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# A BILL FOR AN ACT

RELATING TO SEX TRAFFICKING.

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

1           SECTION 1. The legislature finds that sex trafficking is a  
2 form of modern-day slavery. According to a 2018 report  
3 published by Arizona State University and the Hawaii state  
4 commission on the status of women, one in every eleven male  
5 residents of Hawaii are online sex shoppers. When nonresidents  
6 are included, the report estimated that 74,362 sex shoppers are  
7 potentially active in the islands.

8           The legislature further finds that a disproportionately low  
9 number of the sex trafficking offenses that occur in the State  
10 are prosecuted in court. This is due in significant part to the  
11 fact that most sex trafficking victims delay reporting the  
12 crimes committed against them, and many do not report the crimes  
13 at all. Victims often feel complicit in the offense or carry a  
14 sense of guilt and shame. Most victims delay their reports  
15 until after they have been removed from their traffickers and  
16 the corresponding living conditions, and many undergo trauma-  
17 informed care and counseling before they speak out.



1           The legislature believes that in the interest of aiding  
2 victims who seek justice, prosecutors should have the power to  
3 pursue a criminal case for sex trafficking, regardless of when  
4 the offense was committed.

5           The legislature additionally finds that state law does not  
6 currently identify soliciting a minor for prostitution as a form  
7 of sex trafficking. However, under title 18 United States Code  
8 section 1591, federal law recognizes offering to engage in  
9 sexual activity with a minor for anything of value as a form of  
10 sex trafficking.

11           The purpose of this Act is to protect victims of sex  
12 trafficking by strengthening Hawaii's sex trafficking laws.

13           SECTION 2. Section 701-108, Hawaii Revised Statutes, is  
14 amended by amending subsection (1) to read as follows:

15           "(1) A prosecution for murder, murder in the first and  
16 second degrees, attempted murder, and attempted murder in the  
17 first and second degrees, criminal conspiracy to commit murder  
18 in any degree, criminal solicitation to commit murder in any  
19 degree, sexual assault in the first and second degrees, sex  
20 trafficking, and continuous sexual assault of a minor under the  
21 age of fourteen years may be commenced at any time."



1 SECTION 3. Section 706-606.6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§706-606.6 Repeat violent and sexual offender; enhanced**  
4 **sentence.** (1) Notwithstanding any other provision of law to  
5 the contrary, any person who is convicted of an offense under  
6 section 707-701.5, 707-702, 707-730, 707-731, 707-732,  
7 707-733.6, 707-750, 708-840, 712-1202, or 712-1203, [~~er~~  
8 ~~712-1209.1,~~] after having been convicted on at least three prior  
9 and separate occasions of an offense under section 707-701.5,  
10 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6,  
11 707-750, 708-840, 712-1202, or 712-1203, [~~er 712-1209.1,~~] or of  
12 an offense under federal law or the laws of another state that  
13 is comparable to an offense under section 707-701.5, 707-702,  
14 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750,  
15 708-840, 712-1202, or 712-1203, [~~er 712-1209.1,~~] shall be  
16 sentenced to an extended term of imprisonment as provided in  
17 section 706-661.

18 (2) A conviction shall not be considered a prior offense  
19 unless the conviction occurred within the following time  
20 periods:



- 1 (a) For an offense under section 707-701.5, 707-702,  
2 707-730, 707-733.6, 707-750, 708-840, 712-1202, or  
3 712-1203, [~~er 712-1209.1,~~] within the past twenty  
4 years from the date of the instant offense;
- 5 (b) For an offense under section 707-710 or 707-731,  
6 within the past ten years from the date of the instant  
7 offense;
- 8 (c) For an offense under section 707-711 or 707-732,  
9 within the past five years from the date of the  
10 instant offense; or
- 11 (d) For an offense under federal law or the laws of  
12 another state that is comparable to an offense under  
13 section 707-701.5, 707-702, 707-710, 707-711, 707-730,  
14 707-731, 707-732, 707-733.6, 707-750, 708-840,  
15 712-1202, or 712-1203, [~~er 712-1209.1,~~] within the  
16 maximum term of imprisonment possible under the  
17 appropriate jurisdiction."

18 SECTION 4. Section 712-1202, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§712-1202 Sex trafficking.** (1) A person commits the  
21 offense of sex trafficking if the person knowingly:



- 1 (a) Advances prostitution by compelling or inducing a  
2 person by force, threat, fraud, coercion, or  
3 intimidation to engage in prostitution, or profits  
4 from such conduct by another; [~~or~~]
- 5 (b) Advances or profits from prostitution of a minor;  
6 [~~provided that with respect to the victim's age, the~~  
7 ~~prosecution shall be required to prove only that the~~  
8 ~~person committing the offense acted negligently.] or~~
- 9 (c) Offers or agrees to consideration or the promise of  
10 consideration to a minor to engage in sexual conduct;  
11 third person pursuant to an understanding that such  
12 compensation is in exchange for engaging in sexual  
13 conduct with a minor; or member of a police  
14 department, a sheriff, or a law enforcement officer  
15 who represents that person's self as a minor to engage  
16 in sexual conduct.
- 17 (2) Sex trafficking is a class A felony.
- 18 (3) The state of mind requirement for the offenses under  
19 subsections (1)(b) and (1)(c) is not applicable to the fact that  
20 the person solicited was a minor. A person is strictly liable



1 with respect to the attendant circumstance that the person  
2 solicited was a minor.

3 (4) Consent to sexual conduct shall not constitute a  
4 defense to a violation of this section.

5 (5) Subsection (1)(c) shall not apply to any member of a  
6 police department, a sheriff, or a law enforcement officer who  
7 offers or agrees to pay a fee to a minor while acting in the  
8 course and scope of duties.

9 ~~[-3-]~~ (6) As used in this section:

10 "Consideration" means a benefit to the promisor or any  
11 bargained for exchange. Courts shall not look into the adequacy  
12 of consideration.

13 "Fraud" means making material false statements,  
14 misstatements, or omissions.

15 "Minor" means a person who is less than eighteen years of  
16 age.

17 "Sexual conduct" has the same meaning as in section  
18 712-1200(2).

19 "Threat" means any of the actions listed in section  
20 707-764(1)."



1 SECTION 5. Section 712-1209.5, Hawaii Revised Statutes, is  
2 amended by amending subsections (2) and (3) to read as follows:

3 "(2) For the purposes of this section, a person has the  
4 status of a "habitual prostitution offender" if the person, at  
5 the time of the conduct for which the person is charged, had two  
6 or more convictions within ten years of the instant offense for:

7 (a) Prostitution, in violation of section 712-1200(1)(b);

8 (b) Sex trafficking, in violation of section  
9 712-1202(1)(c);

10 [~~b~~] (c) Street solicitation of prostitution, in  
11 violation of section 712-1207(1)(b);

12 [~~e~~] (d) Habitual solicitation of prostitution, in  
13 violation of this section;

14 [~~d~~] (e) An offense of any other jurisdiction that is  
15 comparable to one of the offenses in paragraph (a),  
16 (b), [~~e~~] (c) [~~r~~], or (d); or

17 [~~e~~] (f) Any combination of the offenses in paragraph  
18 (a), (b), (c), [~~e~~] (d) [~~r~~], or (e).

19 A conviction for purposes of this section is a judgment on the  
20 verdict or a finding of guilt, or a plea of guilty or nolo  
21 contendere. The convictions must have occurred on separate



1 dates and be for separate incidents on separate dates. At the  
2 time of the instant offense, the conviction must not have been  
3 expunged by pardon, reversed, or set aside.

4 (3) Habitual solicitation of prostitution is a class C  
5 felony[-]; provided that habitual solicitation of prostitution  
6 is a class A felony when the instant offense is sex trafficking  
7 under section 712-1202(1)(c)"

8 SECTION 6. Section 806-83, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) Criminal charges may be instituted by written  
11 information for a felony when the charge is a class C felony,  
12 except under:

13 (1) Section 159-28 (bribery related to the Hawaii Meat  
14 Inspection Act);

15 (2) Section 161-28 (bribery related to the Hawaii Poultry  
16 Inspection Act);

17 (3) Section 707-712.5 (assault against a law enforcement  
18 officer in the first degree);

19 (4) Section 707-716 (terroristic threatening in the first  
20 degree);

21 (5) Section 707-732 (sexual assault in the third degree);





- 1 (6) Section 707-741 (incest);
- 2 (7) Section 707-752 (promoting child abuse in the third
- 3 degree);
- 4 (8) Section 708-880 (commercial bribery);
- 5 (9) Section 709-904.5 (compensation by an adult of
- 6 juveniles for crimes);
- 7 (10) Section 710-1026.9 (resisting an order to stop a motor
- 8 vehicle in the first degree);
- 9 (11) Section 710-1070 (bribery of or by a witness);
- 10 (12) Section 710-1071 (intimidating a witness);
- 11 (13) Section 710-1072.2 (retaliating against a witness);
- 12 (14) Section 710-1073 (bribery of or by a juror);
- 13 (15) Section 710-1075 (jury tampering);
- 14 (16) Section 710-1075.5 (retaliating against a juror);
- 15 (17) Section 711-1106.4 (aggravated harassment by
- 16 stalking);
- 17 (18) Section 711-1110.9 (violation of privacy in the first
- 18 degree);
- 19 (19) Section 712-1208 (promoting travel for prostitution);
- 20 [~~20~~] ~~Section 712-1209.1 (solicitation of a minor for~~
- 21 ~~prostitution);~~



- 1       ~~(21)~~ (20) Section 712-1209.5 (habitual solicitation of
- 2               prostitution);
- 3       ~~(22)~~ (21) Section 712-1215 (promoting pornography for
- 4               minors);
- 5       ~~(23)~~ (22) Section 712-1218 (failure to maintain age
- 6               verification records of sexual performers);
- 7       ~~(24)~~ (23) Section 712-1218.5 (failure to maintain age
- 8               verification records of sexually exploited
- 9               individuals); and
- 10       ~~(25)~~ (24) Section 712-1219 (failure to affix information
- 11              disclosing location of age verification records of
- 12              sexual performers)."

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

16           ""Sexual offense" means an offense that is:  
17           (1) Set forth in section 707-730(1), 707-731(1),  
18               707-732(1), 707-733(1)(a), 707-733.6, 712-1202(1), or  
19               712-1203(1), but excludes conduct that is criminal  
20               only because of the age of the victim, as provided in



- 1 section 707-730(1)(b), or section 707-732(1)(b) if the  
2 perpetrator is under the age of eighteen;
- 3 (2) An act defined in section 707-720 if the charging  
4 document for the offense for which there has been a  
5 conviction alleged intent to subject the victim to a  
6 sexual offense;
- 7 (3) An act that consists of:
- 8 (A) Criminal sexual conduct toward a minor, including  
9 but not limited to an offense set forth in  
10 section 707-759;
- 11 (B) Solicitation of a minor who is less than fourteen  
12 years old to engage in sexual conduct;
- 13 (C) Use of a minor in a sexual performance;
- 14 (D) Production, distribution, or possession of child  
15 pornography chargeable as a felony under section  
16 707-750, 707-751, or 707-752; or
- 17 (E) Electronic enticement of a child chargeable under  
18 section 707-756 or 707-757 if the offense was  
19 committed with the intent to promote or  
20 facilitate the commission of another covered  
21 offense as defined in this section; [~~or~~



- 1           ~~(F) Solicitation of a minor for prostitution in~~
- 2                           ~~violation of section 712-1209.1,]~~
- 3           (4) A violation of privacy under section 711-1110.9;
- 4           (5) An act, as described in chapter 705, that is an
- 5                           attempt, criminal solicitation, or criminal conspiracy
- 6                           to commit one of the offenses designated in paragraphs
- 7                           (1) through (4);
- 8           (6) A criminal offense that is comparable to or that
- 9                           exceeds a sexual offense as defined in paragraphs (1)
- 10                          through (5); or
- 11           (7) Any federal, military, out-of-state, tribal, or
- 12                          foreign conviction for any offense that under the laws
- 13                          of this State would be a sexual offense as defined in
- 14                          paragraphs (1) through (6)."

15           SECTION 8. Section 846E-10, Hawaii Revised Statutes, is  
 16 amended by amending subsection (d) to read as follows:

17           "(d) Tier 1 offenses. A covered offender who has  
 18 maintained a clean record for the previous ten years, excluding  
 19 any time the offender was in custody or civilly committed, and  
 20 who has substantially complied with the registration  
 21 requirements of this chapter for the previous ten years, or for



1 the portion of that ten years that this chapter has been  
2 applicable, and who is not a repeat covered offender may  
3 petition the court, in a civil proceeding, for termination of  
4 registration requirements; provided that the covered offender's  
5 most serious covered offense is one of the following:

6 (1) Any offense set forth in section 707-732(1)(d) or (e),  
7 707-733(1)(a), 707-752, 707-759, 711-1110.9, or  
8 712-1203(1) [~~, or 712-1209.1~~];

9 (2) An offense set forth in section 707-721 or 707-722;  
10 provided that the offense involves unlawful  
11 imprisonment of a minor by someone other than a  
12 parent;

13 (3) An offense set forth in section 707-757 that includes  
14 an intent to promote or facilitate the commission of  
15 another covered offense as defined in section 846E-1;

16 (4) An offense that is an attempt, criminal solicitation,  
17 or criminal conspiracy to commit any of the offenses  
18 in paragraph (1), (2), or (3);

19 (5) Any criminal offense that is comparable to one of the  
20 offenses in paragraph (1), (2), (3), or (4);



- 1 (6) Any federal, military, out-of-state, tribal, or
- 2 foreign offense that is comparable to one of the
- 3 offenses in paragraph (1), (2), (3), or (4); or
- 4 (7) Any other covered offense that is not specified in
- 5 subsection (a) or (c) or paragraph (1), (2), (3), (4),
- 6 (5), or (6)."

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

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

- 10 (1) The offense charged involves the intentional, knowing,
- 11 reckless, or negligent killing of another person;
- 12 (2) The offense charged is:
  - 13 (A) A felony that involves the intentional, knowing,
  - 14 or reckless bodily injury, substantial bodily
  - 15 injury, or serious bodily injury of another
  - 16 person; or
  - 17 (B) A misdemeanor or petty misdemeanor that carries a
  - 18 mandatory minimum sentence and that involves the
  - 19 intentional, knowing, or reckless bodily injury,
  - 20 substantial bodily injury, or serious bodily
  - 21 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;



- 1           (10) The defendant is charged with the distribution of a  
2                   dangerous, harmful, or detrimental drug to a minor;
- 3           (11) The defendant has been charged with a felony offense  
4                   and has been previously granted deferred acceptance of  
5                   guilty plea or no contest plea for a prior offense,  
6                   regardless of whether the period of deferral has  
7                   already expired;
- 8           (12) The defendant has been charged with a misdemeanor  
9                   offense and has been previously granted deferred  
10                  acceptance of guilty plea or no contest plea for a  
11                  prior felony, misdemeanor, or petty misdemeanor for  
12                  which the period of deferral has not yet expired;
- 13          (13) The offense charged is:
- 14                  (A) Escape in the first degree;
- 15                  (B) Escape in the second degree;
- 16                  (C) Promoting prison contraband in the first degree;
- 17                  (D) Promoting prison contraband in the second degree;
- 18                  (E) Bail jumping in the first degree;
- 19                  (F) Bail jumping in the second degree;
- 20                  (G) Bribery;
- 21                  (H) Bribery of or by a witness;





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



1 (Y) Habitual solicitation of prostitution under  
 2 section 712-1209.5; [~~or~~  
 3 ~~(Z) Solicitation of a minor for prostitution under~~  
 4 ~~section 712-1209.1,]~~

5 (14) The defendant has been charged with:

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

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

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

15 SECTION 10. Section 712-1209.1, Hawaii Revised Statutes,  
 16 is repealed.

17 [~~§712-1209.1 Solicitation of a minor for prostitution.~~

18 ~~(1) A person eighteen years of age or older commits the offense~~  
 19 ~~of solicitation of a minor for prostitution if the person~~  
 20 ~~intentionally, knowingly, or recklessly offers or agrees to pay~~  
 21 ~~a fee to a minor or to a member of a police department, a~~



1 ~~sheriff, or a law enforcement officer who represents that~~  
2 ~~person's self as a minor to engage in sexual conduct.~~

3 ~~(2) Solicitation of a minor for prostitution is a class C~~  
4 ~~felony.~~

5 ~~(3) A person convicted of committing the offense of~~  
6 ~~solicitation of a minor for prostitution shall be imposed a fine~~  
7 ~~of not less than \$5,000; provided that \$5,000 of the imposed~~  
8 ~~fine shall be credited to the general fund.~~

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

13 ~~(5) The state of mind requirement for this offense is not~~  
14 ~~applicable to the fact that the person solicited was a minor. A~~  
15 ~~person is strictly liable with respect to the attendant~~  
16 ~~circumstance that the person solicited was a minor.~~

17 ~~(6) For purposes of this section:~~

18 ~~"Minor" means a person who is less than eighteen years of~~  
19 ~~age.~~

20 ~~"Sexual conduct" has the same meaning as in section~~  
21 ~~712-1200(2)."]~~



1 SECTION 11. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4 SECTION 12. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10 SECTION 13. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect upon its approval.



**Report Title:**

Sex Trafficking; Statute of Limitations; Prostitution;  
Prosecution; Minors

**Description:**

Includes coercion as a means of committing the offense of sex trafficking. Removes the criminal statute of limitations for sex trafficking. Specifies that sex trafficking of a minor is a strict liability offense. Repeals the offense of solicitation of a minor for prostitution. (SD1)

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