

A Bill for an Act Relating to Crime.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the level of prostitution in Waikiki has become intolerable. One is unable to walk down the streets without repeatedly being accosted for purposes of solicitation. Moreover, the legislature finds that a high level of prostitution is nearly always followed by an increase in other criminal activities relating to theft, robbery, assault, and drugs. Such activity is abhorrent to residents and visitors alike and is driving both from one of the State's prime attractions. Efforts by the Honolulu police department to crack down on prostitution and other criminal activity in the Waikiki area have had limited effect. The legislature further finds and declares that more stringent measures are necessary to preserve Waikiki as a prime attraction and to protect the health, safety, and welfare of residents and visitors to Waikiki.

Accordingly, the purpose of this Act is to provide for increased penalties for prostitution activities in Waikiki. As a mandatory condition of probation and bail, defendants must observe geographic restrictions prohibiting them from entering or walking on the public streets or sidewalks of Waikiki during the hours from 6 p.m. to 6 a.m. If a defendant resides in Waikiki and chooses to remain in Waikiki during the prohibited hours, the defendant must therefore stay off the streets and sidewalks during those hours. Although the restriction covers a large physical space, it is narrowly tailored to cover only the hours most closely associated with the crime. Additionally, the restriction is sufficiently definite to provide the average person with adequate notice of what behavior is prohibited.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§712- Street solicitation of prostitution.** (1) It shall be unlawful for any person within the boundaries of Waikiki and while on a public street or sidewalk to offer or agree to engage in sexual conduct with another person in return for a fee.

(2) Notwithstanding any law to the contrary, any person violating this section shall be guilty of a petty misdemeanor and shall be sentenced to a mandatory minimum term of thirty days imprisonment. The term of imprisonment shall be imposed immediately, regardless of whether the defendant appeals the conviction, except as provided in subsection (3).

(3) As an option to the mandatory minimum term of thirty days imprisonment, if the court finds the option is warranted based upon the defendant's record, the court may place the defendant on probation for a period not to exceed one year, subject to the mandatory condition that the defendant observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki during the hours from 6 p.m. to 6 a.m. Upon any violation of the geographic restrictions by the defendant, the court, after hearing, shall revoke the defendant's probation and immediately impose the mandatory minimum thirty-day term of imprisonment.

(4) Any person charged under this section may be admitted to bail, pursuant to section 804-4, subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki during the hours from 6 p.m. to 6 a.m. Notwithstanding any other provision of law to the contrary, any person who violates

these bail restrictions shall have the person's bail revoked after hearing and shall be imprisoned forthwith.

(5) For purposes of this section:

“Sexual conduct” has the same meaning as in section 712-1200(2).

“Waikiki” means that area of Oahu bounded by the Ala Wai canal, the ocean, and Kapahulu avenue.

(6) This section shall apply to all counties; provided that if a county enacts an ordinance to regulate street solicitation for prostitution, the county ordinance shall supersede this section and no person shall be convicted under this section in that county.’’

SECTION 3. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

**“§804-4 When a matter of right. (a)** If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right[.]; provided that bail shall be allowed for any person charged under section 712- only subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki during the hours from 6 p.m. to 6 a.m. The right to bail shall continue after conviction of a misdemeanor, petty misdemeanor, or violation, and release on bail may continue, in the discretion of the court, after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings [which] that are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; [except that no] provided that:

- (1) No bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; [and provided further that no]
- (2) No bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed[.]; and
- (3) No bail shall be allowed pending appeal of a conviction for a violation of section 712- , unless the court finds, based on the defendant's record, that the defendant may be admitted to bail subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki during the hours from 6 p.m. to 6 a.m.

Notwithstanding any other provision of law to the contrary, any person who violates these bail restrictions shall have the person's bail revoked after hearing and shall be imprisoned forthwith.

(b) The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes [such] these findings, the court shall order the release of the person in accordance with [the provisions of] section 804-7.1. No defendant entitled to bail, whether bailed or not, shall[.] be subject, without the defendant's written

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consent, [be subject] to the operation of any sentence passed upon the defendant, while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a)[.] or section 712-—”

SECTION 4. Section 804-5, Hawaii Revised Statutes, is amended to read as follows:

“**§804-5 By whom allowed.** In cases where the punishment for the offense charged may be imprisonment for life not subject to parole, or imprisonment for a term more than ten years with or without fine, a judge or justice of a court of record, including a district judge, shall be competent to admit the accused to bail, in conformity with sections 804-3 to [6.] §804-6. In all other cases, the accused may be so admitted to bail by any judge or justice of a court of record, including a district judge, and in cases, except under section 712-—, where the punishment for the offense charged may not exceed two years’ imprisonment with or without fine, the sheriff, the sheriff’s deputy, the chief of police or any person named by the chief of police, or the sheriff of Kalawao, regardless of the circuit within which the alleged offense was committed, may admit the accused person to bail.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved July 7, 1998.)

### Note

1. Edited pursuant to HRS §23G-16.5.