

# S.B. NO. 3036

JAN 24 2024

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## A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

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

1           SECTION 1. The Legislature finds that it has made  
2 concerted efforts since the 2010s to reduce and combat sex  
3 trafficking in the State and protect those victimized by  
4 prostitution. One of these efforts was amending sections 712-  
5 1202 and 712-1203, Hawaii Revised Statutes, to specifically  
6 target those who benefit the most from prostitution, such as sex  
7 traffickers and pimps.

8           The Legislature finds that the supreme court of Hawaii's  
9 decision in State v. Ibarra, 526 P.3d 575 (Haw. 2023), indicated  
10 a need for the sex trafficking and promoting prostitution  
11 criminal offense statutes to be further clarified.

12           Accordingly, the purpose of this Act is to clarify the sex  
13 trafficking and promoting prostitution criminal offense statutes  
14 by:

15           (1) Clarifying the definition of "profits from  
16                prostitution";

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1 (2) Inserting the definitions of "advances prostitution"  
2 and "profits from prostitution" into the statutes  
3 establishing the substantive offenses; and

4 (3) Repealing section 712-1201, Hawaii Revised Statutes,  
5 which is no longer needed after inserting its  
6 definitions and exclusions directly into the  
7 underlying substantive offenses.

8 SECTION 2. Section 712-1202, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§712-1202 Sex trafficking. (1) A person commits the  
11 offense of sex trafficking if the person knowingly:

12 (a) Advances prostitution by compelling or inducing a  
13 person by force, threat, fraud, coercion, or  
14 intimidation to engage in prostitution, or profits  
15 from such conduct by another; or

16 (b) Advances prostitution or profits from prostitution of  
17 a minor.

18 (2) Sex trafficking is a class A felony.

19 (3) As used in this section:

20 "Advances prostitution" means that the person knowingly  
21 causes or aids another person to commit or engage in  
22 prostitution, procures or solicits patrons for prostitution,

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1 provides persons for prostitution purposes, permits premises to  
2 be regularly used for prostitution purposes, operates or assists  
3 in the operation of a house of prostitution or a prostitution  
4 enterprise, or engages in any other conduct designed to  
5 institute, aid, or facilitate an act or enterprise of  
6 prostitution.

7 "Fraud" means making material false statements,  
8 misstatements, or omissions.

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

11 "Profits from prostitution" means that the person knowingly  
12 accepts or receives money, anything of value, or other property  
13 pursuant to an agreement or understanding with a third party  
14 whereby the third party participates or is to participate in the  
15 proceeds of prostitution activity, regardless of whether the  
16 money, thing of value, or other property received is in excess  
17 of expenditures related to the agreement or understanding or is  
18 for reimbursement or repayment of debt.

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

21 (4) The state of mind requirement for the offense under  
22 subsection (1)(b) is not applicable to the fact that the victim

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1 was a minor. A person is strictly liable with respect to the  
2 attendant circumstances that the victim was a minor.

3 (5) No person shall be convicted under this section if the  
4 conduct of the person underlying the offense consists  
5 exclusively of:

6 (a) The person's own acts of prostitution as a prostituted  
7 person as provided in section 712-1200; or

8 (b) The person's own acts of commercial sexual  
9 exploitation as provided in section 712-1200.5."

10 SECTION 3. Section 712-1203, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§712-1203 Promoting prostitution. (1) A person commits  
13 the offense of promoting prostitution if the person knowingly  
14 advances prostitution or profits from prostitution.

15 (2) Promoting prostitution is a class B felony.

16 (3) As used in this section:

17 "Advances prostitution" means that the person knowingly  
18 causes or aids another person to commit or engage in  
19 prostitution, procures or solicits patrons for prostitution,  
20 provides persons for prostitution purposes, permits premises to  
21 be regularly used for prostitution purposes, operates or assists  
22 in the operation of a house of prostitution or a prostitution

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1 enterprise, or engages in any other conduct designed to  
2 institute, aid, or facilitate an act or enterprise of  
3 prostitution.

4 "Profits from prostitution" means that the person knowingly  
5 accepts or receives money, anything of value, or other property  
6 pursuant to an agreement or understanding with a third party  
7 whereby the third party participates or is to participate in the  
8 proceeds of prostitution activity, regardless of whether the  
9 money, thing of value, or other property received is in excess  
10 of expenditures related to the agreement or understanding or is  
11 for reimbursement or repayment of debt.

12 (4) No person shall be convicted under this section if the  
13 conduct of the person underlying the offense consists  
14 exclusively of:

15 (a) The person's own acts of prostitution as a prostituted  
16 person as provided in section 712-1200; or

17 (b) The person's own acts of commercial sexual  
18 exploitation as provided in section 712-1200.5."

19 SECTION 4. Section 712-1201, Hawaii Revised Statutes, is  
20 repealed.

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1           ~~["§712-1201 Advancing prostitution; profiting from~~  
2 ~~prostitution; definition of terms. In sections 712-1202 and~~  
3 ~~712-1203:~~

4           ~~(1) A person "advances prostitution" if the person~~  
5           ~~knowingly causes or aids a person to commit or engage~~  
6           ~~in prostitution, procures or solicits patrons for~~  
7           ~~prostitution, provides persons for prostitution~~  
8           ~~purposes, permits premises to be regularly used for~~  
9           ~~prostitution purposes, operates or assists in the~~  
10           ~~operation of a house of prostitution or a prostitution~~  
11           ~~enterprise, or engages in any other conduct designed~~  
12           ~~to institute, aid, or facilitate an act or enterprise~~  
13           ~~of prostitution.~~

14           ~~(2) A person "profits from prostitution" if the person~~  
15           ~~accepts or receives money, anything of value, or other~~  
16           ~~property pursuant to an agreement or understanding~~  
17           ~~with any person whereby the person participates or is~~  
18           ~~to participate in the proceeds of prostitution~~  
19           ~~activity; and~~

20           ~~(3) The definitions in subsections (1) and (2) shall not~~  
21           ~~include those engaged in conduct outlined in section~~  
22           ~~712-1200 as the prostituted person or section 712-~~

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1           ~~1200.5 as the person engaged in commercial sexual~~  
2           ~~exploitation." ]~~

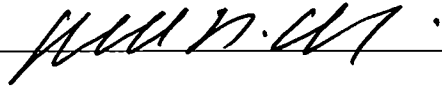
3           SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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BY REQUEST

# S.B. NO. 3036

**Report Title:**

Penal Code; Offenses Against Public Health and Morals; Sex Trafficking; Promoting Prostitution

**Description:**

Clarifies the definition of "profits from prostitution" to include money or property received regardless of expenditures or if it was a reimbursement or repayment of a debt. Amends the sex trafficking and promoting prostitution criminal offense statutes by inserting relevant definitions in those statutes and repealing a statute that is no longer needed.

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



## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

PURPOSE: To clarify the definition of "profits from prostitution" in the sex trafficking and promoting prostitution criminal offense statutes.

To clarify the terms in the statutes for the offenses of sex trafficking and promoting prostitution by inserting the definitions of "advances prostitution" and "profits from prostitution" into each of the applicable Hawaii Revised Statutes sections and repealing the separate statute that currently contains those definitions.

To clarify that the offenses of sex trafficking and promoting prostitution are not intended to apply to prostituted persons and sex buyers if the conduct underlying the offense consists exclusively of their own acts.

MEANS: Amend sections 712-1202 and 712-1203, Hawaii Revised Statutes (HRS), and repeal section 712-1201, HRS.

JUSTIFICATION: The Supreme Court of Hawaii's decision in State v. Ibarra, 526 P.3d 575 (Haw. 2023), gave rise to a need to clarify the sex trafficking and promoting prostitution criminal offense statutes.

The clarification to the definition of "profits from prostitution" will address the concerns in Ibarra and prevent a safe harbor for sex traffickers who extend a loan or a service to their victims but who have not "profited" from the arrangement, despite receiving money or property from the victims as proceeds of prostitution activities. The amendment to the definition will make clear that "profiting" does not require an excess

of returns over expenditures, nor does it rule out reimbursement or repayment of debt.

Incorporating the definitions of "advances prostitution" and "profits from prostitution" into the HRS sections that outline the offenses of sex trafficking and promoting prostitution and rely on those terms will clarify the elements of those offenses.

Incorporating the exclusion of prostituted persons and sex buyers from section 712-1201(3), HRS, into the applicable sections (712-1202 and 712-1203, HRS) will clarify who should not be prosecuted under those statutes.

Repealing section 712-1201, HRS, while moving its contents to the applicable sections, will clarify the laws on sex trafficking and promoting prostitution.

Impact on the public: This bill will have a positive impact on the public's and Legislature's efforts in combating sex trafficking and promoting prostitution within the State by clarifying the law that prohibits those activities.

Impact on the department and other agencies: This bill will greatly assist prosecutions of sex traffickers and those who promote prostitution.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: The county police departments, the prosecutors' offices, and the Department of Law Enforcement.

EFFECTIVE DATE: Upon approval.