

JAN 19 2024

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 out 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 Native Hawaiians and
15 Pacific Islanders are disproportionately overrepresented in the
16 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,
4 "[t]he overutilization of Native Hawaiians to meet sex buyer
5 demand may be directly linked to structural economic coercion
6 and vulnerabilities connected to land dispossession, exposure to
7 sexual violence, hyper sexualization, incarceration, cultural
8 dislocation, intergenerational trauma, mental and emotional
9 distress, racism, poverty, and going inequities."

10 The legislature additionally finds that state law does not
11 currently identify soliciting a minor for prostitution as a form
12 of sex trafficking. However, under title 18 United States Code
13 section 1591, federal law recognizes offering to engage in
14 sexual activity with a minor for anything of value as a form of
15 sex trafficking. Laws that target the solicitation of minors
16 for sex trafficking have been proven to be effective in reducing
17 the demand for sexual exploitation that provides the financial
18 incentive for the commercial sex trade, without relying on
19 criminal systems that often misidentify, retraumatize, penalize,
20 stigmatize, or incarcerate sex trafficking victims.



1 The purpose of this Act is to align Hawaii's sex
2 trafficking laws with federal law by making the commercial
3 sexual exploitation of a minor a form of sex trafficking.

4 SECTION 2. Section 706-606.6, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§706-606.6 Repeat violent and sexual offender; enhanced**
7 **sentence.** (1) Notwithstanding any other provision of law to
8 the contrary, any person who is convicted of an offense under
9 section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-
10 733.6, 707-750, 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~]
11 after having been convicted on at least three prior and separate
12 occasions of an offense under section 707-701.5, 707-702, 707-
13 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
14 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~] or of an
15 offense under federal law or the laws of another state that is
16 comparable to an offense under section 707-701.5, 707-702, 707-
17 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
18 708-840, 712-1202, or 712-1203, [~~or 712-1209.1,~~] shall be
19 sentenced to an extended term of imprisonment as provided in
20 section 706-661.



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

4 (a) For an offense under section 707-701.5, 707-702,
5 707-730, 707-733.6, 707-750, 708-840, 712-1202, or
6 712-1203, [~~or 712-1209.1,~~] within the past twenty
7 years from the date of the instant offense;

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

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

14 (d) For an offense under federal law or the laws of
15 another state that is comparable to an offense under
16 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
17 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-
18 1202, or 712-1203, [~~or 712-1209.1,~~] within the maximum
19 term of imprisonment possible under the appropriate
20 jurisdiction."



1 SECTION 3. Section 712-1202, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§712-1202 Sex trafficking.** (1) A person commits the
4 offense of sex trafficking if the person intentionally,
5 knowingly[+], or recklessly:

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

10 (b) Advances prostitution or profits from prostitution of
11 a minor[-]; or

12 (c) Is over the age of eighteen and solicits, offers to
13 engage in, or requests to engage in sexual conduct
14 with a minor in return for anything of value; provides
15 anything of value to a minor or third person as
16 compensation for having engaged in sexual conduct with
17 a minor; agrees to provide or offers to provide
18 anything of value to a minor or third person for the
19 purpose of engaging in sexual conduct with a minor; or
20 offers or agrees to provide anything of value to a
21 member of a police department, a sheriff's deputy, or



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

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

4 (3) As used in this section:

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

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

9 "Sexual conduct" has the same meaning as in section 712-
10 1200(2).

11 "Threat" means any of the actions listed in section
12 707-764(1).

13 (4) The state of mind requirement for the offense under
14 subsection (1)(b) is not applicable to the fact that the victim
15 was a minor. A person is strictly liable with respect to the
16 attendant circumstances that the victim was a minor.

17 (5) Consent to sexual conduct shall not constitute a
18 defense to an offense under this section.

19 (6) Subsection (1)(c) shall not apply to any member of a
20 police department, a sheriff's deputy, or a law enforcement
21 officer acting in the course and scope of duties; provided that



1 the member of a police department, sheriff's deputy, or law
2 enforcement officer is engaging in undercover operations;
3 provided further that under no circumstances shall sexual
4 contact initiated by a member of a police department, sheriff's
5 deputy, or law enforcement officer; sexual penetration; or
6 sadomasochistic abuse be considered to fall within the course
7 and scope of duties."

8 SECTION 4. Section 712-1209.5, Hawaii Revised Statutes, is
9 amended by amending subsections (2) and (3) to read as follows:

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

15 (a) Commercial sexual exploitation, in violation of
16 section 712-1200.5;

17 (b) Sex trafficking, in violation of section 712-
18 1202(1)(c);

19 [~~(b)~~](c) Street prostitution and commercial sexual
20 exploitation, in violation of section 712-1207(1)(b)
21 or (2)(b);



1 ~~(d)~~ (d) Habitual commercial sexual exploitation, in
2 violation of this section;

3 ~~(e)~~ (e) An offense of this jurisdiction or any other
4 jurisdiction that is comparable to one of the offenses
5 in paragraph (a), (b), ~~(c)~~ ~~(c)~~, or (d); or
6 (e) Any combination of the offenses in paragraph (a), (b),
7 (c), ~~(d)~~ ~~(d)~~; or (e).

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

14 (3) Habitual commercial sexual exploitation is a class C
15 felony~~(-)~~; provided that habitual commercial sexual exploitation
16 is a class A felony when the instant offense is sex trafficking
17 under section 712-1202(1)(c)."

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

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



- 1 (1) Set forth in section 707-730(1), 707-731(1), 707-
2 732(1), 707-733(1)(a), 707-733.6, 712-1200.5(4), 712-
3 1202(1), or 712-1203(1), but excludes conduct that is
4 criminal only because of the age of the victim, as
5 provided in section 707-730(1)(b), or section 707-
6 732(1)(b) if the perpetrator is under the age of
7 eighteen;
- 8 (2) An act defined in section 707-720 if the charging
9 document for the offense for which there has been a
10 conviction alleged intent to subject the victim to a
11 sexual offense;
- 12 (3) An act that consists of:
- 13 (A) Criminal sexual conduct toward a minor, including
14 but not limited to an offense set forth in
15 section 707-759;
- 16 (B) Solicitation of a minor who is less than fourteen
17 years old to engage in sexual conduct;
- 18 (C) Use of a minor in a sexual performance;
- 19 (D) Production, distribution, or possession of child
20 pornography chargeable as a felony under section
21 707-750, 707-751, or 707-752; or



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- 1 (E) Electronic enticement of a child chargeable under
- 2 section 707-756 or 707-757 if the offense was
- 3 committed with the intent to promote or
- 4 facilitate the commission of another covered
- 5 offense as defined in this section; [~~e~~
- 6 ~~(F) Commercial sexual exploitation of a minor in~~
- 7 ~~violation of section 712-1209.1;]~~
- 8 (4) A violation of privacy under section 711-1110.9;
- 9 (5) An act, as described in chapter 705, that is an
- 10 attempt, criminal solicitation, or criminal conspiracy
- 11 to commit one of the offenses designated in paragraphs
- 12 (1) through (4);
- 13 (6) A criminal offense that is comparable to or that
- 14 exceeds a sexual offense as defined in paragraphs (1)
- 15 through (5); or
- 16 (7) Any federal, military, out-of-state, tribal, or
- 17 foreign conviction for any offense that under the laws
- 18 of this State would be a sexual offense as defined in
- 19 paragraphs (1) through (6)."

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



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

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

14 (2) An offense set forth in section 707-721 or 707-722;
15 provided that the offense involves unlawful
16 imprisonment of a minor by someone other than a
17 parent;

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



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

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

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

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

12 SECTION 7. Section 853-4, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

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

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

17 (2) The offense charged is:

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



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



1 any conduct that if perpetrated in this State would
2 constitute a felony;

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

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

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

10 (11) The defendant has been charged with a felony offense
11 and has been previously granted deferred acceptance of
12 guilty plea or no contest plea for a prior offense,
13 regardless of whether the period of deferral has
14 already expired;

15 (12) The defendant has been charged with a misdemeanor
16 offense and has been previously granted deferred
17 acceptance of guilty plea or no contest plea for a
18 prior felony, misdemeanor, or petty misdemeanor for
19 which the period of deferral has not yet expired;

20 (13) The offense charged is:

21 (A) Escape in the first degree;



- 1 (B) Escape in the second degree;
- 2 (C) Promoting prison contraband in the first degree;
- 3 (D) Promoting prison contraband in the second degree;
- 4 (E) Bail jumping in the first degree;
- 5 (F) Bail jumping in the second degree;
- 6 (G) Bribery;
- 7 (H) Bribery of or by a witness;
- 8 (I) Intimidating a witness;
- 9 (J) Bribery of or by a juror;
- 10 (K) Intimidating a juror;
- 11 (L) Jury tampering;
- 12 (M) Promoting prostitution;
- 13 (N) Abuse of family or household member except as
- 14 provided in paragraph (2) and section 709-
- 15 906(18);
- 16 (O) Sexual assault in the second degree;
- 17 (P) Sexual assault in the third degree;
- 18 (Q) A violation of an order issued pursuant to
- 19 chapter 586;
- 20 (R) Promoting child abuse in the second degree;
- 21 (S) Promoting child abuse in the third degree;



- 1 (T) Electronic enticement of a child in the first
- 2 degree;
- 3 (U) Electronic enticement of a child in the second
- 4 degree;
- 5 (V) Commercial sexual exploitation pursuant to
- 6 section 712-1200.5;
- 7 (W) Street prostitution and commercial sexual
- 8 exploitation under section 712-1207(1) (b) or
- 9 (2) (b);
- 10 (X) Commercial sexual exploitation near schools or
- 11 public parks under section 712-1209;
- 12 [~~(Y)~~] ~~Commercial sexual exploitation of a minor under~~
- 13 ~~section 712-1209.1;~~
- 14 ~~(Z)~~ (Y) Habitual commercial sexual exploitation under
- 15 section 712-1209.5;
- 16 [~~(AA)~~] (Z) Violation of privacy in the first degree under
- 17 section 711-1110.9;
- 18 [~~(BB)~~] AA Violation of privacy in the second degree under
- 19 section 711-1111(1) (d), (e), (f), (g), or (h);



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1 [~~(CC)~~] (BB) Habitually operating a vehicle under the
2 influence of an intoxicant under section 291E-
3 61.5(a);

4 [~~(DD)~~] (CC) Promoting gambling in the first degree; or

5 [~~(EE)~~] (DD) Promoting gambling in the second degree;

6 (14) The defendant has been charged with:

7 (A) Knowingly or intentionally falsifying any report
8 required under part XIII of chapter 11, with the
9 intent to circumvent the law or deceive the
10 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 8. Section 712-1209.1, Hawaii Revised Statutes, is
17 repealed.

18 [~~§712-1209.1 Commercial sexual exploitation of a minor.~~

19 ~~(1) A person eighteen years of age or older commits the offense~~
20 ~~of commercial sexual exploitation of a minor if the person~~
21 ~~intentionally, knowingly, or recklessly;~~



1 ~~(a) Offers or agrees to provide anything of value to a~~
2 ~~member of a police department, a sheriff, or a law~~
3 ~~enforcement officer who represents that person's self~~
4 ~~as a minor to engage in sexual conduct;~~

5 ~~(b) Provides anything of value to a minor or third person~~
6 ~~as compensation for having engaged in sexual conduct~~
7 ~~with a minor;~~

8 ~~(c) Agrees to provide or offers to provide anything of~~
9 ~~value to a minor or third person for the purpose of~~
10 ~~engaging in sexual conduct with a minor; or~~

11 ~~(d) Solicits, offers to engage in, or requests to engage~~
12 ~~in sexual conduct with a minor in return for anything~~
13 ~~of value.~~

14 ~~(2) Commercial sexual exploitation of a minor is a class B~~
15 ~~felony.~~

16 ~~(3) In addition to any other authorized disposition, a~~
17 ~~person convicted of committing the offense of commercial sexual~~
18 ~~exploitation of a minor shall be sentenced to pay a fine of no~~
19 ~~less than \$5,000.~~

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



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

8 ~~(5) The state of mind requirement for the offense under~~
9 ~~subsection (1)(b) is not applicable to the fact that the victim~~
10 ~~was a minor. A person is strictly liable with respect to the~~
11 ~~attendant circumstance that the victim was a minor; provided~~
12 ~~that the person had a reasonable opportunity to observe the~~
13 ~~victim.~~

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

16 ~~(7) For purposes of this section:~~

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

19 ~~"Sexual conduct" has the same meaning as in section~~
20 ~~712-1200(2)."]~~



1 SECTION 9. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 10. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

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

12 SECTION 12. This Act shall take effect upon its approval;
13 provided that the amendments made to section 853-4, Hawaii
14 Revised Statutes, by section 7 of this Act shall not be repealed
15 when that section is reenacted on June 30, 2026, pursuant to
16 section 15 of Act 19, Session Laws of Hawaii 2020.

17

INTRODUCED BY:  _____



S.B. NO. 2757

Report Title:

Hawaii Penal Code; Sex Trafficking; Commercial Sexual Exploitation of a Minor

Description:

Aligns state sex trafficking laws with federal law by making the commercial sexual exploitation of a minor a form of sex trafficking.

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

