



GOV. MSG. NO. 1170

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 24, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 24, 2021, the following bill was signed into law:

HB887 HD1 SD2 CD1

RELATING TO CRIME
ACT 068 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

ORIGINAL

Approved by the Governor

on JUN 24 2021

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 068

H.B. NO.

887
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. The legislature finds that sex trafficking is
2 an ever-evolving criminal enterprise in which traffickers and
3 exploiters find various means to sexually exploit the most
4 vulnerable in the community. As traffickers change tactics to
5 avoid accountability, the criminal justice system and
6 understanding of sex trafficking must continue to evolve as
7 well.

8 The legislature further finds that protecting victims from
9 sexual exploitation and holding offenders accountable is
10 difficult given the disparity in power between the victims and
11 perpetrators. Therefore, amending Hawaii's sex trafficking laws
12 to better reflect the current reality and challenges will
13 improve outcomes for trafficking victims and survivors.

14 The legislature additionally finds that legal terminology
15 is vital to an understanding of sex trafficking in the criminal
16 justice system and in the general community. Creating a
17 separate crime for individuals who purchase people for sex,



1 changing the name of a crime from "solicitation of a minor for
2 prostitution" to "commercial sexual exploitation of a minor",
3 and eliminating the noun "prostitute" will further this
4 objective.

5 The legislature also finds that, given the seriousness of
6 the offense, the level of the offense for perpetrators who
7 purchase children for sex should be increased to a class B
8 felony. Additionally, due to the fear, trauma, and
9 psychological tactics utilized by traffickers, victims are
10 reluctant to come forward and seek justice until they feel safe
11 and free from their exploiters. Therefore, eliminating the
12 statute of limitation for sex trafficking is necessary to hold
13 these offenders accountable.

14 The legislature further finds that perpetrators have
15 escaped criminal culpability by exploiting gaps in existing law.
16 Adding the rendering of anything of value as a means of
17 compensation, in addition to a fee, will protect those victims
18 who are being sexually exploited in exchange for drugs, housing,
19 and other non-monetary compensation, while also making the law
20 consistent with the federal definition of human trafficking.
21 Additionally, amending the law to account for situations in



1 which a trafficker or third party is negotiating or profiting
2 from the exploitation of a minor is necessary to hold the buyer
3 accountable.

4 Accordingly, the purpose of this Act is to:

- 5 (1) Create a separate commercial sexual exploitation
6 offense for those who provide anything of value to
7 engage in sexual conduct with another;
- 8 (2) Specify that the offense of sex trafficking may be
9 prosecuted at any time;
- 10 (3) Specify that sex trafficking includes advancing or
11 profiting from prostitution by certain means,
12 including through coercion;
- 13 (4) Make a person strictly liable for sex trafficking of a
14 minor in terms of the victim's age;
- 15 (5) Rename offenses involving the solicitation of
16 prostitution to use the more appropriate term of
17 commercial sexual exploitation;
- 18 (6) Amend the elements for commission of the offense of
19 commercial sexual exploitation of a minor and increase
20 the grade of offense to a class B felony;



- 1 (7) Include anything of value as a type of compensation
2 for purposes of engaging in prostitution or other
3 offenses involving commercial sexual exploitation; and
4 (8) Clarify the exemption from commercial sexual
5 exploitation and prostitution-related offenses for law
6 enforcement officers acting in the course and scope of
7 duties.

8 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§712- Commercial sexual exploitation. (1) A person
12 commits the offense of commercial sexual exploitation if the
13 person provides, agrees to provide, or offers to provide a fee
14 or anything of value to another to engage in sexual conduct.

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

17 (3) Except as provided in subsection (4), commercial
18 sexual exploitation is a petty misdemeanor.

19 (4) Commercial sexual exploitation is a class C felony if
20 the person who commits the offense under subsection (1) does so



1 in reckless disregard of the fact that the person exploited is a
2 victim of sex trafficking.

3 (5) A person convicted of committing the offense of
4 commercial sexual exploitation as a petty misdemeanor shall be
5 sentenced as follows:

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

14 (b) For any subsequent offense, a fine of no less than
15 \$500 but no more than \$1,000 and a term of
16 imprisonment or probation of no more than thirty days,
17 without possibility of suspension of sentence; and

18 (c) For purposes of this subsection, the court may impose
19 as a condition of probation that the defendant
20 complete a course of exploitation intervention



1 classes; provided that the court shall only impose the
2 condition for one term of probation.

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

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

14 "(1) A prosecution for murder, murder in the first and
15 second degrees, attempted murder, [~~and~~] attempted murder in the
16 first and second degrees, criminal conspiracy to commit murder
17 in any degree, criminal solicitation to commit murder in any
18 degree, sexual assault in the first and second degrees, sex
19 trafficking, and continuous sexual assault of a minor under the
20 age of fourteen years may be commenced at any time."



1 SECTION 4. Section 712-1200, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (1) to read:

4 "(1) A person commits the offense of prostitution if the
5 person[+]

6 ~~(a) Engages]~~ engages in, or agrees or offers to engage in,
7 sexual conduct with another person in return for a
8 fee[+~~or~~

9 ~~(b) Pays, agrees to pay, or offers to pay a fee to another~~
10 ~~to engage in sexual conduct.]~~ or anything of value."

11 2. By amending subsections (3) through (6) to read:

12 "(3) Prostitution is a petty misdemeanor; provided that[+]

13 ~~(a) If]~~ if the person who commits the offense under
14 subsection (1)[~~(a)~~] is a minor, prostitution is a
15 violation[+~~and~~

16 ~~(b) If the person who commits the offense under~~
17 ~~subsection (1)(b) does so in reckless disregard of the~~
18 ~~fact that the other person is a victim of sex~~
19 ~~trafficking, prostitution is a class C felony].~~



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

4 (a) For the first offense, when the court has not deferred
5 further proceedings pursuant to chapter 853, a fine of
6 ~~[not]~~ no less than \$500 but ~~[not]~~ no more than \$1,000
7 and the person may be sentenced to a term of
8 imprisonment of ~~[not]~~ no more than thirty days or
9 probation; provided that in the event the convicted
10 person defaults in payment of the fine, and the
11 default was not contumacious, the court may ~~[sentencee~~
12 ~~the person to perform services for the community]~~ make
13 an order converting the unpaid portion of the fine to
14 community service as authorized by
15 section 706-605(1) ~~[+]~~;

16 (b) For any subsequent offense, a fine of ~~[not]~~ no less
17 than \$500 but ~~[not]~~ no more than \$1,000 and a term of
18 imprisonment of thirty days or probation, without
19 possibility of deferral of further proceedings
20 pursuant to chapter 853 and without possibility of
21 suspension of sentence~~[+]~~; and



1 (c) For the purpose of this subsection, if the court has
2 deferred further proceedings pursuant to chapter 853,
3 and notwithstanding any provision of chapter 853 to
4 the contrary, the defendant shall not be eligible to
5 apply for expungement pursuant to section 831-3.2
6 until three years following discharge. A plea
7 previously entered by a defendant under section 853-1
8 for a violation of this section shall be considered a
9 prior offense. ~~[When the court has ordered a sentence~~
10 ~~of probation, the court may impose as a condition of~~
11 ~~probation that the defendant complete a course of~~
12 ~~prostitution intervention classes; provided that the~~
13 ~~court may only impose the condition for one term of~~
14 ~~probation.]~~

15 (5) This section shall not apply to any member of a police
16 department, a sheriff, or a law enforcement officer acting in
17 the course and scope of duties~~[, unless engaged in];~~ provided
18 that the member of a police department, sheriff, or law
19 enforcement officer is engaging in undercover operations;
20 provided further that under no circumstances shall sexual
21 contact initiated by a member of a police department, sheriff,



1 or law enforcement officer; sexual penetration; or
2 sadomasochistic abuse[-] be considered to fall within the course
3 and scope of duties.

4 (6) A minor may be taken into custody by any police
5 officer without order of the judge when there are reasonable
6 grounds to believe that the minor has violated
7 subsection (1)[-a-]. The minor shall be released, referred, or
8 transported pursuant to section 571-31(b). The minor shall be
9 subject to the jurisdiction of the family court pursuant to
10 section 571-11(1), including for the purposes of custody,
11 detention, diversion, and access to services and resources."

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

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

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



1 purposes, permits premises to be regularly used for
2 prostitution purposes, operates or assists in the
3 operation of a house of prostitution or a prostitution
4 enterprise, or engages in any other conduct designed
5 to institute, aid, or facilitate an act or enterprise
6 of prostitution[-];

7 (2) A person "profits from prostitution" if[~~-, acting other~~
8 ~~than as a prostitute receiving compensation for~~
9 ~~personally rendered prostitution services,~~] the person
10 accepts or receives money, anything of value, or other
11 property pursuant to an agreement or understanding
12 with any person whereby the person participates or is
13 to participate in the proceeds of prostitution
14 activity[-]; and

15 (3) The definitions in subsections (1) and (2) shall not
16 include those engaged in conduct outlined in
17 section 712-1200 as the prostituted person or
18 section 712- as the person engaged in commercial
19 sexual exploitation."

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



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

3 (a) Advances prostitution by compelling or inducing a
4 person by force, threat, fraud, coercion, or
5 intimidation to engage in prostitution, or profits
6 from such conduct by another; or

7 (b) Advances prostitution or profits from prostitution of
8 a minor[~~; provided that with respect to the victim's~~
9 ~~age, the prosecution shall be required to prove only~~
10 ~~that the person committing the offense acted~~
11 ~~negligently~~].

12 (2) Sex trafficking is a class A felony.

13 (3) As used in this section:

14 "Fraud" means making material false statements,
15 misstatements, or omissions.

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

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

20 (4) The state of mind requirement for the offense under
21 subsection (1)(b) is not applicable to the fact that the victim



1 was a minor. A person is strictly liable with respect to the
2 attendant circumstances that the victim was a minor."

3 SECTION 7. Section 712-1207, Hawaii Revised Statutes, is
4 amended as follows:

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

7 "\$712-1207 Street [~~solicitation of~~] prostitution[+] and
8 commercial sexual exploitation; designated areas. (1) It shall
9 be unlawful for any person within the boundaries of Waikiki and
10 while on any public property to:

11 (a) Offer or agree to engage in sexual conduct with
12 another person in return for a fee[+] or anything of
13 value; or

14 (b) [~~Pay, agree to pay, or offer to pay~~] Provide, agree to
15 provide, or offer to provide a fee or anything of
16 value to another person to engage in sexual conduct.

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



1 (a) Offer or agree to engage in sexual conduct with
2 another person in return for a fee[+] or anything of
3 value; or
4 (b) [~~Pay, agree to pay, or offer to pay~~] Provide, agree to
5 provide, or offer to provide a fee or anything of
6 value to another person to engage in sexual conduct."

7 2. By amending subsection (9) to read:

8 "(9) This section shall apply to all counties; provided
9 that if a county enacts an ordinance to regulate street
10 [~~solicitation for~~] prostitution[7] and commercial sexual
11 exploitation, other than an ordinance designating an area as a
12 zone of significant prostitution-related activity, the county
13 ordinance shall supersede this section and no person shall be
14 convicted under this section in that county."

15 SECTION 8. Section 712-1209, Hawaii Revised Statutes, is
16 amended by amending its title and subsections (1) and (2) to
17 read as follows:

18 "[+]§712-1209[+] ~~Solicitation of prostitution~~ Commercial
19 sexual exploitation near schools or public parks. (1) A person
20 commits the offense of [~~solicitation of prostitution~~] commercial
21 sexual exploitation near schools or public parks if, within



1 seven hundred fifty feet of a school or public park, the person
2 ~~[offers or agrees to pay]~~ provides, agrees to provide, or offers
3 to provide a fee or anything of value to another person to
4 engage in sexual conduct.

5 (2) ~~[Solicitation of prostitution]~~ Commercial sexual
6 exploitation near schools or public parks is a misdemeanor."

7 SECTION 9. Section 712-1209.1, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§712-1209.1 ~~[Solicitation]~~ Commercial sexual exploitation
10 of a minor ~~[for prostitution]~~. (1) A person eighteen years of
11 age or older commits the offense of ~~[solicitation]~~ commercial
12 sexual exploitation of a minor ~~[for prostitution]~~ if the person
13 intentionally, knowingly, or recklessly ~~[offers]~~:

14 (a) Offers or agrees to ~~[pay a fee to a minor or]~~ provide
15 anything of value to a member of a police department,
16 a sheriff, or a law enforcement officer who represents
17 that person's self as a minor to engage in sexual
18 conduct~~[+]~~;

19 (b) Provides anything of value to a minor or third person
20 as compensation for having engaged in sexual conduct
21 with a minor;



1 (c) Agrees to provide or offers to provide anything of
2 value to a minor or third person for the purpose of
3 engaging in sexual conduct with a minor; or

4 (d) Solicits, offers to engage in, or requests to engage
5 in sexual conduct with a minor in return for anything
6 of value.

7 (2) ~~[Solicitation]~~ Commercial sexual exploitation of a
8 minor ~~[for prostitution]~~ is a class [C] B felony.

9 (3) [A] In addition to any other authorized disposition, a
10 person convicted of committing the offense of ~~[solicitation]~~
11 commercial sexual exploitation of a minor ~~[for prostitution]~~
12 shall be ~~[imposed]~~ sentenced to pay a fine of ~~[not]~~ no less than
13 \$5,000 ~~[; provided that \$5,000 of the imposed fine shall be~~
14 ~~credited to the general fund]~~.

15 (4) This section shall not apply to any member of a police
16 department, a sheriff, or a law enforcement officer ~~[who offers~~
17 ~~or agrees to pay a fee to a minor while]~~ acting in the course
18 and scope of duties~~[-]~~; provided that the member of a police
19 department, sheriff, or law enforcement officer is engaging in
20 undercover operations; provided further that under no
21 circumstances shall sexual contact initiated by a member of a



1 police department, sheriff, or law enforcement officer; sexual
2 penetration; or sadomasochistic abuse be considered to fall
3 within the course and scope of duties.

4 (5) The state of mind requirement for ~~[this]~~ the offense
5 under subsection (1)(b) is not applicable to the fact that the
6 ~~[person solicited]~~ victim was a minor. A person is strictly
7 liable with respect to the attendant circumstance that the
8 ~~[person solicited]~~ victim was a minor~~[-]~~; provided that the
9 person had a reasonable opportunity to observe the victim.

10 (6) Consent of a minor to the sexual conduct does not
11 constitute a defense to any offense in this section.

12 ~~[+6-]~~ (7) For purposes of this section:

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

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

17 SECTION 10. Section 712-1209.5, Hawaii Revised Statutes,
18 is amended to read as follows:

19 "[+]~~§~~712-1209.5[+] ~~Habitual [solicitation of~~
20 ~~prostitution.]~~ commercial sexual exploitation. (1) A person
21 commits the offense of habitual ~~[solicitation of prostitution]~~



1 commercial sexual exploitation if the person is a habitual
2 [~~prostitution~~] commercial sexual exploitation offender and
3 [~~pays, agrees to pay, or offers to pay~~] provides, agrees to
4 provide, or offers to provide a fee or anything of value to
5 another person to engage in sexual conduct.

6 (2) For the purposes of this section, a person has the
7 status of a "habitual [~~prostitution~~] commercial sexual
8 exploitation offender" if the person, at the time of the conduct
9 for which the person is charged, had two or more convictions
10 within ten years of the instant offense for:

11 (a) [~~Prostitution,~~] Commercial sexual exploitation, in
12 violation of section [~~712-1200(1)(b)+~~] 712- ;

13 (b) Street [~~solicitation of~~] prostitution[~~+~~] and
14 commercial sexual exploitation, in violation of
15 section 712-1207(1)(b) [~~+~~] or (2)(b);

16 (c) Habitual [~~solicitation of prostitution,~~] commercial
17 sexual exploitation, in violation of this section;

18 (d) An offense of this jurisdiction or any other
19 jurisdiction that is comparable to one of the offenses
20 in paragraph (a), (b), or (c); or



1 (e) Any combination of the offenses in paragraph (a), (b),
2 (c), or (d).

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

9 (3) Habitual [~~solicitation of prostitution~~] commercial
10 sexual exploitation is a class C felony."

11 SECTION 11. Section 712-1209.6, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "**§712-1209.6 Prostitution; motion to vacate conviction.**

14 (1) A person convicted of committing the offense of
15 prostitution under section 712-1200[~~(1)(a)~~], loitering for the
16 purpose of engaging in or advancing prostitution under
17 section 712-1206(2), street [~~solicitation of~~] prostitution and
18 commercial sexual exploitation in designated areas under
19 section 712-1207(1)(a) or [~~712-1207~~](2)(a), or convicted of a
20 lesser offense when originally charged with a violation of
21 section 712-1200[~~(1)(a)~~], 712-1206(2), or 712-1207(1)(a)



1 or [712-1207] (2) (a), may file a motion to vacate the conviction
2 if the defendant is not subsequently convicted of any offense
3 under the Hawaii Penal Code within three years after the date of
4 the original conviction.

5 (2) The court shall hold a hearing on a motion filed under
6 this section to review the defendant's record over the three
7 years after the date of the original conviction under
8 section 712-1200[~~(1)~~-(a)], 712-1206(2), or 712-1207(1) (a)
9 or (2) (a) or conviction of a lesser offense when originally
10 charged with a violation of any of those sections, and if the
11 court finds that the defendant has not been convicted of any
12 offense under the [~~penal code~~] Hawaii Penal Code within this
13 three year period, the court shall vacate the conviction."

14 SECTION 12. Section 712A-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§712A-4 Covered offenses.** Offenses for which property is
17 subject to forfeiture under this chapter are:

18 (a) All offenses that specifically authorize forfeiture;

19 (b) Murder[~~τ~~]; kidnapping[~~τ~~]; labor trafficking[~~τ~~];
20 unlicensed sale of liquor[~~τ~~]; unlicensed manufacture
21 of liquor[~~τ~~]; gambling[~~τ~~]; criminal property



1 damage[7]; robbery[7]; bribery[7]; extortion[7];
2 theft[7]; unauthorized entry into motor vehicle[7];
3 burglary[7]; money laundering[7]; trademark
4 counterfeiting[7]; insurance fraud[7]; promoting a
5 dangerous, harmful, or detrimental drug[7]; commercial
6 promotion of marijuana[7]; methamphetamine
7 trafficking[7]; manufacturing of a controlled
8 substance with a child present[7]; promoting child
9 abuse[7]; promoting prostitution[7]; sex trafficking[7]
10 ~~solicitation~~]; commercial sexual exploitation of a
11 minor [~~for prostitution~~]; habitual [~~solicitation of~~
12 ~~prostitution~~] commercial sexual exploitation; or
13 electronic enticement of a child that is chargeable as
14 a felony offense under state law;
15 (c) The manufacture, sale, or distribution of a controlled
16 substance in violation of chapter 329, promoting
17 detrimental drugs or intoxicating compounds, promoting
18 pornography, promoting pornography for minors, or
19 [~~solicitation of prostitution~~] commercial sexual
20 exploitation near schools or public parks, which is



1 chargeable as a felony or misdemeanor offense, but not
2 as a petty misdemeanor, under state law; and
3 (d) The attempt, conspiracy, solicitation, coercion, or
4 intimidation of another to commit any offense for
5 which property is subject to forfeiture."

6 SECTION 13. Section 806-83, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

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

- 11 (1) Section 159-28 (bribery related to the Hawaii Meat
12 Inspection Act);
- 13 (2) Section 161-28 (bribery related to the Hawaii Poultry
14 Inspection Act);
- 15 (3) Section 707-712.5 (assault against a law enforcement
16 officer in the first degree);
- 17 (4) Section 707-716 (terroristic threatening in the
18 first degree);
- 19 (5) Section 707-732 (sexual assault in the third degree);
- 20 (6) Section 707-741 (incest);



- 1 (7) Section 707-752 (promoting child abuse in the
2 third degree);
- 3 (8) Section 708-880 (commercial bribery);
- 4 (9) Section 709-904.5 (compensation by an adult of
5 juveniles for crimes);
- 6 (10) Section 710-1026.9 (resisting an order to stop a motor
7 vehicle in the first degree);
- 8 (11) Section 710-1070 (bribery of or by a witness);
- 9 (12) Section 710-1071 (intimidating a witness);
- 10 (13) Section 710-1072.2 (retaliating against a witness);
- 11 (14) Section 710-1073 (bribery of or by a juror);
- 12 (15) Section 710-1075 (jury tampering);
- 13 (16) Section 710-1075.5 (retaliating against a juror);
- 14 (17) Section 711-1106.4 (aggravated harassment by
15 stalking);
- 16 (18) Section 711-1110.9 (violation of privacy in the
17 first degree);
- 18 (19) Section 712-1208 (promoting travel for prostitution);
- 19 [~~(20) Section 712-1209.1 (solicitation of a minor for~~
20 ~~prostitution);~~



1 ~~(21)~~ (20) Section 712-1209.5 (habitual [~~solicitation of~~
2 ~~prostitution~~]; commercial sexual exploitation);

3 ~~(22)~~ (21) Section 712-1215 (promoting pornography for
4 minors);

5 ~~(23)~~ (22) Section 712-1218 (failure to maintain age
6 verification records of sexual performers);

7 ~~(24)~~ (23) Section 712-1218.5 (failure to maintain age
8 verification records of sexually exploited
9 individuals); and

10 ~~(25)~~ (24) Section 712-1219 (failure to affix information
11 disclosing location of age verification records of
12 sexual performers)."

13 SECTION 14. Section 846E-1, Hawaii Revised Statutes, is
14 amended by amending the definition of "sexual offense" to read
15 as follows:

16 ""Sexual offense" means an offense that is:

17 (1) Set forth in section 707-730(1), 707-731(1),
18 707-732(1), 707-733(1)(a), 707-733.6, 712- (4),
19 712-1202(1), or 712-1203(1), but excludes conduct that
20 is criminal only because of the age of the victim, as
21 provided in section 707-730(1)(b), or



- 1 section 707-732(1)(b) if the perpetrator is under the
2 age of eighteen;
- 3 (2) An act defined in section 707-720 if the charging
4 document for the offense for which there has been a
5 conviction alleged intent to subject the victim to a
6 sexual offense;
- 7 (3) An act that consists of:
- 8 (A) Criminal sexual conduct toward a minor, including
9 but not limited to an offense set forth in
10 section 707-759;
- 11 (B) Solicitation of a minor who is less than fourteen
12 years old to engage in sexual conduct;
- 13 (C) Use of a minor in a sexual performance;
- 14 (D) Production, distribution, or possession of child
15 pornography chargeable as a felony under
16 section 707-750, 707-751, or 707-752;
- 17 (E) Electronic enticement of a child chargeable under
18 section 707-756 or 707-757 if the offense was
19 committed with the intent to promote or
20 facilitate the commission of another covered
21 offense as defined in this section; or



- 1 (F) [~~Solicitation~~] Commercial sexual exploitation of
2 a minor [~~for prostitution~~] in violation of
3 section 712-1209.1;
- 4 (4) A violation of privacy under section 711-1110.9;
- 5 (5) An act, as described in chapter 705, that is an
6 attempt, criminal solicitation, or criminal conspiracy
7 to commit one of the offenses designated in
8 paragraphs (1) through (4);
- 9 (6) A criminal offense that is comparable to or that
10 exceeds a sexual offense as defined in paragraphs (1)
11 through (5); or
- 12 (7) Any federal, military, out-of-state, tribal, or
13 foreign conviction for any offense that under the laws
14 of this State would be a sexual offense as defined in
15 paragraphs (1) through (6)."

16 SECTION 15. Section 853-4, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) This chapter shall not apply when:

- 19 (1) The offense charged involves the intentional, knowing,
20 reckless, or negligent killing of another person;
- 21 (2) The offense charged is:



- 1 (A) A felony that involves the intentional, knowing,
2 or reckless bodily injury, substantial bodily
3 injury, or serious bodily injury of another
4 person; or
- 5 (B) A misdemeanor or petty misdemeanor that carries a
6 mandatory minimum sentence and that involves the
7 intentional, knowing, or reckless bodily injury,
8 substantial bodily injury, or serious bodily
9 injury of another person;
- 10 provided that the prohibition in this paragraph shall
11 not apply to offenses described in
12 section 709-906(18);
- 13 (3) The offense charged involves a conspiracy or
14 solicitation to intentionally, knowingly, or
15 recklessly kill another person or to cause serious
16 bodily injury to another person;
- 17 (4) The offense charged is a class A felony;
- 18 (5) The offense charged is nonprobationable;
- 19 (6) The defendant has been convicted of any offense
20 defined as a felony by the Hawaii Penal Code or has



1 been convicted for any conduct that if perpetrated in
2 this State would be punishable as a felony;

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

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

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

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

15 (11) The defendant has been charged with a felony offense
16 and has been previously granted deferred acceptance of
17 guilty plea or no contest plea for a prior offense,
18 regardless of whether the period of deferral has
19 already expired;

20 (12) The defendant has been charged with a misdemeanor
21 offense and has been previously granted deferred



- 1 acceptance of guilty plea or no contest plea for a
2 prior felony, misdemeanor, or petty misdemeanor for
3 which the period of deferral has not yet expired;
- 4 (13) The offense charged is:
- 5 (A) Escape in the first degree;
- 6 (B) Escape in the second degree;
- 7 (C) Promoting prison contraband in the first degree;
- 8 (D) Promoting prison contraband in the second degree;
- 9 (E) Bail jumping in the first degree;
- 10 (F) Bail jumping in the second degree;
- 11 (G) Bribery;
- 12 (H) Bribery of or by a witness;
- 13 (I) Intimidating a witness;
- 14 (J) Bribery of or by a juror;
- 15 (K) Intimidating a juror;
- 16 (L) Jury tampering;
- 17 (M) Promoting prostitution;
- 18 (N) Abuse of family or household member except as
19 provided in paragraph (2) and
20 section 709-906(18);
- 21 (O) Sexual assault in the second degree;



- 1 (P) Sexual assault in the third degree;
- 2 (Q) A violation of an order issued pursuant to
- 3 chapter 586;
- 4 (R) Promoting child abuse in the second degree;
- 5 (S) Promoting child abuse in the third degree;
- 6 (T) Electronic enticement of a child in the first
- 7 degree;
- 8 (U) Electronic enticement of a child in the second
- 9 degree;
- 10 (V) [~~Prostitution~~] Commercial sexual exploitation
- 11 pursuant to section [712-1200(1)(b)] 712-____;
- 12 (W) Street [~~solicitation of~~] prostitution and
- 13 commercial sexual exploitation under
- 14 section 712-1207(1)(b) [÷] or (2)(b);
- 15 (X) [~~Solicitation of prostitution~~] Commercial sexual
- 16 exploitation near schools or public parks under
- 17 section 712-1209;
- 18 (Y) Commercial sexual exploitation of a minor under
- 19 section 712-1209.1; or



1 ~~[-(Y)]~~ (Z) Habitual ~~[solicitation of prostitution]~~
2 commercial sexual exploitation under
3 section 712-1209.5; ~~[or~~
4 ~~-(Z)~~ ~~Solicitation of a minor for prostitution under~~
5 ~~section 712-1209.1,]~~
6 (14) The defendant has been charged with:
7 (A) Knowingly or intentionally falsifying any report
8 required under ~~[chapter 11,]~~ part XIII of
9 chapter 11, with the intent to circumvent the law
10 or deceive the campaign spending commission; or
11 (B) Violating section 11-352 or 11-353; or
12 (15) The defendant holds a commercial driver's license and
13 has been charged with violating a traffic control law,
14 other than a parking law, in connection with the
15 operation of any type of motor vehicle."

16 SECTION 16. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun, before the effective date of this Act.

19 SECTION 17. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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



H.B. NO. 887
H.D. 1
S.D. 2
C.D. 1

APPROVED this 24 day of JUN , 2021

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping "D" and a stylized "Y".

GOVERNOR OF THE STATE OF HAWAII

HB No. 887, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate