

JAN 18 2024

A BILL FOR AN ACT

RELATING TO SEXUAL EXPLOITATION.

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 out of every eleven adult
5 male residents of Hawaii are online sex shoppers. The report
6 also estimated that there were 74,362 potential sex buyers in
7 Hawaii. Moreover, Imua Alliance, a victim service provider for
8 survivors of sex trafficking and sexual violence, estimates that
9 one hundred fifty establishments participate in the commercial
10 sex trade in the State, increasing the high risk for sex
11 trafficking. During the COVID-19 pandemic, a service provider
12 for sex trafficking victims in Hawaii reported seeing a three
13 hundred per cent increase in demand for services.

14 The legislature additionally finds that Pacific Islanders,
15 specifically Native Hawaiians, are disproportionately
16 overrepresented in the State's sex trafficking survivor
17 population. In a survey conducted by the Hawaii Commission on



1 the Status of Women and Arizona State University, sixty-four per
2 cent of the sex trafficking victims identified as having at
3 least partial Native Hawaiian ancestry. According to the
4 report, "overutilization of Native Hawaiians to meet sex buyer
5 demand may be directly linked to structural economic coercion
6 and vulnerabilities connected to land dispossession, exposure to
7 sexual violence, hypersexualization, incarceration, cultural
8 dislocation, intergenerational trauma, mental and emotional
9 distress, racism, poverty, and going inequities".

10 The legislature further finds that victims of sex
11 trafficking should not be criminalized for their own
12 exploitation. Immunizing sex trafficking survivors from being
13 faced with the prospect of prosecution advances the delivery of
14 social services and trauma-informed care for those in need. It
15 would also help to end the social stigma that retraumatizes
16 survivors of sexual exploitation, while empowering victims to
17 obtain financial security for the harm that they have endured
18 and pursue legal individuals and commercial entities that profit
19 from exploitation.



1 The purpose of this Act is to establish safe harbor
2 protections for survivors of sexual exploitation who seek
3 medical or law enforcement assistance.

4 SECTION 2. Section 712-1200, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§712-1200 Prostitution.** (1) A person commits the
7 offense of prostitution if the person engages in, or agrees or
8 offers to engage in, sexual conduct with another person in
9 return for a fee or anything of value.

10 (2) As used in this section:

11 "Minor" means a person who is less than eighteen years of
12 age.

13 "Seeks medical or law enforcement assistance" includes but
14 is not limited to making, or assisting someone who is making, a
15 report to the 911 system, a poison control center, a medical
16 provider, a reproductive health provider, or any law enforcement
17 agency or providing care to someone who is awaiting the arrival
18 of medical or law enforcement personnel.

19 "Sexual conduct" means "sexual penetration", "deviate
20 sexual intercourse", or "sexual contact", as those terms are



1 defined in section 707-700, or "sodomasochistic abuse" as
2 defined in section 707-752.

3 (3) Prostitution [~~is~~] shall be a petty misdemeanor;
4 provided that if the person who commits the offense under
5 subsection (1) is a minor, prostitution [~~is~~] shall be a
6 violation.

7 (4) A person convicted of committing the offense of
8 prostitution as a petty misdemeanor shall be sentenced as
9 follows:

10 (a) For the first offense, when the court has not deferred
11 further proceedings pursuant to chapter 853, a fine of
12 no less than \$500 but no more than \$1,000 and the
13 person may be sentenced to a term of imprisonment of
14 no more than thirty days or probation; provided that
15 in the event the convicted person defaults in payment
16 of the fine, and the default was not contumacious, the
17 court may make an order converting the unpaid portion
18 of the fine to community service as authorized by
19 section 706-605(1);

20 (b) For any subsequent offense, a fine of no less than
21 \$500 but no more than \$1,000 and a term of



1 imprisonment of thirty days or probation, without
2 possibility of deferral of further proceedings
3 pursuant to chapter 853 and without possibility of
4 suspension of sentence; and

5 (c) For the purpose of this subsection, if the court has
6 deferred further proceedings pursuant to chapter 853,
7 and notwithstanding any provision of chapter 853 to
8 the contrary, the defendant shall not be eligible to
9 apply for expungement pursuant to section 831-3.2
10 until three years following discharge. A plea
11 previously entered by a defendant under section 853-1
12 for a violation of this section shall be considered a
13 prior offense.

14 (5) This section shall not apply to any member of a police
15 department, a sheriff, or a law enforcement officer acting in
16 the course and scope of duties; provided that the member of a
17 police department, sheriff, or law enforcement officer is
18 engaging in undercover operations; provided further that under
19 no circumstances shall sexual contact initiated by a member of a
20 police department, sheriff, or law enforcement officer; sexual



1 penetration; or sadomasochistic abuse be considered to fall
2 within the course and scope of duties.

3 (6) A minor may be taken into custody by any police
4 officer without order of the judge when there are reasonable
5 grounds to believe that the minor has violated subsection (1).
6 The minor shall be released, referred, or transported pursuant
7 to section 571-31(b). The minor shall be subject to the
8 jurisdiction of the family court pursuant to section 571-11(1),
9 including for the purposes of custody, detention, diversion, and
10 access to services and resources.

11 (7) Notwithstanding this section or any other law to the
12 contrary, a person who in good faith seeks medical or law
13 enforcement assistance for themselves or another person, or is
14 the subject of another person's good faith act seeking medical
15 or law enforcement assistance, shall not:

- 16 (a) Be arrested, charged, prosecuted, or convicted;
17 (b) Have their property be subject to civil forfeiture; or
18 (c) Otherwise be penalized,
19 pursuant to this section if the probable cause or evidence for
20 the arrest, charge, prosecution, conviction, seizure, or penalty
21 was gained as a result of seeking medical or law enforcement



1 assistance; provided that this subsection shall not apply to any
2 other criminal offense."

3 SECTION 3. Section 712-1206, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§712-1206[+] **Loitering for the purpose of engaging in**
6 **or advancing prostitution.** (1) For the purposes of this
7 section[, "public]:

8 "Public place" means any street, sidewalk, bridge, alley or
9 alleyway, plaza, park, driveway, parking lot or transportation
10 facility or the doorways and entrance ways to any building
11 [~~which~~] that fronts on any of the aforesaid places, or a motor
12 vehicle in or on any such place.

13 "Seeks medical or law enforcement assistance" includes but
14 is not limited to making, or assisting someone who is making, a
15 report to the 911 system, a poison control center, a medical
16 provider, a reproductive health provider, or any law enforcement
17 agency or providing care to someone who is awaiting the arrival
18 of medical or law enforcement personnel.

19 (2) Any person who remains or wanders about in a public
20 place and repeatedly [~~beckons~~]:



1 (a) Beckons to [~~or repeatedly~~], stops, or [~~repeatedly~~]
2 attempts to stop[~~τ~~] or [~~repeatedly attempts to~~] engage
3 passers-by in conversation[~~τ~~, ~~or repeatedly stops~~];

4 (b) Stops or attempts to stop motor vehicles[~~τ~~]; or
5 [~~repeatedly interferes~~]

6 (c) Interferes with the free passage of other persons,
7 for the purpose of committing the crime of prostitution as that
8 term is defined in section 712-1200[~~τ~~] shall be guilty of a
9 violation.

10 (3) Any person who remains or wanders about in a public
11 place and repeatedly [~~beckons~~]:

12 (a) Beckons to, [~~or repeatedly~~] stops, or [~~repeatedly~~]
13 attempts to engage passers-by in conversation[~~τ~~, ~~or~~
14 ~~repeatedly stops~~];

15 (b) Stops or attempts to stop motor vehicles[~~τ~~]; or
16 [~~repeatedly interferes~~]

17 (c) Interferes with the free passage of other persons,
18 for the purpose of committing the crime of advancing
19 prostitution as that term is defined in section 712-1201(1) [~~is~~]
20 shall be guilty of a petty misdemeanor.



1 (4) Notwithstanding this section or any other law to the
2 contrary, a person who in good faith seeks medical or law
3 enforcement assistance for themselves or another person, or is
4 the subject of another person's good faith act seeking medical
5 or law enforcement assistance, shall not:

6 (a) Be arrested, charged, prosecuted, or convicted;

7 (b) Have their property be subject to civil forfeiture; or

8 (c) Otherwise be penalized,

9 pursuant to this section if the probable cause or evidence for
10 the arrest, charge, prosecution, conviction, seizure, or penalty
11 was gained as a result of seeking medical or law enforcement
12 assistance; provided that this subsection shall not apply to any
13 other criminal offense."

14 SECTION 4. Section 712-1207, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§712-1207 Street prostitution and commercial sexual**
17 **exploitation; designated areas.** (1) It shall be unlawful for
18 any person within the boundaries of Waikiki and while on any
19 public property to:



1 (a) Offer or agree to engage in sexual conduct with
2 another person in return for a fee or anything of
3 value; or

4 (b) Provide, agree to provide, or offer to provide a fee
5 or anything of value to another person to engage in
6 sexual conduct.

7 (2) It shall be unlawful for any person within the
8 boundaries of other areas in this State designated by county
9 ordinance pursuant to subsection (3), and while on any public
10 property to:

11 (a) Offer or agree to engage in sexual conduct with
12 another person in return for a fee or anything of
13 value; or

14 (b) Provide, agree to provide, or offer to provide a fee
15 or anything of value to another person to engage in
16 sexual conduct.

17 (3) Upon a recommendation of the chief of police of a
18 county, that county may enact an ordinance that:

19 (a) Designates areas, each no larger than three square
20 miles, as zones of significant prostitution-related



1 activity that is detrimental to the health, safety, or
2 welfare of the general public; or

3 (b) Alters the boundaries of any existing area under
4 paragraph (a);

5 provided that [~~not~~] no more than four areas may be designated
6 within the State.

7 (4) Notwithstanding any law to the contrary, any person
8 violating this section shall be guilty of a petty misdemeanor
9 and shall be sentenced to a mandatory term of thirty days
10 imprisonment. The term of imprisonment shall be imposed
11 immediately, regardless of whether the defendant appeals the
12 conviction, except as provided in subsection (5).

13 (5) As an option to the mandatory term of thirty days
14 imprisonment, if the court finds the option is warranted based
15 upon the defendant's record, the court may place the defendant
16 on probation for a period not to exceed six months, subject to
17 the mandatory condition that the defendant observe geographic
18 restrictions that prohibit the defendant from entering or
19 remaining on public property, in Waikiki and other areas in the
20 State designated by county ordinance during the hours from 6
21 p.m. to 6 a.m. Upon any violation of the geographic



1 restrictions by the defendant, the court, after hearing, shall
2 revoke the defendant's probation and immediately impose the
3 mandatory thirty-day term of imprisonment. Nothing contained in
4 this subsection shall be construed as prohibiting the imposition
5 of stricter geographic restrictions under section 706-624(2)(h).

6 (6) Any person charged under this section may be admitted
7 to bail, pursuant to section 804-4, subject to the mandatory
8 condition that the person observe geographic restrictions that
9 prohibit the defendant from entering or remaining on public
10 property, in Waikiki and other areas in the State designated by
11 county ordinance during the hours from 6 p.m. to 6 a.m.
12 Notwithstanding any other provision of law to the contrary, any
13 person who violates these bail restrictions shall have the
14 person's bail revoked after hearing and shall be imprisoned
15 forthwith. Nothing contained in this subsection shall be
16 construed as prohibiting the imposition of stricter geographic
17 restrictions under section 804-7.1.

18 (7) Notwithstanding any other law to the contrary, a
19 police officer, without warrant, may arrest any person when the
20 officer has probable cause to believe that the person has
21 committed a violation of subsection (5) or (6), and the person



1 shall be detained, without bail, until the hearing under the
2 appropriate subsection can be held, which hearing shall be held
3 as soon as reasonably practicable.

4 (8) For purposes of this section:

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

8 "Public property" includes any street, highway, road,
9 sidewalk, alley, lane, bridge, parking lot, park, or other
10 property owned or under the jurisdiction of any governmental
11 entity or otherwise open to the public.

12 "Seeks medical or law enforcement assistance" includes but
13 is not limited to making, or assisting someone who is making, a
14 report to the 911 system, a poison control center, a medical
15 provider, a reproductive health provider, or any law enforcement
16 agency or providing care to someone who is awaiting the arrival
17 of medical or law enforcement personnel.

18 "Sexual conduct" has the same meaning as in section 712-
19 1200(2).

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



1 (9) This section shall apply to all counties; provided
2 that if a county enacts an ordinance to regulate street
3 prostitution and commercial sexual exploitation, other than an
4 ordinance designating an area as a zone of significant
5 prostitution-related activity, the county ordinance shall
6 supersede this section and no person shall be convicted under
7 this section in that county.

8 (10) Notwithstanding this section or any other law to the
9 contrary, a person who in good faith seeks medical or law
10 enforcement assistance for themselves or another person, or is
11 the subject of another person's good faith act seeking medical
12 or law enforcement assistance, shall not:

13 (a) Be arrested, charged, prosecuted, or convicted;
14 (b) Have their property be subject to civil forfeiture; or
15 (c) Otherwise be penalized,
16 pursuant to this section if the probable cause or evidence for
17 the arrest, charge, prosecution, conviction, seizure, or penalty
18 was gained as a result of seeking medical or law enforcement
19 assistance; provided that this subsection shall not apply to any
20 other criminal offense."

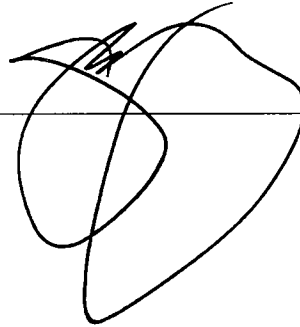


1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____

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S.B. NO. 2238

Report Title:

Sexual Exploitation; Safe Harbor Protections; Assistance

Description:

Establishes safe harbor protections for survivors of sexual exploitation who seek medical or law enforcement assistance.

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

