

Hawaii State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Tier One (green)

Total Points: 9

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; and 3(b) Investigative Tools; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 8 Victim Assistance; 9 Civil Remedy; and 10 Vacating Convictions.

Categories Still Needed: 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; and 7 Safe Harbor for Minors.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§712-1201. Promoting prostitution; definition of terms

(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. 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 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 A felony.
- (3) As used in this section:
 - “Fraud” means making material false statements, misstatements, or omissions.
 - “Threat” means any of the actions listed in section 707-764(1).

Category 2: Labor Trafficking Statute

§ 707-781 Labor trafficking in the first degree

(1) A person commits the offense of labor trafficking in the first degree if the person intentionally or knowingly provides or obtains, or attempts to provide or obtain, another person for labor or services by any of the following means committed against the other person:

- (a) Any of the acts constituting extortion as described in section 707-764, except that for purposes of this paragraph “labor” and “services” shall be as defined in section 707-780;
- (b) The acts constituting kidnapping as described in section 707-720(1)(a) through (g), except that for purposes of this paragraph “labor” and “services” shall be as defined in section 707-780;
- (c) The acts described in section 707-721(1) or 707-722, relating to unlawful imprisonment;
- (d) The acts described in section 707-730, 707-731, or 707-732, relating to sexual assault in the first, second, or third degree;
- (e) Force, deadly force, or unlawful force;
- (f) The acts described in the definition of deception pursuant to section 708-800, or fraud, which means making material false statements, misstatements, or omissions to induce or maintain the person to engage or continue to engage in the labor or services;
- (g) Requiring that labor or services be performed to retire, repay, or service a real or purported debt, if performing the labor or services is the exclusive method allowed to retire, repay, or service the debt and the indebted person is required to repay the debt with direct labor in place of currency; provided that this shall not include labor or services performed by a child for the child's parent or guardian;
- (h) The acts described in either section 707-710, 707-711, or 707-712, relating to assault;
- (i) Withholding any of the person's government-issued identification documents with the intent to impede the movement of the person;
- (j) Using any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform the labor or services, then the person or a friend or a member of the person's family would suffer serious harm, serious financial loss, or physical restraint; or
- (k) Using or threatening to use any form of domination, restraint, or control over the person which, given the totality of the circumstances, would have the reasonably foreseeable effect of causing the person to engage in or to remain engaged in the labor or services.

(2) Labor trafficking in the first degree is a class A felony.

§ 707-782 Labor trafficking in the second degree

(1) A person commits the offense of labor trafficking in the second degree if the person knowingly:



- (a) Acts as an individual or uses a licensed business or business enterprise to aid another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or
 - (b) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act described in paragraph (a) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.
- (2) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (1) involves kidnapping or an attempt to kidnap, sexual assault in the first, second, or third degree, or the attempt to commit sexual assault in the first, second, or third degree, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.
- (3) Upon conviction of a defendant for an offense under subsection (1), the court shall also order that any and all business licenses issued by the State be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate a business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section or section 707-781.

Category 3(a): Asset Forfeiture

Chapter 712A-4. Forfeiture

Covered offenses

Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses that specifically authorize forfeiture;
- (b) Murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, promoting prostitution, solicitation of a minor for prostitution, habitual solicitation of prostitution, or electronic enticement of a child that is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.

Category 3(b): Investigative Tools

§ 803-44. Application for court order to intercept wire, oral, or electronic communications

The attorney general of this State, or a designated deputy attorney general in the attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a designated judge or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or



is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, if the interception might provide or has provided evidence of:

- (1) Murder;
- (2) Kidnapping;
- (3) Labor trafficking in the first degree;
- (4) Labor trafficking in the second degree;
- (5) Felony criminal property damage involving the danger of bodily injury as defined in section 707-700;
- (6) Distribution of dangerous, harmful, or detrimental drugs; or
- (7) Conspiracy to commit one or more of the above; or
- (8) Involvement of organized crime and any of the following felony offenses:
 - (A) Extortion;
 - (B) Bribery of a juror, witness, or police officer;
 - (C) Receiving stolen property;
 - (D) Gambling; and
 - (E) Money laundering.

§ 842-1. Organized Crime: Definitions

As used in this chapter:

“Enterprise” includes any sole proprietorship, partnership, corporation, association, and any union or group of individuals associated for a particular purpose although not a legal entity.

“Organized crime” means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, labor trafficking, or corruption of law enforcement officers or other public officers or employers.

“Person” includes any individual or entity capable of holding a legal or beneficial interest in property and includes nonresident aliens.

“Racketeering activity” means any act or threat involving but not limited to murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, labor trafficking, theft, or prostitution, or any dealing in narcotic or other dangerous drugs that is chargeable as a crime under state law and punishable by imprisonment for more than one year.

“Unlawful debt” means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury.

Category 4(a): Training for Law Enforcement

None.

Category 4(b): Human Trafficking Task Force

None.



Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

Yes. See §712-1202(b).

Category 6: Posting of a Human Trafficking Hotline

371-20. National Human Trafficking Resource Center Hotline; Posting Requirement; Penalty.

(a) Every employer specified in subsection (b) shall post and keep posted in a place readily accessible to individuals in the employer's employ a poster no smaller than eight and one-half inches by eleven inches in size that states the following:

"If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other similar activity – call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. Victims of human trafficking are protected under United States and Hawaii law. The hotline is:

- (1) Available twenty-four hours a day, seven days a week;
- (2) Toll free;
- (3) Operated by a non-profit, non-governmental organization;
- (4) Anonymous and Confidential;
- (5) Accessible in one hundred seventy language; and
- (6) Able to provide help, referral to services, training, and general information.

(b) For purposes of this section, "employer" means any person that:

- (1) Holds a class 5 or Class 11 Liquor License pursuant to Section 281-31;
- (2) Maintains a massage therapy establishment that employs five or more people; or
- (3) Employs one or more erotic or nude massagers or erotic or nude dancers as defined

in Section 712-1210.

(c) A poster required under subsection (a) shall be printed in English and the director may supplement the required information.

(d) The Department shall make available on its public website an electronic version of the poster required by subsection (A) for employers to print.

(e) Any employer who willfully and knowingly fails, neglects, or refuses to perform any act required by this section shall be fined not more than \$100 for each separate offense. Each day the violation continues shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

Category 7: Safe Harbor

None.

Category 8: Victim Assistance

HB 2038 (2014)

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



"§706- Human trafficking victim services fund.

- (1) In addition to any disposition authorized by chapter 706 or 853, any individual who is:
 - (a) Convicted of an offense under part VIII of chapter 707; or
 - (b) Convicted of an offense under part I of chapter 712,shall be ordered to pay a fee under subsection (2).
- (2) Fees for individuals subject to subsection (1) shall not exceed the following:
 - (a) when the offense is a class A felony;
 - (b) when the offense is a class B felony;
 - (c) when the offense is a class C felony;
 - (d) when the offense is a misdemeanor; or
 - (e) when the offense is a petty misdemeanor.
- (3) There is established within the state treasury a special fund to be known as the human trafficking victim services fund to be administered by the department of labor and industrial relations. The disbursement of money from the human trafficking victim services fund shall be used to supplement programs, grants, or purchase of service contracts that support or provide comprehensive services to victims of labor trafficking crimes under part VIII of chapter 707, or victims of promoting prostitution in the first degree under section 712-1202 or a severe form of trafficking as defined under title 22 United States Code section 7102. Moneys in the special fund shall be used for new or existing programs, grants, or purchase of service contracts and shall not supplant any other moneys previously allocated to these programs, grants, or purchase of service contracts.
- (4) All fees paid and interest accrued on funds collected pursuant to this section shall be deposited into the human trafficking victim services fund.
- (5) Pursuant to section 706-605, any crime victim compensation fees imposed under part III of chapter 706, restitution imposed by section 707-785 or 707-786, and probation fees shall be paid before payment of the fee under subsection (2).
- (6) The department of labor and industrial relations shall submit to the legislature no later than twenty days prior to the convening of each regular session a written annual report that provides the following:
 - (a) An accounting of the receipts of and expenditures from the human trafficking victim services fund; and
 - (b) Any recommendations to improve support of and services to victims of labor trafficking crimes under part VIII of chapter 707, or victims of promoting prostitution in the first degree under section 712-1202 or a severe form of trafficking as defined under title 22 United States Code section 7102."

Category 9: Civil Remedy

§663J-2 Definitions.

As used in this chapter:

"Coerce" means to use or threaten to use any form of domination, restraint, or control for the purpose of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution. Coercion exists if the totality of the circumstances establish the existence of domination, restraint, or control that would have the reasonably foreseeable effect of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution.



"Promoting prostitution" means promoting prostitution in the first or second degree, as provided in sections 712-1202 and 712-1203, respectively.

"Prostitution" has the same meaning as provided in section 712-1200.

§663J-3 Cause of action for coercion into prostitution. An individual has a cause of action against a person who:

- (1) Coerced the individual into prostitution;
- (2) Coerced the individual to remain in prostitution;
- (3) Used coercion to collect or receive any of the individual's earnings derived from prostitution; or
- (4) Hired, or attempted to hire the individual to engage in prostitution, when a reasonable person would believe that the individual was coerced into prostitution by another person.

Paragraph (3) shall not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual's earnings derived from prostitution.

§663J-4 Evidence. Acts that may serve as evidence in support of a claim under section -3 include but are not limited to:

- (1) Physical force or threats of physical force;
- (2) Physical or mental torture;
- (3) Leading an individual to believe that the individual will be protected from violence or arrest;
- (4) Kidnapping;
- (5) Blackmail;
- (6) Extortion;
- (7) Threat of criminal prosecution for any violation of the law;
- (8) Threat of interference with parental rights;
- (9) Restriction or interference with speech or communication with others;
- (10) Isolation;
- (11) Exploitation of pornographic performance;
- (12) Interference with opportunities for education;
- (13) Destroying property of the individual;
- (14) Restriction of movement; or
- (15) In the case of a person coerced while a minor:
 - (A) Exploiting needs for food, shelter, safety, affection, or intimate relationship;
 - (B) Exploiting a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency;
 - (C) Promise of legal benefit, such as posting bail, procuring an attorney, protecting from arrest, or promising unionization;
 - (D) Promise of financial rewards; or
 - (E) Defining the terms of an individual's employment or working conditions in a manner that is likely to lead to the individual's use in prostitution.

§663J-5 Damages. A person entitled to bring an action under section 663J-3 may recover all of the following damages:

- (1) Economic damages proximately caused by coercion into prostitution;
- (2) Noneconomic damages proximately caused by coercion into prostitution;



- (3) Exemplary damages;
- (4) Reasonable attorney's fees; and
- (5) Costs of suit, including reasonable expenses for expert testimony.

Category 10: Vacating Convictions

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) Promoting prostitution in the first degree under section 712-1202; 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.

(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:

- (a) Promoting prostitution under section 712-1202 or 712-1203; or
- (b) 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."

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.