

JAN 20 2010

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# A BILL FOR AN ACT

RELATING TO CRIME.

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

1           SECTION 1. The legislature finds that human trafficking,  
2 for the purposes of both sexual and labor exploitation, is a  
3 growing problem around the world and in Hawaii. In February  
4 2009, the United Nations Office on Drugs and Crime issued a  
5 report regarding human trafficking, "Global Report on  
6 Trafficking in Persons" (Report). According to the Report, the  
7 most common form of human trafficking (seventy-nine per cent) is  
8 for sexual exploitation. The victims of sexual exploitation are  
9 predominantly women and girls. The second most common form of  
10 human trafficking is for forced labor purposes (eighteen per  
11 cent), although this form of trafficking may be underestimated  
12 because it is detected and reported less frequently than  
13 trafficking for sexual exploitation.

14           Most human traffickers exploit people of the same  
15 nationality. Worldwide, an estimated four million to twenty-  
16 seven million people are trafficked and almost twenty per cent  
17 of all trafficking victims are children. In 2004, it was  
18 estimated that 14,500 to 17,500 international victims were being

1 trafficked into the United States each year. Human trafficking  
2 is a multibillion-dollar-a-year business, surpassing illegal  
3 arms dealing and ranking as the second largest criminal industry  
4 in the world behind drug dealing, according to the United States  
5 Department of Health and Human Services' Administration for  
6 Children and Families. Total yearly profits generated by the  
7 human trafficking industry are estimated to be \$32,000,000,000,  
8 according to United Nations experts.

9 The United States federal government has sought to combat  
10 the human trafficking problem, adopting the Trafficking Victims  
11 Protection Act of 2000, and subsequently amending the Act in  
12 2003 (the Trafficking Victims Protection Reauthorization Act of  
13 2003), 2005 (the Trafficking Victims Protection Reauthorization  
14 Act of 2005), and 2008 (the William Wilberforce Trafficking  
15 Victims Protection Reauthorization Act of 2008) to combat this  
16 modern form of slavery. The initial Act is the cornerstone of  
17 the national effort to eliminate human trafficking. The  
18 Trafficking Victims Protection Reauthorization Acts of 2003 and  
19 2005 expanded the protection and rights of trafficking victims  
20 to include domestic trafficked victims (American citizens) and  
21 increased federal spending on the effort to combat trafficking.



1 While the federal Acts are crucial to combating in human  
2 trafficking, these laws focus on the international dimension of  
3 trafficking. They address organized networks specializing in  
4 the illicit transport of human beings across political and  
5 geographical boundaries, and focus on large-volume traffickers  
6 designated as "significant" traffickers because they play a  
7 significant role in severe forms of trafficking. Because  
8 federal officials cannot police the enormous volume of  
9 immigration and trafficking issues alone, they have urged the  
10 individual states to participate. According to the United  
11 States Department of State's Trafficking in Persons Report  
12 (2009), as of April 2009, forty-two states have passed anti-  
13 trafficking laws. Hawaii remains one of eight states without  
14 state laws defining human trafficking.

15 Hawaii is not immune to trafficking in persons. Hawaii's  
16 busy tourist, construction, and agricultural industries, large  
17 military population, and location as a Pacific transit point  
18 make it a high-risk region for labor trafficking. Men and women  
19 are brought to Hawaii and forced to work as modern-day slaves  
20 for months or years before they either escape or are rescued and  
21 often, once they are discovered, these persons are not  
22 recognized as victims, and are often arrested or deported. Men



1 who are trafficked into Hawaii are often subject to forced  
2 labor, including for use in construction, agriculture,  
3 landscaping, and fishing.

4 Sexual human trafficking is also a problem in Hawaii.  
5 Honolulu is recognized as a place as having a considerable  
6 amount of child sex-trafficking by the Federal Bureau of  
7 Investigation, which prompted its Innocence Lost National  
8 Initiative to include Honolulu as one of twenty-nine cities  
9 subject to a three-day law enforcement action, Operation Cross  
10 Country II, that is aimed at combating sex trafficking of  
11 children. Hawaii is also plagued by trafficking of adults.  
12 Women are commonly trafficked into Hawaii internationally and  
13 nationally to work in the sex industry, in strip clubs, massage  
14 parlors, brothels, and for street prostitution. They are also  
15 trafficked here as mail-order brides for the purpose of domestic  
16 servitude.

17 Victims trafficked into Hawaii sometimes take out  
18 exorbitant "loans" to pay their "recruiters", who have deceived  
19 them with regards to the type of work they will do and the  
20 amount of payment they will receive. This debt bondage serves  
21 to keep the victim enslaved in the futile attempt to work to  
22 repay a debt that can never be repaid. Victims are promised



1 good living conditions and the opportunity to earn money to  
2 support their families. Once they arrive in Hawaii, however,  
3 their passports or other identification are confiscated, and  
4 they are threatened and often physically and sexually assaulted,  
5 are forced to live and work in substandard conditions, and are  
6 paid nominal or no wages at all.

7 Because there is no specific crime of sexual human  
8 trafficking in Hawaii, identifying individuals who are at high  
9 risk of becoming trafficking victims is difficult. Local teens  
10 may be especially vulnerable to sexual human trafficking,  
11 particularly when there is a history of physical or sexual abuse  
12 that causes them to run away from home and attempt to survive on  
13 the streets. These teens may turn to prostitution to feed  
14 themselves, which essentially marks them as candidates for  
15 traffickers. Cities such as Dallas, Texas, consider teens who  
16 have run away from home more than three times to be "high risk  
17 victims", because of the high probability of their being  
18 recruited and trafficked out of the jurisdiction. In Honolulu  
19 in 2008, an estimated one hundred eighty teenagers had run away  
20 four or more times. Lack of human trafficking legislation makes  
21 it difficult to identify and provide these high risk victims



1 with services that would hinder their recruitment into  
2 trafficking rings.

3 The legislature finds that additional protections must be  
4 put in place to address this growing problem in Hawaii.  
5 Existing laws criminalize certain conduct relating to aspects of  
6 human trafficking, but do not address the trafficking problem  
7 holistically, directly, or completely, and do not protect the  
8 victims of human traffickers. Offenses such as extortion or  
9 promoting prostitution do not address the evil of human  
10 trafficking or the conduct of transporting, recruiting,  
11 enticing, or harboring persons for involuntary slavery purposes.

12 Additionally, the penalties for existing offenses do not  
13 adequately or appropriately address the harms done by human  
14 traffickers; nor do current penalties for existing offenses  
15 deter similar conduct in the future or warn potential victims of  
16 the identities of human traffickers. Human traffickers, charged  
17 under existing criminal statutes, are not necessarily required  
18 to compensate their victims for work performed by their victims.  
19 Traffickers using a business as a cover for their practices do  
20 not suffer revocation of their business licenses. These types  
21 of penalties are reasonably related to the trafficking conduct  
22 and should be instituted.



1           Moreover, sexual human traffickers, who compel their  
2 victims into prostitution through intimidation, fear, and fraud,  
3 are not subject to registration and notification procedures as  
4 sex offenders, even though their victims, like the victims of  
5 sex offenders, bear continuing stigma and long-term  
6 consequences. The legislature finds that some measure of  
7 protection to the public is required by ensuring the release of  
8 relevant information concerning the presence of sexual human  
9 traffickers in the community.

10           Further, the deferred acceptance of guilty or no contest  
11 plea program may be available to these traffickers under  
12 existing law. While the purpose of this program is to give a  
13 defendant the opportunity to keep his or her record free of a  
14 criminal conviction in cases involving first time, accidental,  
15 or situational offenders, the conduct of human trafficking is so  
16 egregious, the legislature finds that this "second chance"  
17 program should not be available to human traffickers. This will  
18 better address and rectify the harms done by human traffickers.

19           The legislature finds that there may be some who are  
20 concerned that constitutional obstacles, such as due process,  
21 equal protection, or double jeopardy, may obstruct the  
22 prosecution of human trafficking offenses herein, where elements



1 of proof essential to the human trafficking offenses are shared  
2 with elements of proof essential to other offenses. However,  
3 these concerns are misplaced since the existing criminal  
4 offenses touch on some, but not all, of the essential elements  
5 comprising human trafficking.

6 One such argument is the "Modica" issue. In a situation  
7 where the human trafficking offense is chargeable as a felony  
8 and an existing offense is chargeable as a misdemeanor, then the  
9 ability of the prosecution to choose between a felony or  
10 misdemeanor charge for similar conduct could raise due process  
11 and equal protection arguments, as argued by the defendant in  
12 State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977). Such  
13 arguments are not applicable to the human trafficking offenses  
14 created by this Act, because the elements for these offenses are  
15 not exactly the same as the underlying offenses described as  
16 "means" in the human trafficking offenses. Nor are the elements  
17 of the human trafficking offenses exactly the same as similar  
18 offenses, such as promoting prostitution. Because the elements  
19 of the human trafficking offenses and the existing offenses  
20 merely overlap, no due process or equal protection violations  
21 exist under Modica. As explained by the Hawaii supreme court in  
22 Modica, where the same act committed under the same





1 circumstances is punishable either as a felony or as a  
2 misdemeanor, under either of two statutory provisions, and the  
3 elements of proof essential to either conviction are exactly the  
4 same, a conviction under the felony statute would constitute a  
5 violation of the defendant's rights to due process and the equal  
6 protection of the laws. However, where elements of two statutes  
7 merely overlap, but are not exactly the same, then there is no  
8 defense to an indictment under one statute that the accused  
9 might have been charged under another.

10 Another concern is that because an underlying means for  
11 controlling or gaining control over a trafficking victim  
12 constitutes its own offense, such as kidnapping or extortion,  
13 the underlying offense would be a lesser included offense of the  
14 trafficking statute and, therefore, imposing punishment under  
15 both statutes would be impermissible "multiple punishments"  
16 under the double jeopardy clause of the Hawaii State  
17 Constitution. However, as the Hawaii supreme court stated  
18 recently in State v. Feliciano, 107 Hawai'i 469, 115 P.3d 648  
19 (2005), the double jeopardy clause is primarily a restriction on  
20 the courts and the prosecution, not the legislature. The  
21 legislature has the power to define crimes and fix punishments.  
22 The legislature may authorize multiple punishments through



1 amending section 701-109(1), Hawaii Revised Statutes, or through  
2 expressing a legislative intent to authorize multiple  
3 punishments. See State v. Brantley, 99 Hawai'i 463, 469, 56  
4 P.3d 1252, 1258 (2002) (concluding that a defendant could be  
5 convicted of both use of a firearm in the commission of a  
6 separate felony and the separate felony, despite the statutory  
7 prohibition in section 701-109(1), Hawaii Revised Statutes,  
8 where the legislative history of the two offenses showed that  
9 the legislature intended to allow convictions for both  
10 offenses). Here, the legislature clearly and unequivocally  
11 intends that the relevant human trafficking offense and any  
12 underlying offense be punished separately as separate offenses.

13 The purpose of this Act is to comprehensively address the  
14 growing problem of sexual human trafficking and labor  
15 trafficking.

16 SECTION 2. Chapter 707, Hawaii Revised Statutes, is  
17 amended by adding a new part to be appropriately designated and  
18 to read as follows:

19 "PART . HUMAN TRAFFICKING

20 §707-A Sexual human trafficking in the first degree. (1)

21 A person commits the offense of sexual human trafficking in the  
22 first degree if the person, with the intent to advance



1 prostitution or sexually-explicit activity, transports, or aids,  
2 assists, or causes to be transported, any person into, through,  
3 within, across, or out of the State, or recruits, entices, or  
4 harbors:

5 (a) Any person for the purpose of engaging in prostitution  
6 or a sexually-explicit activity that will be obtained,  
7 maintained, or advanced by any of the following means:

8 (i) Extortion as defined in section 707-764;

9 (ii) Kidnapping as defined in section 707-720;

10 (iii) Unlawful imprisonment as defined in section  
11 707-721 or 707-722;

12 (iv) Force, threat, or intimidation;

13 (v) Deception, as defined in section 708-800, or  
14 fraud, which means making material false  
15 statements, misstatements, or omissions to induce  
16 or maintain the person to engage or continue to  
17 engage in prostitution or a sexually-explicit  
18 activity;

19 (vi) Requiring that prostitution or a sexually-  
20 explicit activity be performed to retire, repay,  
21 or service a real or purported debt, as in a debt  
22 bondage situation;



- 1           (vii) Causing or threatening to cause financial harm to  
2                   any person;
- 3           (viii) Facilitating or controlling the trafficked  
4                   person's access to an addictive controlled  
5                   substance;
- 6           (ix) Withholding any of the trafficked person's  
7                   government-issued identification document with  
8                   the intent to impede the movement of the  
9                   trafficked person; or
- 10          (x) Using any scheme, plan, or pattern intended to  
11               cause the trafficked person to believe that if  
12               the trafficked person did not perform the  
13               prostitution, then the trafficked person or  
14               another person would suffer serious harm or  
15               physical restraint; or
- 16          (b) Any person under the age of eighteen for the purpose  
17               of engaging in prostitution or in a sexually-explicit  
18               activity.
- 19          (2) Sexual human trafficking in the first degree is a  
20          class A felony; provided that, if the trafficked person was  
21          under the age of eighteen at the time of the offense, the  
22          defendant shall be sentenced to a mandatory minimum term of



1 imprisonment without the possibility of parole, the length of  
2 which shall be as follows:

3 (a) Where the trafficked person was sixteen or seventeen  
4 years old - ten years;

5 (b) Where the trafficked person was thirteen, fourteen, or  
6 fifteen years old - fifteen years; and

7 (c) Where the trafficked person was twelve years old or  
8 younger - twenty years.

9 **§707-B Sexual human trafficking in the second degree. (1)**

10 A person commits the offense of sexual human trafficking in the  
11 second degree if the person manages, supervises, controls, or  
12 owns, either alone or in association with others, a business or  
13 enterprise that recruits, entices, or maintains a person who,  
14 having been transported into, through, within, across, or out of  
15 the State:

16 (a) Is engaging or will engage in prostitution that has  
17 been or will be obtained, maintained, or advanced by  
18 any of the means specified in section 707-A(1)(a); or

19 (b) Is engaging or will engage in prostitution or in a  
20 sexually-explicit activity; provided that this  
21 paragraph shall apply only where the trafficked person  
22 is under the age of eighteen;



1 knowing, or in reckless disregard of the risk, that the person  
2 has been transported into, through, within, across, or out of  
3 the State, and that the person has been subject to any of the  
4 methods set forth in section 707-A(1)(a), for a violation under  
5 paragraph (a), or is under the age of eighteen, for a violation  
6 under paragraph (b).

7 (2) Sexual human trafficking in the second degree is a  
8 class B felony; provided that, if the trafficked person was  
9 under the age of eighteen at the time of the offense, then  
10 sexual human trafficking in the second degree is a class A  
11 felony and the defendant shall be sentenced to a mandatory  
12 minimum term of imprisonment without the possibility of parole,  
13 the length of which shall be as follows:

14 (a) Where the trafficked person was sixteen or seventeen  
15 years old - five years;

16 (b) Where the trafficked person was thirteen, fourteen, or  
17 fifteen years old - seven years, six months; and

18 (c) Where the trafficked person was twelve years old or  
19 younger - ten years.

20 **§707-C Sexual human trafficking in the third degree. (1)**

21 A person commits the offense of sexual human trafficking in the  
22 third degree if the person pays, or agrees or offers to pay, a



1 fee for the purpose of engaging in sexual conduct with another  
2 person knowing or in reckless disregard of the risk that:

3 (a) The other person has been transported into, through,  
4 within, across, or out of the State, or has been  
5 recruited, enticed, or harbored for the purpose of  
6 engaging in prostitution; and

7 (b) The other person is under the age of eighteen or the  
8 sexual conduct has been obtained, maintained, or  
9 advanced by any of the means specified in section  
10 707-A(1) (a).

11 (2) Sexual human trafficking in the third degree is a  
12 class C felony; provided that, if the trafficked person was  
13 under the age of eighteen at the time of the offense, the  
14 defendant shall be sentenced to a mandatory minimum term of  
15 imprisonment without the possibility of parole, the length of  
16 which shall be as follows:

17 (a) Where the trafficked person was sixteen or seventeen  
18 years old - three years;

19 (b) Where the trafficked person was thirteen, fourteen, or  
20 fifteen years old - four years; and

21 (c) Where the trafficked person was twelve years old or  
22 younger - five years.



1           §707-D Labor trafficking in the first degree. (1) A  
2 person commits the offense of labor trafficking in the first  
3 degree if the person transports, or aids, assists, or causes to  
4 be transported, any person into, through, within, across, or out  
5 of the State, or recruits, entices, or harbors any person, for  
6 the purpose of facilitating the obtaining, maintaining, or  
7 advancing of the trafficked person's labor or services by any of  
8 the following means:

- 9           (a) Extortion as defined in section 707-764;
- 10          (b) Kidnapping as defined in section 707-720;
- 11          (c) Unlawful imprisonment as defined in section 707-721 or  
12             707-722;
- 13          (d) Force, threat, or intimidation;
- 14          (e) Deception, as defined in section 708-800, or fraud,  
15             which means making material false statements,  
16             misstatements, or omissions to induce or maintain the  
17             person to engage or continue to engage in the labor or  
18             services;
- 19          (f) Requiring that the labor or services be performed to  
20             retire, repay, or service a real or purported debt, as  
21             in a debt bondage situation;





1 (g) Causing or threatening to cause financial harm to any  
2 person;

3 (h) Facilitating or controlling the trafficked person's  
4 access to an addictive controlled substance;

5 (i) Withholding any of the trafficked person's government-  
6 issued identification document with the intent to  
7 impede the movement of the trafficked person; or

8 (j) Using any scheme, plan, or pattern intended to cause  
9 the trafficked person to believe that if the  
10 trafficked person did not perform the labor or  
11 services, then the trafficked person or another person  
12 would suffer serious harm or physical restraint;

13 provided that reference to the means listed in paragraphs (a)  
14 through (j) shall not apply to the actions of a parent or  
15 guardian who requires the parent or guardian's child to perform  
16 common household chores under threat of lawful parental  
17 discipline.

18 (2) Labor trafficking in the first degree is a class A  
19 felony; provided that, if the trafficked person was under the  
20 age of eighteen at the time of the offense, the defendant shall  
21 be sentenced to a mandatory minimum term of imprisonment without



1 the possibility of parole, the length of which shall be as  
2 follows:

3 (a) Where the trafficked person was sixteen or seventeen  
4 years old - ten years;

5 (b) Where the trafficked person was thirteen, fourteen, or  
6 fifteen years old - fifteen years; and

7 (c) Where the trafficked person was twelve years old or  
8 younger - twenty years.

9 (3) In addition to any other penalty, and notwithstanding  
10 a trafficked person's failure to request restitution under  
11 section 706-646(2), the court shall order that restitution be  
12 paid to the trafficked person, consisting of an amount that is  
13 the greater of:

14 (a) The gross income or value to the defendant of the  
15 trafficked person's labor or services; or

16 (b) The value of the trafficked person's labor or  
17 services, as guaranteed under the minimum wage  
18 provisions of chapter 387 or the Fair Labor Standards  
19 Act of 1938, P.L. 75-718, codified in title 29 United  
20 States Code sections 201 through 219, inclusive,  
21 whichever is greater.



1 The return of the trafficked person to the trafficked person's  
2 home country or other absence of the trafficked person from the  
3 jurisdiction shall not relieve the defendant of the defendant's  
4 restitution obligation.

5 **§707-E Labor trafficking in the second degree.** (1) A  
6 person commits the offense of labor trafficking in the second  
7 degree if the person manages, supervises, controls, or owns,  
8 either alone or in association with others, a business or  
9 enterprise and:

10 (a) The business or enterprise engages a person who is  
11 engaging or will engage in labor or services that have  
12 been or will be obtained, maintained, or advanced by  
13 any of the means specified in section 707-D(1)(a)  
14 through (j); and

15 (b) The person knows, or recklessly disregards the risk,  
16 that the person who is engaging or will engage in  
17 labor or services has been transported into, through,  
18 within, across, or out of the State, or has been  
19 recruited, enticed, or harbored, with the intent to  
20 facilitate obtaining, maintaining, or advancing the  
21 trafficked person performance of labor or services for  
22 the purposes in paragraph (a).



1           (2) Labor trafficking in the second degree is a class B  
2 felony; provided that, if the person transported was under the  
3 age of eighteen at the time of the offense, the defendant shall  
4 be sentenced to a mandatory minimum term of imprisonment without  
5 the possibility of parole, the length of which shall be as  
6 follows:

7           (a) Where the trafficked person was sixteen or seventeen  
8 years old - five years;

9           (b) Where the trafficked person was thirteen, fourteen, or  
10 fifteen years old - seven years, six months; and

11           (c) Where the trafficked person was twelve years old or  
12 younger - ten years.

13           (3) In addition to any other penalty, and notwithstanding  
14 a trafficked person's failure to request restitution under  
15 section 706-646(2), the court shall order restitution to be paid  
16 to the trafficked person, consisting of an amount that is the  
17 greater of:

18           (a) The gross income or value to the defendant of the  
19 trafficked person's labor or services; or

20           (b) The value of the trafficked person's labor or  
21 services, as guaranteed under the minimum wage  
22 provisions of chapter 387 or the Fair Labor Standards



1 Act of 1938, P.L. 75-718, codified in title 29 United  
2 States Code sections 201 through 219, inclusive,  
3 whichever is greater.

4 The return of the trafficked person to the trafficked person's  
5 home country or other absence of the trafficked person from the  
6 jurisdiction shall not relieve the defendant of the defendant's  
7 restitution obligation.

8 (4) Upon conviction of a defendant under this section, the  
9 court shall also order that any and all business licenses issued  
10 by the State be revoked for the subject business or enterprise  
11 the defendant manages, supervises, controls, or owns, either  
12 alone or in association with others; provided, however, that the  
13 court, in its discretion, may reinstate the business licenses  
14 upon petition to the court by the remaining owner or owners of  
15 the business or enterprise who were not convicted of a charge  
16 under this section if the remaining owner or owners submit proof  
17 or a certified statement under penalty of perjury that the  
18 convicted defendant is not currently and shall not in the future  
19 be involved with the subject business or enterprise in any  
20 capacity.

21 §707-F Labor trafficking in the third degree. (1) A  
22 person commits the offense of labor trafficking in the third



1 degree if the person pays, or agrees or offers to pay, a fee for  
2 the purpose of obtaining the labor or services of the other  
3 person, knowing that the labor or services have been obtained,  
4 maintained, or advanced by any of the means specified in section  
5 707-D(1)(a) through (j).

6 (2) Labor trafficking in the third degree is a class C  
7 felony; provided that, if the person transported was under the  
8 age of eighteen at the time of the offense, the defendant shall  
9 be sentenced to a mandatory minimum term of imprisonment without  
10 the possibility of parole, the length of which shall be as  
11 follows:

12 (a) Where the trafficked person was sixteen or seventeen  
13 years old - three years;

14 (b) Where the trafficked person was thirteen, fourteen, or  
15 fifteen years old - four years; and

16 (c) Where the trafficked person was twelve years old or  
17 younger - five years.

18 (3) In addition to any other penalty, and notwithstanding  
19 a trafficked person's failure to request restitution under  
20 section 706-646(2), the court shall order that restitution be  
21 paid to the trafficked person, consisting of an amount that is  
22 the greater of:



- 1 (a) The gross income or value to the defendant of the
- 2 trafficked person's labor or services; or
- 3 (b) The value of the trafficked person's labor or
- 4 services, as guaranteed under the minimum wage
- 5 provisions of chapter 387 or the Fair Labor Standards
- 6 Act of 1938, P.L. 75-718, codified in title 29 United
- 7 States Code sections 201 through 219, inclusive,
- 8 whichever is greater.

9 The return of the trafficked person to the trafficked person's  
10 home country or other absence of the trafficked person from the  
11 jurisdiction shall not relieve the defendant of the defendant's  
12 restitution obligation.

13 **§707-G Definitions; defenses; multiple sentences. (1)**

14 For purposes of this part:

15 "Enticement" includes the use of a computer or any other  
16 electronic device to intentionally or knowingly communicate with  
17 another person, with the intent to promote or facilitate the  
18 trafficking of the other person under this part.

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

20 "Maintain" means, in relation to labor, services,  
21 prostitution, or sexually-explicit activity, to secure continued  
22 performance thereof, regardless of any initial agreement on the



1 part of the trafficked person to perform such labor, service,  
2 prostitution, or sexually-explicit activity.

3 "Nude" shall have the same meaning as defined in section  
4 712-1210.

5 "Services" means a relationship between a person and the  
6 actor in which the person performs activities under the  
7 supervision of or for the benefit of the actor or a third party.

8 "Sexually-explicit activity" means engaging in activity as  
9 an erotic or nude massager or exotic or nude dancer, as defined  
10 by section 712-1210, or in the production of child pornography,  
11 as defined in section 707-750.

12 "Trafficked person" or "trafficking victim" means a person  
13 who is transported for the purposes described in this part.

14 "Transported" means moved any distance, however slight, and  
15 shall not require proof of any specific minimum distance.

16 (2) It shall not be a defense to a charge under this part  
17 that, notwithstanding sections 702-204, 702-212, 702-213, and  
18 702-218, the actor was mistaken as to or unaware of the age of  
19 the trafficked person, or that the trafficked person or another  
20 person reassured the actor regarding the trafficked person's  
21 majority. For purposes of this part, an actor's negligence or





1 reckless as to the age of the trafficked person shall be  
2 sufficient to prove the requisite state of mind.

3 (3) It shall be a complete defense to a charge under this  
4 part that:

5 (a) The actor is the victim of the very conduct that is  
6 the basis of the criminal charge. For purposes of  
7 this part, a trafficked person shall not be deemed to  
8 have aided or assisted in the trafficked person's own  
9 trafficking; or

10 (b) The trafficked person is required to perform labor or  
11 services, such as "chores" in a correctional facility  
12 or as a punishment for a crime for which the  
13 trafficked person has been duly convicted;

14 (4) Any means specified in section 707A-(1)(a) or section  
15 707-D(1)(a) through (j) that is a separate criminal offense  
16 shall not constitute a lesser included offense of the human  
17 trafficking offense, and the defendant may be charged and  
18 prosecuted for each offense. Notwithstanding section  
19 701-109(a), a conviction and sentence for human trafficking  
20 shall be in addition to, and not in lieu of, a conviction and  
21 sentence for any of the means specified in section 707-A(1)(a)  
22 or section 707-D(1)(a) through (j) that constitute a separate



1 offense; provided that the sentence imposed under this part may  
2 run concurrently with or consecutive to the sentence for the  
3 means specified in section 707-A(1) (a) or section 707-D(1) (a)  
4 through (j).

5 **§707-H Rights of alleged trafficking victims.** (1) An  
6 alleged trafficking victim under this part:

7 (a) May not be detained in a facility that is  
8 inappropriate to the trafficking victim's status as a  
9 crime victim;

10 (b) May not be jailed, fined, or otherwise penalized due  
11 to having been the victim of the trafficking offense;  
12 and

13 (c) Shall be provided protection if the trafficking  
14 victim's safety is at risk or if there is danger of  
15 additional harm by recapture of the trafficking victim  
16 by the person who allegedly committed the offense,  
17 including:

18 (i) Taking measures to protect the alleged victim and  
19 the victim's family members from intimidation and  
20 threats of reprisals and reprisals from the  
21 person who allegedly committed the offense or the  
22 person's agent; and



1 (ii) Ensuring that the names and identifying  
2 information of the alleged trafficking victim and  
3 the victim's family members are not disclosed to  
4 the public.

5 (2) Not more than fifteen days after the date a law  
6 enforcement agency first reasonably becomes aware of an alleged  
7 trafficking victim under this part, the law enforcement agency  
8 shall provide the alleged trafficking victim with a completed  
9 Declaration of Law Enforcement Officer for Victim of Trafficking  
10 in Persons (LEA Declaration, form I-914 Supplement B) in  
11 accordance with 8 C.F.R. 214.11(f)(1). However, if the law  
12 enforcement agency finds that the grant of an LEA Declaration is  
13 not appropriate for the alleged victim, then not more than  
14 fifteen days after the date the agency makes the finding, the  
15 law enforcement agency shall provide the alleged trafficking  
16 victim with a letter explaining the grounds for denial of the  
17 LEA Declaration. After receiving a denial letter, the alleged  
18 trafficking victim may submit additional evidence to the law  
19 enforcement agency. If the alleged victim submits additional  
20 evidence, the law enforcement agency shall reconsider the denial  
21 of the LEA Declaration not more than seven days after the date  
22 the agency receives the additional evidence."



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

3 "§351-32 **Violent crimes.** The crimes to which part III of  
4 this chapter applies are the following and no other:

- 5 (1) Murder in the first degree (section 707-701);
- 6 (2) Murder in the second degree (section 707-701.5);
- 7 (3) Manslaughter (section 707-702);
- 8 (4) Negligent homicide in the first degree (section  
9 707-702.5);
- 10 (5) Negligent homicide in the second degree (section  
11 707-703);
- 12 (6) Negligent injury in the first degree (section  
13 707-705);
- 14 (7) Negligent injury in the second degree (section  
15 707-706);
- 16 (8) Assault in the first degree (section 707-710);
- 17 (9) Assault in the second degree (section 707-711);
- 18 (10) Assault in the third degree (section 707-712);
- 19 (11) Kidnapping (section 707-720);
- 20 (12) Sexual assault in the first degree (section 707-730);
- 21 (13) Sexual assault in the second degree (section 707-731);
- 22 (14) Sexual assault in the third degree (section 707-732);



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

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

4 (17) Sexual human trafficking in the first degree (section  
5 707-A);

6 (18) Sexual human trafficking in the second degree (section  
7 707-B);

8 (19) Sexual human trafficking in the third degree (section  
9 707-C);

10 (20) Labor trafficking in the first degree (section 707-D);

11 (21) Labor trafficking in the second degree (section  
12 707-E);

13 (22) Labor trafficking in the third degree (section 707-F);

14 and

15 [~~17~~] (23) Terrorism, as defined in Title 18 United States  
16 Code section 2331."

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

19 "§712A-4 **Covered offenses.** Offenses for which property is  
20 subject to forfeiture under this chapter are:

21 (a) All offenses which specifically authorize forfeiture;



- 1 (b) Murder, kidnapping, sexual human trafficking, labor  
2 trafficking, gambling, criminal property damage,  
3 robbery, bribery, extortion, theft, unauthorized entry  
4 into motor vehicle, burglary, money laundering,  
5 trademark counterfeiting, insurance fraud, promoting a  
6 dangerous, harmful, or detrimental drug, commercial  
7 promotion of marijuana, unlawful methamphetamine  
8 trafficking, manufacturing of a controlled substance  
9 with a child present, promoting child abuse, or  
10 electronic enticement of a child which is chargeable  
11 as a felony offense under state law;
- 12 (c) The manufacture, sale, or distribution of a controlled  
13 substance in violation of chapter 329, promoting  
14 detrimental drugs or intoxicating compounds, promoting  
15 pornography, promoting pornography for minors, or  
16 promoting prostitution, which is chargeable as a  
17 felony or misdemeanor offense, but not as a petty  
18 misdemeanor, under state law; and
- 19 (d) The attempt, conspiracy, solicitation, coercion, or  
20 intimidation of another to commit any offense for  
21 which property is subject to forfeiture."



1 SECTION 5. Section 803-44, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§803-44 Application for court order to intercept wire,  
4 oral, or electronic communications. The attorney general of  
5 this State, or a designated deputy attorney general in the  
6 attorney general's absence or incapacity, or the prosecuting  
7 attorney of each county, or a designated deputy prosecuting  
8 attorney in the prosecuting attorney's absence or incapacity,  
9 may make application to a designated judge or any other circuit  
10 court judge or district court judge, if a circuit court judge  
11 has not been designated by the chief justice of the Hawaii  
12 supreme court, or is otherwise unavailable, in the county where  
13 the interception is to take place, for an order authorizing or  
14 approving the interception of wire, oral, or electronic  
15 communications, and such court may grant in conformity with  
16 section 803-46 an order authorizing, or approving the  
17 interception of wire, oral, or electronic communications by  
18 investigative or law enforcement officers having responsibility  
19 for the investigation of the offense as to which the application  
20 is made, if the interception might provide or has provided  
21 evidence of:

22 (1) Murder;



- 1        (2) Sexual human trafficking;
- 2        (3) Labor trafficking;
- 3        [~~(2)~~] (4) Kidnapping;
- 4        [~~(3)~~] (5) Felony criminal property damage involving the
- 5                danger of bodily injury as defined in section 707-700;
- 6        [~~(4)~~] (6) Distribution of dangerous, harmful, or
- 7                detrimental drugs; or
- 8        [~~(5)~~] (7) Conspiracy to commit one or more of the above;
- 9                or involving
- 10       [~~(6)~~] (8) Organized crime and any of the following felony
- 11                offenses:
- 12                (A) Extortion;
- 13                (B) Bribery of a juror, of a witness, or of a police
- 14                officer;
- 15                (C) Receiving stolen property; [and]
- 16                (D) Gambling; and
- 17                (E) Money laundering."

18        SECTION 6. Section 842-1, Hawaii Revised Statutes, is  
19        amended by amending the definitions of "organized crime" and  
20        "racketeering activity" to read as follows:

21        "'Organized crime" means any combination or conspiracy to  
22        engage in criminal activity as a significant source of income or





1 livelihood, or to violate, aid or abet the violation of criminal  
2 laws relating to prostitution, gambling, loan sharking, drug  
3 abuse, illegal drug distribution, counterfeiting, extortion,  
4 sexual human trafficking, labor trafficking, corruption of law  
5 enforcement officers or other public officers or employers.

6 "Racketeering activity" means any act or threat involving,  
7 but not limited to murder, kidnapping, gambling, criminal  
8 property damage, robbery, bribery, extortion, sexual human  
9 trafficking, labor trafficking, theft or prostitution, or any  
10 dealing in narcotic or other dangerous drugs which is chargeable  
11 as a crime under state law and punishable by imprisonment for  
12 more than one year."

13 SECTION 7. Section 846E-1, Hawaii Revised Statutes, is  
14 amended by amending the definitions of "crime against minors"  
15 and "sexual offense" to read as follows:

16 "'Crime against minors" excludes "sexual offenses" as  
17 defined in this section and means a criminal offense that  
18 consists of:

- 19 (1) Kidnapping of a minor, by someone other than a parent;
- 20 (2) Unlawful imprisonment in the first or second degree  
21 that involves the unlawful imprisonment of a minor by  
22 someone other than a parent;



1 (3) An act, as described in chapter 705, that is an  
 2 attempt, criminal solicitation, or criminal conspiracy  
 3 to commit one of the offenses designated in paragraph  
 4 (1) or (2); [~~or~~]

5 (4) A sexual human trafficking offense, as described in  
 6 section 707-A, 707-B, or 707-C, when the conduct is a  
 7 crime only because the victim is less than eighteen  
 8 years of age; or

9 [~~(4)~~] (5) A criminal offense that is comparable to or which  
 10 exceeds one of the offenses designated in paragraphs  
 11 (1) through (3) or any federal, military, or out-of-  
 12 state conviction for any offense that, under the laws  
 13 of this State would be a crime against minors as  
 14 designated in paragraphs (1) through (3).

15 "Sexual offense" means an offense that is:

16 (1) Set forth in section 707-A, 707-B, 707-C,  
 17 707-730(1) (a), 707-730(1) (b), 707-730(1) (c),  
 18 707-730(1) (d) or (e), 707-731(1) (a), 707-731(1) (b),  
 19 707-731(1) (c), 707-732(1) (a), 707-732(1) (b),  
 20 707-732(1) (c), 707-732(1) (d), 707-732(1) (e),  
 21 707-732(1) (f), 707-733(1) (a), 707-733.6,  
 22 712-1202(1) (b), or 712-1203(1) (b), but excludes



1           conduct that is criminal only because of the age of  
2           the victim, as provided in section 707-730(1)(b), or  
3           section 707-732(1)(b) if the perpetrator is under the  
4           age of eighteen;

5           (2) An act defined in section 707-720 if the charging  
6           document for the offense for which there has been a  
7           conviction alleged intent to subject the victim to a  
8           sexual offense;

9           (3) An act that consists of:

10           (A) Criminal sexual conduct toward a minor, including  
11           but not limited to an offense set forth in  
12           section 707-759;

13           (B) Solicitation of a minor who is less than fourteen  
14           years old to engage in sexual conduct;

15           (C) Use of a minor in a sexual performance;

16           (D) Production, distribution, or possession of child  
17           pornography chargeable as a felony under section  
18           707-750, 707-751, or 707-752;

19           (E) Electronic enticement of a child chargeable under  
20           section 707-756 or 707-757 if the offense was  
21           committed with the intent to promote or



- 1           facilitate the commission of another covered  
2           offense as defined in this section; or  
3           (F) Solicitation of a minor to practice prostitution;  
4       (4) A criminal offense that is comparable to or that  
5           exceeds a sexual offense as defined in paragraphs (1)  
6           through (3) or any federal, military, or out-of-state  
7           conviction for any offense that under the laws of this  
8           State would be a sexual offense as defined in  
9           paragraphs (1) through (3); or  
10       (5) An act, as described in chapter 705, that is an  
11           attempt, criminal solicitation, or criminal conspiracy  
12           to commit one of the offenses designated in paragraphs  
13           (1) through (4)."

14       SECTION 8. Section 853-4, Hawaii Revised Statutes, is  
15       amended to read as follows:

16       "**§853-4 Chapter not applicable; when.** This chapter shall  
17       not apply when:

- 18       (1) The offense charged involves the intentional, knowing,  
19           reckless, or negligent killing of another person;  
20       (2) The offense charged is:  
21           (A) A felony that involves the intentional, knowing,  
22           or reckless bodily injury, substantial bodily



1                   injury, or serious bodily injury of another  
2                   person; or

3                   (B) A misdemeanor or petty misdemeanor that carries a  
4                   mandatory minimum sentence and that involves the  
5                   intentional, knowing, or reckless bodily injury,  
6                   substantial bodily injury, or serious bodily  
7                   injury of another person;

8                   (3) The offense charged involves a conspiracy or  
9                   solicitation to intentionally, knowingly, or  
10                  recklessly kill another person or to cause serious  
11                  bodily injury to another person;

12                  (4) The offense charged is a class A felony;

13                  (5) The offense charged is nonprobationable;

14                  (6) The defendant has been convicted of any offense  
15                  defined as a felony by the Hawaii Penal Code or has  
16                  been convicted for any conduct that if perpetrated in  
17                  this State would be punishable as a felony;

18                  (7) The defendant is found to be a law violator or  
19                  delinquent child for the commission of any offense  
20                  defined as a felony by the Hawaii Penal Code or for  
21                  any conduct that if perpetrated in this State would  
22                  constitute a felony;



- 1           (8) The defendant has a prior conviction for a felony
- 2                   committed in any state, federal, or foreign
- 3                   jurisdiction;
- 4           (9) A firearm was used in the commission of the offense
- 5                   charged;
- 6           (10) The defendant is charged with the distribution of a
- 7                   dangerous, harmful, or detrimental drug to a minor;
- 8           (11) The defendant has been charged with a felony offense
- 9                   and has been previously granted deferred acceptance of
- 10                  guilty plea status for a prior offense, regardless of
- 11                  whether the period of deferral has already expired;
- 12           (12) The defendant has been charged with a misdemeanor
- 13                  offense and has been previously granted deferred
- 14                  acceptance of guilty plea status for a prior felony,
- 15                  misdemeanor, or petty misdemeanor for which the period
- 16                  of deferral has not yet expired;
- 17           (13) The offense charged is:
- 18                  (A) Escape in the first degree;
- 19                  (B) Escape in the second degree;
- 20                  (C) Promoting prison contraband in the first degree;
- 21                  (D) Promoting prison contraband in the second degree;
- 22                  (E) Bail jumping in the first degree;



- 1 (F) Bail jumping in the second degree;
- 2 (G) Bribery;
- 3 (H) Bribery of a witness;
- 4 (I) Intimidating a witness;
- 5 (J) Bribery of or by a juror;
- 6 (K) Intimidating a juror;
- 7 (L) Jury tampering;
- 8 (M) Promoting prostitution in the first degree;
- 9 (N) Promoting prostitution in the second degree;
- 10 (O) Promoting prostitution in the third degree;
- 11 (P) Abuse of family or household members;
- 12 (Q) Sexual human trafficking in the first degree;
- 13 (R) Sexual human trafficking in the second degree;
- 14 (S) Sexual human trafficking in the third degree;
- 15 (T) Labor trafficking in the first degree;
- 16 (U) Labor trafficking in the second degree;
- 17 (V) Labor trafficking in the third degree;
- 18 [~~(Q)~~] (W) Sexual assault in the second degree;
- 19 [~~(R)~~] (X) Sexual assault in the third degree;
- 20 [~~(S)~~] (Y) A violation of an order issued pursuant to
- 21 chapter 586;
- 22 [~~(T)~~] (Z) Promoting child abuse in the second degree;



1           ~~[(U)]~~ (AA) Promoting child abuse in the third degree;

2           ~~[(V)]~~ (BB) Electronic enticement of a child in the  
3           first degree; or

4           ~~[(W)]~~ (CC) Electronic enticement of a child in the  
5           second degree;

6           (14) The defendant has been charged with:

7           (A) Knowingly or intentionally falsifying any report  
8           required under chapter 11, subpart B of part XII,  
9           with the intent to circumvent the law or deceive  
10          the campaign spending commission; or

11          (B) Violating section 11-201 or 11-202; or

12          (15) The defendant holds a commercial driver's license and  
13          has been charged with violating a traffic control law,  
14          other than a parking law, in connection with the  
15          operation of any type of motor vehicle.

16          The court may adopt by rule other criteria in this area."

17          SECTION 9. Section 853-4, Hawaii Revised Statutes, is  
18          amended to read as follows:

19          "**§853-4 Chapter not applicable; when.** This chapter shall  
20          not apply when:

21          (1) The offense charged involves the intentional, knowing,  
22          reckless, or negligent killing of another person;





- 1           (2) The offense charged is:
  - 2                   (A) A felony that involves the intentional, knowing,
  - 3                           or reckless bodily injury, substantial bodily
  - 4                           injury, or serious bodily injury of another
  - 5                           person; or
  - 6                   (B) A misdemeanor or petty misdemeanor that carries a
  - 7                           mandatory minimum sentence and that involves the
  - 8                           intentional, knowing, or reckless bodily injury,
  - 9                           substantial bodily injury, or serious bodily
  - 10                           injury of another person;
- 11          (3) The offense charged involves a conspiracy or
- 12                   solicitation to intentionally, knowingly, or
- 13                   recklessly kill another person or to cause serious
- 14                   bodily injury to another person;
- 15          (4) The offense charged is a class A felony;
- 16          (5) The offense charged is nonprobationable;
- 17          (6) The defendant has been convicted of any offense
- 18                   defined as a felony by the Hawaii Penal Code or has
- 19                   been convicted for any conduct that if perpetrated in
- 20                   this State would be punishable as a felony;
- 21          (7) The defendant is found to be a law violator or
- 22                   delinquent child for the commission of any offense



1 defined as a felony by the Hawaii Penal Code or for  
2 any conduct that if perpetrated in this State would  
3 constitute a felony;

4 (8) The defendant has a prior conviction for a felony  
5 committed in any state, federal, or foreign  
6 jurisdiction;

7 (9) A firearm was used in the commission of the offense  
8 charged;

9 (10) The defendant is charged with the distribution of a  
10 dangerous, harmful, or detrimental drug to a minor;

11 (11) The defendant has been charged with a felony offense  
12 and has been previously granted deferred acceptance of  
13 guilty plea status for a prior offense, regardless of  
14 whether the period of deferral has already expired;

15 (12) The defendant has been charged with a misdemeanor  
16 offense and has been previously granted deferred  
17 acceptance of guilty plea status for a prior felony,  
18 misdemeanor, or petty misdemeanor for which the period  
19 of deferral has not yet expired;

20 (13) The offense charged is;

21 (A) Escape in the first degree;

22 (B) Escape in the second degree;



- 1 (C) Promoting prison contraband in the first degree;
- 2 (D) Promoting prison contraband in the second degree;
- 3 (E) Bail jumping in the first degree;
- 4 (F) Bail jumping in the second degree;
- 5 (G) Bribery;
- 6 (H) Bribery of a witness;
- 7 (I) Intimidating a witness;
- 8 (J) Bribery of or by a juror;
- 9 (K) Intimidating a juror;
- 10 (L) Jury tampering;
- 11 (M) Promoting prostitution in the first degree;
- 12 (N) Promoting prostitution in the second degree;
- 13 (O) Promoting prostitution in the third degree;
- 14 (P) Abuse of family or household members;
- 15 (Q) Sexual human trafficking in the first degree;
- 16 (R) Sexual human trafficking in the second degree;
- 17 (S) Sexual human trafficking in the third degree;
- 18 (T) Labor trafficking in the first degree;
- 19 (U) Labor trafficking in the second degree;
- 20 (V) Labor trafficking in the third degree;
- 21 [~~(Q)~~] (W) Sexual assault in the second degree;
- 22 [~~(R)~~] (X) Sexual assault in the third degree;



1           ~~[(S)]~~ (Y) A violation of an order issued pursuant to  
2                                   chapter 586;

3           ~~[(T)]~~ (Z) Promoting child abuse in the second degree;

4           ~~[(U)]~~ (AA) Promoting child abuse in the third degree;

5           ~~[(V)]~~ (BB) Electronic enticement of a child in the  
6                                   first degree;

7           ~~[(W)]~~ (CC) Electronic enticement of a child in the  
8                                   second degree; or

9           ~~[(X)]~~ (DD) An offense under part IV, chapter 291E;

10       (14) The defendant has been charged with:

11           (A) Knowingly or intentionally falsifying any report  
12                                   required under chapter 11, subpart B of part XII,  
13                                   with the intent to circumvent the law or deceive  
14                                   the campaign spending commission; or

15           (B) Violating section 11-201 or 11-202; or

16       (15) The defendant holds a commercial driver's license and  
17                                   has been charged with violating a traffic control law,  
18                                   other than a parking law, in connection with the  
19                                   operation of any type of motor vehicle.

20       The court may adopt by rule other criteria in this area."



1 SECTION 10. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4 SECTION 11. If any provision of this Act, or its  
5 application to any person or transaction or other circumstances,  
6 is for any reason held to be unconstitutional or invalid, the  
7 remaining provisions of this Act, or the application of this Act  
8 to other persons or transactions or circumstances, shall not be  
9 affected. The legislature hereby declares that it would have  
10 passed this Act, and each provision thereof, irrespective of the  
11 fact that any one or more provisions of this Act, or their  
12 application to any person or transaction or other circumstance,  
13 has been declared unconstitutional or invalid, and to this end,  
14 the provisions of this Act are severable.

15 SECTION 12. In codifying the new sections added by section  
16 2 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 13. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21



1 SECTION 14. This Act shall take effect upon its approval;  
2 provided that section 9 shall take effect on January 1, 2011.

3

INTRODUCED BY: Erzanne Chun Oakland

Russell

Jim

Randy de Bel

Michelle N. Sedani



**Report Title:**

Human Trafficking Offenses; Crime

**Description:**

Establishes class A, B, and C felony sexual human trafficking offenses and class A, B, and C felony labor trafficking offenses, and provisions related to prosecution of the offenses.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

