

JAN 18 2008

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Human trafficking is a worldwide form of
2 exploitation in which men, women, and children are bought, sold,
3 and held against their will in slave-like conditions. People
4 are trafficked and forced to work in the commercial sex trade,
5 sweatshops, agricultural settings, domestic service, and other
6 types of servitude. In addition to the tremendous personal
7 damage suffered by individual trafficking victims, this global
8 crime has broad societal repercussions. It fuels criminal
9 networks, imposes public health costs, and erodes government
10 authority.

11 Human trafficking occurs worldwide and often involves
12 transnational criminal organizations, violations of labor and
13 immigration codes, and government corruption. Although their
14 circumstances vary, fraud, force, or coercion typically
15 distinguish trafficking victims from people who are smuggled.
16 Moreover, most trafficking cases follow the same pattern: people
17 are abducted or recruited in the country of origin, transferred
18 through transit regions, and then exploited in the destination



1 country. People may also be trafficked within the borders of
2 their country of residence.

3 Trafficking victims also include agricultural workers who
4 are brought into the United States; held in crowded, unsanitary
5 conditions; threatened with violence if they attempt to leave;
6 given no or very low pay; and kept under constant surveillance.

7 Currently, the United States government is working to
8 address this issue through funding and programming designed to
9 prevent trafficking, prosecute traffickers, and protect victims
10 through the Trafficking Victims Protection Act of 2000 and the
11 reauthorization and further refinement of this act in 2003 and
12 2005.

13 The Trafficking Victims Protection Act is used successfully
14 to prosecute human traffickers and to provide services for and
15 to protect the rights of trafficked persons. State and local
16 authorities may encounter victims of trafficking while
17 conducting routine arrests; inspecting buildings, factories, and
18 farms; operating fire, rescue, and medical emergency services;
19 and working with child abuse and neglect cases. Furthermore,
20 often members of the general public have identified human
21 trafficking victims. As the victims' neighbors, fellow
22 worshipers, or others in the community notice that something



1 does not seem right with the victims' circumstances, they have
2 made the reports that ultimately resulted in a criminal
3 investigation.

4 Currently, thirty-three states have passed anti-trafficking
5 laws that specifically define and criminalize the act of
6 trafficking in persons. However, unlike other states that have
7 passed legislation similar to the Trafficking Victims Protection
8 Act, Hawaii has distinct case law that would make the
9 establishment of separately defined anti-trafficking criminal
10 provisions difficult. Specifically, because Hawaii's criminal
11 laws already provide for offenses that may constitute human
12 trafficking, such as kidnapping, extortion, and promoting
13 prostitution, a separate human trafficking offense would likely
14 lead to overlap with existing offenses. Such an overlap raises
15 concerns that the proposed higher grade offense will violate the
16 "Modica Rule". In *State v. Modica*, 58 Haw. 249, 567 P.2d 420
17 (1977), the Hawaii supreme court stated that, "where the same
18 act committed under the same circumstances is punishable either
19 as a felony or as a misdemeanor, under either of two statutory
20 provisions, and the elements of proof essential to either
21 conviction are exactly the same, a conviction under the felony
22 statute would constitute a violation of the defendant's rights



1 to due process and the equal protection of the laws". This rule
2 applies not only to felonies and misdemeanors, but also to any
3 crimes with differing grades of offenses. In a *Modica* type of
4 situation, the prosecutors would be compelled to prosecute under
5 the lesser grade offense. Therefore, when a proposed human
6 trafficking crime and an existing penal code crime would require
7 the same elements of proof, the prosecution would be required to
8 prosecute the lesser charge.

9 To ensure that trafficking crimes are properly prosecuted
10 and not downgraded based upon the existence of an identical,
11 lesser-grade offense, this Act amends the existing criminal
12 statutes, specifically the kidnapping, extortion, and promoting
13 prostitution statutes, that are likely to be used to prosecute
14 human trafficking cases. In addition, the Act creates the new
15 offense of sexual exploitation of a minor. It is the intent of
16 this Act that a perpetrator be held strictly liable with respect
17 to the attendant circumstance of the victim's age in cases
18 involving sexual exploitation of a minor or promoting
19 prostitution in the first degree involving a minor. These
20 provisions would enable prosecution of human trafficking
21 offenses under Hawaii law in a manner that is roughly equivalent
22 to prosecutions under the Trafficking Victims Protection Act



1 thus facilitating the successful prosecution of these heinous
2 offenses.

3 This Act also amends section 351-32, Hawaii Revised
4 Statutes, to include sexual exploitation of a minor and
5 promoting prostitution in the first degree, so that the victims
6 may be eligible for compensation from the crime victim
7 compensation commission. The intent of this Act is to establish
8 eligibility for crime victims' compensation for all human
9 trafficking victims whose cases occur within the State of
10 Hawaii. Further, this Act amends the definition of
11 "racketeering activity" in section 842-1, Hawaii Revised
12 Statutes, to include sexual exploitation of a minor.

13 In addition, this Act improves the protections for minors
14 by eliminating the distinction within the promoting prostitution
15 statute between minors under sixteen and minors under eighteen,
16 thus mirroring provisions of the Trafficking Victims Protection
17 Act. Promoting prostitution of any minor is human trafficking.
18 This elevates the penalty for promoting prostitution of sixteen-
19 and seventeen-year-olds to the same level that currently exists
20 for all other minors. It also changes the term "prostitutes" in
21 section 712-1203(a), Hawaii Revised Statutes, "promoting



1 prostitution in the second degree," to "prostituted persons," as
2 trafficking victims are not "prostitutes" voluntarily.

3 SECTION 2. Chapter 707, Hawaii Revised Statutes, is
4 amended by adding to part VI a new section to be appropriately
5 designated and to read as follows:

6 "§707- Sexual exploitation of a minor. (1) A person
7 commits the offense of sexual exploitation of a minor if the
8 person knowingly or recklessly:

9 (a) Causes, entices, persuades, induces, or otherwise aids
10 a minor to engage in activity as an erotic or nude
11 massager or exotic or nude dancer; or

12 (b) Engages in conduct designed to institute, aid, or
13 facilitate an act or enterprise whereby a minor
14 engages in activity as an erotic or nude massager or
15 exotic or nude dancer; or

16 (c) Accepts or receives money or other property pursuant
17 to an agreement or understanding whereby the person
18 participates or is to participate in the proceeds
19 resulting from a minor engaging in activity as an
20 erotic or nude massager or exotic or nude dancer; or



1 (d) Recruits, entices, provides, or obtains a minor
2 knowing that the minor will engage in activity as an
3 erotic or nude massager or exotic or nude dancer.

4 (2) In addition to other remedies that may be provided by
5 law, any property used or intended to be used to facilitate the
6 commission of the offense of sexual exploitation of a minor,
7 proceeds derived from that offense, or property acquired or
8 maintained, in whole or in part, with proceeds of that offense
9 may be forfeited to the State subject to the requirements of
10 chapter 712A.

11 (3) As used in this section:

12 "Erotic or nude massager" means a nude person providing
13 massage services with or without a license.

14 "Exotic or nude dancer" means a person performing, dancing,
15 or entertaining in the nude and includes patrons participating
16 in a contest or receiving instruction in nude dancing.

17 "Minor" means any person less than eighteen years of age.

18 "Nude" means unclothed or in attire including, but not
19 limited to, sheer or see-through attire, so as to expose to view
20 any portion of the pubic hair, anus, cleft of the buttocks,
21 genitals, or any portion of the female breast below the top of
22 the areola.



1 (4) Sexual exploitation of a minor is a class B felony."

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

4 "**§351-32 Violent crimes.** The crimes to which part III of
5 this chapter applies are the following and no other:

- 6 (1) Murder in the first degree (section 707-701);
- 7 (2) Murder in the second degree (section 707-701.5);
- 8 (3) Manslaughter (section 707-702);
- 9 (4) Negligent homicide in the first degree (section 707-
10 702.5);
- 11 (5) Negligent homicide in the second degree (section 707-
12 703);
- 13 (6) Negligent injury in the first degree (section 707-
14 705);
- 15 (7) Negligent injury in the second degree (section 707-
16 706);
- 17 (8) Assault in the first degree (section 707-710);
- 18 (9) Assault in the second degree (section 707-711);
- 19 (10) Assault in the third degree (section 707-712);
- 20 (11) Kidnapping (section 707-720);
- 21 (12) Sexual assault in the first degree (section 707-730);
- 22 (13) Sexual assault in the second degree (section 707-731);



1 (14) Sexual assault in the third degree (section 707-732);

2 (15) Sexual assault in the fourth degree (section 707-733);

3 (16) Abuse of family [or] household member (section 709-
4 906); [and]

5 (17) Sexual exploitation of a minor (section 707-);

6 (18) Promoting prostitution in the first degree (section
7 712-1202); and

8 [~~(17)~~] (19) Terrorism, as defined in Title 18 United States
9 Code section 2331."

10 SECTION 4. Section 707-720, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§707-720 Kidnapping.** (1) A person commits the offense
13 of kidnapping if the person intentionally or knowingly restrains
14 another person with intent to:

15 (a) Hold that person for ransom or reward;

16 (b) Use that person as a shield or hostage;

17 (c) Facilitate the commission of a felony or flight
18 thereafter;

19 (d) Inflict bodily injury upon that person or subject that
20 person to a sexual offense;

21 (e) Terrorize that person or a third person; [~~e~~]



1 (f) Interfere with the performance of any governmental or
2 political function~~[-]~~; or

3 (g) Unlawfully obtain the labor or services of that
4 person, regardless of whether related to the
5 collection of a debt.

6 (2) As used in this section:

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

8 "Services" means a relationship between a person and the
9 actor in which the person performs activities under the
10 supervision of or for the benefit of the actor. Prostitution-
11 related and obscenity-related activities as set forth in chapter
12 712 are forms of "services" under this section. Nothing in this
13 section shall be construed to legitimize or legalize
14 prostitution.

15 ~~[(2)]~~ (3) Except as provided in subsection ~~[(3),]~~ (4),
16 kidnapping is a class A felony.

17 ~~[(3)]~~ (4) In a prosecution for kidnapping, it is a defense
18 which reduces the offense to a class B felony that the defendant
19 voluntarily released the victim, alive and not suffering from
20 serious or substantial bodily injury, in a safe place prior to
21 trial."



1 SECTION 5. 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 expose the person to
7 the risk of serious bodily injury[+~~or~~

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

9 SECTION 6. Section 707-764, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§707-764 Extortion.** A person commits extortion if the
12 person does any of the following:

13 (1) Obtains, or exerts control over, the property, labor,
14 or services of another with intent to deprive another
15 of property, labor, or services by threatening by word
16 or conduct to:

17 (a) Cause bodily injury in the future to the person
18 threatened or to any other person;

19 (b) Cause damage to property or cause damage, as
20 defined in section 708-890, to a computer,
21 computer system, or computer network;



- 1 (c) Subject the person threatened or any other person
- 2 to physical confinement or restraint;
- 3 (d) Commit a penal offense;
- 4 (e) Accuse some person of any offense or cause a
- 5 penal charge to be instituted against some
- 6 person;
- 7 (f) Expose a secret or publicize an asserted fact,
- 8 whether true or false, tending to subject some
- 9 person to hatred, contempt, or ridicule, or to
- 10 impair the threatened person's credit or business
- 11 repute;
- 12 (g) Reveal any information sought to be concealed by
- 13 the person threatened or any other person;
- 14 (h) Testify or provide information or withhold
- 15 testimony or information with respect to
- 16 another's legal claim or defense;
- 17 (i) Take or withhold action as a public servant, or
- 18 cause a public servant to take or withhold such
- 19 action;
- 20 (j) Bring about or continue a strike, boycott, or
- 21 other similar collective action, to obtain
- 22 property that is not demanded or received for the



1 benefit of the group that the defendant purports
2 to represent; [~~or~~]

3 (k) Destroy, conceal, remove, confiscate, or possess
4 any actual or purported passport, or any other
5 actual or purported government identification
6 document, of another person; or

7 [~~(k)~~] (l) Do any other act that would not in itself
8 substantially benefit the defendant but [~~which~~]
9 that is calculated to harm substantially some
10 person with respect to the threatened person's
11 health, safety, business, calling, career,
12 financial condition, reputation, or personal
13 relationships;

14 (2) Intentionally compels or induces another person to
15 engage in conduct from which another has a legal right
16 to abstain or to abstain from conduct in which another
17 has a legal right to engage by threatening by word or
18 conduct to do any of the actions set forth in
19 paragraph (1)(a) through [~~(k)~~] (l); or

20 (3) Makes or finances any extortionate extension of
21 credit, or collects any extension of credit by
22 extortionate means.



1 (4) As used in this section:

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

4 "Services" means a relationship between a person
5 and the actor in which the person performs activities
6 under the supervision of or for the benefit of the
7 actor. Prostitution-related and obscenity-related
8 activities as set forth in chapter 712 are forms of
9 "services" under this section. Nothing in this
10 section shall be construed to legitimize or legalize
11 prostitution."

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

14 **"§712-1202 Promoting prostitution in the first degree.**

15 (1) A person commits the offense of promoting prostitution in
16 the first degree if the person knowingly:

17 (a) Advances prostitution by compelling a person by
18 ~~[criminal coercion]~~ force, threat, or intimidation to
19 engage in prostitution, or profits from such coercive
20 conduct by another; or

21 (b) Advances or profits from prostitution of a person less
22 than ~~[sixteen]~~ eighteen years old.



1 (2) "Threat" as used in this section means any threat
2 proscribed by section 707-764(1).

3 [~~2~~] (3) Promoting prostitution in the first degree is a
4 class B felony."

5 SECTION 8. Section 712-1203, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of promoting
8 prostitution in the second degree if the person knowingly[~~+~~

9 ~~(a) Advances]~~ advances or profits from prostitution by
10 managing, supervising, controlling, or owning, either
11 alone or in association with others, a house of
12 prostitution or a prostitution business or enterprise
13 involving prostitution activity by two or more
14 prostitutes[~~+~~ ~~or~~

15 ~~(b) Advances or profits from prostitution of a person less~~
16 ~~than eighteen years old]."~~

17 SECTION 9. Section 842-1, Hawaii Revised Statutes, is
18 amended by amending the definition of "racketeering activity" to
19 read as follows:

20 "'Racketeering activity" means any act or threat involving,
21 but not limited to, murder, kidnapping, sexual exploitation of a
22 minor, gambling, criminal property damage, robbery, bribery,



1 extortion, theft [~~or~~], prostitution, or any dealing in narcotic
 2 or other dangerous drugs [~~which~~] that is chargeable as a crime
 3 under state law and punishable by imprisonment for more than one
 4 year."

5 SECTION 10. This Act does not affect rights and duties
 6 that matured, penalties that were incurred, and proceedings that
 7 were begun, before its effective date.

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

10 SECTION 12. This Act shall take effect upon its approval.

11

INTRODUCED BY: Roselyn H. Bah
Marine D. Brown
Jill
Shiranne Chun Oakland



Report Title:

Human Trafficking

Description:

Enables prosecution of human trafficking under Hawaii law by creating new offense of sexual exploitation of a minor, amending existing kidnapping, extortion, and prostitution offenses, and including sexual exploitation of a minor in definition of racketeering. Eliminates distinction between minors under 18 and minors under 16 for purposes of promoting prostitution. Makes victims of sexual exploitation of a minor and promoting prostitution in the first degree eligible for crime victim compensation.

