

JAN 27 2010

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# A BILL FOR AN ACT

RELATING TO PROSTITUTION.

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

1           SECTION 1. Section 712-1200, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§712-1200 Prostitution. (1) A person commits the  
4 offense of prostitution if the person engages in, or agrees or  
5 offers to engage in, sexual conduct with another person for a  
6 fee[-] in a public place that is likely to be observed by others  
7 who would be affronted or alarmed. For purposes of this  
8 section, a "public place" means any street, sidewalk, bridge,  
9 alley or alleyway, plaza, driveway, parking lot, or  
10 transportation facility, or the doorways and entrance ways to  
11 any building that fronts on any of these places, or a motor  
12 vehicle in or on any of these places except areas that are  
13 designated as exceptions to this section pursuant to subsection  
14 (6).

15           (2) As used in subsection (1), "sexual conduct" means  
16 "sexual penetration," "deviate sexual intercourse," or "sexual  
17 contact," as those terms are defined in section 707-700.



1           (3) Prostitution is a [~~petty misdemeanor.~~] violation,  
2 subject to a fine of up to \$500.

3           ~~[(4) A person convicted of committing the offense of~~  
4 ~~prostitution shall be sentenced as follows:~~

5           ~~(a) For the first offense, when the court has not deferred~~  
6 ~~further proceedings pursuant to chapter 853, a~~  
7 ~~mandatory fine of \$500 and the person may be sentenced~~  
8 ~~to a term of imprisonment of not more than thirty days~~  
9 ~~or probation; provided that in the event the convicted~~  
10 ~~person defaults in payment of the \$500 fine, and the~~  
11 ~~default was not contumacious, the court may sentence~~  
12 ~~the person to perform services for the community as~~  
13 ~~authorized by section 706 605(1).~~

14           ~~(b) For any subsequent offense, a mandatory fine of \$500~~  
15 ~~and a term of imprisonment of thirty days or~~  
16 ~~probation, without possibility of deferral of further~~  
17 ~~proceedings pursuant to chapter 853 and without~~  
18 ~~possibility of suspension of sentence.~~

19           ~~(c) For the purpose of this subsection, if the court has~~  
20 ~~deferred further proceedings pursuant to chapter 853,~~  
21 ~~and notwithstanding any provision of chapter 853 to~~  
22 ~~the contrary, the defendant shall not be eligible to~~



1 ~~apply for expungement pursuant to section 831 3.2~~  
2 ~~until four years following discharge. A plea~~  
3 ~~previously entered by a defendant under section 853 1~~  
4 ~~for a violation of this section shall be considered a~~  
5 ~~prior offense. When the court has ordered a sentence~~  
6 ~~of probation, the court may impose as a condition of~~  
7 ~~probation that the defendant complete a course of~~  
8 ~~prostitution intervention classes, provided that the~~  
9 ~~court may only impose such condition for one term of~~  
10 ~~probation.]~~

11 (4) There shall be no penalty for engaging in, or agreeing  
12 or offering to engage in, acts of prostitution except as  
13 described in subsection (1).

14 (5) This section shall not apply to any member of a police  
15 department, a sheriff, or a law enforcement officer acting in  
16 the course and scope of duties.

17 (6) The legislature and counties shall designate areas  
18 within their jurisdiction as exempt from the penalty provisions  
19 of subsection (3). Designated areas shall include portions of  
20 geographic areas that have a history of this offense. The  
21 designated areas may be described both by geographic boundaries  
22 and by time of day limitations.



1       The counties shall establish the designated areas as  
2 outlined in this section within one hundred twenty days of the  
3 effective date of this Act. If they are unable to meet this  
4 deadline, the governor may appoint a committee of community  
5 members and sex worker advocates to suggest an outline for these  
6 designated areas. The governor may then impose the designated  
7 areas until the legislature acts upon them at its next regular  
8 session. If no plan is adopted by the counties or the governor,  
9 the entire State of Hawaii shall be treated as a designated  
10 area."

11       SECTION 2. Section 712-1202, Hawaii Revised Statutes, is  
12 amended by amending its title and subsection (1) to read as  
13 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 force,  
18       threat, or intimidation to engage in prostitution, or  
19       profits from such coercive conduct by another; or

20       (b) Advances or profits from prostitution of a person less  
21       than eighteen years old."



1 SECTION 3. Section 712-1203, Hawaii Revised Statutes, is  
2 repealed.

3 [~~"§712-1203 Promoting prostitution in the second degree.~~

4 ~~(1) A person commits the offense of promoting prostitution in~~  
5 ~~the second degree if the person knowingly advances or profits~~  
6 ~~from prostitution by managing, supervising, controlling, or~~  
7 ~~owning, either alone or in association with others, a house of~~  
8 ~~prostitution or a prostitution business or enterprise involving~~  
9 ~~prostitution activity by two or more prostituted persons.~~

10 ~~(2) Promoting prostitution in the second degree is a class~~  
11 ~~C felony." ]~~

12 SECTION 4. Section 712-1204, Hawaii Revised Statutes, is  
13 repealed.

14 [~~"§712-1204 Promoting prostitution in the third degree.~~

15 ~~(1) A person commits the offense of promoting prostitution in~~  
16 ~~the third degree if the person knowingly advances or profits~~  
17 ~~from prostitution.~~

18 ~~(2) Promoting prostitution in the third degree is a~~  
19 ~~misdemeanor." ]~~

20 SECTION 5. Section 712-1206, Hawaii Revised Statutes, is  
21 repealed.



1       ~~["§712-1206] Loitering for the purpose of engaging in or~~  
2 ~~advancing prostitution. (1) For the purposes of this section,~~  
3 ~~"public place" means any street, sidewalk, bridge, alley or~~  
4 ~~alleyway, plaza, park, driveway, parking lot or transportation~~  
5 ~~facility or the doorways and entrance ways to any building which~~  
6 ~~fronts on any of the aforesaid places, or a motor vehicle in or~~  
7 ~~on any such place.~~

8       ~~(2) Any person who remains or wanders about in a public~~  
9 ~~place and repeatedly beckons to or repeatedly stops, or~~  
10 ~~repeatedly attempts to stop, or repeatedly attempts to engage~~  
11 ~~passers by in conversation, or repeatedly stops or attempts to~~  
12 ~~stop motor vehicles, or repeatedly interferes with the free~~  
13 ~~passage of other persons for the purpose of committing the crime~~  
14 ~~of prostitution as that term is defined in section 712-1200,~~  
15 ~~shall be guilty of a violation.~~

16       ~~(3) Any person who remains or wanders about in a public~~  
17 ~~place and repeatedly beckons to, or repeatedly stops, or~~  
18 ~~repeatedly attempts to engage passers by in conversation, or~~  
19 ~~repeatedly stops or attempts to stop motor vehicles, or~~  
20 ~~repeatedly interferes with the free passage of other persons for~~  
21 ~~the purpose of committing the crime of advancing prostitution as~~



1 ~~that term is defined in section 712-1201(1) is guilty of a petty~~  
2 ~~misdemeanor."]~~

3 SECTION 6. Section 712-1207, Hawaii Revised Statutes, is  
4 repealed.

5 [~~§712-1207 Street solicitation of prostitution;~~  
6 ~~designated areas. (1) It shall be unlawful for any person~~  
7 ~~within the boundaries of Waikiki and while on any public~~  
8 ~~property, to offer or agree to engage in sexual conduct with~~  
9 ~~another person in return for a fee.~~

10 ~~(2) It shall be unlawful for any person within the~~  
11 ~~boundaries of other areas in this State designated by county~~  
12 ~~ordinance pursuant to subsection (3), and while on any public~~  
13 ~~property, to offer or agree to engage in sexual conduct with~~  
14 ~~another person in return for a fee.~~

15 ~~(3) Upon a recommendation of the chief of police of a~~  
16 ~~county, that county may enact an ordinance that:~~

17 ~~(a) Designates areas, each no larger than three square~~  
18 ~~miles, as zones of significant prostitution-related~~  
19 ~~activity that is detrimental to the health, safety, or~~  
20 ~~welfare of the general public; or~~

21 ~~(b) Alters the boundaries of any existing area under~~  
22 ~~paragraph (a);~~



1 ~~provided that not more than four areas may be designated within~~  
2 ~~the State.~~

3 ~~(4) Notwithstanding any law to the contrary, any person~~  
4 ~~violating this section shall be guilty of a petty misdemeanor~~  
5 ~~and shall be sentenced to a mandatory term of thirty days~~  
6 ~~imprisonment. The term of imprisonment shall be imposed~~  
7 ~~immediately, regardless of whether the defendant appeals the~~  
8 ~~conviction, except as provided in subsection (5).~~

9 ~~(5) As an option to the mandatory term of thirty days~~  
10 ~~imprisonment, if the court finds the option is warranted based~~  
11 ~~upon the defendant's record, the court may place the defendant~~  
12 ~~on probation for a period not to exceed six months, subject to~~  
13 ~~the mandatory condition that the defendant observe geographic~~  
14 ~~restrictions that prohibit the defendant from entering or~~  
15 ~~remaining on public property, in Waikiki and other areas in the~~  
16 ~~State designated by county ordinance during the hours from 6~~  
17 ~~p.m. to 6 a.m. Upon any violation of the geographic~~  
18 ~~restrictions by the defendant, the court, after hearing, shall~~  
19 ~~revoke the defendant's probation and immediately impose the~~  
20 ~~mandatory thirty day term of imprisonment. Nothing contained in~~  
21 ~~this subsection shall be construed as prohibiting the imposition~~  
22 ~~of stricter geographic restrictions under section 706-624(2)(h).~~





1       ~~(6) Any person charged under this section may be admitted~~  
2 ~~to bail, pursuant to section 804 4, subject to the mandatory~~  
3 ~~condition that the person observe geographic restrictions that~~  
4 ~~prohibit the defendant from entering or remaining on public~~  
5 ~~property, in Waikiki and other areas in the State designated by~~  
6 ~~county ordinance during the hours from 6 p.m. to 6 a.m.~~  
7 ~~Notwithstanding any other provision of law to the contrary, any~~  
8 ~~person who violates these bail restrictions shall have the~~  
9 ~~person's bail revoked after hearing and shall be imprisoned~~  
10 ~~forthwith. Nothing contained in this subsection shall be~~  
11 ~~construed as prohibiting the imposition of stricter geographic~~  
12 ~~restrictions under section 804 7.1.~~

13       ~~(7) Notwithstanding any other law to the contrary, a~~  
14 ~~police officer, without warrant, may arrest any person when the~~  
15 ~~officer has probable cause to believe that the person has~~  
16 ~~committed a violation of subsection (5) or (6), and the person~~  
17 ~~shall be detained, without bail, until the hearing under the~~  
18 ~~appropriate subsection can be held, which hearing shall be held~~  
19 ~~as soon as reasonably practicable.~~

20       ~~(8) For purposes of this section.~~



1       ~~"Area" means any zone within a county that is defined with~~  
2 ~~specific boundaries and designated as a zone of significant~~  
3 ~~prostitution by this section or a county ordinance.~~

4       ~~"Public property" includes any street, highway, road,~~  
5 ~~sidewalk, alley, lane, bridge, parking lot, park, or other~~  
6 ~~property owned or under the jurisdiction of any governmental~~  
7 ~~entity or otherwise open to the public.~~

8       ~~"Sexual conduct" has the same meaning as in section 712-~~  
9 ~~1200(2).~~

10       ~~"Waikiki" means that area of Oahu bounded by the Ala Wai~~  
11 ~~canal, the ocean, and Kapahulu avenue.~~

12       ~~(9) This section shall apply to all counties; provided~~  
13 ~~that if a county enacts an ordinance to regulate street~~  
14 ~~solicitation for prostitution, other than an ordinance~~  
15 ~~designating an area as a zone of significant prostitution-~~  
16 ~~related activity, the county ordinance shall supersede this~~  
17 ~~section and no person shall be convicted under this section in~~  
18 ~~that county." ]~~

19       SECTION 7. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY: Carol Fuhsmeier



**Report Title:**

Prostitution

**Description:**

Decriminalizes the offense of prostitution. Makes prostitution a violation only if it is committed in a public place. Repeals the offenses of promoting prostitution in the second and third degrees, loitering for prostitution, and street solicitation or prostitution.

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

