
A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

1 PART I

2 SECTION 1. Section 707-711, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§707-711 **Assault in the second degree.** (1) A person
5 commits the offense of assault in the second degree if:

6 (a) The person intentionally or knowingly causes
7 substantial bodily injury to another;

8 (b) The person recklessly causes serious or substantial
9 bodily injury to another;

10 (c) The person intentionally or knowingly causes bodily
11 injury to a correctional worker, as defined in section
12 710-1031(2), who is engaged in the performance of duty
13 or who is within a correctional facility;

14 (d) The person intentionally or knowingly causes bodily
15 injury to another with a dangerous instrument;

16 (e) The person intentionally or knowingly causes bodily
17 injury to an educational worker who is engaged in the
18 performance of duty or who is within an educational



1 facility. For the purposes of this paragraph,
2 "educational worker" means: any administrator,
3 specialist, counselor, teacher, or employee of the
4 department of education or an employee of a charter
5 school; a person who is a volunteer, as defined in
6 section 90-1, in a school program, activity, or
7 function that is established, sanctioned, or approved
8 by the department of education; or a person hired by
9 the department of education on a contractual basis and
10 engaged in carrying out an educational function;

11 (f) The person intentionally or knowingly causes bodily
12 injury to any emergency medical services provider who
13 is engaged in the performance of duty. For the
14 purposes of this paragraph, "emergency medical
15 services provider" means emergency medical services
16 personnel, as defined in section 321-222, and
17 physicians, physician's assistants, nurses, nurse
18 practitioners, certified registered nurse
19 anesthetists, respiratory therapists, laboratory
20 technicians, radiology technicians, and social
21 workers, providing services in the emergency room of a
22 hospital; or



1 (g) The person intentionally or knowingly causes bodily
2 injury to a person employed at a state-operated or
3 -contracted mental health facility. For the purposes
4 of this paragraph, "a person employed at a state-
5 operated or -contracted mental health facility"
6 includes health care professionals as defined in
7 section 451D-2, administrators, orderlies, security
8 personnel, volunteers, and any other person who is
9 engaged in the performance of a duty at a state-
10 operated or -contracted mental health facility.

11 (h) The person intentionally or knowingly causes bodily
12 injury to any firefighter or water safety officer who
13 is engaged in the performance of duty. For the
14 purposes of this paragraph, "firefighter" has the same
15 meaning as in section 710-1012 and "water safety
16 officer" means any public servant employed by the
17 United States, the State, or any county as a lifeguard
18 or person authorized to conduct water rescue or ocean
19 safety functions.

20 (2) Assault in the second degree is a class C felony."



1 PART II

2 SECTION 2. Section 708-812.6, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "[+]§708-812.6[+] **Unauthorized entry in a dwelling.** (1)

5 A person commits the offense of unauthorized entry in a dwelling
6 if ~~the~~:

7 (a) The person intentionally or knowingly enters
8 unlawfully into a dwelling with reckless disregard of
9 the risk that another person was lawfully present in
10 the dwelling, and another person was lawfully present
11 in the dwelling[-]; or

12 (b) The person intentionally or knowingly enters
13 unlawfully into a dwelling with reckless disregard of
14 the risk that another person was lawfully present in
15 the dwelling, another person was lawfully present in
16 the dwelling, and the other person lawfully present in
17 the dwelling was sixty-two years of age or older or
18 was and an incapacitated person or had a developmental
19 disability.

20 (2) For the purposes of this section:

21 (a) "Incapacitated person" shall have same meaning as
22 provided in section 560:5-102; and

1 **(b) "Developmental disability" shall have the same meaning**
2 **in section 333E-2.**

3 ~~[(2)]~~ **(3) Unauthorized entry in a dwelling under**
4 **subsection (1)(a) is a class C felony.**

5 **(4) Unauthorized entry in a dwelling under subsection**
6 **(1)(b) is a class B felony.**

7 ~~[(3)]~~ **(5) It is an affirmative defense that reduces this**
8 **offense to a misdemeanor that at the time of the unlawful entry:**

9 (a) There was a social gathering of invited guests at the
10 dwelling the defendant entered;

11 (b) The defendant intended to join the social gathering;
12 and

13 (c) The defendant had no intent to commit any unlawful act
14 other than the entry."

15 PART III

16 SECTION 3. 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 . LABOR TRAFFICKING**

20 **§707-A Definitions.** As used in this part:

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

1 "Services" means a relationship between a person and the
2 actor in which the person performs activities under the
3 supervision of or for the benefit of the actor or a third party.

4 "Venture" means a business relationship between two or more
5 parties to undertake economic activity together.

6 **§707-B Labor trafficking in the first degree.** (1) A
7 person commits the offense of labor trafficking in the first
8 degree if the person knowingly provides or obtains or attempts
9 to provide or obtain another person for labor or services, by
10 any of the following means:

- 11 (a) Assault in violation of either section 707-710,
12 707-711, or 707-712;
- 13 (b) Kidnapping as defined in section 707-720;
- 14 (c) Unlawful imprisonment as defined in section 707-721 or
15 707-722;
- 16 (d) Extortion as defined in section 707-764;
- 17 (e) Deception, as defined in section 708-800, or fraud,
18 which means making material false statements,
19 misstatements, or omissions to induce or maintain the
20 person to engage or continue to engage in the labor or
21 services;
- 22 (f) Force, threat, or intimidation;



- 1 (g) Requiring that labor be performed to retire, repay, or
2 service a real or purported debt, if performing the
3 labor or services is the exclusive method allowed to
4 retire, repay, or service the debt and the indebted
5 person is required to repay the debt with direct labor
6 in place of currency; provided that this shall not
7 include labor or services performed by a child for the
8 child's parent or guardian;
- 9 (h) Withholding any of the trafficked person's government-
10 issued identification documents with the intent to
11 impede the movement of the person;
- 12 (i) Using any scheme, plan, or pattern intended to cause
13 the person to believe that if the person did not
14 perform the labor or services, then the person or a
15 friend or a member of the person's family would suffer
16 serious harm, serious financial loss, or physical
17 restraint; or
- 18 (j) Using or threatening to use any form of domination,
19 restraint, or control over the person which, given the
20 totality of the circumstances, would have the
21 reasonably foreseeable effect of causing the person to



1 engage in or to remain engaging in the labor or
2 services.

3 (2) Labor trafficking in the first degree is a class A
4 felony.

5 **§707-C Labor trafficking in the second degree.** (1) A
6 person commits the offense of labor trafficking in the second
7 degree if the person knowingly:

8 (a) Either acting as an individual or using a licensed
9 business or business enterprise, aids another in a
10 venture knowing that the other person in that venture
11 is committing the offense of labor trafficking in the
12 first degree; or

13 (b) Benefits, financially or by receiving something of
14 value, from participation in a venture knowing or in
15 reckless disregard of the fact that another person has
16 engaged in any act in violation of subsection (1)(a)
17 in the course of that venture or that another person
18 in that venture is committing the offense of labor
19 trafficking in the first degree.

20 (2) Labor trafficking in the second degree is a class B
21 felony; provided that if a violation of subsection (1) involves
22 kidnapping or the attempt to kidnap, aggravated sexual abuse or



1 the attempt to commit aggravated sexual abuse, or the attempt to
2 cause the death of a person, or if the death of a person
3 results, the offense shall be a class A felony.

4 (3) Upon conviction of a defendant under subsection (1),
5 the court shall also order that any and all business licenses
6 issued by the State be revoked for the business or enterprise
7 that the defendant used to aid in the offense of labor
8 trafficking in the second degree; provided that the court, in
9 its discretion, may reinstate the business license upon petition
10 to the court by any remaining owner or partner of the business
11 or enterprise who was not convicted of an offense under this
12 section.

13 **§707-D Additional sentencing considerations; victims held**
14 **in servitude.** In addition to the factors set forth in sections
15 706-606 and 706-621, when determining the particular sentence to
16 be imposed on a defendant convicted under section 707-B or
17 707-C, the court shall consider:

18 (a) The duration for which the victim was held in
19 servitude; and

20 (b) The number of other victims held in servitude with the
21 victim.



1 **§707-E Extended terms of imprisonment; labor trafficking**
2 **offenses.** If a person is found guilty of a violation under
3 section 707-B or 707-C and the victim suffered bodily injury,
4 the person may be sentenced to an extended indeterminate term of
5 imprisonment. Subject to the procedures set forth in section
6 706-664, the court may impose, in addition to the indeterminate
7 term of imprisonment provided for the grade of offense, an
8 additional indeterminate term of imprisonment as follows:

- 9 (a) Bodily injury - an additional two years of
10 imprisonment;
- 11 (b) Serious bodily injury - an additional five years of
12 imprisonment;
- 13 (c) Permanent or life-threatening bodily injury - an
14 additional fifteen years of imprisonment; or
- 15 (d) If death results, the defendant shall be sentenced in
16 accordance with the homicide statute relevant for the
17 level of criminal intent.

18 When ordering an extended term sentence, the court shall impose
19 the maximum length of imprisonment. The minimum length of
20 imprisonment for an extended term sentence under paragraphs (a),
21 (b), (c), or (d) shall be determined by the Hawaii paroling
22 authority in accordance with section 706-669.



1 **§707-F Restitution for victims of labor trafficking. (1)**

2 In addition to any other penalty, and notwithstanding a victim's
3 failure to request restitution under section 706-646(2), the
4 court shall order restitution to be paid to the victim,
5 consisting of an amount that is the greater of:

6 (a) The total gross income or value to the defendant of
7 the victim's labor or services; or

8 (b) The value of the victim's labor or services, as
9 guaranteed under the minimum wage provisions of
10 chapter 387 or the Fair Labor Standards Act of 1938,
11 P.L. 75-718, 29 United States Code Sections 201 to
12 219, inclusive, whichever is greater.

13 (2) The return of the victim to the victim's home country
14 or other absence of the victim from the jurisdiction shall not
15 relieve the defendant of the defendant's restitution obligation.

16 (3) For purposes of this section, "victim" means the
17 person against whom an offense specified in section 707-B or
18 707-C has been committed.

19 **§707-G Nonpayment of wages. (1)** A person commits the
20 offense of nonpayment of wages if the person, in the capacity as
21 an employer of an employee, wilfully or with intent to defraud
22 fails or refuses to pay wages to the employee. In addition to



1 any other penalty, a person convicted of nonpayment of wages
2 shall be fined not less than \$2,000 nor more than \$10,000 for
3 each offense.

4 (2) Nonpayment of wages is:

5 (a) A class C felony, if the amount owed to the employee
6 is equal to or greater than \$2,000 or if the person
7 convicted of nonpayment of wages falsely denies the
8 amount or validity of the wages owed; or

9 (b) A misdemeanor, if the amount owed to the employee is
10 less than \$2,000.

11 (3) A person commits a separate offense under this section
12 for each pay period during which the employee earned wages that
13 the person failed or refused to pay the employee. If no set pay
14 periods were agreed upon between the person and the employee at
15 the time the employee commenced the work, then each "pay period"
16 shall be deemed to be bi-weekly.

17 (4) In addition to any other penalty, the court shall
18 order restitution to be paid to the employee, consisting of an
19 amount that is the greater of:

20 (a) The wages earned by the employee that were unpaid by
21 the person convicted of nonpayment of wages; or



1 (b) The value of the employee's labor or services, as
2 guaranteed under the minimum wage provisions of
3 chapter 387 or the Fair Labor Standards Act of 1938,
4 P.L. 75-718, 29 United States Code Sections 201 to
5 219, inclusive, whichever is greater.

6 (5) An employee who is the victim of nonpayment of wages
7 may bring a civil action to recover all wages owed by the person
8 convicted of nonpayment of wages.

9 (6) For purposes of this section:

10 "Employee" means any person working for another for hire,
11 including an individual employed in domestic service or at a
12 family or person's home or any individual employed by the
13 individual's parent or spouse, or independent contractors.

14 "Person" includes any individual, partnership, association,
15 joint-stock company, trust, corporation, the personal
16 representative of the estate of a deceased individual, or the
17 receiver, trustee, or successor of any of the same, employing
18 any persons, but shall not include the United States.

19 "Wages" means compensation for labor or services rendered
20 by an employee, whether the amount is determined on a time,
21 task, piece, commission, or other basis of calculation.



1 **§707-H Unlawful conduct with respect to documents.** (1) A
2 person commits the offense of unlawful conduct with respect to
3 documents if the person knowingly destroys, conceals, removes,
4 confiscates, or possesses any actual or purported government
5 identification document of another person:

6 (a) In the course of a violation or attempt to commit an
7 offense under section 707-B or 707-C; or

8 (b) To prevent or restrict, or in an attempt to prevent or
9 restrict, without lawful authority, the ability of the
10 other person to move or travel, in order to maintain
11 the labor or services of the other person, when the
12 person is or has been the victim of an offense under
13 section 707-B or 707-C.

14 (2) A person commits the unlawful conduct with respect to
15 documents if the person knowingly destroys, conceals, removes,
16 or confiscates any actual or purported government identification
17 document of an employee.

18 (3) Unlawful conduct with respect to documents is a
19 class C felony."

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



1 "**§712A-4 Covered offenses.** Offenses for which property is
2 subject to forfeiture under this chapter are:

3 (a) All offenses which specifically authorize forfeiture;

4 (b) Murder, kidnapping, labor trafficking, gambling,
5 criminal property damage, robbery, bribery, extortion,
6 theft, unauthorized entry into motor vehicle,
7 burglary, money laundering, trademark counterfeiting,
8 insurance fraud, promoting a dangerous, harmful, or
9 detrimental drug, commercial promotion of marijuana,
10 unlawful methamphetamine trafficking, manufacturing of
11 a controlled substance with a child present, promoting
12 child abuse, or electronic enticement of a child which
13 is chargeable as a felony offense under state law;

14 (c) The manufacture, sale, or distribution of a controlled
15 substance in violation of chapter 329, promoting
16 detrimental drugs or intoxicating compounds, promoting
17 pornography, promoting pornography for minors, or
18 promoting prostitution, which is chargeable as a
19 felony or misdemeanor offense, but not as a petty
20 misdemeanor, under state law; and



1 (d) The attempt, conspiracy, solicitation, coercion, or
2 intimidation of another to commit any offense for
3 which property is subject to forfeiture."

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

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



1 is made, if the interception might provide or has provided
2 evidence of:

3 (1) Murder;

4 (2) Kidnapping;

5 (3) Labor trafficking in the first degree;

6 (4) Labor trafficking in the second degree;

7 [~~3~~] (5) Felony criminal property damage involving the
8 danger of bodily injury as defined in section 707-700;

9 [~~4~~] (6) Distribution of dangerous, harmful, or
10 detrimental drugs; or

11 [~~5~~] (7) Conspiracy to commit one or more of the above; or
12 involving

13 [~~6~~] (8) Organized crime and any of the following felony
14 offenses:

15 (A) Extortion;

16 (B) Bribery of a juror, of a witness, or of a police
17 officer;

18 (C) Receiving stolen property; [~~and~~]

19 (D) Gambling; and

20 (E) Money laundering."



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

4 "Organized crime" means any combination or conspiracy to
5 engage in criminal activity as a significant source of income or
6 livelihood, or to violate, aid or abet the violation of criminal
7 laws relating to prostitution, gambling, loan sharking, drug
8 abuse, illegal drug distribution, counterfeiting, extortion,
9 labor trafficking, or corruption of law enforcement officers or
10 other public officers or employers.

11 "Racketeering activity" means any act or threat
12 involving[?] but not limited to murder, kidnapping, gambling,
13 criminal property damage, robbery, bribery, extortion, labor
14 trafficking, theft, or prostitution, or any dealing in narcotic
15 or other dangerous drugs which is chargeable as a crime under
16 state law and punishable by imprisonment for more than one
17 year."

18 PART IV

19 SECTION 7. The department of the attorney general shall
20 submit a report regarding the implementation of Part III,
21 including findings, recommendations, and any proposed



1 legislation, to the legislature no later than twenty days prior
2 to the convening of the regular session of 2015.

3 PART V

4 SECTION 8. In codifying the new sections added by
5 section 3 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 9. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 10. If any provision of this Act, or the
12 application thereof to any person or circumstance is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act, which can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 11. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act shall take effect on January 7, 2059;
20 provided that part III shall be repealed on December 31, 2017;
21 provided that:

22 (1) Section 712A-4, Hawaii Revised Statutes, in section 4;



1 (2) Section 803-44, Hawaii Revised Statutes, in section 5;
2 and
3 (3) Section 842-1, Hawaii Revised Statutes, in section 6;
4 of this Act, shall be reenacted in the form in which they read
5 on the day before the effective date of this Act.



Report Title:

HSAC Package; Penal Code; Firefighters; Water Safety Officers

Description:

Adds the assault of firefighters and water safety officers to the offense of assault in the second degree. Creates a class B felony for unauthorized entry in a dwelling based on occupant's age and incapacity. Establishes labor trafficking as a criminal offense. Requires the Attorney General to report on labor trafficking provisions. Repeals the labor trafficking provisions on December 31, 2017. Effective January 7, 2059. (SB1025 HD1)

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

