
A BILL FOR AN ACT

RELATING TO PROSTITUTION.

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

SECTION 1. The legislature finds that it is in the State's interest to protect the health and safety of all its citizens and that the Hawaii state constitution recognizes our citizens' right to liberty. In considering these facts, several amendments to the statutes relating to zoning of prostitution activity are necessary.

This Act repeals two statutes to achieve these ends: section 712-1206, Hawaii Revised Statutes, relating to loitering for the purpose of engaging in or advancing prostitution, is unconstitutionally vague and section 712-1209, Hawaii Revised Statutes, relating to solicitation of prostitution near schools or public parks, is not justified by a clear public purpose. It may be argued that children should be shielded from observing overtly sexual conversations by adults. However, most or all of the activity may occur after dark when children are not present or occur when children are out of hearing range.

The counties shall retain zoning authority for the public aspects of prostitution as defined in section 712-1207, Hawaii Revised Statutes, relating to street solicitation of prostitution.

However, to protect the rights of sex workers, the process of establishing the zones shall include a court hearing that includes representation of the affected parties.

SECTION 2. Section 712-1207, Hawaii Revised Statutes, is amended to read as follows:

"§712-1207 Street solicitation of prostitution; designated areas. (1) ~~[It]~~ A county may petition the court to establish designated areas where it shall be unlawful for any person within the boundaries of ~~[Waikiki]~~ the designated areas 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:]~~ The court shall hold a hearing to consider the county's petition. The court shall make reasonable efforts to identify advocates for sex workers and consider any arguments they present in opposition to or with advice on the county petition before making its ruling. The county's petition shall:

(a) [~~Designates~~] Designate 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~~] Alter the boundaries of any existing area under paragraph (a);

provided that not more than four areas may be designated within the State.

[~~(4)~~] (3) 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).~~]

~~(5)~~] (4) 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~~] in 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)~~] (5) 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~~] in 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)~~ (6) 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]~~ may be detained~~[, without bail,]~~ until the hearing under the appropriate subsection can be held, which hearing shall be held as soon as reasonably practicable.

~~(8)~~ (7) 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)~~ (8) 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."

(9) 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.

SECTION 3. Section 712-1206, Hawaii Revised Statutes, is repealed.

~~["~~§712-1206~~ **Loitering for the purpose of engaging in or advancing prostitution.** (1) For the purposes of this section, "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.~~

~~(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."]~~

SECTION 4. Section 712-1209, Hawaii Revised Statutes, is repealed.

~~["~~§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)."]~~

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

SECTION 6. This Act shall take effect on July 1, 2017.

INTRODUCED BY: _____

Report Title:

Prostitution; Loitering; Street Solicitation; Designated Areas;
Solicitation Near Schools or Public Parks

Description:

Authorizes counties to designate areas where prostitution is prohibited upon petition to the courts. Repeals crimes of loitering for the purpose of prostitution and solicitation of prostitution near schools or public parks.

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