

ACT 145

H.B. NO. 240

A Bill for an Act Relating to Promoting Prostitution.

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

PART I

SECTION 1. Section 28-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The attorney general shall establish a statewide witness program through which the attorney general may fund or provide for the security and protection of a government witness or a potential government witness in an official proceeding or investigation where the attorney general determines that an offense such as those described in ~~[sections]~~ section 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), or 710-1072.2 (retaliating against a witness) is likely to be committed or which involves great public interest. The attorney general may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered. In determining whether ~~[such]~~ the funds or security and protection ~~[or funds]~~ are to be provided, the attorney general shall give greatest priority to official proceedings or investigations involving pending or potential organized crime, racketeering activity, promoting prostitution, or career criminal prosecutions.”

PART II

SECTION 2. Section 712-1201, Hawaii Revised Statutes, is amended to read as follows:

“§712-1201 Promoting prostitution; definition of terms. In sections 712-1202[,] and 712-1203 [and 712-1204]:

- (1) A person “advances prostitution” if, acting other than as a prostitute or a patron of a prostitute, [he] the person knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.
- (2) A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, [he] the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby [he] the person participates or is to participate in the proceeds of prostitution activity.”

SECTION 3. Section 712-1202, Hawaii Revised Statutes, is amended to read as follows:

“§712-1202 Promoting prostitution in the first degree. (1) A person commits the offense of promoting prostitution in the first degree if the person knowingly:

- (a) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, or profits from such [e]xercise] conduct by another; or
 - (b) Advances or profits from prostitution of a person less than eighteen years old.
- (2) Promoting prostitution in the first degree is a class [B] A felony.
- (3) As used in this section[, “threat”]:

“Fraud” means making material false statements, misstatements, or omissions.

“Threat” means any of the actions listed in section 707-764(1).”

SECTION 4. Section 712-1203, Hawaii Revised Statutes, is amended to read as follows:

“§712-1203 Promoting prostitution in the second degree. (1) A person commits the offense of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution [~~by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostituted persons~~].

- (2) Promoting prostitution in the second degree is a class [C] B felony.”

SECTION 5. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
 - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
 - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of or by a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - (M) Promoting prostitution in the first degree;
 - (N) Promoting prostitution in the second degree;
 - ~~(O) Promoting prostitution in the third degree;~~
 - ~~(P)~~ (O) Abuse of family or household members;

- ~~[(Q)]~~ (P) Sexual assault in the second degree;
~~[(R)]~~ (Q) Sexual assault in the third degree;
~~[(S)]~~ (R) A violation of an order issued pursuant to chapter 586;
~~[(T)]~~ (S) Promoting child abuse in the second degree;
~~[(U)]~~ (T) Promoting child abuse in the third degree;
~~[(V)]~~ (U) Electronic enticement of a child in the first degree; or
~~[(W)]~~ (V) Electronic enticement of a child in the second degree;
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or
- (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle. The court may adopt by rule other criteria in this area."

SECTION 6. Section 712-1204, Hawaii Revised Statutes, is repealed.

PART III

SECTION 7. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of prostitution if the person ~~engages~~:

- (a) Engages in, or agrees or offers to engage in, sexual conduct with another person for a fee~~[-]; or~~
- (b) Pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct."

SECTION 8. Section 712-1207, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

"(1) It shall be unlawful for any person within the boundaries of Waikiki and while on any public property~~[-; to offer] to:~~

- (a) Offer or agree to engage in sexual conduct with another person in return for a fee~~[-]; or~~
- (b) Pay, agree to pay, or offer to pay a fee to another person to engage in sexual conduct.

(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] to:~~

- (a) Offer or agree to engage in sexual conduct with another person in return for a fee~~[-]; or~~
- (b) Pay, agree to pay, or offer to pay a fee to another person to engage in sexual conduct."

SECTION 9. Act 192, Session Laws of Hawaii 2008, is amended by amending section 1 to read as follows:

"SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- **Habitual solicitation of prostitution.** (1) A person commits the offense of habitual solicitation of prostitution if the person is a habitual prosti-

tution offender and pays, agrees to pay, or offers to pay a fee to another person to engage in sexual conduct.

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

- (a) Prostitution, in violation of section ~~[712-1200;]~~ 712-1200(1)(b);
- (b) Street solicitation of prostitution, in violation of section ~~[712-1207;]~~ 712-1207(1)(b);
- (c) Habitual solicitation of prostitution, in violation of this section;
- (d) An offense of any other jurisdiction that is comparable to one of the offenses in ~~[paragraphs]~~ paragraph (a), (b), or (c); or
- (e) Any combination of the offenses in ~~[paragraphs]~~ paragraph (a), (b), (c), or (d).

A conviction for purposes of this section is a judgment on the verdict or a finding of guilt, or a plea of guilty or nolo contendere. The convictions must have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the conviction must not have been expunged by pardon, reversed, or set aside.

(3) Habitual solicitation of prostitution is a ~~[misdemeanor.]~~ class C felony.”

SECTION 10. Act 192, Session Laws of Hawaii 2008, section 3, as amended by Act 95, Session Laws of Hawaii 2010, section 1, is amended to read as follows:

“SECTION 3. This Act shall take effect upon its approval~~[-and shall be repealed on June 30, 2012].~~”

PART IV

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

SECTION 12. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

Note

- 1. Edited pursuant to HRS §23G-16.5.