

State of Hawaii
Department of the Attorney General



**REPORT OF THE
HAWAII ANTI-TRAFFICKING
TASK FORCE**

Pursuant to Act 260,
Session Laws of Hawaii 2006

*Submitted to
The Twenty-Fourth State Legislature
Regular Session of 2008*

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ATTACHMENT “A”

I. Introduction

The Hawaii Anti-Trafficking Task Force I ("HATTF I") is supported by funding from the United States Department of Justice (DOJ), Law Enforcement and Service Provider Multidisciplinary Anti-Trafficking Task Force grant (2005-VT-BX-0008). The HATTF I officially began meeting in June 2005 to develop working protocols between service providers and law enforcement, to provide law enforcement training for first responders, and to increase public awareness and reporting of human trafficking. In addition to the HATTF I, the DOJ supports 31 other task forces across the United States and its territories.

Act 260, Session Laws of Hawaii 2006, established a second Hawaii Anti-Trafficking Task Force ("HATTF II"), to be supported by the Department of the Attorney General. HATTF II was tasked with investigating and drafting legislation to combat human trafficking, and assessing the social service needs of human trafficking victims. HATTF I is prohibited from participation in activities deemed to constitute legislative lobbying as a matter of federal policy.

Under Act 260, HATTF II is required to submit to the Legislature a report on its activities not less than twenty days before the start of the regular sessions of 2007 and 2008. The report submitted before the regular session of 2007 covered the activities conducted as of December 2006, and included a comprehensive overview of the issues and federal and state moneys and services available at that time. This report covers the activities of HATTF II from January 2007 through December 2007.

II. Legislative Requirement

Act 260, Session Laws of Hawaii 2006, established HATTF II and required that it carry out the following activities:

- (1) Compile and review statutes, rules, and information relating to programs adopted in other states to combat human trafficking and to provide services to its victims;
- (2) Recommend further changes to Hawaii law necessary to assist in the prevention of human trafficking and to provide support to victims;
- (3) Develop protocols and training for individuals within designated state agencies, nongovernmental organizations, and private entities regarding provision of services to trafficked persons;
- (4) Develop interagency procedures to collect and organize data, including research and resource information on domestic trafficking, and to measure the extent of the need for protection and assistance to victims of trafficking; and
- (5) Engage in consultation with governmental and nongovernmental organizations, among other entities, to advance the purposes of this Act.

The task force was given two years to satisfy these requirements.

Act 260 requires HATTF II to include the following members:

- (1) The attorney general, or the attorney general's designees;
- (2) The directors of health, human services, and labor, or their designees;
- (3) The chief of police of each county or the chief's designee;
- (4) The prosecuting attorney of each county, or the prosecutor's designee;
- (5) The director of the victim and witness assistance program of the department of the prosecuting attorney, city and county of Honolulu;
- (6) The Salvation Army;
- (7) Sisters Offering Support¹;
- (8) The Sex Abuse Treatment Center;
- (9) GirlFest;
- (10) Na Loio - Immigrant Rights and Public Interest Legal Center ("Na Loio");
- (11) The Domestic Violence Clearinghouse and Legal Hotline²; and
- (12) The Hawaii State Coalition Against Sexual Assault.

III. Update on HATTF II Activities

A. Compile and review statutes, rules, and information relating to programs adopted in other states to combat human trafficking and to provide services to its victims.

This requirement was met prior to December 2006 and is discussed in the report to the 2007 Legislature. The only update to the 2007 report is the growing number of states that have adopted anti-trafficking laws. To date 33 states have passed measures that specifically define and criminalize the act of trafficking in persons. These states are Alaska, Arizona, Arkansas, California, Connecticut, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New

¹ Since the enactment of Act 260, "Sisters Offering Support" has disbanded and is no longer a member of the Task Force.

² This agency's name has since changed to: "The Domestic Violence Action Center."

York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, and Washington.

B. Recommend further changes to Hawaii law necessary to assist in the prevention of human trafficking and to provide support to victims.

For the 2007 legislative session, HATTF II recommended provisions for a bill that would create the criminal offense of human trafficking. House Bill (H.B.) No. 1784 was introduced on January 24, 2007, amended in the House Committee on Human Services and Housing (House Draft (H.D.) 1) and passed on to the House Committee on Judiciary. On February 27, 2007, H.B. No. 1784, H.D. 1, was heard by the House Committee on Judiciary and passed with amendments as H.D. 2. It was then transmitted to the Senate on March 6, 2007, and referred to the Senate Committee on Judiciary and Labor on March 8, 2007. However, the Judiciary and Labor committee deferred the measure on March 22, 2007. Although it did not pass, it is still pending for the 2008 legislative regular session.

One of the reasons it did not pass is because of testimony presented by the Department of the Attorney General that recommended that the bill's text be replaced by a proposed Senate Draft (S.D.) 1, which did not create a new crime of human trafficking, but instead, enhanced and expanded current laws covering crimes associated with human trafficking. The Attorney General submitted testimony for the hearing before the Senate Committee on Judiciary and Labor on March 16, 2007, which stated:

The Hawaii Anti-trafficking Task Force surveyed Hawaii's existing criminal laws to determine whether they include prohibitions on involuntary servitude, kidnapping, false imprisonment, and extortion. While Hawaii's criminal laws do contain these prohibitions, the task force determined that creating separately defined anti-trafficking criminal provisions should result in increased use of such statutes. However, unlike in other states that have passed legislation similar to the federal anti-human trafficking law, Hawaii has distinct case law that would make the establishment of separately defined anti-trafficking criminal provisions difficult.

Specifically, the proposed offense of Human Trafficking [in H.B. No. 1784, H.D. 2] is problematic because it attempts to create trafficking crimes that already have been established under our current penal code. Most of the new proposed crimes are the same or very similar to existing extortion, kidnapping, child abuse and promoting prostitution offenses. The significant overlap with existing offenses raises concerns that the proposed, higher grade offenses will violate the "Modica Rule." In State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977), the Hawaii Supreme Court held the following:

[W]here the same act committed under the same circumstances

is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of the defendant's rights to due process and the equal protection of the laws.

This rule applies not only to felony and misdemeanors, but to any crimes with differing grades of offense. In a Modica type of situation, the prosecutors would be compelled to prosecute under the lesser grade offense. Therefore, when a proposed Human Trafficking crime and an existing penal code crime would require the same elements of proof, the prosecution would be required to prosecute the lesser charge.

In order to ensure that trafficking crimes are properly prosecuted and not downgraded based upon the existence of an identical lesser grade offense, we recommend the attached proposed S.D. 1 that amends the existing trafficking criminal statutes, specifically the kidnapping, extortion, and promoting prostitution statutes, and creates the new offense of exploitation of minors. All of these offenses, as amended, would constitute human trafficking offenses and would enable the successful prosecution of these heinous offenses.

Since that time, HATTF II has been working on amending the proposed S.D. 1 of H.B. No. 1784, H.D. 2, to address concerns of various members of the task force. It has made a number of changes to the measure that HATTF II believes will also be of great assistance to law enforcement in the fight against human trafficking. Notably, we believe these changes avoid the Modica issues raised last session. H.B. No. 1874, H.D. 2, proposed S.D. 1, is attached to this report as Attachment "A" and made a part hereof.

In order to ensure that trafficking crimes are properly prosecuted and not downgraded based upon the existence of an identical lesser grade offense, this bill would amend the existing criminal statutes, specifically the kidnapping, extortion, and promoting prostitution statutes, that are likely to be used to prosecute human trafficking cases. In addition, the bill creates the new offense of sexual exploitation of a minor. It is the intent of this bill that a perpetrator be held strictly liable with respect to the attendant circumstance of the victim's age in cases involving sexual exploitation of a minor or promoting prostitution in the first degree involving a minor. All of these offenses, as amended, would enable the prosecution of human trafficking offenses under Hawaii law in a manner that is roughly equivalent to prosecutions under the federal Trafficking Victims Protection Act of 2000 (Public Law 106-386) (TVPA), and would facilitate the successful prosecution of these heinous offenses.

It would also amend section 351-32, Hawaii Revised Statutes (HRS), "Violent crimes," to include sexual exploitation of a minor and promoting prostitution in the first degree, so that the victims may be eligible for compensation from the crime victim

compensation commission. The intent of this bill is to establish eligibility for crime victims' compensation for all human trafficking victims whose cases occur within the State of Hawaii. Further, it would amend section 842-1, HRS, the definition of "racketeering activity," to include sexual exploitation of a minor.

In addition, this bill further improves the protections for minors by eliminating the distinction within the promoting prostitution statute between minors under sixteen and minors under eighteen, thus mirroring provisions of the TVPA. Promoting prostitution of any minor is the equivalent of human trafficking. This elevates the penalty for promoting prostitution of sixteen- and seventeen-year-olds to the same level that currently exists for all other minors. It also changes the term "prostitutes" in section 712-1203(a), HRS, "Promoting prostitution in the second degree," to "prostituted persons" as trafficking victims are not "prostitutes" voluntarily.

Minority Opinion

Two members of HATTF II believed that it would be more appropriate to create a separate offense of Human Trafficking, and that a carefully drafted statute could survive a Modica challenge in the courts. The members believed the proposed measure does not adequately address or criminalize many aspects of human trafficking and that the proposal could be more victim-centered.

One member of HATTF II expressed concern with the proposed amendments to sections 712-1202 and -1203, HRS, with respect to promoting prostitution. This member believes that these offenses mischaracterize and inappropriately label human trafficking victims as prostitutes. The member noted that traffickers use coercion, threats, physical violence, isolation, and other forms of physical and mental punishment against their victims, and unlike prostitutes, human trafficking victims do not engage in sexual contact of their own volition. This member also noted that trafficking laws were never designed to penalize those who "advance prostitution," as "prostitutes" may engage voluntarily in sex for profit. Trafficking laws are designed to prohibit exploitation of persons who are held in slave-like conditions.

This member of HATTF II was also concerned that the proposal would negatively impact trafficking victims who already struggle with tremendous guilt, depression, and trauma as a result of being trafficked. The member believed victims would suffer further traumatization if their circumstances were equated with prostitution and endorsed by statutes that referred to them as "prostitutes."

This member recommended that the task force reconsider the proposed changes to the Promoting Prostitution sections, and instead, refocus its efforts on redefining Sexual Assault in the First Degree, Second Degree, etc., to clarify and make certain that these offenses cover trafficking victims. This member believed that section 707-730 (a), HRS, as written, would be subject to challenge if applied to a case involving human trafficking. Rather than risk challenge, an additional section could be added to that section to the

effect, "The person recruits, entices, harbors, or transports a person, without their consent, for commercial sex," or other similar language.

Another minority member expressed an opinion that section 712-1202, HRS, "Promoting prostitution in the first degree," should be a class A felony rather than a class B felony, and that section 712-1203, HRS, "Promoting prostitution in the second degree," be increased from a class C felony to a class B felony. The reasoning is that they are acts very similar to sexual assault and, therefore, should have similar penalties. The majority believed that many of these crimes could and would be prosecuted under the current sexual assault statute, rather than promoting prostitution, if the facts and evidence were sufficient.

Other issues

HATTF II had a discussion about the new terminology and perception that most prostitutes are actually "commercially sexually exploited persons," and not in the business voluntarily. The task force also discussed the possibility of amending the statutes with respect to prostitution, especially promoting prostitution, to reflect this new terminology. The commentary on sections 712-1201 to 1204, HRS, states: "These four sections deal with the non-prostitutes who derive financial gain from the work of prostitutes." (Emphasis added.) Again, this reinforces the thinking that all prostitutes are doing this "work" voluntarily. The task force did agree to recommend changing the term "prostitutes" in section 712-1203(a), HRS, to "prostituted person," a term that more clearly defines what a trafficked person would be. However, the majority of the task force conceded that changing all of the references with respect to "prostitution" to "commercial sexual exploitation" would require substantial analysis of all related statutes and case law, and was, at least for the time being, beyond the scope of this task force.

C. Develop protocols and training for individuals within designated state agencies, nongovernmental organizations, and private entities regarding provision of services to trafficked persons.

For the most part, HATTF I was tasked with developing protocols and training for law enforcement. HATTF II has not wanted to duplicate these efforts, especially since many of the members of HATTF II are also members of HATTF I. The following is a list of the activities undertaken by HATTF I and HATTF II members to achieve these goals:

For the past three years interdisciplinary teams from Hawaii have been sent to The United States Department of Justice National Conference on Human Trafficking. Teams of five members from law enforcement and human services both governmental organizations and nongovernmental organizations were represented.

Training Sessions Provided in Hawaii in 2007 (reported by Task Force members)			
Title of Training	Month	# Attended	Description of Attendees
Human Trafficking Workshop	February	31	Island of Hawaii prosecutors and ranking Maui Police Department officers
Psychological Trauma: Understanding and Working with Survivors of Human Trafficking.	April	60	Service providers, prosecutors, psychologists, and medical personnel
Human Trafficking	June/July (18 separate sessions)	1,500	Honolulu Police Department's uniform officers and plainclothes personnel
PTSD and Human Trafficking	June	50	UH School of Medicine Psychiatric Residents, service providers, prosecutors, and psychologists
Human Trafficking 101 for Community Health Center	August	35-40	Kokua Kalihi Valley Heath Center staff
Understanding Human Trafficking	October	20	Sexual assault service providers, law enforcement, advocates
Statewide Multidisciplinary Training on Human Trafficking	November	50 plus	Maui law enforcement, prosecutors, service providers
Statewide Multidisciplinary Training on Human Trafficking	November	100	Law enforcement, prosecutors, service providers
Understanding Human Trafficking	November	12	Hawai'i Pacific University students
Human Trafficking	Current	In Progress	Maui County Police Department has begun training of its patrol personnel.
Human Trafficking for Police Recruits	Unknown	Unknown	Maui County Police Recruits

Training Sessions Currently Planned for Hawaii in 2008 (reported by Task Force members)			
Description of Planned Training	Month	Estimate	Target Audience
Family Violence Prevention Fund Technical Assistance on the issue of human trafficking	February	Approx. 40	Federal law enforcement, HATTF I members, other social service and domestic violence providers/advocates, and community based agencies
Case coordination and service delivery issues in human trafficking cases	Feb./Mar.	40	Service providers for victims of Human Trafficking
Utilization of interpreters in human trafficking cases	May/June	40	Service providers for victims of Human Trafficking

HATTF II agrees that there need to be more resources for training for law enforcement, and also for service providers and the general public.

D. Develop interagency procedures to collect and organize data, including research and resource information on domestic trafficking, and to measure the extent of the need for protection and assistance to victims of trafficking

Last year, in its legislative report, HATTF II recommended that the task force be funded to complete a comprehensive needs assessment to determine the number of victims it can anticipate needing to serve, and any gaps in services to those victims. On May 3, 2007, Senate Concurrent Resolution (S.C.R.) No. 220, S.D. 1, was adopted. It requested that the Department of Human Services (DHS) conduct “a statewide needs assessment of non-citizen victims of human trafficking.” This resolution also requested DHS to:

- (1) Collaborate with the task force that was established, to determine how Hawaii can best combat and deter human trafficking, pursuant to Act 260, Session Laws of Hawaii 2006;
- (2) Identify existing obstacles, in statute, rule, or policy, that limit or deny benefits to non-citizen victims of human trafficking; and
- (3) Identify appropriate social, financial, and other services for victims of human trafficking, in general, including gaps in the services offered by state, county, and private agencies for victims of human trafficking[.]

Because DHS was tasked with this project, and has been working through the HATTF II Services committee to conduct this needs assessment, HATTF II did not feel it was appropriate to duplicate this effort. Please refer to DHS' report with respect to S.C.R. No. 220 (2007) for further information on this issue.

E. Engage in consultation with governmental and nongovernmental organizations, among other entities, to advance the purposes of this Act.

HATTF I held eight meetings this year and many HATTF II members also attended those meetings. HATTF II held two meetings of the full task force to date, and numerous meetings of its Legal committee and its Services committee since the last report. They are:

January 23, 2007	Meeting of HATTF I
February 27, 2007	Meeting of HATTF I
March 27, 2007	Meeting of HATTF I
April 24, 2007	Meeting of HATTF I
June 19, 2007	Meeting of HATTF I
August 21, 2007	Meeting of HATTF I
September 11, 2007	Meeting of full HATTF II
September 24, 2007	Meeting of deputy attorneys general and county deputy prosecuting attorneys to discuss concerns with H.B. No. 1784, H.D. 2, proposed S.D. 1, and draft a proposal for the HATTF II Legal committee to review
October 16, 2007	Meeting of HATTF I
October 18, 2007	Meeting of HATTF II Services committee
October 19, 2007	Meeting of HATTF II Legal committee
October 30, 2007	Meeting of HATTF II Services committee
October 31, 2007	Meeting of HATTF II Legal committee
November 20, 2007	Meeting of HATTF I

November 21, 2007 Meeting between a representative of the Attorney General with a representative of the Honolulu Prosecuting Attorney on H.B No. 1784, H.D. 2, proposed S.D. 1

November 28, 2007 Meeting of HATTF II Services committee

December 4, 2007 Meeting of full HATTF II

IV. Task Force Recommendations

A. Criminal Offense of Human Trafficking:

HATTF II recommends passage of H.B. No. 1784, H.D. 2, proposed S.D. 1. See Attachment "A," proposed language to enhance laws relating to human trafficking.

B. Extension of Sunset Date of Task Force:

The majority of HATTF II members continue to recommend (as noted in the 2007 report) that the current 2008 sunset date be extended to 2010 to enable the task force to follow through on its mandates, especially analysis of the needs assessment and proposals for further legislation to improve the provision of services to trafficking victims. The majority of task force members also recommend that no further reports to the legislature be necessary except for a closing, sunset report in 2010.

If HATTF II is to be extended, it is recommended that it also be further funded to pay to support the work of the task force, including the payment of reasonable travel expenses for task force members to attend meetings.

C. Changes to Task Force Membership:

The task force discussed HATTF II's membership and agreed that a number of changes would be beneficial. Sisters Offering Support should be deleted from the membership list, since it no longer exists and the name of the Domestic Violence Clearinghouse and Legal Hotline has changed to the Domestic Violence Action Center. Despite the fact that a number of named member representatives did not consistently attend meetings, the task force recommends that the rest of the membership list remain as is, except that the following organizations should be added to the membership list, as they are significant participants in the fight against human trafficking:

1. The Crime Victim Compensation Commission;
2. The Office of Gender Equity, University of Hawaii at Manoa;
3. The Hawaii State Coalition Against Domestic Violence;
4. The U.S. Conference of Catholic Bishops' Hawaii contractees;
5. The U.S. Department of Health and Human Services, Office of Refugee Resettlement's Hawaii contractees; and
6. The Hawaii County Immigration Information Office.

Attachment "A"

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 1784
H.D. 2
Proposed S.D. 1

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Human trafficking is a worldwide form of
2 exploitation in which men, women, and children are bought, sold,
3 and held against their will in slave-like conditions. People
4 are trafficked and forced to work in the commercial sex trade,
5 sweatshops, agricultural settings, domestic service, and other
6 types of servitude. In addition to the tremendous personal
7 damage suffered by individual trafficking victims, this global
8 crime has broad societal repercussions. It fuels criminal
9 networks, imposes public health costs, and erodes government
10 authority.

11 Human trafficking occurs worldwide and often involves
12 transnational criminal organizations, violations of labor and
13 immigration codes, and government corruption. Although their
14 circumstances vary, fraud, force, or coercion typically
15 distinguish trafficking victims from people who are smuggled.

1 Moreover, most trafficking cases follow the same pattern: people
2 are abducted or recruited in the country of origin, transferred
3 through transit regions, and then exploited in the destination
4 country. People may also be trafficked within the borders of
5 their country of residence.

6 Trafficking victims also include agricultural workers who
7 are brought into the United States; held in crowded, unsanitary
8 conditions; threatened with violence if they attempt to leave;
9 given no or very low pay; and kept under constant surveillance.

10 Currently, the United States government is working to
11 address this issue through funding and programming designed to
12 prevent trafficking, prosecute traffickers, and protect victims
13 through the Trafficking Victims Protection Act of 2000 and the
14 reauthorization and further refinement of this act in 2003 and
15 2005.

16 The Trafficking Victims Protection Act is used successfully
17 to prosecute human traffickers and to provide services for and
18 to protect the rights of trafficked persons. State and local
19 authorities may encounter victims of trafficking while
20 conducting routine arrests; inspecting buildings, factories, and
21 farms; operating fire, rescue, and medical emergency services;
22 and working with child abuse and neglect cases. Furthermore,
23 often members of the general public have identified human

1 trafficking victims. As the victims' neighbors, fellow
2 worshipers, or others in the community notice that something
3 does not seem right with the victims' circumstances, they have
4 made the reports that ultimately resulted in a criminal
5 investigation.

6 Currently, thirty-three states have passed anti-trafficking
7 laws that specifically define and criminalize the act of
8 trafficking in persons. However, unlike other states that have
9 passed legislation similar to the Trafficking Victims Protection
10 Act, Hawaii has distinct case law that would make the
11 establishment of separately defined anti-trafficking criminal
12 provisions difficult. Specifically, because Hawaii's criminal
13 laws already provide for offenses that may constitute human
14 trafficking, such as kidnapping, extortion, and promoting
15 prostitution, a separate human trafficking offense would likely
16 lead to overlap with existing offenses. Such an overlap raises
17 concerns that the proposed higher grade offense will violate the
18 "Modica Rule." In State v. Modica, 58 Haw. 249, 567 P.2d 420
19 (1977), the Hawaii Supreme Court stated that,
20 "where the same act committed under the same circumstances
21 is punishable either as a felony or as a misdemeanor, under
22 either of two statutory provisions, and the elements of proof
23 essential to either conviction are exactly the same, a

1 conviction under the felony statute would constitute a violation
2 of the defendant's rights to due process and the equal
3 protection of the laws." This rule applies not only to felonies
4 and misdemeanors, but also to any crimes with differing grades
5 of offenses. In a Modica type of situation, the prosecutors
6 would be compelled to prosecute under the lesser grade offense.
7 Therefore, when a proposed human trafficking crime and an
8 existing penal code crime would require the same elements of
9 proof, the prosecution would be required to prosecute the lesser
10 charge.

11 In order to ensure that trafficking crimes are properly
12 prosecuted and not downgraded based upon the existence of an
13 identical, lesser-grade offense, this Act amends the existing
14 criminal statutes, specifically the kidnapping, extortion, and
15 promoting prostitution statutes, that are likely to be used to
16 prosecute human trafficking cases. In addition, the Act creates
17 the new offense of sexual exploitation of a minor. It is the
18 intent of this Act that a perpetrator be held strictly liable
19 with respect to the attendant circumstance of the victim's age
20 in cases involving sexual exploitation of a minor or promoting
21 prostitution in the first degree involving a minor. All of
22 these offenses, as amended, would enable prosecution of human
23 trafficking offenses under Hawaii law in a manner that is

1 roughly equivalent to prosecutions under the Trafficking Victims
2 Protection Act, and would facilitate the successful prosecution
3 of these heinous offenses.

4 It would also amend section 351-32, Hawaii Revised
5 Statutes, to include sexual exploitation of a minor and
6 promoting prostitution in the first degree, so that the victims
7 may be eligible for compensation from the crime victim
8 compensation commission. The intent of this Act is to establish
9 eligibility for crime victims' compensation for all human
10 trafficking victims whose cases occur within the State of
11 Hawaii. Further, it would amend the definition of "racketeering
12 activity" in section 842-1, Hawaii Revised Statutes, to include
13 sexual exploitation of a minor.

14 In addition, this Act improves the protections for minors
15 by eliminating the distinction within the promoting prostitution
16 statute between minors under sixteen and minors under eighteen,
17 thus mirroring provisions of the Trafficking Victims Protection
18 Act. Promoting prostitution of any minor is human trafficking.
19 This elevates the penalty for promoting prostitution of sixteen-
20 and seventeen-year-olds to the same level that currently exists
21 for all other minors. It also changes the term "prostitutes" in
22 section 712-1203(a), Hawaii Revised Statutes, "Promoting

1 prostitution in the second degree," to "prostituted persons," as
2 trafficking victims are not "prostitutes" voluntarily.

3 SECTION 2. Chapter 707, Hawaii Revised Statutes, is
4 amended by adding to part VI a new section to be appropriately
5 designated and to read as follows:

6 "§707- Sexual exploitation of a minor. (1) A person
7 commits the offense of sexual exploitation of a minor if the
8 person knowingly or recklessly:

9 (a) Causes, entices, persuades, induces, or otherwise aids
10 a minor to engage in activity as an erotic or nude
11 massager or exotic or nude dancer; or

12 (b) Engages in conduct designed to institute, aid, or
13 facilitate an act or enterprise whereby a minor
14 engages in activity as an erotic or nude massager or
15 exotic or nude dancer; or

16 (c) Accepts or receives money or other property pursuant
17 to an agreement or understanding whereby the person
18 participates or is to participate in the proceeds
19 resulting from a minor engaging in activity as an
20 erotic or nude massager or exotic or nude dancer; or

21 (d) Recruits, entices, provides, or obtains a minor
22 knowing that the minor will engage in activity as an
23 erotic or nude massager or exotic or nude dancer.

1 (2) In addition to other remedies that may be provided by
2 law, any property used or intended to be used to facilitate the
3 commission of the offense of sexual exploitation of a minor,
4 proceeds derived from that offense, or property acquired or
5 maintained, in whole or in part, with proceeds of that offense,
6 may be forfeited to the State subject to the requirements of
7 chapter 712A.

8 (3) As used in this section:

9 "Erotic or nude massager" means a nude person providing
10 massage services with or without a license.

11 "Exotic or nude dancer" means a person performing, dancing,
12 or entertaining in the nude, and includes patrons participating
13 in a contest or receiving instruction in nude dancing.

14 "Minor" means any person less than eighteen years of age.

15 "Nude" means unclothed or in attire, including but not
16 limited to sheer or see-through attire, so as to expose to view
17 any portion of the pubic hair, anus, cleft of the buttocks,
18 genitals, or any portion of the female breast below the top of
19 the areola.

20 (4) Sexual exploitation of a minor is a class B felony."

21 SECTION 3. Section 351-32, Hawaii Revised Statutes, is
22 amended to read as follows:

"§351-32 **Violent crimes.** The crimes to which part III of this chapter applies are the following and no other:

- (1) Murder in the first degree (section 707-701);
- (2) Murder in the second degree (section 707-701.5);
- (3) Manslaughter (section 707-702);
- (4) Negligent homicide in the first degree (section 707-702.5);
- (5) Negligent homicide in the second degree (section 707-703);
- (6) Negligent injury in the first degree (section 707-705);
- (7) Negligent injury in the second degree (section 707-706);
- (8) Assault in the first degree (section 707-710);
- (9) Assault in the second degree (section 707-711);
- (10) Assault in the third degree (section 707-712);
- (11) Kidnapping (section 707-720);
- (12) Sexual assault in the first degree (section 707-730);
- (13) Sexual assault in the second degree (section 707-731);
- (14) Sexual assault in the third degree (section 707-732);
- (15) Sexual assault in the fourth degree (section 707-733);
- (16) Abuse of family [†]or[†] household member (section 709-906); [and]

1 (17) Sexual exploitation of a minor (section 707-) ;

2 (18) Promoting prostitution in the first degree (section
3 712-1202) ; and

4 ~~[(17)]~~ (19) Terrorism, as defined in Title 18 United States
5 Code section 2331."

6 SECTION 4. Section 707-720, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§707-720 Kidnapping.** (1) A person commits the offense
9 of kidnapping if the person intentionally or knowingly restrains
10 another person with intent to:

11 (a) Hold that person for ransom or reward;

12 (b) Use that person as a shield or hostage;

13 (c) Facilitate the commission of a felony or flight
14 thereafter;

15 (d) Inflict bodily injury upon that person or subject that
16 person to a sexual offense;

17 (e) Terrorize that person or a third person; ~~[or]~~

18 (f) Interfere with the performance of any governmental or
19 political function~~[or]~~ ; or

20 (g) Unlawfully obtain the labor or services of that
21 person, whether or not related to the collection of a
22 debt.

23 (2) As used in this section:

1 "Labor" means work of economic or financial value.

2 "Services" means a relationship between a person and the
3 actor in which the person performs activities under the
4 supervision of or for the benefit of the actor. Prostitution-
5 related and obscenity-related activities as set forth in chapter
6 712 are forms of "services" under this section. Nothing in this
7 section shall be construed to legitimize or legalize
8 prostitution.

9 ~~[(2)]~~ (3) Except as provided in subsection ~~[(3)],~~ (4),
10 kidnapping is a class A felony.

11 ~~[(3)]~~ (4) In a prosecution for kidnapping, it is a defense
12 which reduces the offense to a class B felony that the defendant
13 voluntarily released the victim, alive and not suffering from
14 serious or substantial bodily injury, in a safe place prior to
15 trial."

16 SECTION 5. Section 707-721, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§707-721 Unlawful imprisonment in the first degree. (1)**

19 A person commits the offense of unlawful imprisonment in the
20 first degree if the person knowingly restrains another person[+

21 ~~(a) Under]~~ under circumstances which expose the person to
22 the risk of serious bodily injury[+~~or~~

23 ~~(b) In a condition of involuntary servitude].~~

1 (2) Unlawful imprisonment in the first degree is a class C
2 felony."

3 SECTION 6. Section 707-764, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§707-764 Extortion.** A person commits extortion if the
6 person does any of the following:

7 (1) Obtains, or exerts control over, the property, labor,
8 or services of another with intent to deprive another
9 of property, labor, or services by threatening by word
10 or conduct to:

11 (a) Cause bodily injury in the future to the person
12 threatened or to any other person;

13 (b) Cause damage to property or cause damage, as
14 defined in section 708-890, to a computer,
15 computer system, or computer network;

16 (c) Subject the person threatened or any other person
17 to physical confinement or restraint;

18 (d) Commit a penal offense;

19 (e) Accuse some person of any offense or cause a
20 penal charge to be instituted against some
21 person;

22 (f) Expose a secret or publicize an asserted fact,
23 whether true or false, tending to subject some

1 person to hatred, contempt, or ridicule, or to
2 impair the threatened person's credit or business
3 repute;

4 (g) Reveal any information sought to be concealed by
5 the person threatened or any other person;

6 (h) Testify or provide information or withhold
7 testimony or information with respect to
8 another's legal claim or defense;

9 (i) Take or withhold action as a public servant, or
10 cause a public servant to take or withhold such
11 action;

12 (j) Bring about or continue a strike, boycott, or
13 other similar collective action, to obtain
14 property that is not demanded or received for the
15 benefit of the group that the defendant purports
16 to represent; [~~ex~~]

17 (k) Destroy, conceal, remove, confiscate, or possess
18 any actual or purported passport, or any other
19 actual or purported government identification
20 document, of another person; or

21 [~~(k)~~] (l) Do any other act that would not in itself
22 substantially benefit the defendant but which is
23 calculated to harm substantially some person with

1 respect to the threatened person's health,
2 safety, business, calling, career, financial
3 condition, reputation, or personal relationships;

4 (2) Intentionally compels or induces another person to
5 engage in conduct from which another has a legal right
6 to abstain or to abstain from conduct in which another
7 has a legal right to engage by threatening by word or
8 conduct to do any of the actions set forth in
9 paragraph (1) (a) through ~~[(4)]~~ (1); or

10 (3) Makes or finances any extortionate extension of
11 credit, or collects any extension of credit by
12 extortionate means.

13 (4) As used in this section:

14 "Labor" means work of economic or financial
15 value.

16 "Services" means a relationship between a person
17 and the actor in which the person performs activities
18 under the supervision of or for the benefit of the
19 actor. Prostitution-related and obscenity-related
20 activities as set forth in chapter 712 are forms of
21 "services" under this section. Nothing in this
22 section shall be construed to legitimize or legalize
23 prostitution."

SECTION 7. 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 a person by ~~[criminal coercion]~~ force, threat, or intimidation to engage in prostitution, or profits from such coercive conduct by another; or

(b) Advances or profits from prostitution of a person less than ~~[sixteen]~~ eighteen years old.

(2) "Threat" as used in this section means any threat proscribed by section 707-764(1).

~~[-2-]~~ (3) Promoting prostitution in the first degree is a class B felony."

SECTION 8. 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[-

~~(a) Advances]~~ advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of

1 prostitution or a prostitution business or enterprise

2 involving prostitution activity by two or more

3 [~~prostitutes, or~~

4 ~~(b) Advances or profits from prostitution of a person less~~

5 ~~than eighteen years old.]~~ prostituted persons.

6 (2) Promoting prostitution in the second degree is a class
7 C felony."

8 SECTION 9. Section 842-1, Hawaii Revised Statutes, is
9 amended by amending the definition of "racketeering activity" to
10 read as follows:

11 "'Racketeering activity" means any act or threat involving,
12 but not limited to, murder, kidnapping, sexual exploitation of a
13 minor, gambling, criminal property damage, robbery, bribery,
14 extortion, theft [or], prostitution, or any dealing in narcotic
15 or other dangerous drugs which is chargeable as a crime under
16 state law and punishable for more than one year."

17 SECTION 10. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun, before its effective date.

20 SECTION 11. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 12. This Act shall take effect upon its approval.