

JAN 17 2014

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. 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);



- 1 (11) Kidnapping (section 707-720);
- 2 (12) Sexual assault in the first degree (section 707-730);
- 3 (13) Sexual assault in the second degree (section 707-731);
- 4 (14) Sexual assault in the third degree (section 707-732);
- 5 (15) Sexual assault in the fourth degree (section 707-733);
- 6 (16) Abuse of family [+]or[+] household member (section
- 7 709-906); ~~and~~
- 8 (17) Terrorism, as defined in Title 18 United States Code
- 9 section 2331[-];
- 10 (18) Labor trafficking in the first degree (section
- 11 707-781); and
- 12 (19) Promoting prostitution in the first degree (section
- 13 712-1202)."

14 SECTION 2. Section 712-1200, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (2) to read:

17 "(2) As used in subsection (1), "sexual conduct" means
18 [~~sexual penetration,~~]:

19 (a) "Sexual penetration," "deviate sexual intercourse," or
20 "sexual contact," as those terms are defined in
21 section 707-700[-]; or



1 (b) "Sadomasochistic abuse," as defined in section 707-
2 752."

3 2. By amending subsection (5) to read:

4 "(5) This section shall not apply to any member of a
5 police department, a sheriff, or a law enforcement officer
6 acting in the course and scope of duties~~[-]~~, unless the action
7 includes sexual penetration or sadomasochistic abuse."

8 SECTION 3. Section 712-1209.1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[+]§712-1209.1[+]~~ **Solicitation of a minor for**

11 **prostitution.** (1) A person eighteen years of age or older
12 commits the offense of solicitation of a minor for prostitution
13 if the person offers or agrees to pay a fee to a minor or to
14 another person who represents that person's self as a minor to
15 engage in sexual conduct.

16 (2) Solicitation of a minor for prostitution is a class C
17 felony.

18 (3) A person convicted of committing the offense of
19 solicitation of a minor for prostitution shall be imposed a fine
20 of not less than ~~[\$2,000+]~~ \$5,000; provided that ~~[\$2,000]~~ \$5,000
21 of the imposed fine shall be credited to the general fund.



1 (4) This section shall not apply to any member of a police
2 department, a sheriff, or a law enforcement officer acting in
3 the course and scope of duties.

4 (5) It shall not be a defense to a prosecution for
5 solicitation of a minor for prostitution that the defendant did
6 not know the victim was under the age of eighteen.

7 [~~4~~] (6) For purposes of this section:

8 "Minor" means a person who is less than eighteen years of
9 age.

10 "Sexual conduct" has the same meaning as in section
11 712-1200(2)."

12 SECTION 4. Section 706-606.5, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) Notwithstanding section 706-669 and any other law to
15 the contrary, any person convicted of murder in the second
16 degree, any class A felony, any class B felony, or any of the
17 following class C felonies: section 188-23 relating to
18 possession or use of explosives, electrofishing devices, and
19 poisonous substances in state waters; section 386-98(d)(1)
20 relating to fraud violations and penalties; section 431:2-
21 403(b)(2) relating to insurance fraud; section 707-703 relating
22 to negligent homicide in the second degree; section 707-711



1 relating to assault in the second degree; section 707-713
2 relating to reckless endangering in the first degree; section
3 707-716 relating to terroristic threatening in the first degree;
4 section 707-721 relating to unlawful imprisonment in the first
5 degree; section 707-732 relating to sexual assault or rape in
6 the third degree; section 707-752 relating to promoting child
7 abuse in the third degree; section 707-757 relating to
8 electronic enticement of a child in the second degree; section
9 707-766 relating to extortion in the second degree; section 708-
10 811 relating to burglary in the second degree; section 708-821
11 relating to criminal property damage in the second degree;
12 section 708-831 relating to theft in the first degree as amended
13 by Act 68, Session Laws of Hawaii 1981; section 708-831 relating
14 to theft in the second degree; section 708-835.5 relating to
15 theft of livestock; section 708-836 relating to unauthorized
16 control of propelled vehicle; section 708-839.8 relating to
17 identity theft in the third degree; section 708-839.55 relating
18 to unauthorized possession of confidential personal information;
19 section 708-852 relating to forgery in the second degree;
20 section 708-854 relating to criminal possession of a forgery
21 device; section 708-875 relating to trademark counterfeiting;
22 section 710-1071 relating to intimidating a witness; section



1 711-1103 relating to riot; [~~section 712-1203 relating to~~
2 ~~promoting prostitution in the second degree;~~] section 712-1209.1
3 relating to solicitation of a minor for prostitution; section
4 712-1209.5 relating to habitual solicitation of prostitution;
5 section 712-1221 relating to gambling in the first degree;
6 section 712-1224 relating to possession of gambling records in
7 the first degree; section 712-1243 relating to promoting a
8 dangerous drug in the third degree; section 712-1247 relating to
9 promoting a detrimental drug in the first degree; section 846E-9
10 relating to failure to comply with covered offender registration
11 requirements; section 134-7 relating to ownership or possession
12 of firearms or ammunition by persons convicted of certain
13 crimes; section 134-8 relating to ownership, etc., of prohibited
14 weapons; section 134-9 relating to permits to carry, or who is
15 convicted of attempting to commit murder in the second degree,
16 any class A felony, any class B felony, or any of the class C
17 felony offenses enumerated above and who has a prior conviction
18 or prior convictions for the following felonies, including an
19 attempt to commit the same: murder, murder in the first or
20 second degree, a class A felony, a class B felony, any of the
21 class C felony offenses enumerated above, or any felony
22 conviction of another jurisdiction, shall be sentenced to a



1 mandatory minimum period of imprisonment without possibility of
2 parole during such period as follows:

3 (a) One prior felony conviction:

4 (i) Where the instant conviction is for murder in the
5 second degree or attempted murder in the second
6 degree--ten years;

7 (ii) Where the instant conviction is for a class A
8 felony--six years, eight months;

9 (iii) Where the instant conviction is for a class B
10 felony--three years, four months; and

11 (iv) Where the instant conviction is for a class C
12 felony offense enumerated above--one year, eight
13 months;

14 (b) Two prior felony convictions:

15 (i) Where the instant conviction is for murder in the
16 second degree or attempted murder in the second
17 degree--twenty years;

18 (ii) Where the instant conviction is for a class A
19 felony--thirteen years, four months;

20 (iii) Where the instant conviction is for a class B
21 felony--six years, eight months; and



- 1 (iv) Where the instant conviction is for a class C
- 2 felony offense enumerated above--three years,
- 3 four months;
- 4 (c) Three or more prior felony convictions:
- 5 (i) Where the instant conviction is for murder in the
- 6 second degree or attempted murder in the second
- 7 degree--thirty years;
- 8 (ii) Where the instant conviction is for a class A
- 9 felony--twenty years;
- 10 (iii) Where the instant conviction is for a class B
- 11 felony--ten years; and
- 12 (iv) Where the instant conviction is for a class C
- 13 felony offense enumerated above--five years."

14 SECTION 5. Section 706-606.6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§706-606.6 Repeat violent and sexual offender; enhanced**
17 **sentence.** (1) Notwithstanding any other provision of law to
18 the contrary, any person who is convicted of an offense under
19 section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-
20 733.6, 707-750, [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1,
21 after having been convicted on at least three prior and separate
22 occasions of an offense under section 707-701.5, 707-702, 707-



1 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
2 [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, or of an
3 offense under federal law or the laws of another state that is
4 comparable to an offense under section 707-701.5, 707-702, 707-
5 710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,
6 [~~or~~] 708-840, 712-1202, 712-1203, or 712-1209.1, shall be
7 sentenced to an extended term of imprisonment as provided in
8 section 706-661.

9 (2) A conviction shall not be considered a prior offense
10 unless the conviction occurred within the following time
11 periods:

- 12 (a) For an offense under section 707-701.5, 707-702,
13 707-730, 707-733.6, 707-750, [~~or~~] 708-840, 712-1202,
14 712-1203, or 712-1209.1, within the past twenty years
15 from the date of the instant offense;
- 16 (b) For an offense under section 707-710 or 707-731,
17 within the past ten years from the date of the instant
18 offense;
- 19 (c) For an offense under section 707-711 or 707-732,
20 within the past five years from the date of the
21 instant offense; or



1 (d) For an offense under federal law or the laws of
2 another state that is comparable to an offense under
3 section 707-701.5, 707-702, 707-710, 707-711, 707-730,
4 707-731, 707-732, 707-733.6, 707-750, [~~ex~~] 708-840,
5 712-1202, 712-1203, or 712-1209.1, within the maximum
6 term of imprisonment possible under the appropriate
7 jurisdiction."

8 SECTION 6. Section 853-4, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) This chapter shall not apply when:

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

13 (2) The offense charged is:

14 (A) A felony that involves the intentional, knowing,
15 or reckless bodily injury, substantial bodily
16 injury, or serious bodily injury of another
17 person; or

18 (B) A misdemeanor or petty misdemeanor that carries a
19 mandatory minimum sentence and that involves the
20 intentional, knowing, or reckless bodily injury,
21 substantial bodily injury, or serious bodily
22 injury of another person;



- 1 (3) The offense charged involves a conspiracy or
- 2 solicitation to intentionally, knowingly, or
- 3 recklessly kill another person or to cause serious
- 4 bodily injury to another person;
- 5 (4) The offense charged is a class A felony;
- 6 (5) The offense charged is nonprobationable;
- 7 (6) The defendant has been convicted of any offense
- 8 defined as a felony by the Hawaii Penal Code or has
- 9 been convicted for any conduct that if perpetrated in
- 10 this State would be punishable as a felony;
- 11 (7) The defendant is found to be a law violator or
- 12 delinquent child for the commission of any offense
- 13 defined as a felony by the Hawaii Penal Code or for
- 14 any conduct that if perpetrated in this State would
- 15 constitute a felony;
- 16 (8) The defendant has a prior conviction for a felony
- 17 committed in any state, federal, or foreign
- 18 jurisdiction;
- 19 (9) A firearm was used in the commission of the offense
- 20 charged;
- 21 (10) The defendant is charged with the distribution of a
- 22 dangerous, harmful, or detrimental drug to a minor;



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

5 (12) The defendant has been charged with a misdemeanor
6 offense and has been previously granted deferred
7 acceptance of guilty plea status for a prior felony,
8 misdemeanor, or petty misdemeanor for which the period
9 of deferral has not yet expired;

10 (13) The offense charged is:

- 11 (A) Escape in the first degree;
- 12 (B) Escape in the second degree;
- 13 (C) Promoting prison contraband in the first degree;
- 14 (D) Promoting prison contraband in the second degree;
- 15 (E) Bail jumping in the first degree;
- 16 (F) Bail jumping in the second degree;
- 17 (G) Bribery;
- 18 (H) Bribery of or by a witness;
- 19 (I) Intimidating a witness;
- 20 (J) Bribery of or by a juror;
- 21 (K) Intimidating a juror;
- 22 (L) Jury tampering;



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- 1 [~~(M)~~] ~~Promoting prostitution in the first degree;~~
- 2 ~~(N)]~~ (M) Promoting prostitution in the second degree;
- 3 [~~(O)~~] (N) Abuse of family or household members;
- 4 [~~(P)~~] (O) Sexual assault in the second degree;
- 5 [~~(Q)~~] (P) Sexual assault in the third degree;
- 6 [~~(R)~~] (Q) A violation of an order issued pursuant to
- 7 chapter 586;
- 8 [~~(S)~~] (R) Promoting child abuse in the second degree;
- 9 [~~(T)~~] (S) Promoting child abuse in the third degree;
- 10 [~~(U)~~] (T) Electronic enticement of a child in the
- 11 first degree;
- 12 [~~(V)~~] (U) Electronic enticement of a child in the
- 13 second degree;
- 14 [~~(W)~~] (V) Prostitution pursuant to section 712-
- 15 1200(1)(b);
- 16 [~~(X)~~] (W) Street solicitation of prostitution under
- 17 section 712-1207(1)(b);
- 18 [~~(Y)~~] (X) Solicitation of prostitution near schools or
- 19 public parks under section 712-1209; [~~(Z)]~~
- 20 [~~(Z)~~] (Y) Habitual solicitation of prostitution under
- 21 section 712-1209.5; or



1 (Z) Solicitation of a minor for prostitution under
2 section 712-1209.1;

3 (14) The defendant has been charged with:

4 (A) Knowingly or intentionally falsifying any report
5 required under chapter 11, part XIII with the
6 intent to circumvent the law or deceive the
7 campaign spending commission; or

8 (B) Violating section 11-352 or 11-353; or

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

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

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

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INTRODUCED BY: Shianne Chun Clark
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Report Title:

Prostitution; Sex Crimes

Description:

Allows crime victim compensation for labor trafficking in the first degree and promoting prostitution in the first degree. Amends the definition of "sexual conduct" as used in describing the offense of prostitution. Makes solicitation of a minor for prostitution ineligible for deferred acceptance of guilty plea. Makes promoting prostitution in the first degree eligible for deferred acceptance of guilty plea. Amends the offense of solicitation of a minor for prostitution. Clarifies sentencing of repeat offenders and enhanced sentences for repeat violent and sexual offenders.

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