

Hawaii Prostitution Law

Presented by Tracy Ryan for the 2018 Conference

Overview

- Hawaii addresses criminal and non-criminal conduct through the Hawaii Revised Statutes (HRS). A statute is a specific law created by action of the State's legislature. The complete set of statutes can be accessed at <http://www.capitol.hawaii.gov/> by scrolling to the bottom left of the page.
- Prostitution laws consist of a series of statutes that are comprised in section 712-1200 to 712-1209. There are other references in the HRS, but this session will focus on the 712 series.

712-1200 the main law covering prostitution

- Under 712-1200 A person commits the offense of prostitution if the person:
 - (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.
- When first passed in the 1970's this was a short statute, but politics over the decades have added on and added on . For years it was a "petty misdemeanor" subject to a month in jail and a \$500 fine. It now runs for over a page.
- To continue section 712-1200 includes definitions and a whole new section regarding minors:
 - (2) As used in subsection "Sexual conduct" means "sexual penetration", "deviate sexual intercourse", or "sexual contact", as those terms are defined in section 707-700, or "sodomasochistic abuse" as defined in section 707-752.
 - "Minor" means a person who is less than eighteen years of age.
- (3) Prostitution is a petty misdemeanor; provided that:
 - (a) If the person who commits the offense under subsection (1)(a) is a minor, prostitution is a violation; and
 - (b) If the person who commits the offense under subsection (1)(b) does so in reckless disregard of the fact that the other person is a victim of sex trafficking, prostitution is a class C felony.

712-1200 continued with more recent additions

- (4) A person convicted of committing the offense of prostitution as a petty misdemeanor shall be sentenced as follows:
 - (a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a fine of not less than \$500 but not more than \$1,000 and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).
 - (b) For any subsequent offense, a fine of not less than \$500 but not more than \$1,000 and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.
 - (c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until four years following discharge. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense. When the court has ordered a sentence of probation, the court may impose as a condition of probation that the defendant complete a course of prostitution intervention classes; provided that the court may only impose such condition for one term of probation.

712-1200 continues

- (5) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties, unless engaged in sexual penetration or sadomasochistic abuse§
- (6) A minor may be taken into custody by any police officer without order of the judge when there are reasonable grounds to believe that the minor has violated paragraph (1)(a). The minor shall be released, referred, or transported pursuant to subsection 571-31(b). The minor shall be subject to the jurisdiction of the family court pursuant to section 571-11(1), including for the purposes of custody, detention, diversion, and access to services and resources."

712-1201 Definitions of advancing prostitution

- This section is used to define actions rather than sanction them which is done in following sections.
- **§712-1201 Advancing prostitution; profiting from prostitution; definition of terms.**
- In sections 712-1202 and 712-1203:
 - (1) A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, 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, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.

712-1202 Sex Trafficking

- For years this section was labeled promoting prostitution in the first degree. It was renamed in 2016 for political reasons so that Hawaii could have a sex trafficking law.
- by us to this section.
- **§712-1202 Sex Trafficking** (1) A person commits the offense of sex trafficking 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 conduct by another; or
 - (b) Advances or profits from prostitution of a minor; provided that with respect to the victim's age, the prosecution shall be required to prove only that the person committing the offense acted negligently.
- (2) Sex trafficking is a class A felony.
- (3) As used in this section:
 - "Fraud" means making material false statements, misstatements, or omissions.
 - "Minor" means a person who is less than eighteen years of age.
 - "Threat" means any of the actions listed in section 707-764(1)."

712-1203 Promoting Prostitution

- This section was called promoting prostitution in the second degree and was a class C felony until a few years ago. Both promoting in the third degree and second degree were rounded into this section and made a class B felony. In 2016 it was simplified to promoting prostitution without any degree when promoting in the first degree was renamed sex trafficking. Elements regarding the prostitution of a minor were removed and placed in section 712-1202 some years ago. Currently this law does not include any need to show a coercive or harmful action in order to put someone in prison for up to ten years.
- **§712-1203 Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the person knowingly advances or profits from prostitution.
- (2) Promoting prostitution is a class B felony.

712-1206 Loitering for purposes of prostitution

- This was passed to fight Waikiki streetwalking in 1991.
- (2) Any person who remains or wanders about in a public place and repeatedly beckons to or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of prostitution as that term is defined in section 712-1200, shall be guilty of a violation.
- (3) Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of advancing prostitution as that term is defined in section 712-1201(1) is guilty of a petty misdemeanor

712-1207 Street solicitation of prostitution; designated areas.

- This was originally passed in 1998 to protect Mililani residents and others through so called “prostitute free zones”. It has been amended and lengthened several times for political reasons so that it is now over a page long.
- **§712-1207 Street solicitation of prostitution; designated areas.** (1) It shall be unlawful for any person within the boundaries of Waikiki and while on any public property 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:
 - (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.
- (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 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 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 (5).

712-1207 continued

- (5) As an option to the mandatory 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 six months, subject to the mandatory condition that the defendant observe geographic restrictions that prohibit the defendant from entering or 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 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).
- (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 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.

712-1207 still more

- (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.
- (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.

712-1208 Promoting travel for prostitution

- This was passed in 2004 to sanction behavior that may occur in other jurisdictions even where legal.
- **[§712-1208] Promoting travel for prostitution.** (1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the State.
- (2) "Travel services" has the same meaning as in section 468L-1.
- (3) Promoting travel for prostitution is a class C felony.

712-1209 Solicitation of prostitution near schools and public parks.

This statute passed in 2011 is supposed to protect children from conversations between adults which are likely to be made late at night and/or hundreds of feet away.

[§712-1209] Solicitation of prostitution near schools or public parks. (1) A person commits the offense of solicitation of prostitution near schools or public parks if, within seven hundred fifty feet of a school or public park, the person offers or agrees to pay a fee to another person to engage in sexual conduct.

- (2) Solicitation of prostitution near schools or public parks is a misdemeanor.
- (3) For purposes of this section:
- "School" has the same meaning as in section 712-1249.6(6).
- "Sexual conduct" has the same meaning as in section 712-1200(2). [L 2011, c 74, §1]

712-1209-1 Solicitation of a minor for prostitution

- Passed in 2013 this is aimed at men who hire underage prostitutes, but includes no age difference and may therefore apply to two minors.
- **§712-1209.1 Solicitation of a minor for prostitution.** (1) A person eighteen years of age or older commits the offense of solicitation of a minor for prostitution if the person intentionally, knowingly, or recklessly offers or agrees to pay a fee to a minor or to a member of a police department, a sheriff, or a law enforcement officer who represents that person's self as a minor to engage in sexual conduct.
- (2) Solicitation of a minor for prostitution is a class C felony.
- (3) A person convicted of committing the offense of solicitation of a minor for prostitution shall be imposed a fine of not less than \$5,000; provided that \$5,000 of the imposed fine shall be credited to the general fund.
- (4) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer who offers or agrees to pay a fee to a minor while acting in the course and scope of duties.
- (5) The state of mind requirement for this offense is not applicable to the fact that the person solicited was a minor. A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor.
- (6) For purposes of this section:
 - "Minor" means a person who is less than eighteen years of age.
 - "Sexual conduct" has the same meaning as in section 712-1200(2). [L 2013, c

712-1209.5 Habitual solicitation of prostitution

- A 2011 law aimed at the men who hire prostitutes on the theory that they are victimizers and those who consent to sex with them are helpless victims without agency.
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- **[§712-1209.5] Habitual solicitation of prostitution.** (1) A person commits the offense of habitual solicitation of prostitution if the person is a habitual prostitution 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(1)(b);
 - (b) Street solicitation of prostitution, in violation of section 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 paragraph (a), (b), or (c); or
 - (e) Any combination of the offenses in 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 class C felony.

712-1209.6 Prostitution; motion to vacate conviction

- This bill passed in 2009 was drafted by anti-prostitution groups to motivate people to claim they were sex trafficking victims. It created a long complicated process to clear a criminal prostitution conviction rather than a simple one which would have allowed all former sex workers the ability to clear their records.
- **[§712-1209.6] Prostitution; motion to vacate conviction.** (1) A person convicted of committing the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206, street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207, may file a motion to vacate the conviction if the defendant's participation in the offense was the result of the person having been a victim of:
 - (a) Sex Trafficking under section 712-1202; or promoting prostitution under section 712-1203; or
 - (b) A severe form of trafficking as defined in title 22 United States Code section 7102(13).
- (2) A motion filed under this section shall:
 - (a) Be in writing;
 - (b) Be signed and sworn to by the petitioner;
 - (c) Be made within six years after the date that the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section;
 - (d) Describe all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge, and provide copies of any official documents showing that the defendant is entitled to relief under this section; and
 - (e) Be subject to the review and written approval of the state agency or county prosecutor responsible for prosecuting the offense that is the subject of the motion to vacate conviction.
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712-1209.6 continued

- (3) The court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (2); provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.
- (4) If the court grants a motion filed under this section, the court shall vacate the conviction.
- (5) A person making a motion to vacate pursuant to this section has the burden of proof by a preponderance of the evidence.
- (6) This section shall not apply to a motion to vacate a conviction under this chapter for:
 - Sex trafficking under section
 - Promoting prostitution under section 712-1203; or
 - (c) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct.
- (7) For the purposes of this section:
 - "Victim of trafficking" and "victim of a severe form of trafficking" shall have the same meaning as in title 22 United States Code section 7102.