

## ACT 143

S.B NO. 3133

A Bill for an Act Relating to Crime.

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

SECTION 1. Section 712-1207, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§712-1207]] Street solicitation of prostitution; designated areas.~~** (1) It shall be unlawful for any person within the boundaries of Waikiki and while on [a public street or sidewalk] any public property, to offer or agree to engage in sexual conduct with another person in return for a fee.

(2) It shall be unlawful for any person within the boundaries of other areas in this State designated by county ordinance pursuant to subsection (3), and while on any public property, to offer or agree to engage in sexual conduct with another person in return for a fee.

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

(a) Designates areas, each no larger than three square miles, as zones of significant prostitution-related activity that is detrimental to the health, safety, or welfare of the general public; or

(b) Alters the boundaries of any existing area under paragraph (a); provided that not more than four areas may be designated within the State.

(4) 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).] (5).

[(3)] (5) 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,] six months, 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] remaining on public property, in

Waikiki and other areas in the State designated by county ordinance 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. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 706-624(2)(h).

(4) (6) 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] remaining on public property, in Waikiki and other areas in the State designated by county ordinance 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. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1.

(7) Notwithstanding any other law to the contrary, a police officer, without warrant, may arrest any person when the officer has probable cause to believe that the person has committed a violation of subsection (5) or (6), and the person shall be detained, without bail, until the hearing under the appropriate subsection can be held, which hearing shall be held as soon as reasonably practicable.

(5) (8) For purposes of this section:

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

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

"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) (9) This section shall apply to all counties; provided that if a county enacts an ordinance to regulate street solicitation for prostitution, other than an ordinance designating an area as a zone of significant prostitution-related activity, the county ordinance shall supersede this section and no person shall be convicted under this section in that county."

SECTION 2. Section 804-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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]. Except for section 712-1207(7), bail shall be allowed for any person charged under section 712-1207 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] remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m.; and provided further that nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1. 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 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; 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;
- (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 712-1207, 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 or other areas in the State designated by county ordinance pursuant to section 712-1207 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."

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

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

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 30, 2000.)