

ACT 206

H.B. NO. 1902

A Bill for an Act Relating to Sex Trafficking.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 28-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The attorney general shall establish a statewide witness program through which the attorney general may fund or provide for the security and protection of a government witness or a potential government witness in an official proceeding or investigation where the attorney general determines that an offense [~~such as those~~] described in section 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), or 710-1072.2 (retaliating against a witness) is likely to be committed or [~~which~~] involves great public interest. The attorney general may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, [~~such~~] the witness or potential witness if the family or person may also be endangered. In determining whether the funds or security and protection are to be provided, the attorney general shall give greatest priority to official proceedings or investigations involving pending or potential organized crime, racketeering activity, promoting prostitution, sex trafficking, or career criminal prosecutions.”

SECTION 2. Section 351-32, Hawaii Revised Statutes, is amended to read as follows:

“**§351-32 Violent crimes.** The crimes to which part III of this chapter applies are the following and no other:

- (1) Murder in the first degree (section 707-701);
- (2) Murder in the second degree (section 707-701.5);
- (3) Manslaughter (section 707-702);
- (4) Negligent homicide in the first degree (section 707-702.5);
- (5) Negligent homicide in the second degree (section 707-703);
- (6) Negligent injury in the first degree (section 707-705);
- (7) Negligent injury in the second degree (section 707-706);
- (8) Assault in the first degree (section 707-710);
- (9) Assault in the second degree (section 707-711);
- (10) Assault in the third degree (section 707-712);
- (11) Kidnapping (section 707-720);
- (12) Sexual assault in the first degree (section 707-730);
- (13) Sexual assault in the second degree (section 707-731);
- (14) Sexual assault in the third degree (section 707-732);
- (15) Sexual assault in the fourth degree (section 707-733);
- (16) Abuse of family [~~or~~] household [~~member~~] members (section 709-906); [~~and~~]
- (17) Sex trafficking (section 712-1202); and

~~[(17)]~~ (18) Terrorism, as defined in title 18 United States Code section 2331.”

SECTION 3. Section 663J-1, Hawaii Revised Statutes, is amended to read as follows:

~~“[§663J-1]~~ **Title.** This ~~[chapter]~~ may be cited as the Sex Trafficking and Prostitution Coercion Liability Act.”

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

1. By adding a new definition to be appropriately inserted and to read: “Sex trafficking” has the same meaning as provided in section 712-1202.
2. By amending the definition of “promoting prostitution” to read: “Promoting prostitution” means promoting prostitution [in the first or second degree,] as provided in [sections 712-1202 and] section 712-1203[, respectively].”

SECTION 5. Section 663J-3, Hawaii Revised Statutes, is amended to read as follows:

~~“[§663J-3]~~ **Cause of action for coercion into prostitution[-] or sex trafficking.** An individual has a cause of action against a person who:

- (1) Coerced the individual into prostitution[;] or to remain in prostitution, or subjected the individual to sex trafficking;
- ~~[(2) Coerced the individual to remain in prostitution;~~
- ~~(3)~~ (2) Used coercion to collect or receive any of the individual’s earnings derived from prostitution[;] or from being the subject of sex trafficking; or
- ~~[(4)~~ (3) Hired, or attempted to hire the individual to engage in prostitution, when a reasonable person would believe that the individual was coerced into prostitution by another person[-] or was being subjected to sex trafficking.

~~[Paragraph (3) shall not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual’s earnings derived from prostitution.]”~~

SECTION 6. Section 663J-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§663J-5]~~ **Damages.** ~~[A person]~~ 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[;] or being the subject of sex trafficking;
- (2) Noneconomic damages proximately caused by coercion into prostitution[;] or being the subject of sex trafficking;
- (3) Exemplary damages;
- (4) Reasonable attorney’s fees; and
- (5) Costs of suit, including reasonable expenses for expert testimony.”

SECTION 7. Section 663J-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the discretion of the court, two or more [persons] individuals may join in one action under this chapter as plaintiffs if their respective actions

involve ~~[an individual]~~ a person who engages in promoting prostitution by coercion~~[-]~~ or subjecting the individuals to sex trafficking.”

SECTION 8. Section 663J-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A claim under this chapter may not be brought against a person more than six years after an act of promoting prostitution by coercion or sex trafficking by that person.”

SECTION 9. Section 663J-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§663J-8]]~~ **Stay of action.** On motion by a governmental agency involved in an investigation or prosecution for promoting prostitution~~[-]~~ or sex trafficking, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.”

SECTION 10. Section 663J-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§663J-9]]~~ **Other remedies preserved.** The remedies provided under this chapter do not restrict the right of any ~~(person)~~ individual to bring an action under other law, including common law, to recover damages arising out of the use of the individual in prostitution, or subjecting the individual to sex trafficking, or the coercion incident to the individual being used in prostitution~~[-]~~ or sex trafficking; nor does this chapter limit or restrict the liability of any person under other law.”

SECTION 11. Chapter 712, Hawaii Revised Statutes, is amended by amending the title of part I to read as follows:

“PART I. PROSTITUTION ~~[AND]~~, PROMOTING PROSTITUTION, AND SEX TRAFFICKING”

SECTION 12. Section 712-1200, Hawaii Revised Statutes, is amended to read as follows:

“**§712-1200 Prostitution.** (1) A person commits the offense of prostitution if the person:

- (a) Engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee; or
- (b) Pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct.

(2) As used in ~~[subsection (1), “sexual]~~ this section:

“Sexual conduct” means “sexual penetration”, “deviate sexual intercourse”, or “sexual contact”, as those terms are defined in section 707-700, or “sodomasochistic abuse” as defined in section 707-752.

“Minor” means a person who is less than eighteen years of age.

(3) Prostitution is a petty misdemeanor~~[-]~~; provided that:

- (a) If the person who commits the offense under subsection (1)(a) is a minor, prostitution is a violation; and
- (b) If the person who commits the offense under subsection (1)(b) does so in reckless disregard of the fact that the other person is a victim

of sex trafficking, prostitution is a class C felony.

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

- (a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a fine of not less than \$500 but not more than \$1,000 and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).
- (b) For any subsequent offense, a fine of not less than \$500 but not more than \$1,000 and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.
- (c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until four years following discharge. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense. When the court has ordered a sentence of probation, the court may impose as a condition of probation that the defendant complete a course of prostitution intervention classes; provided that the court may only impose ~~[such]~~ the condition for one term of probation.

(5) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties, unless engaged in sexual penetration or sadomasochistic abuse.

(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 paragraph (1)(a). The minor shall be released, referred, or transported pursuant to subsection 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 13. Section 712-1201, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“§712-1201 [~~Promoting prostitution;~~] Advancing prostitution; profiting from prostitution; definition of terms.”

SECTION 14. Section 712-1202, Hawaii Revised Statutes, is amended to read as follows:

“§712-1202 [~~Promoting prostitution in the first degree.] Sex trafficking.~~

(1) A person commits the offense of [~~promoting prostitution in the first degree]~~ sex trafficking if the person knowingly:

- (a) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, or profits

from such conduct by another; or

- (b) Advances or profits from prostitution of ~~[a person less than eighteen years old;]~~ a minor; provided that with respect to the victim's age, the prosecution shall be required to prove only that the person committing the offense acted negligently.

(2) ~~[Promoting prostitution in the first degree]~~ Sex trafficking is a class A felony.

- (3) As used in this section:

“Fraud” means making material false statements, misstatements, or omissions.

“Minor” means a person who is less than eighteen years of age.

“Threat” means any of the actions listed in section 707-764(1).”

SECTION 15. Section 712-1203, Hawaii Revised Statutes, is amended to read as follows:

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

- (2) Promoting prostitution ~~[in the second degree]~~ is a class B felony.”

SECTION 16. Section 712-1209.6, Hawaii Revised Statutes, is amended to read as follows:

“§712-1209.6 Prostitution; motion to vacate conviction. (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, street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207, may file a motion to vacate the conviction if the defendant's participation in the offense was the result of the person having been a victim of:

- (a) ~~[Promoting prostitution in the first degree]~~ Sex trafficking under section 712-1202~~[- or]~~ or promoting prostitution under section 712-1203; or
- (b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102(9)(A).
- (2) A motion filed under this section shall:
- (a) Be in writing;
- (b) Be signed and sworn to by the petitioner;
- (c) Be made within six years after the date that the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section;
- (d) Describe all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge, and provide copies of any official documents showing that the defendant is entitled to relief under this section; and
- (e) Be subject to the review and written approval of the state agency or

county prosecutor responsible for prosecuting the offense that is the subject of the motion to vacate conviction.

(3) The court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (2); provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

(4) If the court grants a motion filed under this section, the court shall vacate the conviction.

(5) A person making a motion to vacate pursuant to this section has the burden of proof by a preponderance of the evidence.

(6) This section shall not apply to a motion to vacate a conviction under this chapter for:

(a) Sex trafficking under section 712-1202;

~~[(a)]~~ (b) Promoting prostitution under section ~~[712-1202 or]~~ 712-1203; or

~~[(b)]~~ (c) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct.

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

~~“Victim of trafficking” and “victim of a severe form of trafficking” shall have the same meaning as in title 22 United States Code section 7102.]”~~

SECTION 17. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

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

- (a) All offenses that specifically authorize forfeiture;
- (b) Murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, promoting prostitution, sex trafficking, solicitation of a minor for prostitution, habitual solicitation of prostitution, or electronic enticement of a child that is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or solicitation of prostitution near schools or public parks, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 18. Section 803-44, Hawaii Revised Statutes, is amended to read as follows:

“§803-44 Application for court order to intercept wire, oral, or electronic communications. The attorney general of this State, or a designated deputy attorney general in the attorney general’s absence or incapacity, or the prosecut-

ing attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a designated judge or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and [sueh] the court may grant in conformity with section 803-46 an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, if the interception might provide or has provided evidence of:

- (1) Murder;
- (2) Kidnapping;
- (3) Labor trafficking in the first degree;
- (4) Labor trafficking in the second degree;
- (5) Felony criminal property damage involving the danger of bodily injury as defined in section 707-700;
- (6) Distribution of dangerous, harmful, or detrimental drugs;
- (7) Conspiracy to commit one or more of the above; or
- (8) Involvement of organized crime and any of the following felony offenses:
 - (A) Extortion;
 - (B) Bribery of a juror, witness, or police officer;
 - (C) Receiving stolen property;
 - (D) Gambling; ~~and~~
 - (E) Money laundering[-]; and
 - (F) Sex trafficking.

SECTION 19. Section 846E-10, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Tier 2 offenses. A covered offender who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, [~~712-1202(1)(b);~~] 712-1202, or 712-1203(1)(b), as section 712-1203(1)(b) read prior to its amendment pursuant to section 9 of Act 147, Session Laws of Hawaii 2008;
- (2) An offense set forth in section 707-720; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

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

- (1) Any offense set forth in section 707-732(1)(d) or (e), 707-733(1)(a), 707-752, 707-759, 711-1110.9, ~~[712-1202(1)(a)]~~ 712-1203(1), or 712-1209.1;
- (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
- (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4);
- (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (7) Any other covered offense that is not specified in subsection (a) or (c) or paragraph (1), (2), (3), (4), (5), or (6)."

SECTION 20. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
 - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
 - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;

- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of or by a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - (M) Promoting prostitution [~~in the second degree~~];
 - (N) Abuse of family or household member;
 - (O) Sexual assault in the second degree;
 - (P) Sexual assault in the third degree;
 - (Q) A violation of an order issued pursuant to chapter 586;
 - (R) Promoting child abuse in the second degree;
 - (S) Promoting child abuse in the third degree;
 - (T) Electronic enticement of a child in the first degree;
 - (U) Electronic enticement of a child in the second degree;
 - (V) Prostitution pursuant to section 712-1200(1)(b);
 - (W) Street solicitation of prostitution under section 712-1207(1)(b);
 - (X) Solicitation of prostitution near schools or public parks under section 712-1209;
 - (Y) Habitual solicitation of prostitution under section 712-1209.5;
or
 - (Z) Solicitation of a minor for prostitution under section 712-1209.1;
- (14) The defendant has been charged with:
 - (A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or
 - (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle."

SECTION 21. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect on July 1, 2016.
(Approved July 5, 2016.)