

~~(1) A person eighteen years of age or older commits the offense
of solicitation of a minor for prostitution if the person
intentionally, knowingly, or recklessly offers or agrees to pay
a fee to a minor or to a member of a police department, a
sheriff, or a law enforcement officer who represents that
person's self as a minor to engage in sexual conduct.~~



~~(2) Solicitation of a minor for prostitution is a class C felony.~~

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

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

~~(5) The state of mind requirement for this offense is not applicable to the fact that the person solicited was a minor. A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor.~~

~~(6) For purposes of this section:~~

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

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



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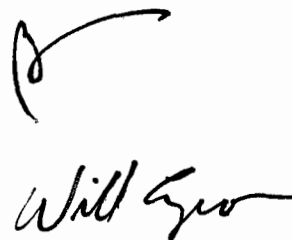
1 SECTION 16. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 17. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect upon its approval.

7

INTRODUCED BY: 


Will Geo



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Report Title:

Prostitution; Labor Trafficking; Sex Trafficking; Misdemeanor;
Fine; Minors

Description:

Exempts victims of labor trafficking, sex trafficking, and prostitution from those offenses for which the crime victim compensation commission may reduce a victim's compensation based on the victim's behavior. Elevates the offense of prostitution to a misdemeanor if an individual pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct and amends the penalties. Elevates the offenses of loitering for the purpose of advancing prostitution and advancing prostitution to a petty misdemeanor and misdemeanor, respectively. Amends the offense of sex trafficking to include solicitation of a minor for prostitution. Makes traveling for prostitution where the victim is a minor a class A felony. Repeals the offense of soliciting a minor for prostitution. Makes clarifying and conforming amendments.

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

