

JAN 22 2021

A BILL FOR AN ACT

RELATING TO SEX TRAFFICKING.

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

1 SECTION 1. The legislature finds that sex trafficking is a
2 form of modern-day slavery. According to a 2018 report
3 published by Arizona state university and the Hawaii state
4 commission on the status of women, one of every eleven adult
5 male residents of Hawaii are online sex shoppers. The report
6 also estimated that there were 74,362 potential sex buyers in
7 Hawaii. Moreover, Imua Alliance, a victim service provider for
8 survivors of sex trafficking and sexual violence, estimates that
9 one hundred fifty establishments participate in the commercial
10 sex trade in the State, increasing the high risk for sex
11 trafficking. During the COVID-19 pandemic, a service provider
12 for sex trafficking victims in Hawaii reported seeing a three
13 hundred per cent increase in demand for services.

14 The legislature further finds that a disproportionately low
15 number of the sex trafficking offenses that occur in the State
16 are prosecuted in court. This is due in significant part to the
17 fact that most sex trafficking victims delay reporting the



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1 crimes committed against them, and many do not report the crimes
2 at all. Victims often feel complicit in the offense or carry a
3 sense of guilt and shame. Most victims delay their reports
4 until after they have been removed from their traffickers and
5 the corresponding living conditions, and many undergo trauma-
6 informed care and counseling before they speak out.

7 Accordingly, in the interest of aiding victims who seek justice,
8 prosecutors should have the power to pursue a criminal case for
9 sex trafficking, regardless of when the offense was committed.

10 The legislature additionally finds that existing state law
11 does not identify soliciting a minor for prostitution as a form
12 of sex trafficking. However, federal law recognizes offering to
13 engage in sexual activity with a minor for anything of value as
14 a form of sex trafficking. Laws that target the solicitation of
15 minors for sex trafficking have been proven to be effective in
16 reducing the demand for sexual exploitation that provides the
17 financial incentive for the commercial sex trade, without
18 relying on criminal systems that often misidentify,
19 retraumatize, penalize, stigmatize, or incarcerate sex
20 trafficking victims.



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1 The purpose of this Act is to strengthen Hawaii's sex
2 trafficking laws by making the solicitation of a minor for
3 sexual services a form of sex trafficking.

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, sex
11 trafficking, and continuous sexual assault of a minor under the
12 age of fourteen years may be commenced at any time."

13 SECTION 3. Section 706-606.6, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§706-606.6~~ Repeat violent and sexual offender; enhanced
16 sentence. (1) Notwithstanding any other provision of law to
17 the 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, [~~ex~~
20 ~~712-1209.1,7~~] after having been convicted on at least three prior
21 and separate occasions of an offense under section 707-701.5,



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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, [~~ex 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, [~~ex 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, [~~ex 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



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1 (d) For an offense under federal law or the laws of
2 another state that is comparable to an offense under
3 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
4 707-731, 707-732, 707-733.6, 707-750, 708-840,
5 712-1202, or 712-1203, [~~ex 712-1209.1,~~] within the
6 maximum term of imprisonment possible under the
7 appropriate jurisdiction."

8 SECTION 4. Section 712-1202, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§712-1202 Sex trafficking. (1) A person commits the
11 offense of sex trafficking if the person knowingly:

12 (a) Advances prostitution by compelling or inducing a
13 person by force, threat, fraud, coercion, or
14 intimidation to engage in prostitution, or profits
15 from such conduct by another; [~~ex~~]

16 (b) Advances or profits from prostitution of a minor [~~+~~
17 ~~provided that with respect to the victim's age, the~~
18 ~~prosecution shall be required to prove only that the~~
19 ~~person committing the offense acted negligently.~~]; or

20 (c) Offers or agrees to consideration or the promise of
21 consideration to a:



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- 1 (i) Minor to engage in sexual conduct;
2 (ii) Third person pursuant to an understanding that
3 such compensation is in exchange for engaging in
4 sexual conduct with a minor; or
5 (iii) Member of a police department, a sheriff, or a
6 law enforcement officer who represents that
7 person's self as a minor to engage in sexual
8 conduct.

9 (2) The state of mind requirement for the offenses under
10 subsection (1)(b) and (1)(c) is not applicable to the fact that
11 the person solicited was a minor. A person is strictly liable
12 with respect to the attendant circumstance that the person
13 solicited was a minor.

14 (3) Consent to sexual conduct shall not constitute a
15 defense to a violation of this section.

16 (4) Subsection (1)(c) 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 their official duties.

20 ~~[-2]~~ (5) Sex trafficking is a class A felony.

21 ~~[-3]~~ (6) As used in this section:



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1 "Consideration" means a benefit to the promisor or any
2 bargained for exchange without regard to a determination as to
3 the adequacy of the consideration.

4 "Fraud" means making material false statements,
5 misstatements, or omissions.

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

8 "Sexual conduct" has the same meaning as in section
9 712-1200(2).

10 "Threat" means any of the actions listed in section
11 707-764(1)."

12 SECTION 5. Section 712-1209.5, Hawaii Revised Statutes, is
13 amended by amending subsections (2) and (3) to read as follows:

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

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

19 (b) Sex trafficking, in violation of section
20 712-1202(1)(c);



1 ~~(b)~~ (c) Street solicitation of prostitution, in
2 violation of section 712-1207(1) (b);
3 ~~(e)~~ (d) Habitual solicitation of prostitution, in
4 violation of this section;
5 ~~(d)~~ (e) An offense of any other jurisdiction that is
6 comparable to one of the offenses in paragraph (a),
7 (b), ~~(c)~~ (c) ~~(d)~~, or (d); or
8 ~~(e)~~ (f) Any combination of the offenses in paragraph
9 (a), (b), (c), ~~(d)~~ (d) ~~(e)~~, or (e).

10 A conviction for purposes of this section is a judgment on the
11 verdict or a finding of guilt, or a plea of guilty or nolo
12 contendere. The convictions must have occurred on separate
13 dates and be for separate incidents on separate dates. At the
14 time of the instant offense, the conviction must not have been
15 expunged by pardon, reversed, or set aside.

16 (3) Habitual solicitation of prostitution is a class C
17 felony[-]; provided that habitual solicitation of prostitution
18 is a class A felony when the instant offense is sex trafficking
19 under section 712-1202(1) (c)."

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



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- 1 "(a) Criminal charges may be instituted by written
2 information for a felony when the charge is a class C felony,
3 except under:
- 4 (1) Section 159-28 (bribery related to the Hawaii Meat
5 Inspection Act);
 - 6 (2) Section 161-28 (bribery related to the Hawaii Poultry
7 Inspection Act);
 - 8 (3) Section 707-712.5 (assault against a law enforcement
9 officer in the first degree);
 - 10 (4) Section 707-716 (terroristic threatening in the first
11 degree);
 - 12 (5) Section 707-732 (sexual assault in the third degree);
 - 13 (6) Section 707-741 (incest);
 - 14 (7) Section 707-752 (promoting child abuse in the third
15 degree);
 - 16 (8) Section 708-880 (commercial bribery);
 - 17 (9) Section 709-904.5 (compensation by an adult of
18 juveniles for crimes);
 - 19 (10) Section 710-1026.9 (resisting an order to stop a motor
20 vehicle in the first degree);
 - 21 (11) Section 710-1070 (bribery of or by a witness);



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- 1 (12) Section 710-1071 (intimidating a witness);
- 2 (13) Section 710-1072.2 (retaliating against a witness);
- 3 (14) Section 710-1073 (bribery of or by a juror);
- 4 (15) Section 710-1075 (jury tampering);
- 5 (16) Section 710-1075.5 (retaliating against a juror);
- 6 (17) Section 711-1106.4 (aggravated harassment by
- 7 stalking);
- 8 (18) Section 711-1110.9 (violation of privacy in the first
- 9 degree);
- 10 (19) Section 712-1208 (promoting travel for prostitution);
- 11 ~~[(20) Section 712-1209.1 (solicitation of a minor for~~
- 12 ~~prostitution)]~~;
- 13 ~~[(21)]~~ (20) Section 712-1209.5 (habitual solicitation of
- 14 prostitution);
- 15 ~~[(22)]~~ (21) Section 712-1215 (promoting pornography for
- 16 minors);
- 17 ~~[(23)]~~ (22) Section 712-1218 (failure to maintain age
- 18 verification records of sexual performers);
- 19 ~~[(24)]~~ (23) Section 712-1218.5 (failure to maintain age
- 20 verification records of sexually exploited
- 21 individuals); and



1 [~~25~~] (24) Section 712-1219 (failure to affix information
2 disclosing location of age verification records of
3 sexual performers)."

4 SECTION 7. Section 846E-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "sexual offense" to read
6 as follows:

7 "'Sexual offense" means an offense that is:

- 8 (1) Set forth in section 707-730(1), 707-731(1),
9 707-732(1), 707-733(1)(a), 707-733.6, 712-1202(1), or
10 712-1203(1), but excludes conduct that is criminal
11 only because of the age of the victim, as provided in
12 section 707-730(1)(b), or section 707-732(1)(b) if the
13 perpetrator is under the age of eighteen;
- 14 (2) An act defined in section 707-720 if the charging
15 document for the offense for which there has been a
16 conviction alleged intent to subject the victim to a
17 sexual offense;
- 18 (3) An act that consists of:
- 19 (A) Criminal sexual conduct toward a minor, including
20 but not limited to an offense set forth in
21 section 707-759;



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- 1 (B) Solicitation of a minor who is less than fourteen
2 years old to engage in sexual conduct;
- 3 (C) Use of a minor in a sexual performance;
- 4 (D) Production, distribution, or possession of child
5 pornography chargeable as a felony under section
6 707-750, 707-751, or 707-752; or
- 7 (E) Electronic enticement of a child chargeable under
8 section 707-756 or 707-757 if the offense was
9 committed with the intent to promote or
10 facilitate the commission of another covered
11 offense as defined in this section[~~; or~~
- 12 ~~(F) Solicitation of a minor for prostitution in~~
13 ~~violation of section 712-1209.1];~~
- 14 (4) A violation of privacy under section 711-1110.9;
- 15 (5) An act, as described in chapter 705, that is an
16 attempt, criminal solicitation, or criminal conspiracy
17 to commit one of the offenses designated in paragraphs
18 (1) through (4);
- 19 (6) A criminal offense that is comparable to or that
20 exceeds a sexual offense as defined in paragraphs (1)
21 through (5); or



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

5 SECTION 8. Section 846E-10, Hawaii Revised Statutes, is
6 amended by amending subsection (d) to read as follows:

7 "(d) Tier 1 offenses. A covered offender who has
8 maintained a clean record for the previous ten years, excluding
9 any time the offender was in custody or civilly committed, and
10 who has substantially complied with the registration
11 requirements of this chapter for the previous ten years, or for
12 the portion of that ten years that this chapter has been
13 applicable, and who is not a repeat covered offender may
14 petition the court, in a civil proceeding, for termination of
15 registration requirements; provided that the covered offender's
16 most serious covered offense is one of the following:

17 (1) Any offense set forth in section 707-732(1)(d) or (e),
18 707-733(1)(a), 707-752, 707-759, 711-1110.9, or
19 712-1203(1) [~~7~~ ~~or~~ ~~712-1209.1~~];
20 (2) An offense set forth in section 707-721 or 707-722;
21 provided that the offense involves unlawful



- 1 imprisonment of a minor by someone other than a
2 parent;
- 3 (3) An offense set forth in section 707-757 that includes
4 an intent to promote or facilitate the commission of
5 another covered offense as defined in section 846E-1;
- 6 (4) An offense that is an attempt, criminal solicitation,
7 or criminal conspiracy to commit any of the offenses
8 in paragraph (1), (2), or (3);
- 9 (5) Any criminal offense that is comparable to one of the
10 offenses in paragraph (1), (2), (3), or (4);
- 11 (6) Any federal, military, out-of-state, tribal, or
12 foreign offense that is comparable to one of the
13 offenses in paragraph (1), (2), (3), or (4); or
- 14 (7) Any other covered offense that is not specified in
15 subsection (a) or (c) or paragraph (1), (2), (3), (4),
16 (5), or (6)."

17 SECTION 9. Section 853-4, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

- 19 "(a) This chapter shall not apply when:
- 20 (1) The offense charged involves the intentional, knowing,
21 reckless, or negligent killing of another person;



- 1 (2) The offense charged is:
- 2 (A) A felony that involves the intentional, knowing,
- 3 or reckless bodily injury, substantial bodily
- 4 injury, or serious bodily injury of another
- 5 person; or
- 6 (B) A misdemeanor or petty misdemeanor that carries a
- 7 mandatory minimum sentence and that involves the
- 8 intentional, knowing, or reckless bodily injury,
- 9 substantial bodily injury, or serious bodily
- 10 injury of another person;
- 11 provided that the prohibition in this paragraph shall
- 12 not apply to offenses described in section
- 13 709-906(18);
- 14 (3) The offense charged involves a conspiracy or
- 15 solicitation to intentionally, knowingly, or
- 16 recklessly kill another person or to cause serious
- 17 bodily injury to another person;
- 18 (4) The offense charged is a class A felony;
- 19 (5) The offense charged is nonprobationable;
- 20 (6) The defendant has been convicted of any offense
- 21 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



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- 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 section 709-
20 906(18);
 - 21 (O) Sexual assault in the second degree;



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- 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 pursuant to section 712-1200(1)(b);
- 11 (W) Street solicitation of prostitution under section
- 12 712-1207(1)(b);
- 13 (X) Solicitation of prostitution near schools or
- 14 public parks under section 712-1209; or
- 15 (Y) Habitual solicitation of prostitution under
- 16 section 712-1209.5 [~~;~~ ~~or~~
- 17 ~~(Z) Solicitation of a minor for prostitution under~~
- 18 ~~section 712-1209.1];~~
- 19 (14) The defendant has been charged with:
- 20 (A) Knowingly or intentionally falsifying any report
- 21 required under chapter 11, part XIII with the



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1 intent to circumvent the law or deceive the
2 campaign spending commission; or
3 (B) Violating section 11-352 or 11-353; or
4 (15) The defendant holds a commercial driver's license and
5 has been charged with violating a traffic control law,
6 other than a parking law, in connection with the
7 operation of any type of motor vehicle."

8 SECTION 10. Section 712-1209.1, Hawaii Revised Statutes,
9 is repealed.

10 ~~["§712-1209.1 Solicitation of a minor for prostitution.~~
11 ~~(1) A person eighteen years of age or older commits the offense~~
12 ~~of solicitation of a minor for prostitution if the person~~
13 ~~intentionally, knowingly, or recklessly offers or agrees to pay~~
14 ~~a fee to a minor or to a member of a police department, a~~
15 ~~sheriff, or a law enforcement officer who represents that~~
16 ~~person's self as a minor to engage in sexual conduct.~~
17 ~~(2) Solicitation of a minor for prostitution is a class C~~
18 ~~felony.~~
19 ~~(3) A person convicted of committing the offense of~~
20 ~~solicitation of a minor for prostitution shall be imposed a fine~~



1 ~~of not less than \$5,000; provided that \$5,000 of the imposed~~
2 ~~fine shall be credited to the general fund.~~

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

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

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

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

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

16 SECTION 11. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.



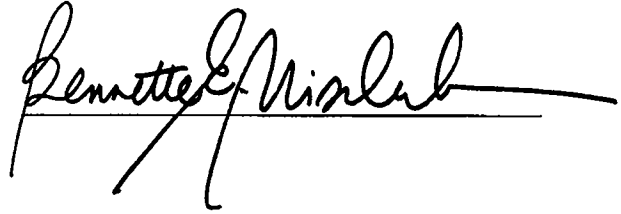
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1 SECTION 12. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect upon its approval.

4

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Bennett L. Nishub", is written over a horizontal line. The signature is cursive and extends to the right of the line.



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Report Title:

Sex Trafficking; Minors; Statute of Limitations; Prostitution;
Coercion

Description:

Authorizes a prosecution for sex trafficking to be commenced at any time. Includes coercion as a means of committing the offense of sex trafficking. Makes the solicitation of a minor for sex a strict liability offense of sex trafficking. Repeals the offense of solicitation of a minor for prostitution.

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

