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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. The legislature finds that when children are  
2 solicited for sex, it may not be done with monetary  
3 consideration, but rather something else of value, such as a  
4 reward, token, or other incentive. This is unfortunately the  
5 case in a survival sex scenario where a child is offered basic  
6 necessities in exchange for sex. Survival sex is defined as  
7 trading sex acts, including prostitution, stripping, and  
8 pornography, in order to get a basic need, such as a meal for  
9 the day, a place to sleep at night, clothes, or transportation.  
10 No money is exchanged. This is commonly seen in poor, homeless,  
11 or runaway youth who have no other means of getting their basic  
12 needs met.

13 The legislature notes that the solicitation of a minor for  
14 prostitution statute is analogous to the electronic enticement  
15 of a child in the first degree statute, a class B felony, which  
16 does not require a fee or consideration in exchange for the same  
17 sexual conduct. Both offenses address the same population with



1 the same mental state and overt action of an adult intending to  
2 engage in sexual conduct with a minor. Therefore, the  
3 legislature finds that these two offenses should both be class B  
4 felonies.

5 The legislature further finds that the solicitation of a  
6 minor for prostitution statute needs clarification to ensure  
7 that the state of mind requirement does not apply to an  
8 undercover operation. As currently written, the statute has an  
9 unintended element of requiring proof that the offender knew the  
10 communication was with an undercover operative.

11 The legislature also finds that the State must do more to  
12 prevent adults from engaging in sexual intercourse with minors.  
13 This may be accomplished in two ways:

- 14 (1) Making it easier for law enforcement to stop child sex  
15 predators; and
- 16 (2) Holding parents who offer their minor children for sex  
17 accountable.

18 The legislature further finds that undercover operations  
19 have shown an increase in "johns" seeking sex with minors.  
20 These "johns" communicate with an adult who represents that they  
21 are a parent or guardian or have custody or control of the child



1 being offered for sex. However, under the current state  
2 statute, only the communication from the "john" directly to the  
3 minor or a law enforcement officer representing that person's  
4 self to be a minor is unlawful.

5 The purpose of this Act is to:

6 (1) Amend the offense of solicitation of a minor for  
7 prostitution by:

8 (A) Specifying that the act of offering or agreeing  
9 to any type of consideration in exchange for  
10 sexual conduct with a minor, rather than payment  
11 of a fee, constitutes solicitation of a minor;

12 (B) Changing the offense to a class B felony; and

13 (C) Clarifying that the offender's state of mind does  
14 not apply to a situation involving an undercover  
15 law enforcement officer; and

16 (2) Impose a criminal penalty on:

17 (A) A parent or guardian who offers or agrees for  
18 consideration or the promise of consideration for  
19 the purpose of another person engaging in sexual  
20 conduct with the parent or guardian's minor  
21 child;



1 (B) A person seeking to solicit sexual conduct with a  
2 minor from a third person; and

3 (C) An adult who communicates with someone the adult  
4 perceives to be the minor's parent or guardian  
5 for the purpose of engaging in sexual conduct  
6 with the minor.

7 SECTION 2. Chapter 712, Hawaii Revised Statutes, is  
8 amended by adding two new sections to part I to be appropriately  
9 designated and to read as follows:

10 "§712-A Promoting the prostitution of a minor. (1) A  
11 person commits the offense of promoting prostitution of a minor  
12 if that person is a parent, guardian, or has custody or control  
13 of a minor, is eighteen years of age or older, and  
14 intentionally, knowingly, or recklessly offers or agrees for  
15 consideration or the promise of consideration for the purpose of  
16 another person engaging in sexual conduct with the minor.

17 (2) Promoting prostitution of a minor is a class B felony.

18 (3) For purposes of this section:

19 "Consideration" means a benefit to the promisor or any  
20 bargained for exchange. Courts shall not look into the adequacy  
21 of consideration.



1       "Sexual conduct" shall have the same meaning as that term  
2 is defined in section 712-1200(1).

3       §712-B Solicitation of another for prostitution of a minor.

4       (1) A person commits the offense of solicitation of another for  
5 prostitution of a minor if the person intentionally, knowingly,  
6 or recklessly agrees for consideration or the promise of  
7 consideration for sexual conduct with a minor to:

8       (a) Another who offers to provide the minor; or

9       (b) A member of a police department, a sheriff, or a law  
10 enforcement officer who represents that person's self  
11 as a person providing a minor for sexual conduct.

12       (2) Solicitation of another for prostitution of a minor is  
13 a class B felony. Notwithstanding any law to the contrary, a  
14 person convicted of solicitation of another for prostitution of  
15 a minor shall be sentenced to an indeterminate term of  
16 imprisonment as provided by law.

17       (3) The state of mind requirement for this offense is not  
18 applicable to the fact that the person solicited was a member of  
19 a police department, a sheriff, or a law enforcement officer who  
20 represented that person's self as a person providing a minor for  
21 sexual conduct. A person is strictly liable with respect to the



1 attendant circumstance that the person solicited was a member of  
2 a police department, a sheriff, or a law enforcement officer who  
3 represented that person's self as a person providing a minor for  
4 sexual conduct.

5 (4) For purposes of this section:

6 "Consideration" means a benefit to the promisor or any  
7 bargained for exchange. Courts shall not look into the adequacy  
8 of consideration.

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

11 "Sexual conduct" has the same meaning as in section 712-  
12 1200(2)."

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

15 **"§712-1209.1 Solicitation of a minor for prostitution.**

16 (1) A person eighteen years of age or older commits the offense  
17 of solicitation of a minor for prostitution if the person  
18 intentionally, knowingly, or recklessly offers or agrees to [~~pay~~  
19 ~~a fee~~] provide any type of consideration to a minor or to a  
20 member of a police department, a sheriff, or a law enforcement



1 officer who represents that person's self as a minor to engage  
2 in sexual conduct.

3 (2) Solicitation of a minor for prostitution is a class  
4 [E] B felony.

5 (3) A person convicted of committing the offense of  
6 solicitation of a minor for prostitution shall be ~~[imposed]~~  
7 ordered to pay a fine of not less than \$5,000 ~~[, provided that~~  
8 ~~\$5,000 of the imposed fine shall be credited to the general~~  
9 ~~fund.]~~, along with any other appropriate sentence.

10 (4) This section shall not apply to any member of a police  
11 department, a sheriff, or a law enforcement officer who offers  
12 or agrees to ~~[pay a fee]~~ provide any type of consideration to a  
13 minor while acting in the course and scope of duties.

14 (5) The state of mind requirement for this offense is not  
15 applicable to the fact that the person solicited was a minor~~[-]~~  
16 or a member of a police department, a sheriff, or law  
17 enforcement officer who represented that person's self as a  
18 minor. A person is strictly liable with respect to the  
19 attendant circumstance that the person solicited was a minor~~[-]~~  
20 or a member of a police department, a sheriff, or a law



1 enforcement officer who represents that person's self as a  
2 minor.

3 (6) For purposes of this section:

4 "Consideration" means a benefit to the promisor or any  
5 bargained for exchange. Courts shall not look into the adequacy  
6 of consideration.

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

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

11 SECTION 4. Section 707-756, Hawaii Revised Statutes, is  
12 amended by amending subsection (1) to read as follows:

13 "(1) Any person who, using a computer or any other  
14 electronic device:

15 (a) Intentionally or knowingly communicates:

16 (i) With a minor known by the person to be under the  
17 age of eighteen years;

18 (ii) With another person, in reckless disregard of the  
19 risk that the other person is under the age of  
20 eighteen years, and the other person is under the  
21 age of eighteen years; [e]





1 (iii) With another person who represents that person to  
2 be under the age of eighteen years; or  
3 (iv) With another person who represents that person to  
4 have control or custody of a minor, including but  
5 not limited to a parent or guardian;  
6 (b) With the intent to promote or facilitate the  
7 commission of a felony:  
8 (i) That is a murder in the first or second degree;  
9 (ii) That is a class A felony; or  
10 (iii) That is another covered offense as defined in  
11 section 846E-1,  
12 agrees to meet with the minor, [~~or~~] with another  
13 person who represents that person to be a minor under  
14 the age of eighteen years [~~+~~], or with another person  
15 who represents that person to have control or custody  
16 of a minor; and  
17 (c) Intentionally or knowingly travels to the agreed upon  
18 meeting place at the agreed upon meeting time,  
19 is guilty of electronic enticement of a child in the first  
20 degree."



1 SECTION 5. Section 707-757, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:

3 "(1) Any person who, using a computer or any other  
4 electronic device:

5 (a) Intentionally or knowingly communicates:

6 (i) With a minor known by the person to be under the  
7 age of eighteen years;

8 (ii) With another person, in reckless disregard of the  
9 risk that the other person is under the age of  
10 eighteen years, and the other person is under the  
11 age of eighteen years; [~~or~~]

12 (iii) With another person who represents that person to  
13 be under the age of eighteen years; or

14 (iv) With another person who represents that person to  
15 have control or custody of a minor, including but  
16 not limited to a parent or guardian;

17 (b) With the intent to promote or facilitate the  
18 commission of a felony, agrees to meet with the minor,  
19 [~~or~~] with another person who represents that person to  
20 be a minor under the age of eighteen years [~~+~~], or with



1           another person who represents that person to have  
2           control or custody of a minor; and

3           (c) Intentionally or knowingly travels to the agreed upon  
4           meeting place at the agreed upon meeting time;  
5 is guilty of electronic enticement of a child in the second  
6 degree."

7           SECTION 6. Section 846E-1, Hawaii Revised Statutes, is  
8 amended by amending the definition of "sexual offense" to read  
9 as follows:

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

11           (1) Set forth in section 707-730(1), 707-731(1), 707-  
12           732(1), 707-733(1)(a), 707-733.6, 712-1202(1), or 712-  
13           1203(1), but excludes conduct that is criminal only  
14           because of the age of the victim, as provided in  
15           section 707-730(1)(b), or section 707-732(1)(b) if the  
16           perpetrator is under the age of eighteen;

17           (2) An act defined in section 707-720 if the charging  
18           document for the offense for which there has been a  
19           conviction alleged intent to subject the victim to a  
20           sexual offense;

21           (3) An act that consists of:



- 1 (A) Criminal sexual conduct toward a minor, including  
2 but not limited to an offense set forth in  
3 section 707-759;
- 4 (B) Solicitation of a minor who is less than fourteen  
5 years old to engage in sexual conduct;
- 6 (C) Use of a minor in a sexual performance;
- 7 (D) Production, distribution, or possession of child  
8 pornography chargeable as a felony under section  
9 707-750, 707-751, or 707-752;
- 10 (E) Electronic enticement of a child chargeable under  
11 section 707-756 or 707-757 if the offense was  
12 committed with the intent to promote or  
13 facilitate the commission of another covered  
14 offense as defined in this section; [~~or~~]
- 15 (F) Solicitation of a minor for prostitution in  
16 violation of section 712-1209.1;
- 17 (G) Promoting the prostitution of a minor in  
18 violation of section 712-A; or
- 19 (H) Solicitation of another for prostitution of a  
20 minor in violation of section 712-B;
- 21 (4) A violation of privacy under section 711-1110.9;



1 (5) An act, as described in chapter 705, that is an  
2 attempt, criminal solicitation, or criminal conspiracy  
3 to commit one of the offenses designated in paragraphs  
4 (1) through (4);

5 (6) A criminal offense that is comparable to or that  
6 exceeds a sexual offense as defined in paragraphs (1)  
7 through (5); or

8 (7) Any federal, military, out-of-state, tribal, or  
9 foreign conviction for any offense that under the laws  
10 of this State would be a sexual offense as defined in  
11 paragraphs (1) through (6)."

12 SECTION 7. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15 SECTION 8. In codifying the new sections added by section  
16 2 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.



1           SECTION 9. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3           SECTION 10. This Act shall take effect on July 1, 2050.



**Report Title:**

Solicitation of a Minor for Prostitution; Consideration; State of Mind; Solicitation of Another for Prostitution of a Minor

**Description:**

Amends the offense of solicitation of a minor for prostitution by specifying that the act of offering or agreeing to any type of consideration, rather than payment of a fee, constitutes solicitation of a minor. Makes solicitation of a minor a class B felony. Clarifies that the offender's state of mind is not required when the person solicited is a law enforcement officer who holds themselves out as a minor. Imposes a criminal penalty on any parent, guardian, or person having custody or control of a minor that offers or agrees for consideration for the purpose of another person engaging in sexual conduct with the minor. Imposes a criminal penalty on any person that entices a parent, guardian, or person having custody or control of a minor by electronic means for the purposes of engaging in sexual conduct with the minor. Imposes a criminal penalty on any person that solicits another for prostitution of a minor. Effective 7/1/2050. (HD1)

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

