
A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Chapter 707, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:
4 **"PART . SEXUAL HUMAN TRAFFICKING**
5 **§707-A Definitions.** For purposes of this part:
6 "Enticement" includes the use of a computer or any other
7 electronic device to intentionally or knowingly communicate with
8 another person, with the intent to promote or facilitate the
9 trafficking of the other person under this part.
10 "Maintain" means to secure continued performance of
11 prostitution or sexually-explicit activity regardless of any
12 initial agreement on the part of the trafficked person to
13 perform such prostitution or sexually-explicit activity.
14 "Nude" shall have the same meaning as defined in section
15 712-1210.
16 "Sexually-explicit activity" means engaging in activity as
17 an erotic or nude massager or exotic or nude dancer, as defined



1 by section 712-1210, or in the production of child pornography,
2 as defined in section 707-750.

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

5 "Transport" means to move any distance, however slight, and
6 shall not require proof of any specific minimum distance.

7 §707-B Sexual human trafficking in the first degree. (1)

8 A person commits the offense of sexual human trafficking in the
9 first degree if the person, with the intent to advance
10 prostitution or a sexually-explicit activity, transports, aids
11 or assists the transportation of, or causes to be transported,
12 any person into, through, within, across, or out of the state,
13 or recruits, entices, or harbors:

14 (a) Any person for the purpose of engaging in prostitution
15 or a sexually-explicit activity that shall be
16 obtained, maintained, or advanced by any of the
17 following means:

- 18 (i) Extortion as described in section 707-764;
19 (ii) Kidnapping as described in section 707-720;
20 (iii) Unlawful imprisonment as described in section
21 707-721 or 707-722;
22 (iv) Force, threat, or intimidation;



- 1 (v) Deception, as defined in section 708-800, or
2 fraud, which means making material false
3 statements, misstatements, or omissions to induce
4 or maintain the person to engage or continue to
5 engage in prostitution or a sexually-explicit
6 activity;
- 7 (vi) Requiring that prostitution or a sexually-
8 explicit activity be performed to retire, repay,
9 or service a real or purported debt, such as a
10 debt bondage situation;
- 11 (vii) Causing or threatening to cause financial harm to
12 any person;
- 13 (viii) Facilitating or controlling the trafficked
14 person's access to an addictive controlled
15 substance;
- 16 (ix) Withholding any of the trafficked person's
17 government-issued identification documents with
18 the intent to impede the movement of the
19 trafficked person; or
- 20 (x) Using any scheme, plan, or pattern intended to
21 cause the trafficked person to believe that if
22 the trafficked person did not perform the



1 prostitution or sexually-explicit activity, then
2 the trafficked person or another person would
3 suffer serious harm or physical restraint; or

4 (b) Any person under the age of eighteen for the purpose
5 of engaging in prostitution or in a sexually-explicit
6 activity.

7 (2) Sexual human trafficking in the first degree is a
8 class A felony.

9 **§707-C 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-B(1)(a); or

19 (b) Is under the age of eighteen and is engaging or will
20 engage in prostitution or in a sexually-explicit
21 activity;

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 means set forth in section 707-B(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.

9 **§707-D Defenses; multiple sentences.** (1) Notwithstanding
10 sections 702-204, 702-212, 702-213, and 702-218, it shall not be
11 a defense to a charge under this part that the actor was
12 mistaken as to or unaware of the age of the trafficked person,
13 or that the trafficked person or another person reassured the
14 actor of the trafficked person's majority. For purposes of this
15 part, an actor's negligence or recklessness as to the age of the
16 trafficked person shall be sufficient to prove the requisite
17 state of mind.

18 (2) It shall be a complete defense to a charge under this
19 part that the actor is the victim of the very conduct that is
20 the basis of the criminal charge. For purposes of this part, a
21 trafficked person shall not be deemed to have aided or assisted
22 in the trafficked person's own trafficking.



1 (3) Any means specified in section 707-B(1)(a) that is a
2 separate criminal offense shall not constitute a lesser included
3 offense of the sexual human trafficking offense, and the
4 defendant may be charged and prosecuted for each offense.
5 Notwithstanding section 701-109(1)(a), a conviction and sentence
6 for sexual human trafficking shall be in addition to, and not in
7 lieu of, a conviction and sentence for any of the means
8 specified in section 707-B(1)(a) that constitute a separate
9 offense; provided that the sentence imposed under this part may
10 run concurrently with or consecutive to the sentence for the
11 means specified in section 707-B(1)(a).

12 **§707-E Rights of alleged trafficking victims.** (1) An
13 alleged trafficking victim under this part:

- 14 (a) May not be detained in a facility that is
15 inappropriate to the trafficking victim's status as a
16 crime victim;
- 17 (b) May not be jailed, fined, or otherwise penalized due
18 to having been the victim of the trafficking offense;
19 and
- 20 (c) Shall be provided protection if the trafficking
21 victim's safety is at risk or if there is danger of
22 additional harm by recapture of the trafficking victim



1 by the person who allegedly committed the offense,
2 including:

3 (i) Taking measures to protect the alleged victim and
4 the victim's family members from intimidation,
5 reprisals, and threats of reprisals from the
6 person who allegedly committed the offense or the
7 person's agent; and

8 (ii) Ensuring that the names and identifying
9 information of the alleged trafficking victim and
10 the victim's family members are not disclosed to
11 the public.

12 (2) Not more than fifteen days after the date a law
13 enforcement agency first reasonably becomes aware of an alleged
14 trafficking victim under this part, the law enforcement agency
15 shall provide the alleged trafficking victim with a completed
16 Declaration of Law Enforcement Officer for Victim of Trafficking
17 in Persons ("LEA Declaration", Form I-914, Supplement B) in
18 accordance with Title 8 Code of Federal Regulations, Section
19 214.11(f)(1). However, if the law enforcement agency finds that
20 the certification of an LEA Declaration is not appropriate for
21 the alleged victim, then not more than fifteen days after the
22 date the agency makes the finding, the law enforcement agency



1 shall provide the alleged trafficking victim with a letter
2 explaining the grounds for denial of the LEA Declaration. After
3 receiving a denial letter, the alleged trafficking victim may
4 submit additional evidence to the law enforcement agency. If
5 the alleged victim submits additional evidence, the law
6 enforcement agency shall reconsider the denial of the LEA
7 Declaration not more than seven days after the date the agency
8 receives the additional evidence."

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

11 "§351-32 **Violent crimes.** The crimes to which part III of
12 this chapter applies are the following and no other:

- 13 (1) Murder in the first degree (section 707-701);
- 14 (2) Murder in the second degree (section 707-701.5);
- 15 (3) Manslaughter (section 707-702);
- 16 (4) Negligent homicide in the first degree (section
17 707-702.5);
- 18 (5) Negligent homicide in the second degree (section
19 707-703);
- 20 (6) Negligent injury in the first degree (section
21 707-705);



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

19 SECTION 3. Section 712A-4, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§712A-4 Covered offenses. Offenses for which property is
22 subject to forfeiture under this chapter are:



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



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

17 SECTION 5. Section 842-1, Hawaii Revised Statutes, is
18 amended by amending the definitions of "organized crime" and
19 "racketeering activity" to read as follows:

20 "Organized crime" means any combination or conspiracy to
21 engage in criminal activity as a significant source of income or
22 livelihood, or to violate, aid or abet the violation of criminal



1 laws relating to prostitution, gambling, loan sharking, drug
2 abuse, illegal drug distribution, counterfeiting, extortion,
3 sexual human trafficking, or corruption of law enforcement
4 officers or other public officers or employers.

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

12 SECTION 6. Section 846E-1, Hawaii Revised Statutes, is
13 amended by amending the definition of the definition of "sexual
14 offense" to read:

15 ""Sexual offense" means an offense that is:

16 (1) Set forth in section 707-B(1), 707-C(1),
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 7. 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] 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] state
22 would 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 or by 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 second degree;
- 13 [~~(Q)~~] (R) Sexual assault in the second degree;
- 14 [~~(R)~~] (S) Sexual assault in the third degree;
- 15 [~~(S)~~] (T) A violation of an order issued pursuant to
- 16 chapter 586;
- 17 [~~(T)~~] (U) Promoting child abuse in the second degree;
- 18 [~~(U)~~] (V) Promoting child abuse in the third degree;
- 19 [~~(V)~~] (W) Electronic enticement of a child in the
- 20 first degree; or
- 21 [~~(W)~~] (X) Electronic enticement of a child in the
- 22 second degree;



- 1 (14) The defendant has been charged with:
- 2 (A) Knowingly or intentionally falsifying any report
- 3 required under chapter 11, subpart B of part XII,
- 4 with the intent to circumvent the law or deceive
- 5 the campaign spending commission; or
- 6 (B) Violating section 11-201 or 11-202;
- 7 or
- 8 (15) The defendant holds a commercial driver's license and
- 9 has been charged with violating a traffic control law,
- 10 other than a parking law, in connection with the
- 11 operation of any type of motor vehicle.

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

13 SECTION 8. This Act does not affect rights and duties that

14 matured, penalties that were incurred, and proceedings that were

15 begun before its effective date.

16 SECTION 9. If any provision of this Act, or the

17 application thereof to any person or circumstance is held

18 invalid, the invalidity does not affect other provisions or

19 applications of the Act, which can be given effect without the

20 invalid provision or application, and to this end the provisions

21 of this Act are severable.



1 SECTION 10. In codifying the new sections added by section
2 1 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 11. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 12. This Act shall take effect on December 21,
8 2058.



Report Title:

Human Trafficking Offenses; Crime

Description:

Establishes class A and B felony sexual human trafficking offenses, and provisions related to prosecution of the offenses. Effective December 21, 2058. (SB2045 HD1)

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