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# A BILL FOR AN ACT

RELATING TO SEXUAL OFFENSES.

**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 . SEX TRAFFICKING**

5           **§707-A Definitions.** As used in this part, unless the  
6 context otherwise requires:

7           "Coercion" means the use or threat to use any form of  
8 domination, restraint, or control, including:

- 9           (a) Causing bodily injury in the future to the person  
10                threatened or to any other person;
- 11           (b) Subjecting the person or any other person to physical  
12                confinement or restraint;
- 13           (c) Committing a penal offense;
- 14           (d) Accusing some person of any offense or causing a penal  
15                charge to be instituted against some person;
- 16           (e) Testifying or providing information or withholding  
17                testimony or information with respect to another's  
18                legal claim or defense;



1 (f) Taking or withholding action as a public servant, or  
2 causing a public servant to take or withhold such  
3 action;

4 (g) Destroying, concealing, removing, confiscating, or  
5 possessing any actual or purported passport, or any  
6 other actual or purported government identification  
7 document, or other immigration document, of another  
8 person; or

9 (h) Facilitating or controlling another person's access to  
10 a controlled substance.

11 "Force" means the use of any form of "bodily injury" or  
12 "restraint" as those terms are defined in section 707-700.

13 "Fraud" means the intentional misrepresentation of facts to  
14 induce another person to act.

15 "Sexual conduct" means "sexual penetration," "deviate  
16 sexual intercourse," or "sexual contact" as those terms are  
17 defined in section 707-700.

18 "Sexually explicit activity" includes:

19 (a) Performances by erotic or nude massagers or exotic or  
20 nude dancers as defined in section 712-1210; and

21 (b) Activities relating to the production of child  
22 pornography as defined in section 707-750.



1           **§707-B Sex trafficking in the first degree.** (1) A person  
2 commits the offense of sex trafficking in the first degree if:

3           (a) The person knowingly advances or profits from the  
4           sexual conduct or sexually explicit activity of a  
5           person who is less than eighteen years of age that  
6           occurs through force, fraud, or coercion; or

7           (b) The person knowingly entices, recruits, harbors,  
8           provides, or transports a person who is less than  
9           eighteen years of age to be used or employed for  
10          sexual conduct or sexually explicit activity through  
11          force, fraud, or coercion.

12          (2) Sex trafficking in the first degree is a class A  
13 felony.

14           **§707-C Sex trafficking in the second degree.** (1) A  
15 person commits the offense of sex trafficking in the second  
16 degree if:

17          (a) The person knowingly advances or profits from the  
18          sexual conduct or sexually explicit activity of a  
19          person who is eighteen years of age or older that  
20          occurs through force, fraud, or coercion; or

21          (b) The person knowingly entices, recruits, harbors,  
22          provides, or transports a person who is eighteen years



1 of age or older to be used or employed for sexual  
2 conduct or sexually explicit activity through force,  
3 fraud, or coercion.

4 (2) Sex trafficking in the second degree is a class B  
5 felony."

6 SECTION 2. Section 28-94, Hawaii Revised Statutes, is  
7 amended by amending the definition of "abuse" to read as  
8 follows:

9 "Abuse" means actual or imminent physical injury,  
10 psychological abuse or neglect, sexual abuse, financial  
11 exploitation, negligent treatment, or maltreatment.

12 Abuse occurs where:

- 13 (1) Any dependent elder exhibits evidence of:
- 14 (A) Substantial or multiple skin bruising or any
  - 15 other internal bleeding;
  - 16 (B) Any injury to skin causing substantial bleeding;
  - 17 (C) Malnutrition;
  - 18 (D) A burn or burns;
  - 19 (E) Poisoning;
  - 20 (F) The fracture of any bone;
  - 21 (G) A subdural hematoma;
  - 22 (H) Soft tissue swelling;



- 1 (I) Extreme physical pain; or
- 2 (J) Extreme mental distress which includes a
- 3 consistent pattern of actions or verbalizations,
- 4 including threats, insults, or harassment, that
- 5 humiliates, provokes, intimidates, confuses, and
- 6 frightens the dependent elder;
- 7 and the injury is not justifiably explained, or where
- 8 the history given is at variance with the degree or
- 9 type of injury, or circumstances indicate that the
- 10 injury is not the product of an accidental occurrence;
- 11 (2) Any dependent elder has been the victim of
- 12 nonconsensual sexual contact or conduct by a
- 13 caregiver, including [~~but not limited to~~]:
- 14 (A) Sexual assault, molestation, sexual fondling,
- 15 incest, [~~prostitution~~] sex trafficking;
- 16 (B) Obscene or pornographic photographing, filming,
- 17 or depiction; or
- 18 (C) Other similar forms of sexual exploitation;
- 19 (3) Any dependent elder is provided with dangerous,
- 20 harmful, or detrimental drugs as defined by section
- 21 712-1240; however, this paragraph shall not apply when
- 22 such drugs are provided to the dependent elder



- 1           pursuant to the direction or prescription of a  
2           practitioner, as defined in section 712-1240;
- 3           (4) Any dependent elder is subject to neglect;
- 4           (5) Any dependent elder appears to lack sufficient  
5           understanding or capacity to make or communicate  
6           responsible decisions concerning the dependent elder's  
7           person, and appears to be exposed to a situation or  
8           condition which poses an imminent risk of death or  
9           risk of serious physical harm; or
- 10          (6) There is financial and economic exploitation."

11          SECTION 3. Section 28-101, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13          "(a) The attorney general shall establish a statewide  
14 witness program through which the attorney general may fund or  
15 provide for the security and protection of a government witness  
16 or a potential government witness in an official proceeding or  
17 investigation where the attorney general determines that an  
18 offense such as those described in [~~sections~~] section 710-1071  
19 (intimidating a witness), 710-1072 (tampering with a witness),  
20 or 710-1072.2 (retaliating against a witness) is likely to be  
21 committed or which involves great public interest. The attorney  
22 general may also fund or provide for the security and protection



1 of the immediate family of, or a person otherwise closely  
2 associated with, such witness or potential witness if the family  
3 or person may also be endangered. In determining whether such  
4 security and protection or funds are to be provided, the  
5 attorney general shall give greatest priority to official  
6 proceedings or investigations involving pending or potential  
7 organized crime, racketeering activity, sex trafficking, or  
8 career criminal prosecutions."

9 SECTION 4. Section 587A-4, Hawaii Revised Statutes, is  
10 amended by amending the definition of "harm" to read as follows:

11 "Harm" means damage or injury to a child's physical or  
12 psychological health or welfare, where:

13 (1) The child exhibits evidence of injury, including[, ~~but~~  
14 ~~not limited to~~]:

15 (A) Substantial or multiple skin bruising;

16 (B) Substantial external or internal bleeding;

17 (C) Burn or burns;

18 (D) Malnutrition;

19 (E) Failure to thrive;

20 (F) Soft tissue swelling;

21 (G) Extreme pain;

22 (H) Extreme mental distress;



- 1 (I) Gross degradation;
- 2 (J) Poisoning;
- 3 (K) Fracture of any bone;
- 4 (L) Subdural hematoma; or
- 5 (M) Death;
- 6 and the injury is not justifiably explained, or the
- 7 history given concerning the condition or death is not
- 8 consistent with the degree or type of the condition or
- 9 death, or there is evidence that the condition or
- 10 death may not be the result of an accident;
- 11 (2) The child has been the victim of sexual contact or
- 12 conduct, including sexual assault; sodomy;
- 13 molestation; sexual fondling; incest; [~~prostitution;~~
- 14 sex trafficking; obscene or pornographic
- 15 photographing, filming, or depiction; or other similar
- 16 forms of sexual exploitation;
- 17 (3) The child's psychological well-being has been injured
- 18 as evidenced by a substantial impairment in the
- 19 child's ability to function;
- 20 (4) The child is not provided in a timely manner with
- 21 adequate food; clothing; shelter; supervision; or
- 22 psychological, physical, or medical care; or





1           (5) The child is provided with dangerous, harmful, or  
2           detrimental drugs as defined in section 712-1240,  
3           except when a child's family administers drugs to the  
4           child as directed or prescribed by a practitioner as  
5           defined in section 712-1240."

6           SECTION 5. Section 712-1200, Hawaii Revised Statutes, is  
7           amended to read as follows:

8           "**§712-1200 Prostitution.** (1) A person commits the  
9           offense of prostitution if the person engages in, or agrees or  
10          offers to engage in, sexual conduct with another person for a  
11          fee.

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

15          (3) Prostitution is a petty misdemeanor.

16          (4) In any prosecution for prostitution, it is an  
17          affirmative defense that the defendant engaged in sexual conduct  
18          through force, fraud, or coercion.

19          (5) This section shall not apply to any member of a police  
20          department, a sheriff, or other law enforcement officer acting  
21          in the course and scope of duty.



1       ~~[(4)]~~ (6) A person convicted of committing the offense of  
2 prostitution shall be sentenced as follows:

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

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

17       (c) For the purpose of this subsection, if the court has  
18 deferred further proceedings pursuant to chapter 853,  
19 and notwithstanding any provision of chapter 853 to  
20 the contrary, the defendant shall not be eligible to  
21 apply for expungement pursuant to section 831-3.2  
22 until four years following discharge. A plea



1 previously entered by a defendant under section 853-1  
2 for a violation of this section shall be considered a  
3 prior offense. When the court has ordered a sentence  
4 of probation, the court may impose as a condition of  
5 probation that the defendant complete a course of  
6 prostitution intervention classes; provided that the  
7 court may only impose such condition for one term of  
8 probation.

9 ~~[(5) This section shall not apply to any member of a  
10 police department, a sheriff, or a law enforcement officer  
11 acting in the course and scope of duties.]~~

12 (7) For purposes of this section, "coercion" has the same  
13 meaning as in section 707- ."

14 SECTION 6. Section 712-1201, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§712-1201 Promoting prostitution; definition of terms.**

17 In sections 712-1202, 712-1203, and 712-1204:

18 (1) A person "advances prostitution" if, acting other than  
19 as a prostitute or a patron of a prostitute, [he] the person  
20 knowingly [~~causes or~~] aids a person to commit or engage in  
21 prostitution, procures or solicits patrons for prostitution,  
22 provides persons for prostitution purposes, permits premises to



1 be regularly used for prostitution purposes, operates or assists  
 2 in the operation of a house of prostitution or a prostitution  
 3 enterprise, or engages in any other conduct designed to  
 4 institute, aid, or facilitate an act or enterprise of  
 5 prostitution[-]; and

6 (2) A person "profits from prostitution" if, acting other  
 7 than as a prostitute receiving compensation for personally-  
 8 rendered prostitution services, [he] the person accepts or  
 9 receives money or other property pursuant to an agreement or  
 10 understanding with any other person whereby [he] the person  
 11 participates or is to participate in the proceeds of  
 12 prostitution activity."

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

15 **"§712-1202 Promoting prostitution in the first degree.**

16 (1) A person commits the offense of promoting prostitution in  
 17 the first degree if the person knowingly[+]

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

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



1           (2) Promoting prostitution in the first degree is a class  
2 B felony.

3           ~~[(3) As used in this section, "threat" means any of the~~  
4 ~~actions listed in section 707-764(1).]~~"

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 advances or profits from prostitution by managing, supervising,  
10 controlling, or owning, either alone or in association with  
11 others, a house of prostitution or a prostitution business or  
12 enterprise involving prostitution activity by two or more  
13 ~~[prostituted]~~ persons."

14           SECTION 9. Section 712-1206, Hawaii Revised Statutes, is  
15 amended by amending subsection (2) to read as follows:

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



1 ~~[crime]~~ offense of prostitution as that term is defined in  
2 section 712-1200, shall be guilty of a violation."

3 SECTION 10. Section 712-1207, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsections (1) and (2) to read:

6 "(1) It shall be unlawful for any person within the  
7 boundaries of Waikiki, and while on any public property, to  
8 offer or agree to engage in ~~[sexual conduct with another person~~  
9 ~~in return for a fee]~~ prostitution.

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

15 2. By amending subsection (8) to read:

16 "(8) For purposes of this section:

17 "Area" means any zone within a county that is defined with  
18 specific boundaries and designated as a zone of significant  
19 prostitution by this section or a county ordinance.

20 "Public property" includes any street, highway, road,  
21 sidewalk, alley, lane, bridge, parking lot, park, or other



1 property owned or under the jurisdiction of any governmental  
2 entity or otherwise open to the public.

3 ~~["Sexual conduct" has the same meaning as in section 712-~~  
4 ~~1200(2).]~~

5 "Prostitution" has the same meaning as in section 712-1200.

6 "Waikiki" means that area of Oahu bounded by the Ala Wai  
7 canal, the ocean, and Kapahulu avenue."

8 SECTION 11. Section 846E-1, Hawaii Revised Statutes, is  
9 amended by amending the definition of "sexual offense" to read  
10 as follows:

11 "Sexual offense" means an offense that is:

- 12 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),
- 13 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),
- 14 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-
- 15 732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-
- 16 732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6,
- 17 712-1202[~~(1)(b)~~], 707-\_\_\_\_\_, or 712-1203(1)(b), but
- 18 excludes conduct that is criminal only because of the
- 19 age of the victim, as provided in section 707-
- 20 730(1)(b) [~~7~~] or [~~section~~] 707-732(1)(b) if the
- 21 perpetrator is under the age of eighteen;



- 1           (2) An act defined in section 707-720 if the charging  
2           document for the offense for which there has been a  
3           conviction alleged intent to subject the victim to a  
4           sexual offense;
- 5           (3) An act that consists of:
- 6           (A) Criminal sexual conduct toward a minor, including  
7           but not limited to an offense set forth in  
8           section 707-759;
- 9           (B) Solicitation of a minor who is less than fourteen  
10          years old to engage in sexual conduct;
- 11          (C) Use of a minor in a sexual performance;
- 12          (D) Production, distribution, or possession of child  
13          pornography chargeable as a felony under section  
14          707-750, 707-751, or 707-752;
- 15          (E) Electronic enticement of a child chargeable under  
16          section 707-756 or 707-757 if the offense was  
17          committed with the intent to promote or  
18          facilitate the commission of another covered  
19          offense as defined in this section; or
- 20          (F) Solicitation of a minor to practice prostitution;
- 21          (4) A criminal offense that is comparable to or that  
22          exceeds a sexual offense as defined in paragraphs (1)





1 through (3) or any federal, military, or out-of-state  
2 conviction for any offense that under the laws of this  
3 [State] state would be a sexual offense as defined in  
4 paragraphs (1) through (3); or

5 (5) An act, as described in chapter 705, that is an  
6 attempt, criminal solicitation, or criminal conspiracy  
7 to commit one of the offenses designated in paragraphs  
8 (1) through (4)."

9 SECTION 12. Section 846E-10, Hawaii Revised Statutes, is  
10 amended by amending subsection (c) to read as follows:

11 "(c) Tier 2 offenses. A covered offender who has  
12 maintained a clean record for the previous twenty-five years,  
13 excluding any time the offender was in custody or civilly  
14 committed, and who has substantially complied with the  
15 registration requirements of this chapter for the previous  
16 twenty-five years, or for the portion of that twenty-five years  
17 that this chapter has been applicable, and who is not a repeat  
18 covered offender may petition the court, in a civil proceeding,  
19 for termination of registration requirements; provided that the  
20 covered offender's most serious covered offense is one of the  
21 following:



- 1 (1) Any offense set forth in section 707-730(1)(c), 707-  
2 731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-  
3 1202[~~(1)(b)~~], 707-\_\_\_\_\_, or 712-1203(1)(b);
- 4 (2) An offense set forth in section 707-720; provided that  
5 the charging document for the offense for which there  
6 has been a conviction alleged intent to subject the  
7 victim to a sexual offense;
- 8 (3) An offense set forth in section 707-756 that includes  
9 an intent to promote or facilitate the commission of  
10 another felony covered offense as defined in section  
11 846E-1;
- 12 (4) An offense that is an attempt, criminal solicitation,  
13 or criminal conspiracy to commit any of the offenses  
14 in paragraph (1), (2), or (3);
- 15 (5) Any criminal offense that is comparable to one of the  
16 offenses in paragraph (1), (2), (3), or (4); or
- 17 (6) Any federal, military, or out-of-state offense that is  
18 comparable to one of the offenses in paragraph (1),  
19 (2), (3), or (4)."

20 SECTION 13. This Act does not affect rights and duties  
21 that matured, penalties that were incurred, and proceedings that  
22 were begun before its effective date.



# H.B. NO. 497

1 SECTION 14. If any provision of this Act, or the  
 2 application thereof to any person or circumstance is held  
 3 invalid, the invalidity does not affect other provisions or  
 4 applications of the Act, which can be given effect without the  
 5 invalid provision or application, and to this end the provisions  
 6 of this Act are severable.

7 SECTION 15. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

9 SECTION 16. This Act shall take effect upon its approval.

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INTRODUCED BY:

Karen Luana  
Cindy Evans

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**Report Title:**

Sex Trafficking Offenses; Crime

**Description:**

Establishes class A and class B felony sex trafficking offenses. Includes sex trafficking offenses in the official proceedings or investigations that are to be given greatest priority for purposes of witness protection programs.

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

