
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 additionally finds that Native Hawaiians
15 and Pacific Islanders are disproportionately overrepresented in
16 the State's sex trafficking survivor population. In a survey
17 conducted by the Hawaii state commission on the status of women



1 and Arizona State University, sixty-four per cent of individuals
2 identified as victims of sexual exploitation possessed at least
3 partial Native Hawaiian ancestry. According to the report, "The
4 overutilization of Native Hawaiians to meet sex buyer demand may
5 be directly linked to structural economic coercion and
6 vulnerabilities connected to land dispossession, exposure to
7 sexual violence, hypersexualization, incarceration, cultural
8 dislocation, intergenerational trauma, mental and emotional
9 distress, racism, poverty, and going inequities."

10 The legislature further finds that victims of sex
11 trafficking should not be criminalized for their own
12 exploitation. Decriminalizing the commercialization of people's
13 bodies prevents sex trafficking survivors from being faced with
14 the prospect of prosecution and advances an approach to sex
15 trafficking that focuses on the delivery of social services and
16 trauma-informed care for those in need. One of the best known
17 legal framework for decriminalizing the sale of sexual services
18 is the Nordic model, which focuses on decreasing the demand for
19 sexual exploitation and increasing funding for sex trafficking
20 survivors and individuals seeking to exit the commercial sex
21 trade. Over a half-dozen nations have adopted the Nordic model



1 in whole or in part, including Canada, France, Iceland, Ireland,
2 Israel, Norway, and Sweden.

3 The legislature also finds that while studies have
4 demonstrated the efficacy of the Nordic model in reducing rates
5 of sex buying, there is no account for the connection between
6 sexual exploitation and colonization that propels Hawaii's
7 commercial sex industry. Accordingly, survivors of sexual
8 exploitation, anti-trafficking advocates, and service providers
9 have crafted a decolonial public policy paradigm called the
10 "bodies back model" that seeks to address the ideological
11 foundation of sexual servitude in part by:

- 12 (1) Decriminalizing people who are pressured into
13 commercializing their bodies for profit;
- 14 (2) Ending social stigmas that retraumatize survivors of
15 sexual exploitation;
- 16 (3) Recognizing the role of imperialism and colonialism
17 and driving demand for sexual exploitation in Hawaii;
18 and
- 19 (4) Empowering victims of sex trafficking to obtain
20 financial security for the harm that they have
21 endured, including by pursuing legal action against



1 businesses, transient accommodations, and other
2 commercial entities that profit from exploitation.

3 Accordingly, the purpose of this Act is to support
4 survivors of sex trafficking by:

5 (1) Decriminalizing the act of engaging in, or agreeing or
6 offering to engage in, sexual conduct with another
7 person in return for a fee or anything of value;

8 (2) Authorizing civil claims to be made against a
9 business, owner, or operator of a transient
10 accommodation, or other commercial entity that profits
11 from sexual exploitation; and

12 (3) Converting the human trafficking victim services fund
13 to a human trafficking reparations fund to provide
14 direct financial assistance to survivors of sex and
15 labor trafficking.

16 SECTION 2. Section 28-101, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The attorney general shall establish a statewide
19 witness program through which the attorney general may fund or
20 provide for the security and protection of a government witness
21 or a potential government witness in an official proceeding or



1 investigation where the attorney general determines that an
2 offense described in section 710-1071 (intimidating a witness),
3 710-1072 (tampering with a witness), or 710-1072.2 (retaliating
4 against a witness) is likely to be committed or involves great
5 public interest. The attorney general may also fund or provide
6 for the security and protection of the immediate family of, or a
7 person otherwise closely associated with, the witness or
8 potential witness if the family or person may also be
9 endangered. In determining whether the funds or security and
10 protection are to be provided, the attorney general shall give
11 greatest priority to official proceedings or investigations
12 involving pending or potential organized crime, racketeering
13 activity, [~~promoting prostitution,~~] sex trafficking[7] in the
14 first or second degree, or career criminal prosecutions."

15 SECTION 3. Chapter 663J, Hawaii Revised Statutes, is
16 amended by amending its title to read as follows:

17 "[+]CHAPTER 663J[+]

18 **LIABILITY FOR COERCION INTO [~~PROSTITUTION~~] SEX TRAFFICKING AND**
19 **SEXUAL EXPLOITATION"**

20 SECTION 4. Section 663J-1, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§663J-1 Title.** This chapter may be cited as the Sex
2 Trafficking and [~~Prostitution~~] Sexual Exploitation Coercion
3 Liability Act."

4 SECTION 5. Section 663J-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§663J-2 Definitions.** As used in this chapter:

7 "Coerce" means to use or threaten to use any form of
8 domination, restraint, or control for the purpose of causing an
9 individual to engage in or remain in [~~prostitution~~] sexual
10 exploitation or to relinquish earnings derived from
11 [~~prostitution.~~] sexual exploitation. Coercion exists if the
12 totality of the circumstances establish the existence of
13 domination, restraint, or control that would have the reasonably
14 foreseeable effect of causing an individual to engage in or
15 remain in [~~prostitution~~] sexual exploitation or to relinquish
16 earnings derived from [~~prostitution.~~] sexual exploitation.

17 ~~["Promoting prostitution" means promoting prostitution as~~
18 ~~provided in section 712-1203.~~

19 ~~"Prostitution" has the same meaning as provided in section~~
20 ~~712-1200.]~~



1 "Sex trafficking" ~~[has the same meaning as provided in]~~
2 means any act included under section 712-1202[-] or section 712-
3 1203.

4 "Sexual exploitation" has the same meaning as the term
5 "prostitution" as that term is defined in section 712-1201."

6 SECTION 6. Section 663J-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§663J-3 Cause of action for coercion into ~~[prostitution~~**
9 **~~or]~~ sex trafficking[-] or sexual exploitation.** An individual
10 has a cause of action against a person, business, owner or
11 operator of a transient accommodation, or other commercial
12 entity who:

13 (1) Coerced the individual into ~~[prostitution]~~ sexual
14 exploitation or to remain in ~~[prostitution,]~~ sexual
15 exploitation, or subjected the individual to sex
16 trafficking;

17 (2) Used coercion to collect or receive any of the
18 individual's earnings derived from ~~[prostitution]~~
19 sexual exploitation or from being the subject of sex
20 trafficking; ~~[or]~~



(3) Hired, or attempted to hire the individual to engage in ~~[prostitution]~~ sexual exploitation, when a reasonable person would believe that the individual was coerced into ~~[prostitution]~~ sexual exploitation by another person or was being subjected to sex trafficking~~[-]~~; or

(4) Profits from the coercion of the individual into sexual exploitation or subjection of the individual to sex into sex trafficking."

SECTION 7. Section 663J-4, Hawaii Revised Statutes, is amended to read as follows:

"[+]§663J-4[+] **Evidence.** Acts that may serve as evidence in support of a claim under section 663J-3 include but are not limited to:

- (1) Physical force or threats of physical force;
- (2) Physical or mental torture;
- (3) Leading an individual to believe that the individual will be protected from violence or arrest;
- (4) Kidnapping;
- (5) Blackmail;
- (6) Extortion;



- 1 (7) Threat of criminal prosecution for any violation of
- 2 the law;
- 3 (8) Threat of interference with parental rights;
- 4 (9) Restriction or interference with speech or
- 5 communication with others;
- 6 (10) Isolation;
- 7 (11) Exploitation of pornographic performance;
- 8 (12) Interference with opportunities for education;
- 9 (13) Destroying property of the individual;
- 10 (14) Restriction of movement; ~~[or]~~
- 11 (15) In the case of a person coerced while a minor:
- 12 (A) Exploiting needs for food, shelter, safety,
- 13 affection, or intimate relationship;
- 14 (B) Exploiting a condition of developmental
- 15 disability, cognitive limitation, affective
- 16 disorder, or substance dependency;
- 17 (C) Promise of legal benefit, such as posting bail,
- 18 procuring an attorney, protecting from arrest, or
- 19 promising unionization;
- 20 (D) Promise of financial rewards; or



(E) Defining the terms of an individual's employment
or working conditions in a manner that is likely
to lead to the individual's use in
~~[prostitution.]~~ sexual exploitation; or

(16) Neglecting notification or other indications that an
individual is being coerced into sexual exploitation
or sex trafficking on premises controlled by another
individual, business, owner or operator of a transient
accommodation, or other commercial entity."

SECTION 8. Section 663J-5, Hawaii Revised Statutes, is
amended to read as follows:

"§663J-5 Damages. An individual entitled to bring an
action under section 663J-3 may recover all of the following
damages:

(1) Economic damages proximately caused by coercion into
~~[prostitution]~~ sexual exploitation or being the
subject of sex trafficking;

(2) Noneconomic damages proximately caused by coercion
into ~~[prostitution]~~ sexual exploitation or being the
subject of sex trafficking;

(3) Exemplary damages;



1 (4) Punitive damages;

2 [+4+] (5) Reasonable attorney's fees; and

3 [+5+] (6) Costs of suit, including reasonable expenses for
4 expert testimony."

5 SECTION 9. Section 663J-6, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In the discretion of the court, two or more
8 individuals may join in one action under this chapter as
9 plaintiffs if their respective actions involve a person,
10 business, owner or operator of a transient accommodation, or
11 other commercial entity who ~~[engages in promoting prostitution~~
12 ~~by coercion or subjecting]~~ subjects or profits from the
13 subjection of the individuals to sexual exploitation or sex
14 trafficking."

15 SECTION 10. Section 663J-7, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§663J-7 Statute of limitations.** (a) A claim under this
18 chapter may ~~[not]~~ be brought against a person ~~[more than six~~
19 ~~years after an act of promoting prostitution by coercion or sex~~
20 ~~trafficking by that person.~~



1 ~~(b) The limitation period provided for in this chapter is~~
2 ~~tolled:~~

3 ~~(1) During the minority of the individual who engages in~~
4 ~~prostitution; or~~

5 ~~(2) Any time there is a criminal offense investigation~~
6 ~~being actively conducted against the defendant by a~~
7 ~~governmental agency or there is a criminal offense~~
8 ~~charge, information, or indictment pending against the~~
9 ~~defendant.] at any time."~~

10 SECTION 11. Section 663J-8, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§663J-8 Stay of action.** On motion by a governmental
13 agency involved in an investigation or prosecution for
14 ~~[promoting prostitution]~~ commercial exploitation or sex
15 trafficking, an action brought under this chapter shall be
16 stayed until the completion of the criminal investigation or
17 prosecution that gave rise to the motion for a stay of the
18 action."

19 SECTION 12. Section 663J-9, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§663J-9 Other remedies preserved.** The remedies provided
2 under this chapter do not restrict the right of any individual
3 to bring an action under other law, including common law, to
4 recover damages arising out of the use of the individual in
5 ~~[prostitution]~~ sexual exploitation, or subjecting the
6 individual to sex trafficking, or the coercion incident to the
7 individual being used in ~~[prostitution]~~ sexual exploitation or
8 sex trafficking; nor does this chapter limit or restrict the
9 liability of any person, business, owner or operator of a
10 transient accommodation, or other commercial entity under other
11 law."

12 SECTION 13. Section 706-650.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§706-650.5 Human trafficking ~~[victim services]~~**
15 **reparations fund.** (1) In addition to any disposition
16 authorized by chapter 706, any individual who is:
17 (a) Convicted of an offense under part VIII of chapter
18 707; or
19 (b) Convicted of an offense under part I of chapter 712;
20 shall be ordered to pay a fee under subsection (2).



1 (2) Fees for individuals subject to subsection (1) shall
2 not exceed the following:

3 (a) \$5,000 when the offense is a class A felony;

4 (b) \$2,500 when the offense is a class B felony;

5 (c) \$1,000 when the offense is a class C felony;

6 (d) \$500 when the offense is a misdemeanor; or

7 (e) \$250 when the offense is a petty misdemeanor.

8 (3) There is established within the state treasury a
9 special fund to be known as the human trafficking [~~victim~~
10 ~~services~~] reparations fund to be administered by the department
11 of [~~labor and industrial relations.~~] human services. The
12 disbursement of money from the human trafficking [~~victim~~
13 ~~services~~] reparations fund shall be used to [~~supplement~~
14 ~~programs, grants, or purchase of service contracts that support~~
15 ~~or provide comprehensive services to victims of labor~~
16 ~~trafficking crimes under part VIII of chapter 707, or victims of~~
17 ~~trafficking related to crimes under part I of chapter 712.~~
18 ~~Moneys in the special fund shall be used for new or existing~~
19 ~~programs, grants, or purchase of service contracts and shall not~~
20 ~~supplant any other moneys previously allocated to these~~
21 ~~programs, grants, or purchase of service contracts.] provide~~



1 direct financial assistance to victims of labor trafficking
2 crimes under part VIII of chapter 707 or victims of trafficking
3 related to crimes under part I of chapter 712, which may include
4 but not be limited to assistance with housing, healthcare,
5 mental services, child care, educational and occupational
6 programs, transportation, or direct cash payments.

7 (4) All fees paid and interest accrued on funds collected
8 pursuant to this section shall be deposited into the human
9 trafficking ~~[victim services]~~ reparations fund.

10 (5) When a defendant is ordered to make payments in
11 addition to the human trafficking ~~[victim services]~~ reparations
12 fee authorized under subsection (2), payments by the defendant
13 shall be made pursuant to section 706-651.

14 (6) The department of human services shall establish a
15 process through which victims of labor trafficking crimes under
16 part VIII of chapter 707 or victims of trafficking related to
17 crimes under part I of chapter 712 may request financial
18 assistance from the human trafficking reparations fund.

19 ~~[+6+]~~ (7) The department of ~~[labor and industrial~~
20 ~~relations]~~ human services shall submit to the legislature no



1 later than twenty days prior to the convening of each regular
2 session a written annual report that provides the following:

3 (a) An accounting of the receipts of and expenditures from
4 the human trafficking [~~victim services~~] reparations
5 fund; and

6 (b) Any recommendations to improve support of and services
7 to victims of labor trafficking crimes under part VIII
8 of chapter 707, or victims of trafficking related to
9 crimes under part I of chapter 712."

10 SECTION 14. Section 712-1200.5, Hawaii Revised Statutes,
11 is amended by amending subsection (2) to read as follows:

12 "(2) As used in this section, "sexual conduct" has the
13 same meaning as in section [~~712-1200(2)-~~] 712-1201(4)."

14 SECTION 15. Section 712-1201, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§712-1201 Advancing prostitution; profiting from**
17 **prostitution; definition of terms.** In sections 712-1202 and
18 712-1203:

19 (1) A person "advances prostitution" if the person
20 knowingly causes or aids a person to commit or engage
21 in prostitution, procures or solicits patrons for



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

8 (2) A person "profits from prostitution" if the person
9 accepts or receives money, anything of value, or other
10 property pursuant to an agreement or understanding
11 with any person whereby the person participates or is
12 to participate in the proceeds of prostitution
13 activity; and

14 (3) The definitions in subsections (1) and (2) shall not
15 include those engaged in prostitution as it is defined
16 in this section or in conduct outlined in ~~[section~~
17 ~~712-1200 as the prostituted person or]~~ section 712-
18 1200.5 as the person engaged in commercial sexual
19 exploitation.

20 (4) For the purpose of this section:



1 "Prostitution" shall mean engaging in, or offering to
2 engage in, sexual conduct with another person in return for a
3 fee or anything of value.

4 "Sexual conduct" shall mean "sexual penetration", "deviate
5 sexual intercourse", or "sexual contact", as those terms are
6 defined in section 707-700, or "sodomasochistic abuse" as
7 defined in section 707-752."

8 SECTION 16. Section 712-1202, Hawaii Revised Statutes, is
9 amended by amending its title and subsections (1) and (2) to
10 read as follows:

11 **"§712-1202 Sex trafficking[~~-~~] in the first degree.** (1) A
12 person commits the offense of sex trafficking in the first
13 degree if the person knowingly:

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

18 (b) Advances prostitution or profits from prostitution of
19 a minor.

20 (2) Sex trafficking in the first degree is a class A
21 felony."



SECTION 17. Section 712-1203, Hawaii Revised Statutes, is amended to read as follows:

"§712-1203 ~~[Promoting prostitution.]~~ Sex trafficking in the second degree. (1) A person commits the offense of ~~[promoting prostitution]~~ sex trafficking in the second degree if the person knowingly advances or profits from prostitution.

(2) ~~[Promoting prostitution]~~ Sex trafficking in the second degree is a class B felony."

SECTION 18. Section 712-1206, Hawaii Revised Statutes, is amended to read as follows:

"[+]§712-1206[+] **Loitering for the purpose of engaging in or advancing prostitution.** (1) For the purposes of this section, "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.

(2) ~~[Any person who remains or wanders about in a public place and repeatedly beckons to or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to~~



~~stop motor vehicles, or repeatedly interferes with the free
passage of other persons for the purpose of committing the crime
of prostitution as that term is defined in section 712-1200,
shall be guilty of a violation.~~

~~(3)]~~ Any person who remains or wanders about in a public
place and repeatedly beckons to, or repeatedly stops, or
repeatedly attempts to engage passers-by in conversation, or
repeatedly stops or attempts to stop motor vehicles, or
repeatedly interferes with the free passage of other persons for
the purpose of committing the crime of advancing prostitution as
that term is defined in section 712-1201(1) is guilty of a petty
misdemeanor."

SECTION 19. Section 712-1207, Hawaii Revised Statutes, is
amended as follows:

1. By amending its title and subsections (1), (2), and (3)
to read:

"§712-1207 ~~[Street prostitution and commercial]~~ Commercial
sexual exploitation; designated areas. (1) It shall be
unlawful for any person within the boundaries of Waikiki and
while on any public property to[÷



~~(a) Offer or agree to engage in sexual conduct with
another person in return for a fee or anything of
value; or~~

~~(b) Provide,~~ provide, agree to provide, or offer to
provide a fee or anything of value to another person
to engage in sexual conduct.

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

~~(a) Offer or agree to engage in sexual conduct with
another person in return for a fee or anything of
value; or~~

~~(b) Provide,~~ provide agree to provide, or offer to
provide a fee or anything of value to another person
to engage in sexual conduct.

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

(a) Designates areas, each no larger than three square
miles, as zones of significant [~~prostitution-related~~]
commercial sexual exploitation-related activity that



1 is detrimental to the health, safety, or welfare of
 2 the general public; or
 3 (b) Alters the boundaries of any existing area under
 4 paragraph (a);
 5 provided that not more than four areas may be designated within
 6 the State."

7 2. By amending subsections (8) and (9) to read:

8 "(8) For purposes of this section:

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

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

16 "Sexual conduct" has the same meaning as in section [712-
 17 ~~1200(2)-~~] 712-1201(4).

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

20 (9) This section shall apply to all counties; provided
 21 that if a county enacts an ordinance to regulate [street



1 ~~prostitution and~~ commercial sexual exploitation, other than an
2 ordinance designating an area as a zone of significant
3 ~~[prostitution-related]~~ commercial sexual exploitation-related
4 activity, the county ordinance shall supersede this section and
5 no person shall be convicted under this section in that county."

6 SECTION 20. Section 712-1208, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§712-1208[+] **Promoting travel for ~~[prostitution.]~~**
9 **commercial sexual exploitation.** (1) A person commits the
10 offense of promoting travel for ~~[prostitution]~~ commercial sexual
11 exploitation if the person knowingly sells or offers to sell
12 travel services that include or facilitate travel for the
13 purpose of engaging in ~~[what would be prostitution if occurring~~
14 ~~in the State.]~~ commercial sexual exploitation under section 712-
15 1200.5.

16 (2) "Travel services" has the same meaning as in section
17 468L-1.

18 (3) Promoting travel for ~~[prostitution]~~ commercial sexual
19 exploitation is a class C felony."

20 SECTION 21. Section 712-1209, Hawaii Revised Statutes, is
21 amended by amending subsection (3) to read as follows:



1 "(3) For purposes of this section:

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

3 "Sexual conduct" has the same meaning as in section

4 ~~[712-1200(2).]~~ 712-1201(4)."

5 SECTION 22. Section 712-1209.1, Hawaii Revised Statutes,
6 is amended by amending subsection (7) to read as follows:

7 "(7) For purposes of this section:

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

10 "Sexual conduct" has the same meaning as in section

11 ~~[712-1200(2).]~~ 712-1201(4)."

12 SECTION 23. Section 712-1209.5, Hawaii Revised Statutes,
13 is amended by amending subsection (2) to read as follows:

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

19 (a) Commercial sexual exploitation, in violation of
20 section 712-1200.5;



(b) [~~Street prostitution and commercial~~] Commercial sexual exploitation[~~7~~] in designated areas, in violation of section 712-1207(1) [~~(b)~~] or (2) [~~(b)~~];

(c) Habitual commercial sexual exploitation, in violation of this section;

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

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

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

SECTION 24. Section 712-1209.6, Hawaii Revised Statutes, is amended to read as follows:

"§712-1209.6 Prostitution; [~~motion to vacate conviction.~~] vacation of convictions. [~~(1)~~] A person convicted of committing the offense of prostitution under section 712-1200, loitering



~~for the purpose of engaging in or advancing prostitution under section 712-1206(2), street prostitution and commercial sexual exploitation in designated areas under section 712-1207(1)(a) or (2)(a), or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206(2), or 712-1207(1)(a) or (2)(a), may file a motion to vacate the conviction if the defendant is not subsequently convicted of any offense under the Hawaii Penal Code within three years after the date of the original conviction.~~

~~(2) The court shall hold a hearing on a motion filed under this section to review the defendant's record over the three years after the date of the original conviction under section 712-1200, 712-1206(2), or 712-1207(1)(a) or (2)(a) or conviction of a lesser offense when originally charged with a violation of any of those sections, and if the court finds that the defendant has not been convicted of any offense under the Hawaii Penal Code within this three year period, the court shall vacate the conviction.]~~ On the effective date of Act , Session Laws of Hawaii 2022, any person convicted of the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206(2), and street



1 prostitution and commercial sexual exploitation in designated
2 areas under section 712-1207(1) or (2) shall have their
3 conviction vacated by the court."

4 SECTION 25. Section 712A-4, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§712A-4 Covered offenses.** Offenses for which property is
7 subject to forfeiture under this chapter are:

- 8 (a) All offenses that specifically authorize forfeiture;
9 (b) Murder; kidnapping; labor trafficking; unlicensed sale
10 of liquor; unlicensed manufacture of liquor; gambling;
11 criminal property damage; robbery; bribery; extortion;
12 theft; unauthorized entry into motor vehicle;
13 burglary; money laundering; trademark counterfeiting;
14 insurance fraud; promoting a dangerous, harmful, or
15 detrimental drug; commercial promotion of marijuana;
16 methamphetamine trafficking; manufacturing of a
17 controlled substance with a child present; promoting
18 child abuse; [~~promoting prostitution;~~] sex
19 trafficking[+] in the first degree; sex trafficking in
20 the second degree; commercial sexual exploitation of a
21 minor; habitual commercial sexual exploitation; or



1 electronic enticement of a child that is chargeable as
2 a felony offense under state law;

3 (c) The manufacture, sale, or distribution of a controlled
4 substance in violation of chapter 329, promoting
5 detrimental drugs or intoxicating compounds, promoting
6 pornography, promoting pornography for minors, or
7 commercial sexual exploitation near schools or public
8 parks, which is chargeable as a felony or misdemeanor
9 offense, but not as a petty misdemeanor, under state
10 law; and

11 (d) The attempt, conspiracy, solicitation, coercion, or
12 intimidation of another to commit any offense for
13 which property is subject to forfeiture."

14 SECTION 26. Section 806-83, Hawaii Revised Statutes, is
15 amended by amending subsections (a) and (b) to read as follows:

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

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



- 1 (2) Section 161-28 (bribery related to the Hawaii Poultry
- 2 Inspection Act);
- 3 (3) Section 707-712.5 (assault against a law enforcement
- 4 officer in the first degree);
- 5 (4) Section 707-716 (terroristic threatening in the first
- 6 degree);
- 7 (5) Section 707-732 (sexual assault in the third degree);
- 8 (6) Section 707-741 (incest);
- 9 (7) Section 707-752 (promoting child abuse in the third
- 10 degree);
- 11 (8) Section 708-880 (commercial bribery);
- 12 (9) Section 709-904.5 (compensation by an adult of
- 13 juveniles for crimes);
- 14 (10) Section 710-1026.9 (resisting an order to stop a motor
- 15 vehicle in the first degree);
- 16 (11) Section 710-1070 (bribery of or by a witness);
- 17 (12) Section 710-1071 (intimidating a witness);
- 18 (13) Section 710-1072.2 (retaliating against a witness);
- 19 (14) Section 710-1073 (bribery of or by a juror);
- 20 (15) Section 710-1075 (jury tampering);
- 21 (16) Section 710-1075.5 (retaliating against a juror);



- 1 (17) Section 711-1106.4 (aggravated harassment by
2 stalking);
- 3 (18) Section 711-1110.9 (violation of privacy in the first
4 degree);
- 5 (19) Section 712-1208 (promoting travel for
6 ~~[prostitution]~~ commercial sexual exploitation);
- 7 (20) Section 712-1209.5 (habitual commercial sexual
8 exploitation);
- 9 (21) Section 712-1215 (promoting pornography for minors);
- 10 (22) Section 712-1218 (failure to maintain age verification
11 records of sexual performers);
- 12 (23) Section 712-1218.5 (failure to maintain age
13 verification records of sexually exploited
14 individuals); and
- 15 (24) Section 712-1219 (failure to affix information
16 disclosing location of age verification records of
17 sexual performers).
- 18 (b) Criminal charges may be instituted by written
19 information for a felony when the charge is a class B felony,
20 except under:
- 21 (1) Section 707-720 (kidnapping);



- 1 (2) Section 707-731 (sexual assault in the second degree);
- 2 (3) Section 707-751 (promoting child abuse in the second
- 3 degree);
- 4 (4) Section 708-841 (robbery in the second degree);
- 5 (5) Section 709-904.5 (compensation by an adult of
- 6 juveniles for crimes; grade or class of offense
- 7 increased);
- 8 (6) Section 710-1031 (intimidating a correctional worker);
- 9 (7) Section 710-1040 (bribery);
- 10 (8) Section 710-1074 (intimidating a juror); and
- 11 (9) Section 712-1203 [~~(promoting prostitution).~~] (sex
- 12 trafficking in the second degree)."

13 SECTION 27. Section 853-4, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

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

- 16 (1) The offense charged involves the intentional, knowing,
- 17 reckless, or negligent killing of another person;
- 18 (2) The offense charged is:
 - 19 (A) A felony that involves the intentional, knowing,
 - 20 or reckless bodily injury, substantial bodily



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



- 1 (7) The defendant is found to be a law violator or
2 delinquent child for the commission of any offense
3 defined as a felony by the Hawaii Penal Code or for
4 any conduct that if perpetrated in this State would
5 constitute a felony;
- 6 (8) The defendant has a prior conviction for a felony
7 committed in any state, federal, or foreign
8 jurisdiction;
- 9 (9) A firearm was used in the commission of the offense
10 charged;
- 11 (10) The defendant is charged with the distribution of a
12 dangerous, harmful, or detrimental drug to a minor;
- 13 (11) The defendant has been charged with a felony offense
14 and has been previously granted deferred acceptance of
15 guilty plea or no contest plea for a prior offense,
16 regardless of whether the period of deferral has
17 already expired;
- 18 (12) The defendant has been charged with a misdemeanor
19 offense and has been previously granted deferred
20 acceptance of guilty plea or no contest plea for a



- 1 prior felony, misdemeanor, or petty misdemeanor for
- 2 which the period of deferral has not yet expired;
- 3 (13) The offense charged is:
- 4 (A) Escape in the first degree;
- 5 (B) Escape in the second degree;
- 6 (C) Promoting prison contraband in the first degree;
- 7 (D) Promoting prison contraband in the second degree;
- 8 (E) Bail jumping in the first degree;
- 9 (F) Bail jumping in the second degree;
- 10 (G) Bribery;
- 11 (H) Bribery of or by a witness;
- 12 (I) Intimidating a witness;
- 13 (J) Bribery of or by a juror;
- 14 (K) Intimidating a juror;
- 15 (L) Jury tampering;
- 16 (M) [~~Promoting prostitution;~~] Sex trafficking in the
- 17 second degree;
- 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;



- 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) Commercial sexual exploitation pursuant to
- 11 section 712-1200.5;
- 12 (W) [~~Street prostitution and commercial~~] Commercial
- 13 sexual exploitation in designated areas under
- 14 section 712-1207(1) [~~(b)~~] or (2) [~~(b)~~];
- 15 (X) Commercial sexual exploitation near schools or
- 16 public parks under section 712-1209;
- 17 (Y) Commercial sexual exploitation of a minor under
- 18 section 712-1209.1; or
- 19 (Z) Habitual commercial sexual exploitation under
- 20 section 712-1209.5;



- 1 (AA) Violation of privacy in the first degree under
 2 section 711-1110.9;
- 3 (BB) Violation of privacy in the second degree under
 4 section 711-1111(1)(d), (e), (f), (g), or (h); or
- 5 [†] (CC) [†] Habitually operating a vehicle under the
 6 influence of an intoxicant under section 291E-
 7 61.5(a);
- 8 (14) The defendant has been charged with:
- 9 (A) Knowingly or intentionally falsifying any report
 10 required under part XIII of chapter 11, with the
 11 intent to circumvent the law or deceive the
 12 campaign spending commission; or
- 13 (B) Violating section 11-352 or 11-353; or
- 14 (15) The defendant holds a commercial driver's license and
 15 has been charged with violating a traffic control law,
 16 other than a parking law, in connection with the
 17 operation of any type of motor vehicle."

18 SECTION 28. Section 712-1200, Hawaii Revised Statutes, is
 19 repealed.

20 [~~"§712-1200 Prostitution. (1) A person commits the~~
 21 ~~offense of prostitution if the person engages in, or agrees or~~



~~1 offers to engage in, sexual conduct with another person in
2 return for a fee or anything of value.~~

~~3 (2) As used in this section:~~

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

~~6 "Sexual conduct" means "sexual penetration", "deviate
7 sexual intercourse", or "sexual contact", as those terms are
8 defined in section 707-700, or "sodomasochistic abuse" as
9 defined in section 707-752.~~

~~10 (3) Prostitution is a petty misdemeanor; provided that if
11 the person who commits the offense under subsection (1) is a
12 minor, prostitution is a violation.~~

~~13 (4) A person convicted of committing the offense of
14 prostitution as a petty misdemeanor shall be sentenced as
15 follows:~~

~~16 (a) For the first offense, when the court has not deferred
17 further proceedings pursuant to chapter 853, a fine of
18 no less than \$500 but no more than \$1,000 and the
19 person may be sentenced to a term of imprisonment of
20 no more than thirty days or probation; provided that
21 in the event the convicted person defaults in payment~~



1 ~~of the fine, and the default was not contumacious, the~~
2 ~~court may make an order converting the unpaid portion~~
3 ~~of the fine to community service as authorized by~~
4 ~~section 706-605(1);~~

5 ~~(b) For any subsequent offense, a fine of no less than~~
6 ~~\$500 but no more than \$1,000 and a term of~~
7 ~~imprisonment of thirty days or probation, without~~
8 ~~possibility of deferral of further proceedings~~
9 ~~pursuant to chapter 853 and without possibility of~~
10 ~~suspension of sentence; and~~

11 ~~(c) For the purpose of this subsection, if the court has~~
12 ~~deferred further proceedings pursuant to chapter 853,~~
13 ~~and notwithstanding any provision of chapter 853 to~~
14 ~~the contrary, the defendant shall not be eligible to~~
15 ~~apply for expungement pursuant to section 831-3.2~~
16 ~~until three years following discharge. A plea~~
17 ~~previously entered by a defendant under section 853-1~~
18 ~~for a violation of this section shall be considered a~~
19 ~~prior offense.~~

20 ~~(5) This section shall not apply to any member of a police~~
21 ~~department, a sheriff, or a law enforcement officer acting in~~



~~the course and scope of duties; provided that the member of a police department, sheriff, or law enforcement officer is engaging in undercover operations; provided further that under no circumstances shall sexual contact initiated by a member of a police department, sheriff, or law enforcement officer; sexual penetration; or sadomasochistic abuse be considered to fall within the course and scope of duties.~~

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

SECTION 29. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 30. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



H.B. NO. 2265

1 SECTION 31. This Act shall take effect upon its approval;
2 provided that the amendments made to section 853-4, Hawaii
3 Revised Statutes, by section 27 of this Act shall not be
4 repealed when that section is reenacted on June 30, 2026,
5 pursuant to section 15 of Act 19, Session Laws of Hawaii 2020.

6

INTRODUCED BY:



JAN 25 2022



H.B. NO. 2265

Report Title:

Crime; Prostitution; Sexual Exploitation; Human Trafficking;
Civil Claims

Description:

Decriminalizes the act of engaging in, or agreeing or offering to engage in, sexual conduct with another person in return for a fee or anything of value. Authorizes civil claims to be made against a business, owner or operator of a transient accommodation, or other commercial entity that profits from sexual exploitation. Converts the human trafficking victim services fund to a human trafficking reparations fund.

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

