

PROPOSED

A BILL FOR AN ACT

RELATING TO PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING.

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

1 SECTION 1. The legislature finds that existing legislation
2 and law enforcement activities in Hawaii are inadequate to deter
3 human trafficking and to bring traffickers to justice. Hawaii
4 law does not penalize the full range of offenses involved in the
5 trafficking scheme. Instead, even the most brutal instances of
6 trafficking are punished under laws that also apply to lesser
7 offenses, allowing traffickers to escape deserved punishment.

8 The legislature also finds that the United States Congress
9 passed the Victims of Trafficking and Violence Protection Act,
10 the first comprehensive piece of legislation aimed at addressing
11 the range of injustices perpetrated by traffickers. Likewise,
12 to deter human trafficking, Hawaii must recognize that
13 trafficking is a serious offense, which is done, in the first
14 instance, by prescribing appropriate punishment and ensuring
15 that state anti-trafficking laws are compatible with the Victims
16 of Trafficking and Violence Protection Act.

17 The purpose of this Act is to combat and deter human
18 trafficking, which is a contemporary manifestation of slavery,



1 to ensure just and effective punishment of traffickers, prevent
2 or reduce human trafficking, and protect the rights of
3 trafficked persons.

4 SECTION 2. Chapter 707, part IV, Hawaii Revised Statutes,
5 is amended as follows:

6 1. By amending its title to read:

7 "PART IV. [KIDNAPPING] HUMAN TRAFFICKING, UNLAWFUL RESTRAINT,
8 AND RELATED OFFENSES [~~;~~ ~~CRIMINAL COERCION~~]"

9 2. By adding six new sections to be appropriately
10 designated and to read:

11 "§707-A Definitions. As used in this part, unless the
12 context otherwise requires:

13 "Commercial sexual activity" means sexual conduct on
14 account of which anything of value is given to, promised to, or
15 received by any person.

16 "Debt bondage" means the status or condition of a debtor
17 arising from a pledge by the debtor of the debtor's personal
18 services or of those of a person under the debtor's control as a
19 security for debt, if the value of those services as reasonably
20 assessed is not applied toward the liquidation of the debt or
21 the length and nature of those services are not respectively
22 limited and defined.

PROPOSED

H.B. NO.

2051
H.D. 1
S.D. 1

1 "Financial harm" includes but is not limited to credit
2 extortion pursuant to chapter 707, part VII, criminal violation
3 of the usury law pursuant to section 478-6, or employment
4 contracts that violate the statute of frauds.

5 "Involuntary servitude" means labor or services performed
6 or provided by a person that are obtained or maintained by an
7 actor who intentionally or knowingly:

- 8 (1) Causes or threatens to cause bodily injury to any
9 person;
- 10 (2) Physically restrains or threatens to physically
11 restrain any person;
- 12 (3) Abuses or threatens to abuse the law or legal process;
- 13 (4) Destroys, conceals, removes, confiscates, or possesses
14 any actual or purported passport or other immigration
15 document, or any other actual or purported government
16 identification document, of another person;
- 17 (5) Uses extortion;
- 18 (6) Causes or threatens to cause financial harm to any
19 person or uses debt bondage of any person; or
- 20 (7) Uses any scheme, plan, or pattern intended to cause
21 any person to believe that, if the person did not
22 perform the labor or services, that person or another



PROPOSED

H.B. NO. 2051
H.D. 1
S.D. 1

1 person would suffer bodily injury or be physically
2 restrained.

3 "Labor" means work of economic or financial value.

4 "Maintain" means, in relation to labor or services, to
5 secure continued performance thereof, regardless of any initial
6 agreement on the part of the trafficked person to perform such
7 labor or service.

8 "Minor" means a person under the age of eighteen years.

9 "Obtain" means, in relation to labor or services, to secure
10 performance thereof.

11 "Services" means an ongoing relationship between a person
12 and an actor in which the person performs activities, including
13 but not limited to commercial sexual activity or sexually
14 explicit performances, under the control of or for the benefit
15 of the actor or a third party.

16 "Sexual conduct" means "sexual penetration", "deviate
17 sexual intercourse", or "sexual contact" as those terms are
18 defined in section 707-700.

19 "Sexually-explicit performance" means a live or public act
20 or show intended to arouse or satisfy the sexual desires or
21 appeal to the prurient interests of patrons.



PROPOSED

H.B. NO.

2051
H.D. 1
S.D. 1

1 "Trafficked person", "person trafficked", "person who has
2 been trafficked", or similar terms are used interchangeably and
3 mean a person subjected to the practices set forth in section
4 707-B, 707-C, or 707-D.

5 "Venture" means any group of two or more individuals
6 associated in fact, whether or not a legal entity."

7 **§707-B Trafficking of persons for involuntary servitude.**

8 (1) A person commits the offense of trafficking of persons for
9 involuntary servitude if the person intentionally recruits,
10 entices, harbors, transports, provides, or obtains by any means
11 another person, knowing that the person will be subjected to
12 involuntary servitude.

13 (2) Trafficking of persons for involuntary servitude is a
14 class A felony; provided that the defendant shall be sentenced
15 as provided in section 707-E.

16 **§707-C Involuntary servitude.** (1) A person commits the
17 offense of involuntary servitude if the person knowingly:

18 (a) Obtains or maintains the labor or services of another
19 by means of involuntary servitude; or

20 (b) Benefits, financially or by receiving anything of
21 value, from participation in a venture that has

PROPOSED

H.B. NO.

2051
H.D. 1
S.D. 1

1 obtained or maintained the labor or services of
2 another by means of involuntary servitude.

3 (2) Involuntary servitude is a class B felony; provided
4 that the defendant shall be sentenced as provided in section
5 707-E.

6 **§707-D Unlawful conduct with respect to documents in**
7 **furtherance of trafficking or involuntary servitude.** (1) A
8 person commits the offense of unlawful conduct with respect to
9 documents in furtherance of trafficking or involuntary servitude
10 if:

11 (a) The person knowingly destroys, conceals, removes,
12 confiscates, or possesses any actual or purported
13 passport or other immigration document, or any other
14 actual or purported government identification
15 document, of any person; and

16 (b) The person intends to restrict the liberty to move or
17 travel of a person who has been trafficked pursuant to
18 section 707-A or from whom labor or services have been
19 obtained or maintained by means of involuntary
20 servitude in violation of section 707-B.

21 (2) The offense of unlawful conduct with respect to
22 documents in furtherance of trafficking or involuntary servitude

1 is a class C felony; provided that the defendant shall be
2 sentenced as provided in section 707-E.

3 **§707-E Sentencing for offenses relating to involuntary**

4 **servitude.** (1) In addition to the indeterminate term of
5 imprisonment of twenty years required by section 706-659 for an
6 offense under section 707-B, the court shall impose a mandatory
7 minimum term of imprisonment of not less than two years and not
8 more than ten years, which shall be determined by the court
9 after consideration of the factors set forth in subsection (4).

10 (2) If the court sentences a person convicted under
11 section 707-C to the indeterminate term of imprisonment of ten
12 years authorized by section 706-660, the court shall impose a
13 mandatory minimum term of imprisonment of not less than one year
14 and not more than five years, which shall be determined by the
15 court after consideration of the factors set forth in subsection
16 (4).

17 (3) If the court sentences a person convicted under
18 section 707-C or 707-D to a term of probation, the court shall
19 require that the person serve a term of imprisonment of at least
20 six months in the case of a conviction under section 707-C and
21 ninety days in the case of a conviction under section 707-D as a



PROPOSED

1 condition of probation after consideration of the factors set
2 forth in subsection (4).

3 (4) When determining the length of the mandatory minimum
4 term of imprisonment required by subsections (1) and (2) or the
5 length of the term of imprisonment required by subsection (3) as
6 a condition of probation, the court shall consider the following
7 factors:

8 (a) Whether the person trafficked for involuntary
9 servitude or from whom labor or services were obtained
10 or maintained by means of involuntary servitude was a
11 minor;

12 (b) Whether the labor or services involved commercial
13 sexual activity, a sexually explicit performance, or
14 promotion or production of pornography or child
15 pornography as those terms are defined or used in this
16 part, part VI, or section 712-1214;

17 (c) The number of persons trafficked or from whom labor or
18 services were obtained by means of involuntary
19 servitude; and

20 (d) The length of time for which the labor or services of
21 a person were obtained or maintained by means of
22 involuntary servitude.

PROPOSED**H.B. NO. 2051
H.D. 1
S.D. 1**

1 (5) A person sentenced pursuant to subsection (1) or (2)
 2 shall not be eligible for parole during the mandatory term of
 3 imprisonment.

4 **§707-F Defense to certain offenses.** It shall be an
 5 affirmative defense to a charge under section 712-1200,
 6 712-1206, or 712-1207 that the person had been trafficked for
 7 involuntary servitude involving the charged offense or that the
 8 person's commission of the charged offense had been obtained by
 9 involuntary servitude."

10 SECTION 3. Section 351-32, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 **"§351-32 Violent crimes.** The crimes to which part III of
 13 this chapter applies are the following and no other:

14 (1) Murder in the first degree (section 707-701);

15 (2) Murder in the second degree (section 707-701.5);

16 (3) Manslaughter (section 707-702);

17 (4) Negligent homicide in the first degree (section
 18 707-702.5);

19 (5) Negligent homicide in the second degree (section
 20 707-703);

21 (6) Negligent injury in the first degree (section
 22 707-705);

PROPOSED

- 1 (7) Negligent injury in the second degree (section
- 2 707-706);
- 3 (8) Assault in the first degree (section 707-710);
- 4 (9) Assault in the second degree (section 707-711);
- 5 (10) Assault in the third degree (section 707-712);
- 6 (11) Trafficking of persons for involuntary servitude
- 7 (section 707-B);
- 8 (12) Involuntary servitude (section 707-C);
- 9 [~~+11~~] (13) Kidnapping (section 707-720);
- 10 [~~+12~~] (14) Sexual assault in the first degree (section
- 11 707-730);
- 12 [~~+13~~] (15) Sexual assault in the second degree (section
- 13 707-731);
- 14 [~~+14~~] (16) Sexual assault in the third degree (section
- 15 707-732);
- 16 [~~+15~~] (17) Sexual assault in the fourth degree (section
- 17 707-733);
- 18 [~~+16~~] (18) Abuse of family [~~+~~]or[~~+~~] household member
- 19 (section 709-906); and
- 20 [~~+17~~] (19) Terrorism, as defined in Title 18 United States
- 21 Code section 2331."

PROPOSED

H.B. NO. 2051
H.D. 1
S.D. 1

1 SECTION 4. Section 707-721, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of unlawful imprisonment
4 in the first degree if the person knowingly restrains another
5 person[+]

6 ~~(a) Under]~~ under circumstances [~~which~~] that expose the
7 person to the risk of serious bodily injury[~~+-er~~

8 ~~(b) In a condition of involuntary servitude]."~~

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

11 "**§712A-4 Covered offenses.** Offenses for which property is
12 subject to forfeiture under this chapter are:

13 (a) All offenses which specifically authorize forfeiture;

14 (b) Murder, trafficking of persons for involuntary
15 servitude, involuntary servitude, kidnapping,
16 gambling, criminal property damage, robbery, bribery,
17 extortion, theft, unauthorized entry into motor
18 vehicle, burglary, money laundering, trademark
19 counterfeiting, insurance fraud, promoting a
20 dangerous, harmful, or detrimental drug, commercial
21 promotion of marijuana, promoting child abuse, or



PROPOSED

H.B. NO.

2051
H.D. 1
S.D. 1

1 electronic enticement of a child which is chargeable
2 as 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 promoting prostitution, which is chargeable as a
8 felony or misdemeanor offense, but not as a petty
9 misdemeanor, under state law; and

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

13 SECTION 6. (a) The attorney general shall work with the
14 existing Hawaii anti-trafficking task force to expand its
15 membership and the role of the task force. The task force
16 shall:

17 (1) Coordinate efforts to prevent, investigate, and
18 prosecute human trafficking in the state by facilitating
19 communication between county police, county prosecutors, and
20 appropriate federal agencies;

PROPOSED

- 1 (2) Establish protocols and training for law enforcement
2 officers and prosecutors in the areas of investigation
3 and prosecution of human trafficking cases;
- 4 (3) Develop interagency procedures to collect and organize
5 data, including research and resource information on
6 domestic trafficking;
- 7 (4) Engage in efforts to facilitate cooperation among
8 countries of origin, transit, and destination to
9 strengthen local and regional capacities to prevent
10 trafficking and prosecute traffickers;
- 11 (5) Measure and evaluate progress of the State in the
12 areas of preventing, investigating, and prosecuting
13 human trafficking; and
- 14 (6) Advise the attorney general of all federal funding
15 that may be available for preventing, investigating,
16 and prosecuting human trafficking and assisting
17 trafficking victims.
- 18 (b) Not less than twenty days prior to the convening of
19 each regular session, the attorney general shall provide to the
20 legislature a report that includes information on the:
 - 21 (1) Progress of the State in the prevention of human
22 trafficking;

PROPOSED

- 1 (2) Number of cases investigated;
- 2 (3) Number of prosecutions for trafficking offenses under
- 3 part IV of chapter 707, Hawaii Revised Statutes;
- 4 (4) Number of convictions and plea bargains in trafficking
- 5 cases under part IV of chapter 707, Hawaii Revised
- 6 Statutes; and
- 7 (5) Age, sex, and nationality of the trafficking victims
- 8 and defendants in all cases prosecuted.

9 SECTION 7. (a) The anti-trafficking task force is to be
 10 comprised of the following:

- 11 (1) The attorney general, or the attorney general's
- 12 designees;
- 13 (2) The directors of health, human services, and labor, or
- 14 their designees;
- 15 (3) The chief of police of each county or the chief's
- 16 designee;
- 17 (4) The prosecuting attorney of each county, or the
- 18 prosecutor's designee, and the director of the victim
- 19 and witness assistance program of the department of
- 20 the prosecuting attorney, city and county of Honolulu;
- 21 (5) The Salvation Army;
- 22 (6) Sisters Offering Support;

PROPOSED

H.B. NO.

2051
H.D. 1
S.D. 1

- 1 (7) The Sex Abuse Treatment Center;
- 2 (8) GirlFest;
- 3 (9) Na Loio;
- 4 (10) The Domestic Violence Clearinghouse and Legal Hotline;
- 5 and
- 6 (11) The Hawaii State Coalition Against Sexual Assault.
- 7 (b) The task force shall carry out the following
- 8 activities:
- 9 (1) Compile and review statutes, rules, and information
- 10 relating to programs adopted in other states to combat
- 11 human trafficking and to provide services to its
- 12 victims;
- 13 (2) Recommend further changes to Hawaii law necessary to
- 14 assist in the prevention of human trafficking and to
- 15 provide support to victims;
- 16 (3) Develop protocols and training for individuals within
- 17 designated state agencies, nongovernmental
- 18 organizations, and private entities regarding
- 19 provision of services to trafficked persons;
- 20 (4) Develop interagency procedures to collect and organize
- 21 data, including research and resource information on
- 22 domestic trafficking, and to measure the extent of the



PROPOSED

H.B. NO.

2051
H.D. 1
S.D. 1

1 need for protection and assistance to victims of
2 trafficking; and

3 (5) Engage in consultation with governmental and
4 nongovernmental organizations, among other entities,
5 to advance the purposes of this Act.

6 (c) The anti-trafficking task force is authorized to seek
7 federal grants available to states, local government, and
8 nonprofit organizations for personnel, training, services and
9 programs that are related to the task force's activities.

10 (d) Not less than twenty days prior to the convening of
11 the regular sessions of 2007 and 2008, the task force shall
12 provide to the legislature a report on its activities.

13 (e) The task force shall cease to exist on June 30, 2008.

14 SECTION 8. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$2,000 or so much
16 thereof as may be necessary for fiscal year 2006-2007 for the
17 purpose of supporting the work of the task force established by
18 section 7, including the payment of reasonable travel expenses
19 for task force members to attend meetings.

20 The sum appropriated shall be expended by the department of
21 the attorney general for the purposes of this Act.

PROPOSED

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. In codifying the new sections added by section
5 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

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

10 SECTION 12. This Act shall take effect on July 1, 2096.

PROPOSED

Report Title:

Human Trafficking; Criminal Offenses; Protection of Victims

Description:

Establishes offenses related to human trafficking and provides related definitions. Provides victims of trafficking an affirmative defense to certain offenses that they may have been forced to commit. Makes trafficking victims eligible for crime victim compensation funds. Requires attorney general to report to legislature annually regarding human trafficking.

Establishes task force to compile and review law and information from other states regarding support for victims of human trafficking and to recommend changes to Hawaii law and programs.

(SD1)

