

ACT 261

S.B. NO. 292

A Bill for an Act Relating to Sexual Exploitation.

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

SECTION 1. The legislature finds that sex trafficking is a form of modern-day slavery. According to a 2018 report published by Arizona State University and the Hawaii state commission on the status of women, one out of every eleven adult male residents of the State are online sex shoppers. The report also estimated that there were 74,362 potential sex buyers in the State. Moreover, Imua Alliance, a victim service provider for survivors of sex trafficking and sexual violence, estimates that one hundred fifty establishments participate in the commercial sex trade in the State, increasing the high risk for sex

trafficking. During the coronavirus disease 2019 pandemic, a service provider for sex trafficking victims in the State reported seeing a three hundred per cent increase in demand for services.

The legislature additionally finds that Pacific Islanders, specifically Native Hawaiians, are disproportionately overrepresented in the State's sex trafficking survivor population. In a survey conducted by the Hawaii state commission on the status of women and Arizona State University, sixty-four per cent of sex trafficking victims identified as having at least partial Native Hawaiian ancestry. According to the report, "overutilization of Native Hawaiians to meet sex buyer demand may be directly linked to structural economic coercion and vulnerabilities connected to land dispossession, exposure to sexual violence, hypersexualization, incarceration, cultural dislocation, intergenerational trauma, mental and emotional distress, racism, poverty, and ongoing inequities".

The legislature further finds that victims of sex trafficking should not be criminalized for their own exploitation. Immunizing sex trafficking survivors from being faced with the prospect of prosecution advances the delivery of social services and trauma-informed care for those in need. It would also help to end the social stigma that retraumatizes survivors of sexual exploitation, while empowering victims to obtain financial security for the harm that they have endured and pursue legal persons and commercial entities that profit from exploitation.

Accordingly, the purpose of this Act is to establish safe harbor protections for survivors of sexual exploitation who seek medical or law enforcement assistance.

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

(2) As used in this section:

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

"Seeks medical or law enforcement assistance" includes but is not limited to making, or assisting someone who is making, a report to the 911 system, a poison control center, a medical provider, a reproductive health provider, or any law enforcement agency or providing care to someone who is awaiting the arrival of medical or law enforcement personnel.

"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.

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

(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 no less than \$500 but no more than \$1,000 and the person may be sentenced to a term of imprisonment of no 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 make an order converting the unpaid portion of the fine to community service as authorized by section 706-605(1);

- (b) For any subsequent offense, a fine of no less than \$500 but no 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; and
- (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 three 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.

(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; 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.

(7) Notwithstanding this section or any other law to the contrary, a person who in good faith seeks medical or law enforcement assistance for themselves or another person, or is the subject of another person's good faith act seeking medical or law enforcement assistance, shall not:

- (a) Be arrested, charged, prosecuted, or convicted;
- (b) Have their property be subject to civil forfeiture; or
- (c) Otherwise be penalized.

pursuant to this section if the probable cause or evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking medical or law enforcement assistance; provided that this subsection shall not apply to any other criminal offense."

SECTION 3. Section 712-1206, Hawaii Revised Statutes, is amended to read as follows:

“[H§712-1206] Loitering for the purpose of engaging in or advancing prostitution. (1) For the purposes of this section[, “public]:

“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] that fronts on any of the aforesaid places, or a motor vehicle in or on any such place.

“Seeks medical or law enforcement assistance” includes but is not limited to making, or assisting someone who is making, a report to the 911 system, a poison control center, a medical provider, a reproductive health provider, or any law enforcement agency or providing care to someone who is awaiting the arrival of medical or law enforcement personnel.

(2) Any person who remains or wanders about in a public place and repeatedly ~~[beckons]~~:

(a) Beckons to ~~[or repeatedly]~~, stops, or ~~[repeatedly]~~ attempts to stop~~;~~ or ~~[repeatedly attempts to]~~ engage passers-by in conversation~~;~~ ~~or repeatedly stops]~~;

(b) Stops or attempts to stop motor vehicles~~;~~; or ~~[repeatedly interferes]~~

(c) 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]~~:

(a) Beckons to, ~~[or repeatedly]~~ stops, or ~~[repeatedly]~~ attempts to engage passers-by in conversation~~;~~ ~~or repeatedly stops]~~;

(b) Stops or attempts to stop motor vehicles~~;~~; or ~~[repeatedly interferes]~~

(c) 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]~~ shall be guilty of a petty misdemeanor.

(4) Notwithstanding this section or any other law to the contrary, a person who in good faith seeks medical or law enforcement assistance for themselves or another person, or is the subject of another person's good faith act seeking medical or law enforcement assistance, shall not:

(a) Be arrested, charged, prosecuted, or convicted;

(b) Have their property be subject to civil forfeiture; or

(c) Otherwise be penalized,

pursuant to this section if the probable cause or evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking medical or law enforcement assistance; provided that this subsection shall not apply to any other criminal offense."

SECTION 4. Section 712-1207, Hawaii Revised Statutes, is amended to read as follows:

"§712-1207 Street prostitution and 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, 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]~~ the 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, 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 activity that is detrimental to the health, safety, or welfare of the general public; or

(b) Alters the boundaries of any existing area under paragraph (a); provided that not more than four areas may be designated within the State.

(4) Notwithstanding any law to the contrary, any person violating this section shall be guilty of a petty misdemeanor and shall be sentenced to a mandatory term of thirty days imprisonment. The term of imprisonment shall be imposed immediately, regardless of whether the defendant appeals the conviction, except as provided in subsection (5).

(5) As an option to the mandatory term of thirty days imprisonment, if the court finds the option is warranted based upon the defendant's record, the court may place the defendant on probation for a period not to exceed six months, subject to the mandatory condition that the defendant observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Upon any violation of the geographic restrictions by the defendant, the court, after a hearing, shall revoke the defendant's probation and immediately impose the mandatory thirty-day term of imprisonment. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 706-624(2)(h).

(6) Any person charged under this section may be admitted to bail, pursuant to section 804-4, subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Notwithstanding any other provision of law to the contrary, any person who violates these bail restrictions shall have the person's bail revoked after a hearing and shall be imprisoned ~~[forthwith]~~. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1.

(7) Notwithstanding any other law to the contrary, a police officer, without warrant, may arrest any person when the officer has probable cause to believe that the person has committed a violation of subsection (5) or (6), and the person shall be detained, without bail, until the hearing under the appropriate subsection can be held, which ~~[hearing]~~ shall be held as soon as reasonably practicable.

(8) For purposes of this section:

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

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

"Seeks medical or law enforcement assistance" includes but is not limited to making, or assisting someone who is making, a report to the 911 system, a poison control center, a medical provider, a reproductive health provider, or any law enforcement agency or providing care to someone who is awaiting the arrival of medical or law enforcement personnel.

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

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

(9) This section shall apply to all counties; provided that if a county enacts an ordinance to regulate street prostitution and commercial sexual exploitation, other than an ordinance designating an area as a zone of significant prostitution-related activity, the county ordinance shall supersede this section and no person shall be convicted under this section in that county.

(10) Notwithstanding this section or any other law to the contrary, a person, except for a person who provides, agrees to provide, or offers to provide a fee or anything of value to another person to engage in sexual conduct, who in good faith seeks medical or law enforcement assistance for themselves or another person, or is the subject of another person's good faith act seeking medical or law enforcement assistance, shall not:

- (a) Be arrested, charged, prosecuted, or convicted;
- (b) Have their property be subject to civil forfeiture; or
- (c) Otherwise be penalized.

pursuant to this section, if the probable cause or evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking medical or law enforcement assistance; provided that this subsection shall not apply to any other criminal offense.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 1, 2025.)