

S.B. NO. 1312

JAN 23 2025

A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

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

1 SECTION 1. The legislature finds that it has made
2 concerted efforts since the 2010s to reduce and combat sex
3 trafficking in the State and protect those victimized by
4 prostitution. One of these efforts has been amending sections
5 712-1202 and 712-1203, Hawaii Revised Statutes, to specifically
6 target those who benefit the most from prostitution, such as sex
7 traffickers and pimps.

8 The legislature finds that the Hawaii supreme court
9 decision in *State v. Ibarra*, 153 Hawai'i 50, 526 P.3d 575 (2023),
10 indicates a need for the sex trafficking and promoting
11 prostitution criminal offense statutes to be further clarified.

12 Accordingly, the purpose of this Act is to clarify and
13 update the sex trafficking and promoting prostitution criminal
14 offense statutes by:

15 (1) Clarifying the definition of "profits from
16 prostitution";

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- 1 (2) Restructuring provisions that define terms or
2 establish exemptions for part I of chapter 712, Hawaii
3 Revised Statutes, to enhance readability;
- 4 (3) Making technical amendments to update statutory
5 references to part I of chapter 712, Hawaii Revised
6 Statutes.

7 SECTION 2. Section 350-1, Hawaii Revised Statutes, is
8 amended by amending the definition of "child abuse or neglect"
9 to read as follows:

10 "Child abuse or neglect" means:

- 11 (1) The acts or omissions of any person who, or legal
12 entity [~~which,~~] that, is in any manner or degree
13 related to the child, is residing with the child, or
14 is otherwise responsible for the child's care, that
15 have resulted in the physical or psychological health
16 or welfare of the child, who is under the age of
17 eighteen, to be harmed, or to be subject to any
18 reasonably foreseeable, substantial risk of being
19 harmed. The acts or omissions are indicated for the
20 purposes of reports by circumstances that include but
21 are not limited to:
- 22 (A) When the child exhibits evidence of:

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- 1 (i) Substantial or multiple skin bruising or any
 - 2 other internal bleeding;
 - 3 (ii) Any injury to skin causing substantial
 - 4 bleeding;
 - 5 (iii) Malnutrition;
 - 6 (iv) Failure to thrive;
 - 7 (v) Burn or burns;
 - 8 (vi) Poisoning;
 - 9 (vii) Fracture of any bone;
 - 10 (viii) Subdural hematoma;
 - 11 (ix) Soft tissue swelling;
 - 12 (x) Extreme pain;
 - 13 (xi) Extreme mental distress;
 - 14 (xii) Gross degradation; or
 - 15 (xiii) Death; and
- 16 [~~such~~] the injury is not justifiably explained,
- 17 or when the history given concerning [~~such~~] the
- 18 condition or death is at variance with the degree
- 19 or type of [~~such~~] the condition or death, or
- 20 circumstances indicate that [~~such~~] the condition
- 21 or death may not be the product of an accidental
- 22 occurrence;

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- 1 (B) When the child has been the victim of sexual
2 contact or conduct, including but not limited to
3 sexual assault as defined in the Penal Code,
4 molestation, sexual fondling, incest, or
5 prostitution; obscene or pornographic
6 photographing, filming, or depiction; or other
7 similar forms of sexual exploitation, including
8 but not limited to acts that constitute an
9 offense pursuant to section [~~712-1202(1)(b);~~]
10 712-1202(1)(c);
- 11 (C) When there exists injury to the psychological
12 capacity of a child as is evidenced by an
13 observable and substantial impairment in the
14 child's ability to function;
- 15 (D) When the child is not provided in a timely manner
16 with adequate food, clothing, shelter,
17 psychological care, physical care, medical care,
18 or supervision;
- 19 (E) When the child is provided with dangerous,
20 harmful, or detrimental drugs as defined by
21 section 712-1240; provided that this subparagraph
22 shall not apply when such drugs are provided to

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1 the child pursuant to the direction or
2 prescription of a practitioner, as defined in
3 section 712-1240; or

4 (F) When the child has been the victim of labor
5 trafficking under chapter 707; or

6 (2) The acts or omissions of any person that have resulted
7 in sex trafficking or severe forms of trafficking in
8 persons; provided that no finding by the department
9 pursuant to this chapter shall be used as conclusive
10 evidence that a person has committed an offense under
11 part VIII of chapter 707 or section 712-1202."

12 SECTION 3. Section 588-2, Hawaii Revised Statutes, is
13 amended by amending the definition of "child sexual abuse" to
14 read as follows:

15 ""Child sexual abuse" means any of the offenses described
16 under chapter 707, part V, when committed against a person under
17 the age of eighteen years or that damage or injure a child's
18 physical or psychological health or welfare, where the child has
19 been the victim of sexual contact or conduct, including sexual
20 assault; sodomy; molestation; sexual fondling; incest;
21 prostitution; obscene or pornographic photographing, filming, or
22 depiction; or other similar forms of sexual exploitation,

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1 including but not limited to acts that constitute an offense
2 pursuant to section [~~712-1202(1)(b)~~] 712-1202(1)(c)."

3 SECTION 4. Section 712-1200, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§712-1200 Prostitution. (1) A person commits the
6 offense of prostitution if the person engages in, or agrees or
7 offers to engage in, sexual conduct with another person in
8 return for a fee or anything of value.

9 [~~(2) As used in this section:~~

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

12 "~~Sexual conduct~~" means "~~sexual penetration~~", "~~deviate~~
13 ~~sexual intercourse~~", or "~~sexual contact~~", as those terms are
14 defined in section ~~707-700~~, or "~~sadomasochistic abuse~~" as
15 defined in section ~~707-752~~.

16 ~~(3)]~~ (2) Prostitution [~~is~~] shall be a petty misdemeanor;
17 provided that if the person who commits the offense under
18 subsection (1) is a minor, prostitution [~~is~~] shall be a
19 violation.

20 [~~(4)]~~ (3) A person convicted of committing the offense of
21 prostitution as a petty misdemeanor shall be sentenced as
22 follows:

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- 1 (a) For the first offense, when the court has not deferred
2 further proceedings pursuant to chapter 853, a fine of
3 no less than \$500 but no more than \$1,000 and the
4 person may be sentenced to a term of imprisonment of
5 no more than thirty days or probation; provided that
6 in the event the convicted person defaults in payment
7 of the fine, and the default was not contumacious, the
8 court may make an order converting the unpaid portion
9 of the fine to community service as authorized by
10 section 706-605(1);
- 11 (b) For any subsequent offense, a fine of no less than
12 \$500 but no more than \$1,000 and a term of
13 imprisonment of thirty days or probation, without
14 possibility of deferral of further proceedings
15 pursuant to chapter 853 and without possibility of
16 suspension of sentence; and
- 17 (c) For the purpose of this subsection, if the court has
18 deferred further proceedings pursuant to chapter 853,
19 [and] the defendant, notwithstanding any provision of
20 chapter 853 to the contrary, [~~the defendant~~] shall not
21 be eligible to apply for expungement pursuant to
22 section 831-3.2 until three years following discharge.

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1 A plea previously entered by a defendant under section
2 853-1 for a violation of this section shall be
3 considered a prior offense.

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

15 ~~(6)~~ (5) A minor may be taken into custody by any police
16 officer without order of the judge when there are reasonable
17 grounds to believe that the minor has violated subsection (1).
18 The minor shall be released, referred, or transported pursuant
19 to section 571-31(b). The minor shall be subject to the
20 jurisdiction of the family court pursuant to section 571-11(1),
21 including for the purposes of custody, detention, diversion, and
22 access to services and resources."

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1 SECTION 5. Section 712-1200.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[†]~~ §712-1200.5~~[‡]~~ **Commercial Sexual Exploitation.** (1) A
4 person commits the offense of commercial sexual exploitation if
5 the person provides, agrees to provide, or offers to provide a
6 fee or anything of value to another to engage in sexual conduct.

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

9 ~~[(3)]~~ (2) Except as provided in subsection ~~[(4)]~~, (3),
10 commercial sexual exploitation ~~[is]~~ shall be a petty
11 misdemeanor.

12 ~~[(4)]~~ (3) Commercial sexual exploitation ~~[is]~~ shall be a
13 class C felony if the person who commits the offense under
14 subsection (1) does so in reckless disregard of the fact that
15 the person exploited is a victim of sex trafficking.

16 ~~[(5)]~~ (4) A person convicted of committing the offense of
17 commercial sexual exploitation as a petty misdemeanor shall be
18 sentenced as follows:

19 (a) For the first offense, a fine of no less than \$500 but
20 no more than \$1,000 and the person may be sentenced to
21 a term of imprisonment of no more than thirty days or
22 probation; provided that in the event the convicted

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1 person defaults in payment of the fine, and the
2 default was not contumacious, the court may order
3 conversion of the unpaid portion of the fine to
4 community service as authorized by 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 or probation of no more than thirty days,
8 without possibility of suspension of sentence; and

9 (c) For purposes of this subsection, the court may impose
10 as a condition of probation that the defendant
11 complete a course of exploitation intervention
12 classes; provided that the court shall only impose the
13 condition for one term of probation.

14 [~~6~~] (5) This section shall not apply to any member of a
15 police department, a sheriff, or a law enforcement officer
16 acting in the course and scope of duties; provided that the
17 member of a police department, sheriff, or law enforcement
18 officer is engaging in undercover operations; provided further
19 that under no circumstances shall sexual contact initiated by a
20 member of a police department, sheriff, or law enforcement
21 officer[~~7~~] or sexual penetration[~~7~~] or sadomasochistic abuse by
22 a member of a police department, sheriff, or law enforcement

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1 officer be considered to fall within the course and scope of
2 duties."

3 SECTION 6. Section 712-1201, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§712-1201 [~~Advancing prostitution; profiting from~~
6 ~~prostitution; definition]~~ Definitions of terms[-] in this part.

7 In [~~sections 712-1202 and 712-1203: (1) A person "advances]~~
8 this part, unless a different meaning is required or specified:

9 "Advances prostitution" [~~if~~] means that the person
10 knowingly causes or aids [~~a~~] another person to commit or engage
11 in prostitution, procures or solicits patrons for prostitution,
12 provides persons for prostitution purposes, permits premises to
13 be regularly used for prostitution purposes, operates or assists
14 in the operation of a house of prostitution or a prostitution
15 enterprise, or engages in any other conduct designed to
16 institute, aid, or facilitate an act or enterprise of
17 prostitution[+].

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

20 [~~(2) A person "profits]~~ "Profits from prostitution" [~~if~~]
21 means that the person knowingly accepts or receives money,
22 anything of value, or other property pursuant to an agreement or

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1 understanding with [~~any person~~] a third party whereby the person
2 participates or is to participate in the proceeds of
3 prostitution activity[~~;~~ and], regardless of whether the money,
4 thing of value, or other property is accepted or received in
5 excess of expenditures or as reimbursement or repayment of any
6 debt.

7 [~~(3) The definitions in subsections (1) and (2) shall not~~
8 ~~include those engaged in conduct outlined in section 712-1200 as~~
9 ~~the prostituted person or section 712-1200.5 as the person~~
10 ~~engaged in commercial sexual exploitation.]~~

11 "Sexual conduct" means "sexual penetration", "deviate
12 sexual intercourse", or "sexual contact", as those terms are
13 defined in section 707-700, or "sodomasochistic abuse" as
14 defined in section 707-752."

15 SECTION 7. Section 712-1202, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§712-1202 Sex trafficking. (1) A person commits the
18 offense of sex trafficking if the person knowingly:

19 (a) Advances prostitution by compelling or inducing a
20 person by force, threat, fraud, coercion, or
21 intimidation to engage in prostitution [~~or profits~~
22 ~~from such conduct by another~~]; or

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1 (b) Profits from prostitution that is the result of
2 another person compelling or inducing a person by
3 force, threat, fraud, coercion, or intimidation to
4 engage in prostitution; or

5 [~~(b)~~] (c) Advances prostitution or profits from
6 prostitution of a minor.

7 (2) Sex trafficking [~~is~~] shall be a class A felony.

8 (3) As used in this section:

9 "Fraud" means making material false statements,
10 misstatements, or omissions.

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

13 "Threat" means any of the actions listed in section 707-
14 764(1).

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

20 (5) No person shall be convicted under this section if the
21 conduct of the person underlying the offense consists
22 exclusively of the person's own acts of:

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1 (a) Prostitution as a prostituted person as provided in
2 section 712-1200; or

3 (b) Commercial sexual exploitation as provided in section
4 712-1200.5."

5 SECTION 8. Section 712-1203, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§712-1203 Promoting prostitution.** (1) A person commits
8 the offense of promoting prostitution if the person knowingly
9 advances prostitution or profits from prostitution.

10 (2) Promoting prostitution [~~is~~] shall be a class B felony.

11 (3) No person shall be convicted under this section if the
12 conduct of the person underlying the offense consists
13 exclusively of the person's own acts of:

14 (a) Prostitution as a prostituted person as provided in
15 section 712-1200; or

16 (b) Commercial sexual exploitation as provided in section
17 712-1200.5."

18 SECTION 9. Section 712-1206, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**[+]§712-1206[+]** **Loitering for the purpose of engaging in**
21 **or advancing prostitution.** (1) For the purposes of this
22 section, "public place" means any street, sidewalk, bridge,

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1 alley or alleyway, plaza, park, driveway, parking lot or
2 transportation facility or the doorways and entrance ways to any
3 building [~~which~~] that fronts on any of the aforesaid places, or
4 a motor vehicle in or on any such place.

5 (2) Any person who remains or wanders about in a public
6 place and repeatedly beckons to [~~or~~], repeatedly stops, [~~or~~]
7 repeatedly attempts to stop, or repeatedly attempts to engage
8 passers-by in conversation, [~~or~~] repeatedly stops or attempts to
9 stop motor vehicles, or repeatedly interferes with the free
10 passage of other persons for the purpose of committing the crime
11 of prostitution as that term is defined in section 712-1200
12 shall be guilty of a violation.

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

21 SECTION 10. Section 712-1207, Hawaii Revised Statutes, is
22 amended by amending subsection (8) to read as follows:

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1 "(8) For purposes of this section:

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

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

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

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

13 SECTION 11. Section 712-1209, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) For purposes of this section:

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

17 ~~["Sexual conduct" has the same meaning as in section 712-~~
18 ~~1200(2)-.] "~~

19 SECTION 12. Section 712-1209.1, Hawaii Revised Statutes,
20 is amended to read as follows:

21 "**§712-1209.1 Commercial Sexual Exploitation of a Minor.**

22 (1) A person eighteen years of age or older commits the offense

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1 of commercial sexual exploitation of a minor if the person
2 intentionally, knowingly, or recklessly:

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

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

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

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

16 (2) Commercial sexual exploitation of a minor [~~is~~] shall
17 be a class B felony.

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

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

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

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

19 ~~[(7) For purposes of this section:~~

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

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

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

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

7 (1) Set forth in section 707-730(1), 707-731(1), 707-
8 732(1), 707-733(1)(a), 707-733.6, [~~712-1200.5(4),~~]
9 712-1200.5(3), 712-1202(1), or 712-1203(1), but
10 excludes conduct that is criminal only because of the
11 age of the victim, as provided in section 707-
12 730(1)(b), or section 707-732(1)(b) if the perpetrator
13 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;
- 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) Commercial sexual exploitation of a minor 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

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

8 SECTION 15. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 16. This Act, upon its approval, shall take effect
11 on July 1, 2025.

12

13

INTRODUCED BY:



14

BY REQUEST

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Report Title:

Penal Code; Offenses Against Public Health and Morals; Sex Trafficking; Promoting Prostitution

Description:

Clarifies that the definition of "profits from prostitution" includes any money or property accepted or received from the proceeds of prostitution activity even if it is accepted or received as the reimbursement or repayment of a debt. Restructures provisions that define terms or establish exemptions for part I of chapter 712, Hawaii Revised Statutes, to enhance readability. Makes technical amendments to update statutory references to part I of chapter 712, Hawaii Revised Statutes.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

PURPOSE: To clarify that the definition of "profits from prostitution" includes any money or property accepted or received from the proceeds of prostitution activity regardless of whether it is accepted or received as the excess of returns over expenditure or reimbursement or repayment of a debt. To restructure provisions that define terms or establish exemptions for part I of chapter 712, Hawaii Revised Statutes, to enhance readability. To make technical amendments to update statutory references to part I of chapter 712, Hawaii Revised Statutes.

MEANS: Amend sections 350-1, 588-2, 712-1200, 712-1200.5, 712-1201, 712-1202, 712-1203, 712-1206, 712-1207(8), 712-1209(3), 712-1209.1, and 846E-1, HRS.

JUSTIFICATION: The Supreme Court of Hawaii's decision in State v. Ibarra, 153 Hawai'i 50, 526 P.3d 575 (2023), gave rise to a need to clarify the sex trafficking and promoting prostitution criminal offense statutes.

The clarification to the definition of "profits from prostitution" will address the concerns in Ibarra and prevent a safe harbor for sex traffickers who extend a loan or a service to their victims but who have not "profited" from the arrangement, despite receiving money or property from the victims as proceeds of prostitution activities. The amendment to the definition will make clear that "profiting" does not require an excess of returns over expenditures, nor does it rule out reimbursement or repayment of debt.

Restructuring provisions that define terms or establish exemptions for part I of

chapter 712, Hawaii Revised Statutes, will streamline the part and clarify who should not be prosecuted under those statutes.

Impact on the public: This bill will have a positive impact on the public's and Legislature's efforts in combating sex trafficking and promoting prostitution within the state by clarifying the law that prohibits those activities.

Impact on the department and other agencies: This bill will greatly assist prosecutions of sex traffickers and pimps.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County prosecutors' offices.

EFFECTIVE DATE: July 1, 2025.