
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, to bring traffickers to justice, and to
4 protect the rights of trafficked persons. No comprehensive law
5 exists in Hawaii that penalizes the range of offenses involved
6 in the trafficking scheme or recognizes the needs and rights of
7 trafficked persons. Instead, even the most brutal instances of
8 trafficking are punished under laws that also apply to lesser
9 offenses, so that traffickers typically escape deserved
10 punishment.

11 The legislature also finds that existing state laws fail to
12 protect victims of trafficking, who are often in the destination
13 country without proper documentation and are frequently punished
14 more harshly than the traffickers themselves. Trafficked
15 persons also often find it difficult or impossible to report the
16 crimes committed against them or to assist in the investigation
17 and prosecution of these crimes because they are typically
18 unfamiliar with our laws, culture, and language, are subjected



1 to coercion and intimidation, including physical or
2 psychological control and debt bondage, and often fear
3 retribution and forcible removal to countries in which they will
4 face retaliation or other hardship.

5 The legislature also finds that adequate services and
6 facilities do not exist in Hawaii to meet the needs of
7 trafficking victims for health care, housing, education, and
8 legal assistance, which safely support the recovery and ability
9 of trafficked persons to regain control of their lives and also
10 to assist with the prosecution of traffickers.

11 The legislature also finds that, to deter human trafficking
12 and bring its perpetrators to justice and protect the rights of
13 trafficked persons, the United States Congress passed the
14 Victims of Trafficking and Violence Protection Act, the first
15 comprehensive piece of legislation aimed at addressing the range
16 of injustices perpetrated by traffickers. Likewise, to deter
17 human trafficking, Hawaii must recognize that trafficking is a
18 serious offense, which is done by prescribing appropriate
19 punishment, giving priority to the prosecution of trafficking
20 offenses, and protecting, rather than punishing, the victims of
21 these offenses. Hawaii must ensure that state anti-trafficking
22 laws are compatible with the Victims of Trafficking and Violence



1 Protection Act and ensure, to the extent possible, that the
2 victims have access to the rights and benefits available to them
3 under the Victims of Trafficking and Violence Protection Act, or
4 to equivalent rights and benefits under state law.

5 The purpose of this Act is to combat human trafficking,
6 which is a contemporary manifestation of slavery, to ensure just
7 and effective punishment of traffickers and to protect the
8 rights of trafficked persons.

9 SECTION 2. The Hawaii Revised Statutes is amended by
10 adding a new chapter to be appropriately designated and to read
11 as follows:

12 "CHAPTER

13 PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING

14 PART I. DEFINITIONS

15 § -1 Definitions. As used in this chapter:

16 "Actor" means a person who violates any of the provisions
17 of this part.

18 "Commercial sexual activity" means any sex act on account
19 of which anything of value is given to, promised to, or received
20 by any person.

21 "Debt bondage" means the status or condition of a debtor
22 arising from a pledge by the debtor of the debtor's personal



1 services or of those of a person under the debtor's control as a
2 security for debt, if the value of those services as reasonably
3 assessed is not applied toward the liquidation of the debt or
4 the length and nature of those services are not respectively
5 limited and defined.

6 "Extortion" has the same meaning as used in chapter 707,
7 part VII, and includes, but is not limited to, a threat to
8 expose any secret tending to subject any person to hatred,
9 contempt, or ridicule.

10 "Financial harm" includes, but is not limited to, credit
11 extortion as defined by chapter 707, part VII, criminal
12 violation of the usury law as defined by section 478-6, or
13 employment contracts that violate the statute of frauds.

14 "Forced labor or services" means labor, as defined in this
15 section, or services, as defined in this section, that are
16 performed or provided by another person and are obtained or
17 maintained through an actor:

- 18 (1) Causing or threatening to cause serious harm to any
19 person;
- 20 (2) Physically restraining or threatening to physically
21 restrain any person;



- 1 (3) Abusing or threatening to abuse the law or legal
2 process;
- 3 (4) Knowingly destroying, concealing, removing,
4 confiscating, or possessing any actual or purported
5 passport or other immigration document, or any other
6 actual or purported government identification
7 document, of another person;
- 8 (5) Using extortion;
- 9 (6) Causing or threatening to cause financial harm to any
10 person or using financial control over any person; or
- 11 (7) Using any scheme, plan, or pattern intended to cause
12 any person to believe that, if the person did not
13 perform such labor or services, that person or another
14 person would suffer serious harm or physical
15 restraint.

16 "Intentionally" has the same meaning as defined in section
17 702-206(1).

18 "Knowingly" has the same meaning as defined in section 702-
19 206(2).

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

21 "Maintain" means, in relation to labor or services, to
22 secure continued performance thereof, regardless of any initial



1 agreement on the part of the trafficked person to perform such
2 labor or service.

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

4 "Obtain" means, in relation to labor or services, to secure
5 performance thereof.

6 "Services" means an ongoing relationship between a person
7 and the actor in which the person performs activities under the
8 supervision of or for the benefit of the actor or a third party.
9 Commercial sexual activity and sexually explicit performances
10 shall be considered "services" under this chapter.

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

14 "Trafficked person", "victim of trafficking", and
15 "trafficking victim" are used interchangeably and mean a person
16 subjected to the practices set forth in section -2, -3,
17 -4, or -5. In the case of a trafficked person who is a
18 minor, incompetent, incapacitated, or deceased, the legal
19 guardian of the trafficked person or a representative of the
20 trafficked person's estate, another family member, next friend
21 or any other person appointed as suitable by the court may



1 assume the trafficked person's rights, but in no event shall a
2 defendant be named such representative or guardian.

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

5 **PART II. CRIMINAL OFFENSES AND PENALTIES**

6 **§ -2 Trafficking of persons for forced labor or**
7 **services.** (a) Whoever knowingly:

8 (1) Recruits, entices, harbors, transports, provides, or
9 obtains by any means, or attempts to recruit, entice,
10 harbor, transport, provide, or obtain by any means,
11 another person, intending or knowing that the person
12 will be subjected to forced labor or services; or

13 (2) Benefits, financially or by receiving anything of
14 value, from participation in a venture that has
15 engaged in an act described in violation of section
16 -3 or -4, shall, subject to the provisions of
17 section -7, be imprisoned for not more than twenty
18 years.

19 **§ -3 Involuntary servitude.** Whoever knowingly subjects,
20 or attempts to subject, another person to forced labor or
21 services shall be punished by imprisonment for not more than
22 twenty years, subject to the provisions of section -7.

1 § **-4 Sexual servitude of a minor.** Whoever knowingly
2 subjects, or attempts to subject, or who recruits, entices,
3 harbors, transports, provides, or obtains by any means, or
4 attempts to recruit, entice, harbor, transport, provide, or
5 obtain by any means, a minor knowing that the minor will engage
6 in commercial sexual activity, sexually-explicit performance, or
7 the promotion of pornography, or causes or attempts to cause a
8 minor to engage in commercial sexual activity, sexually-explicit
9 performance, or the production of pornography shall be punished
10 by imprisonment as follows, subject to the provisions of section
11 -7:

- 12 (1) In cases involving a minor between the ages of sixteen
13 and eighteen years, not involving force or threat of
14 force, for not more than twenty years;
- 15 (2) In cases in which the minor had not attained the age
16 of sixteen years, not involving force or threat of
17 force, for not more than twenty-five years; and
- 18 (3) In cases in which the violation involved a minor and
19 also involved one or more of the elements of forced
20 labor or services, for not more than thirty years.

21 § **-5 Unlawful conduct with respect to documents in**
22 **furtherance of trafficking or involuntary servitude.** Anyone who

1 knowingly destroys, conceals, removes, confiscates, or
2 possesses, or attempts to destroy, conceal, remove, confiscate,
3 or possess, any actual or purported passport or other
4 immigration document, or any other actual or purported
5 government identification document, of any person to prevent or
6 restrict or attempt to prevent or restrict, without lawful
7 authority, the person's liberty to move or travel in order to
8 maintain the labor or services of that person, when the person
9 is or has been a victim of a violation of section -2, -3,
10 or -4 shall be punished by imprisonment for not more than
11 five years.

12 § -6 **Accomplice liability.** Whoever knowingly aids,
13 abets, or conspires with one or more persons to violate section
14 -2, -3, -4, or -5 shall be punishable in the same
15 manner as for a completed violation of that section.

16 § -7 **Sentencing enhancements.** (a) If the violation of
17 this part involves death, an attempt to kill, kidnapping,
18 attempted kidnapping, sexual assault or abuse, or attempted
19 sexual assault or abuse, the defendant may be sentenced to any
20 term of years or to imprisonment for life.



1 (b) If, as the result of a violation of this part, a
2 trafficking victim suffered bodily injury, the sentence may be
3 enhanced as follows:

4 (1) Bodily injury, an additional five years of
5 imprisonment;

6 (2) Serious bodily injury, an additional ten years of
7 imprisonment; or

8 (3) Permanent or life-threatening bodily injury, an
9 additional twenty years of imprisonment.

10 (c) In determining sentences within statutory maximums,
11 the sentencing court shall take into account the time in which
12 the trafficked person was held in involuntary servitude, forced
13 labor or services, or a minor was held in sexual servitude,
14 with:

15 (1) An additional five years of imprisonment for cases in
16 which the trafficking victim was held for between one
17 hundred eighty days and one year; and

18 (2) An additional ten years of imprisonment for cases in
19 which the trafficked person was held for more than one
20 year.

21 (d) If the defendant knew or shall have known that a
22 victim of the offense was a vulnerable victim, an additional



1 five years of imprisonment may be imposed. A "vulnerable
2 victim" is a person who had no real or acceptable alternative
3 but to submit.

4 (e) In determining sentences within statutory maximums,
5 the sentencing court shall take into account the number of
6 trafficking victims and may impose an additional five years of
7 imprisonment in cases involving more than ten victims. If the
8 offense involved a large number of vulnerable victims, an
9 additional ten years of imprisonment may be imposed.

10 (f) In determining sentences with statutory maximums, the
11 sentencing court shall take into account the age of the victim
12 at the time the crime occurred and, in cases involving minors,
13 shall provide increased sentences in cases involving convictions
14 under section -2 or -3 as follows:

15 (1) In cases involving a minor between the ages of sixteen
16 and eighteen years, not involving force or threat of
17 force, an additional five years may be imposed;

18 (2) In cases in which the minor had not attained the
19 sixteen years, not involving force or threat of force,
20 an additional ten years may be imposed; and



1 (3) In cases in which the violation involved a minor and
2 also involved force or threat of force, an additional
3 twenty years may be imposed.

4 **§ -8 Plea of guilty or nolo contendere by a defendant.**

5 (a) Any plea of guilty or nolo contendere entered by a
6 defendant charged with a crime under section -2, -3,
7 -4, -5, or -6 shall fully state the offenses that
8 justify prosecution under the applicable state law.

9 (b) Any plea of guilty or nolo contendere entered under
10 subsection (a) shall automatically entitle the victim of
11 trafficking to all benefits and rights under this statute.

12 **§ -9 Evidence generally inadmissible.** The following
13 evidence is not admissible in any criminal proceeding under this
14 part:

- 15 (1) Evidence offered to prove that any alleged trafficking
16 victim engaged in other sexual behavior; or
17 (2) Evidence offered to prove any alleged trafficking
18 victim's sexual predisposition.

19 **§ -10 Prosecutorial immunity.** (a) Victims of
20 trafficking shall not be inappropriately incarcerated, fined, or
21 otherwise penalized solely for unlawful acts committed as a
22 direct result of, or incident or related to, being trafficked,



1 such as entering the United States without inspection or
2 documentation, using false documents, unlawful presence in the
3 country, working without documentation, engaging in prostitution
4 or drug possession.

5 (b) Victims of trafficking shall not be held in detention
6 centers, jail, or prison at any time prior to, during, or after
7 all civil, criminal, or other legal proceedings.

8 § -11 **Asset forfeiture.** (a) The court, in imposing
9 sentence on any person convicted of, or who enters a plea of
10 guilty or nolo contendere to, a violation of this part, shall
11 order, in addition to any other sentence imposed and
12 irrespective of any other provision of law, that such person
13 forfeit the following:

14 (1) The person's interest in any property, real or
15 personal, that was used or intended to be used to
16 commit or to facilitate the commission of such
17 violation; and

18 (2) Any property, real or personal, constituting or
19 derived from, any proceeds that such person obtained,
20 directly or indirectly, as a result of such violation.

21 (b) The forfeited assets shall be distributed as follows:



1 (1) Fifty per cent shall be distributed to victims of
2 trafficking. If the amount distributed equals or
3 exceeds the amount of any court-ordered restitution or
4 compensation, the forfeiture shall be deemed to
5 satisfy the order. Any amounts in excess of the order
6 may be retained by the victim;

7 (2) Fifty per cent shall be distributed to the attorney
8 general for the following purposes:

9 (A) To pay expenses incurred by the agency or
10 agencies that investigated and prosecuted the
11 criminal case from which the forfeiture arose;

12 (B) To fund trafficking victim services provided by
13 state or county entities and nonprofit
14 organizations;

15 (C) To fund law enforcement efforts, including
16 special units to investigate alleged trafficking
17 cases, human rights and legal awareness training
18 on trafficking, and witness protection programs
19 for trafficking victims and witnesses; and

20 (D) To fund trafficking prevention measures.



1 **PART III. RESTITUTION AND CIVIL REMEDIES**

2 **§ -12 Mandatory restitution to trafficked persons.** (a)

3 Restitution is mandatory when guilt of an offense under part II
4 has been determined by a plea of guilty or nolo contendere or by
5 trial. In addition to any other amount of loss identified, and
6 authorized by law, the court shall order restitution for the
7 full amount of losses suffered by the victims of trafficking.

8 (b) For purposes of this part, "full amount of losses"
9 means:

10 (1) Lost income, which in the case of a trafficked person
11 includes the greater of:

12 (A) The gross income or value to the defendant of the
13 trafficked person's labor or services; or

14 (B) The value of the trafficked person's labor as
15 guaranteed under the minimum wage and overtime
16 guarantees of state law or the Fair Labor
17 Standards Act, 29 U.S.C. §201 et seq., whichever
18 law results in the higher calculation of lost
19 income;

20 (2) Medical and related professional services relating to
21 physical, psychiatric, or psychological care,
22 including nonmedical care and treatment rendered in



- 1 accordance with a method of healing recognized by
2 state law;
- 3 (3) Physical and occupational therapy or rehabilitation;
- 4 (4) Necessary transportation, temporary housing, and child
5 care expenses;
- 6 (5) In the case of an offense resulting in damage or
7 destruction of property, return of the property, or,
8 if return is impossible, impracticable, or inadequate,
9 payment of the value of the property;
- 10 (6) In the case of an offense resulting in death or bodily
11 injury that results in death, the costs and expenses
12 of necessary funeral and related services;
- 13 (7) Attorneys' fees and other costs and expenses incurred,
14 including those costs and expenses incurred that are
15 related to participation in the investigation or
16 prosecution of the offense or attendance at
17 proceedings related to the offense; and
- 18 (8) Any other losses suffered by the person as a proximate
19 result of the offense.

20 § -13 **Discretionary restitution to trafficked persons.**

21 In the event mandatory restitution or other remedies are not
22 available to a trafficked person, the court may impose an order



1 of restitution when sentencing a defendant for any offense that
2 is a crime of violence or in which an identifiable person or
3 persons has suffered a physical injury or pecuniary loss, or in
4 connection with the entering of a plea agreement or nolo
5 contendere if agreed to by the parties, for any person for up to
6 the "full amount of the losses" incurred by such person.

7 **§ -14 Procedure for issuance of order of restitution.**

8 (a) The court shall order a pre-sentence report with
9 information sufficient for the court to exercise its discretion
10 in fashioning a restitution order. The pre-sentence report
11 shall include, to the extent practicable:

- 12 (1) A complete accounting of losses to each trafficked
13 person;
- 14 (2) Any restitution owed pursuant to a plea agreement or
15 nolo contendere; and
- 16 (3) Information relating to the economic circumstances of
17 each defendant.

18 (b) Before submitting the pre-sentence report, to the
19 extent practicable, notice shall be provided to all identified
20 trafficked persons of, among other things, the following: the
21 amounts subject to restitution, the opportunity for the
22 trafficked person to submit information concerning amount of



1 losses, the availability of a lien in favor of the trafficked
2 person, and the opportunity for the trafficked person to file
3 with the probation officer a separate affidavit relating to
4 amount of trafficked person's losses subject to restitution.

5 (c) Any dispute as to proper amount or type of restitution
6 shall be resolved by the court by the preponderance of the
7 evidence. The burden of demonstrating amount of loss sustained
8 by a trafficked person as a result of the offense shall be on
9 the attorney for the State.

10 (d) In each order of restitution, the court shall order
11 restitution to each trafficked person in accordance with the
12 provisions of this part as determined by the court and without
13 consideration of the economic circumstances of the defendant;
14 provided that the court shall specify the manner in which and
15 the schedule according to which the restitution is to be paid in
16 consideration of the defendant's financial resources, projected
17 earnings, and dependents.

18 (e) If the trafficked person agrees, all or part of the
19 restitution may be in the form of in-kind payments, such as real
20 or personal property.

21 (f) Any amount paid to a trafficked person under an order
22 of restitution shall be reduced by any amount later recovered as



1 compensatory damages for the same loss by the trafficked person
2 in any federal or state civil proceeding, to the extent provided
3 by federal law or the law of such state.

4 § -15 **Enforcement of order of restitution.** (a) An
5 order of restitution may be enforced by the State by all
6 available and reasonable means.

7 (b) An order of restitution shall be deemed a lien in
8 favor of the State on all property and rights to property of the
9 person fined as if the liability of the person fined were a
10 liability for a tax assessed under chapter 231. At a trafficked
11 person's request, the clerk shall issue an abstract of judgment
12 certifying that a judgment has been entered in favor of such
13 trafficked person in the amount specified and, upon registering,
14 recording, docketing, or indexing such abstract, the abstract of
15 judgment shall be a lien on the property of the defendant.

16 (c) The State may enforce judgment imposing a fine or
17 restitution in accordance with the practices and procedures for
18 enforcement of a civil judgment, and the judgment may be
19 enforced against all property or rights to property of the
20 person fined or ordered to pay restitution, with those limited
21 exceptions imposed by state or federal law.



1 (d) If the defendant knowingly fails to pay a delinquent
 2 fine or restitution, the court may resentence the defendant to
 3 any sentence that might originally have been imposed. The
 4 defendant may be sentenced to a term of imprisonment only if the
 5 court determines that:

6 (1) The defendant willfully refused to pay the fine or
 7 failed to make sufficient bona fide efforts to pay the
 8 fine; or

9 (2) In light of the nature of the offense and the
 10 characteristics of the defendant, alternatives to
 11 imprisonment are not adequate to serve the purposes of
 12 punishment and deterrence; provided that, in each
 13 case, imprisonment shall not be more than one year.

14 (e) If the defendant, having been sentenced to pay a fine
 15 or restitution, willfully fails to pay the fine or restitution,
 16 the court may fine such person the greater of:

17 (1) An amount not more than twice the unpaid balance of
 18 the fine or restitution; or

19 (2) \$10,000.

20 § -16 Civil action; limitations; exceptions. (a) A
 21 trafficked person may bring a civil action for actual damages,
 22 compensatory damages, punitive damages, injunctive relief, any



1 combination of those, or any other appropriate relief. A
2 prevailing plaintiff shall also be awarded attorney's fees and
3 costs. Treble damages shall be awarded on proof of actual
4 damage where defendant's acts are willful and malicious.

5 (b) Except as provided in subsection (c), an action
6 brought pursuant to this section shall be commenced within ten
7 years of the date on which the trafficked person was freed from
8 the trafficking situation, or if the trafficked person was a
9 minor when the act occurred, within fifteen years after the date
10 the plaintiff attains the age of eighteen.

11 (c) The limitations period established by subsection (b)
12 shall not apply in the following circumstances:

13 (1) If a person entitled to sue is under a "disability" at
14 the time the cause of action accrues, such that it is
15 impossible or impracticable for the person to bring an
16 action, the time during which the plaintiff is under a
17 disability tolls the running of the time limit for the
18 commencement of the action. For purposes of this
19 paragraph, "disability" includes insanity,
20 imprisonment, or other incapacity or incompetence;

21 (2) The period specified in subsection (b) shall not run
22 against an incompetent or minor plaintiff simply



1 because a guardian ad litem has been appointed. In
2 the event that a minor plaintiff is under a
3 disability, the failure of the minor's guardian ad
4 litem to bring a plaintiff's action within the
5 applicable limitation period will not prejudice the
6 plaintiff's right to do so after the plaintiff's
7 disability ceases;

8 (3) A defendant is estopped from asserting a defense of
9 the limitations period under subsection (b) when the
10 expiration of the period is due to:

11 (A) Conduct by the defendant inducing the plaintiff
12 to delay the filing of the action or preventing
13 the plaintiff from filing the action; or

14 (B) Threats made by the defendant that caused duress
15 upon the plaintiff; or

16 (4) The suspension of the statute of limitations due to
17 disability or estoppel applies to all other related
18 claims arising out of the trafficking situation.

19 (d) In this section, a "criminal action" includes
20 investigation and prosecution and remains pending until final
21 adjudication in the trial court.

1 (e) Any legal guardian, family member, representative of
2 the trafficked person, or court appointee may represent the
3 trafficked person's rights, in the event the trafficked person
4 is deceased or otherwise unable to represent the person's own
5 interests in court.

6 **PART IV. BENEFITS AND SERVICES TO TRAFFICKED PERSONS**

7 **§ -17 Definitions.** For purposes of this part:

8 "Local service provider" refers to legal entities at the
9 county level that offer benefits and services to trafficked
10 persons.

11 "Responsible official" refers to the state officials agency
12 or other entity designated to oversee the provision of services
13 and benefits to trafficked persons and family members of
14 trafficked persons as described in this section.

15 "Services" refers to those services provided to trafficked
16 persons and family members of trafficked persons. Provision of
17 such services shall not be contingent on the trafficked person's
18 immigration status or on the prosecution of the trafficking
19 victim's trafficker.

20 **§ -18 Services.** (a) Notwithstanding any state or
21 county law, ordinance, or rule limiting the ability of an alien
22 to access state or county benefits or services, an alien who is



1 a victim of trafficking shall be eligible for benefits and
2 services under any state or local program, including the
3 criminal injuries compensation commission or an activity funded
4 or administered by any official or agency described in
5 subsection (b).

6 (b) Subject to subsection (c) and, in the case of
7 nonentitlement programs, to the availability of appropriations,
8 the directors of health, human services, and labor, the heads of
9 other state agencies, and local service providers are hereby
10 authorized to provide benefits and services to trafficked
11 persons, without regard to the immigration status of such
12 trafficked persons or the ability or willingness of the
13 trafficked person to participate in the investigation or
14 prosecution of the person's trafficker.

15 (c) Within ninety-six hours of a state or local official
16 having identified the presence of a trafficked person within the
17 State, the responsible official shall review and evaluate the
18 case of the trafficked person, including any attendant crime
19 report, and issue a letter of certification of eligibility or
20 other relevant document entitling the trafficked person to have
21 access to criminal injuries compensation commission funds and
22 other state benefits and services.



1 § **-19 Protections while in custody.** (a) Trafficked
2 persons, while in custody of a responsible official, shall:

3 (1) Not be detained in facilities inappropriate to their
4 status as crime victims;

5 (2) Receive necessary medical care and other assistance;
6 and

7 (3) Be provided law enforcement protection if the person's
8 safety is at risk or if there is a danger of harm by
9 recapture of the trafficked person by a trafficker,
10 including:

11 (A) Taking measures to protect trafficked persons and
12 their family members from intimidation and
13 threats of reprisals and reprisals from
14 traffickers or their associates; and

15 (B) Ensuring that the names and identifying
16 information of trafficked persons and their
17 family members are not disclosed to the public.

18 (b) Where appropriate, responsible officials shall employ
19 civil procedures, including application for temporary
20 restraining orders and protective orders, while protecting
21 trafficking victims and witnesses and their family members.

1 § -20 Access to rights, benefits, and services.

2 Trafficked persons shall be provided with information about
3 their rights and applicable services, including:

4 (1) The right to pro bono and low-cost legal services;

5 (2) The right to access federal and state benefits and
6 services, including regularized immigration status,
7 benefits and services under the Victims of Trafficking
8 and Violence Protection Act, state compensation,
9 assistance, education, and training programs;

10 (3) The names and contact information about relevant local
11 service providers offering services to victims of
12 trafficking and, when relevant, to domestic violence
13 and rape crisis centers;

14 (4) The availability of federal and state protections for
15 victims and witnesses, and their families, faced with
16 threats and intimidation;

17 (5) The legal remedies available, including restitution
18 and compensation in civil and criminal proceedings;

19 (6) The right to privacy and confidentiality;

20 (7) The right to receive notices about status of the case
21 against the trafficker; and



1 (8) The right to access translation services or an oral
2 interpreter if the trafficked person cannot
3 communicate fully in English.

4 § -21 **Medical and related professional services.** The
5 State shall provide the following services:

- 6 (1) Medical and dental care and other assistance
7 including, for victims of sexual assault:
- 8 (A) Free optional confidential testing for HIV and
9 other sexually transmitted diseases; and
 - 10 (B) A counseling session by a medically-trained
11 professional on the accuracy of such tests and
12 the risk of transmission of sexually transmitted
13 diseases;
- 14 (2) Trafficked persons shall be provided mental health
15 counseling to address the psychological trauma
16 associated with human trafficking; and
- 17 (3) Trafficked persons shall receive necessary and
18 appropriate occupational therapy services.

19 § -22 **Social and other services.** The State shall ensure
20 that all trafficked persons have access to comprehensive social
21 and other services necessary for recovery and reintegration,
22 including:



- 1 (1) Language translation services and counseling in the
- 2 trafficked person's native language or language of
- 3 fluency;
- 4 (2) Temporary Assistance to Needy Families, and other
- 5 state or federal welfare benefits;
- 6 (3) Transportation;
- 7 (4) Appropriate and safe housing;
- 8 (5) Child care;
- 9 (6) Education and language training;
- 10 (7) Employment assistance and training;
- 11 (8) Job placement services; and
- 12 (9) Opportunities for employment, education, and training.

13 § **-23 Legal services and protections.** (a) Trafficked
14 persons shall be provided with free legal counsel to:

- 15 (1) Pursue civil actions against the person's traffickers;
- 16 (2) Represent the trafficked person's interests in any
- 17 criminal investigation or prosecution; and
- 18 (3) Assist with applications for immigration benefits or
- 19 regular immigration status.

20 (b) Trafficked persons and prosecution witnesses, and
21 their families, shall be protected from intimidation and
22 retaliation by traffickers and their associates and shall have

1 access to the services provided victim-witness assistance
2 programs.

3 **§ -24 Creation of shelter programs.** (a) The State
4 shall establish shelters specifically for the protection and
5 housing of trafficked persons. Each shelter shall be designed
6 to provide the following basic services to trafficked persons:

7 (1) Shelter operating twenty-four hours a day, seven days
8 a week;

9 (2) A switchboard for crisis calls operating twenty-four
10 hours a day, seven days a week;

11 (3) Temporary housing and food facilities;

12 (4) Psychological support and peer counseling;

13 (5) Referrals to existing services in the community and
14 follow-up on the outcome of the referrals; and

15 (6) Emergency transportation to the shelter and, when
16 appropriate, arrangements with local law enforcement
17 for assistance in providing such transportation.

18 (b) The shelters shall be funded by state-level efforts to
19 coordinate application for federal funds designated for the
20 support of victims of trafficking and additional funds that the
21 legislature shall see fit to earmark for this purpose.



1 § **-25 Crime victim compensation funds.** (a) Trafficked
2 persons are entitled to seek relief from the crime victim
3 compensation commission.

4 (b) An application for a claim based on having been a
5 victim of trafficking may not be denied solely because no police
6 report was made by the trafficked person.

7 (c) The crime victim compensation commission shall adopt
8 guidelines that allow the commission to consider and approve
9 applications for assistance based upon evidence other than a
10 police report to establish that an applicant had been a victim
11 of trafficking. The evidence may include, but is not limited
12 to, documentation submitted to support the trafficked person's
13 application for T nonimmigrant status, letters from caseworkers,
14 and sworn affidavit from the applicant, or the applicant's
15 friends, family, or other public contacts familiar with the
16 circumstance of the incident. Persons who may provide this
17 evidence include, but are not limited to, teachers, medical
18 professionals, or religious leaders.

19 **PART V. IMMIGRATION STATUS**

20 § **-26 Assisting trafficked persons to secure immigration**
21 **status and federal benefits.** To ensure that trafficking victims
22 are able to access all available federal benefits and programs



1 for trafficked persons, the relevant state law enforcement
2 agency officials shall:

3 (1) Keep federal authorities informed about trafficking
4 cases in the State;

5 (2) Within seventy-two hours of determining that, more
6 likely than not, an immigrant was a victim of
7 trafficking, and upon the written request from the
8 trafficked person or the trafficked person's legal
9 representative, submit a written request to the
10 appropriate federal authorities requesting that the
11 trafficking victim be granted the temporary
12 immigration status known as "continued presence" under
13 the Victims of Trafficking and Violence Protection
14 Act;

15 (3) Within seventy-two hours of a written request for
16 documentation from a person identified by local or
17 state authorities as someone who had, more likely than
18 not, been a victim of trafficking or a written request
19 from the person's legal representative, provide the
20 person with a completed form Supplement B to Form I-
21 914, Declaration of Law Enforcement Officer for Victim
22 of Trafficking in Persons that satisfies the Law



1 Enforcement Agency Endorsement regulations in 8 C.F.R.
2 section 214.11(f)(1) in support of the person's
3 application for the T nonimmigrant status or the U
4 nonimmigrant status available to victims of
5 trafficking under the Victims of Trafficking and
6 Violence Protection Act;

7 (4) Within seventy-two hours of a request for
8 documentation from a person identified by local or
9 state authorities as someone who had, more likely than
10 not, been a victim of trafficking, or a written
11 request from the person's legal representative,
12 provide the person with documents in support of such
13 person's request for benefits and services authorized
14 by the Victims of Trafficking and Violence Protection
15 Act to be provided to trafficking victims by the
16 Office of Refugee Resettlement in the Department of
17 Health and Human Services.

18 § -27 Referral to immigration for removal or deportation
19 prohibited. No state or local official shall transmit, in any
20 form, any information identifying, in any way, the name or
21 location of a trafficked person to federal immigration officials
22 responsible for removal or deportation of undocumented aliens.



1 **PART VI. TRAINING, TASK FORCE AND DATA COLLECTION**

2 **§ -28 Training to identify and protect trafficking**

3 **victims.** Training shall be made available in all relevant local
4 and state agencies, including, but not limited to, healthcare,
5 hospital, law enforcement, labor, agriculture, housing, and
6 social service, to:

- 7 (1) Educate officials on the phenomenon of human
8 trafficking, state and federal laws on human
9 trafficking, the rights and needs of trafficked
10 persons, and the tools necessary to provide effective
11 services to trafficked persons;
- 12 (2) How to recognize and identify trafficking victims;
- 13 (3) Methods for protecting trafficking victims and
14 advising them of their rights; and
- 15 (4) Procedures and techniques for handling specialized
16 needs of victims who may face cultural, language, and
17 other barriers that impede ability to request and
18 obtain available services.

19 **§ -29 State interagency anti-trafficking task force.**

20 (a) The Governor shall establish a state interagency anti-
21 trafficking task force to be comprised of the attorney general
22 and the directors of health, human services, and labor, or their



1 designees, officials from other appropriate state agencies, and
2 representatives from local service providers.

3 (b) The task force shall carry out the following
4 activities:

5 (1) Coordinate the implementation of this part;

6 (2) Coordinate the implementation of part V, including
7 developing protocols and training individuals within
8 designated state agencies, nongovernmental
9 organizations, and private entities to provide data
10 collection services and immigration resources to
11 trafficked persons;

12 (3) Measure and evaluate progress of the State in the
13 areas of trafficking prevention, protection and
14 assistance to victims of trafficking, and prosecution
15 and enforcement against traffickers;

16 (4) Expand interagency procedures to collect and organize
17 data, including significant research and resource
18 information on domestic trafficking. Any data
19 collection procedures established under this paragraph
20 shall respect the confidentiality of trafficking
21 victims;



1 (5) Engage in efforts to facilitate cooperation among
2 countries of origin, transit, and destination. These
3 efforts shall aim to strengthen local and regional
4 capacities to prevent trafficking and prosecute
5 traffickers; and

6 (6) Engage in consultation and advocacy with governmental
7 and nongovernmental organizations, among other
8 entities, to advance the purposes of this part and
9 part V.

10 (c) The attorney general is authorized to designate a
11 director of the task force. The director shall have the primary
12 responsibility for assisting the task force in carrying out the
13 purposes of this part and may have additional responsibilities
14 as determined by the attorney general. The director shall
15 consult with nongovernmental organizations, multilateral
16 organizations, and trafficking victims or other affected
17 persons. The director shall have the authority to take evidence
18 in public hearings or by other means.

19 (d) The interagency anti-trafficking task force is
20 authorized to seek federal grants available to states, local
21 government, nonprofit organizations for services programs under
22 the Victim of Trafficking and Violence Protection Act.



1 (e) Not less than twenty days prior to the convening of
2 each regular session, the attorney general shall provide to the
3 legislature a report that includes information on: the progress
4 of the State in the areas of trafficking prevention, protection,
5 and assistance to victims of trafficking; prosecution and
6 enforcement against traffickers; and the number of persons who
7 received benefits or other services under this chapter in
8 connection with programs or activities funded or administered by
9 the agencies or officials during the preceding fiscal year.

10 § -30 **Protocols and training for law enforcement**

11 **officers.** The State shall establish protocols and training for
12 law enforcement officers to assist trafficked persons in
13 accessing nonimmigrant status and federal benefits, including
14 mechanisms for coordinating with the federal officials to ensure
15 that trafficked persons are able to access their rights under
16 federal law.

17 § -31 **Data collection.** (a) On or before June 30 of
18 each year, the attorney general shall submit a report to the
19 United States Attorney General, with respect to the preceding
20 fiscal year, the number, if any, of otherwise eligible
21 applicants who did not receive visas under section
22 101(a)(1)(5)(T) of the Immigration and Nationality Act, or who



1 were unable to adjust their status under section 245(l) of the
2 Act, solely on account of the unavailability of visas due to the
3 limitation imposed by section 214(n)(1) or 245(l)(4)(A) of the
4 Act.

5 (b) The relevant state authorities shall also collect data
6 on trafficking cases, including:

7 (1) The number of trafficked persons who received and the
8 number of trafficked persons who were refused:

9 (A) Continuous physical presence status;

10 (B) T nonimmigrant visas; and

11 (C) Federal benefits from the Department of Health
12 and Human Services;

13 (2) The number of cases investigated;

14 (3) The number of prosecutions under part II;

15 (4) The number of convictions and plea bargains under part
16 II; and

17 (5) The age, sex, and nationality of the trafficking
18 victims and defendants in all cases prosecuted.

19 **§ -32 Creation of a resource center.** (a) An agency or
20 agencies designated by the attorney general shall develop and
21 disseminate throughout the State information and materials
22 concerning human trafficking, including, but not limited to, a



1 procedures manual on the identification and prevention of human
2 trafficking. The agency or agencies designated by the attorney
3 general shall also establish a resource center for the
4 collection, retention, and distribution of educational materials
5 related to human trafficking.

6 (b) The programs created in subsection (a) shall be
7 developed consistent with the availability of funds from the
8 federal government for human trafficking prevention and
9 education.

10 § -33 **Creation of a liaison to the department of**
11 **justice.** The attorney general shall establish a liaison with
12 the United States Department of Justice in order to harmonize
13 the State's response to human trafficking with the federal
14 government's response to trafficking. This liaison shall:

15 (1) Facilitate the legal processes over which the federal
16 government has sole authority, including, but not
17 limited to, those processes through which overseas
18 family members of trafficked persons can receive
19 protection from the United States Government;

20 (2) Advise the attorney general of all federal funding
21 that may be available for implementing the various
22 elements of the State's responses to human



1 trafficking, with particular attention to shelter
2 funding; and

3 (3) Endeavor, in conjunction with nongovernmental
4 organizations, to secure federal documents enabling
5 trafficked persons to have access to federal benefits
6 and services."

7 SECTION 3. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$, or so much
9 thereof as may be necessary for fiscal year 2006-2007, for the
10 purpose of implementing part II of section 2 of this Act.

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

13 SECTION 4. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$, or so much
15 thereof as may be necessary for fiscal year 2006-2007, for
16 investigation of crimes and labor violations established by this
17 Act.

18 The sum appropriated shall be expended by the department of
19 labor for the purposes of this Act.

20 SECTION 5. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$, or so much



1 thereof as may be necessary for fiscal year 2006-2007, for the
2 purpose of implementing part IV of section 2 of this Act.

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

5 SECTION 6. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$, or so much
7 thereof as may be necessary for fiscal year 2006-2007, for the
8 purpose of implementing part VI of section 2 of this Act.

9 The sum appropriated shall be expended by the attorney
10 general for the purposes of this Act.

11 SECTION 7. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun, before its effective date.

14 SECTION 8. If any provision of this Act, or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act, which can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 9. This Act shall take effect on July 1, 2006.

21

INTRODUCED BY: Theranne Chun Oakland
Carol Fukunaga

SB2142

Report Title:

Human Trafficking; Protection for Victims

Description:

Enacts a comprehensive scheme of criminal and civil remedies and services to victims of human trafficking and programs to prevent, investigate, and prosecute offenses relating to human trafficking.

